MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(CITY OF ST. LOUIS)

CURTIS FARBER,	)	
	)	
PLAINTIFF,	)	
	)	NO: 1622-CC05285
V.	)	
	)	DIVISION 18
METROPOLITAN POLICE DEPARTMENT OF THE CITY OF ST. LOUIS,	)	
	)	
DEFENDANT.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT

Plaintiff seeks declaratory and injunctive relief under the provisions of the Sunshine Law, §§ 610.010 *et seq.*, RSMo, and particularly §610.100 pertaining to investigative records. The cause was tried to the Court on February 22, 2017. Having considered the pleadings, testimony, exhibits and arguments of counsel, and being fully advised in the premises, the Court now enters its findings of fact, conclusions of law and order and judgment. Any objections not expressly ruled on are deemed overruled, with the Court considering the evidence solely for permissible purposes. Issues on which no specific findings are made shall be deemed found in accordance with the result reached.

Findings of Fact

1. Plaintiff is an individual citizen of Missouri and resident of the City of St. Louis.

2. The Metropolitan Police Department is now a department or division of the City of St. Louis, a constitutional charter city of Missouri. The Police Department became a part of City government in 2013 by virtue of a statutory change transferring the control of the Department from the Board of Police Commissioners of the City of St. Louis, a state agency, to the City. The Police Department has, and at all times material hereto, had its own designated custodian of records for its departmental records. The Police Department maintains an Internal Affairs Division to which are assigned any complaints of misconduct by commissioned officers of the Police Department. The citizen complaint process is described in a brochure entered into the record as Pl.Ex. 2.

3. A complaint of police officer misconduct, when received by anyone in the Police Department, is referred to the Internal Affairs Division for preliminary investigation. If, at any point, the Internal Affairs Division, "IAD" for short, considers that the citizen complaint calls for a criminal investigation of the officer involved, the IAD initiates a second, wholly separate criminal investigation, utilizing officers who have no connection to the misconduct investigation. This "two-track" investigative approach to police misconduct apparently has been in place for some time, although it was belatedly disclosed in reaction to the judgment originally entered by this Court (Heagney, J.) in *Chasnoff v. Board of Police Commissioners*, 22nd Cir. No. 0722-CC07278. In any event, the practice appears to be designed to avoid tainting any parallel criminal investigation with information obtained from the officer or officers involved in the

alleged misconduct, as a result of compelled employee interviews—so-called "*Garrity*" statements after *Garrity v. New Jersey,* 385 U.S. 492 (1967).

4. A variety of records are created or obtained by IAD investigators in the course of their investigation of a citizen complaint of police misconduct. All of these records are maintained in what the Police Department considers to be a closed personnel record, although many of the records are documents or communications obtained from third persons. The IAD file in this case was admitted into evidence, under seal, by stipulation, as Def.Ex. I, thereby permitting the Court to examine all records at issue.

5. Plaintiff was arrested on July 9, 2011, when officers went to the apartment he apparently shared with his paramour, who had complained of abuse of a child by plaintiff. Upon entering the apartment, the officers saw and arrested plaintiff, who was partaking of cannabis at the time. Plaintiff was charged with and eventually pleaded guilty to several offenses, including abuse of a child, and was placed on probation.

6. On or about March 18, 2013, plaintiff filed a formal complaint concerning his arrest. Plaintiff asserted that, in the immediate aftermath of his arrest, the arresting officers assaulted him and threatened to concoct false drug charges against him. Plaintiff further claimed that a sergeant on the scene did nothing to prevent this mistreatment. IAD did not notify plaintiff of the receipt of his complaint until June 20, assigning it IAD File No. 13/131. Although there is no written memorialization of the decision,

the investigator assigned to the complaint immediately concluded that no criminal investigation of the arresting officers' conduct was warranted, so that the investigation of the plaintiff's complaint proceeded purely as a potential disciplinary matter. It is not altogether clear to the Court whether the IAD investigator interviewed plaintiff before plaintiff completed the employee misconduct report, or whether the investigator insisted that plaintiff first file the employee misconduct report before the investigator would proceed with an investigation. In any event, after the employee misconduct report was submitted, the investigator proceeded to generate or collect the materials described below.

7. The records actually created by IAD investigators in this case, in approximate chronological order, include: (a) the allegation of employee misconduct report ("EMR"), Pl.Ex. 1, Def.Ex. G; (b) notification of receipt of complaint, see Pl.Ex. 3; (c) memorializations or recordings of the complainant's statement; (d) notice of the complaint and other memoranda to the accused officer or officers, usually with a warning that responses must be provided on pain of dismissal but that such responses cannot be used against the officer in a criminal proceeding; (e) written or recorded statements of the accused officers responding to the complainant's allegations; (f) memorializations of the IAD investigators' efforts to obtain information from third parties (the complainant's criminal defense counsel, medical providers, independent witnesses, etc.); (g) an administrative reports transmittal sheet ("ARTS"), see Def.Ex. H; (h) formal notification to the complainant of the result of the IAD

investigation; and (i) internal inventory and timeline records or logs reflecting what documents have been collected, what investigative steps were taken and when.

8. In dealing with plaintiff's complaint at issue in this case, the Police Department IAD also assembled documents from several sources besides IAD, either external sources or other police reports. The documents are included in Def.Ex. I, but were not prepared by IAD or submitted by the accused police officers in response to IAD requests. These additional documents include: (a) medical records release authorizations signed by plaintiff; (b) booking and prisoner processing information records; (c) arrest record printouts or "rap sheets" from the Regional Justice Information System ("REJIS"); (d) an arrest log showing arrests on the same date as plaintiff's arrest; (e) plaintiff's medical records from the City corrections facility; (f) the incident report recording the complaint and plaintiff's arrest as a result thereof, and the charges preferred; (g) "supplemental" reports reflecting activity after plaintiff's arrest, including presentation of charges to the Circuit Attorney; (h) a report, apparently from a credit reporting agency, concerning the complaining witness in the underlying incident leading to plaintiff's arrest and subsequent charges; and (i) photographs apparently supplied to IAD by plaintiff, showing injuries to plaintiff's face and hip. The inventory list compiled and included as part of Def.Ex. I indicates that transcripts of testimony of the arresting officers and the complaining witness were obtained, apparently from the criminal

proceedings, but these do not appear in Def.Ex. I or elsewhere in the record.

9. Although it would appear that the investigation of plaintiff's complaint by the IAD was substantially complete by September 2013, the Police Department bureaucratic wheels ground on very slowly. The final ARTS document, consisting of the report of the investigation and the recommendations of the IAD were not reviewed and accepted by the Chief of Police until January 2015, at which time plaintiff was notified that the investigation found his complaint "not sustained," which in IAD patois means that the complaint was neither proved nor disproved by the investigation. See Pl.Ex. 2.

10. On November 3, 2015, plaintiff formally requested that the Police Department release to him an unredacted copy of the IAD report on his complaint. Pl.Ex. 4. The City Counselor, on behalf of the Department, responded that plaintiff's request would not be "processed" for several weeks. Pl.Ex. 5. However, it was only after a renewed demand by plaintiff in March 2016 that the Department replied in April that the IAD report was a closed record. See Pl.Ex. 6, 7. Plaintiff then filed suit. Although plaintiff's requests to the Police Department referred to "a copy of the Internal Affairs report 13/131," the petition herein alleges: "The records requested by Plaintiff are related to Plaintiff's incident report (his citizen complaint alleging criminal conduct) and the subsequent investigative report (the Internal Affairs Division investigation documents that were compiled after the complaint was investigated), which are all open records that Defendant must disclose." At trial and in post-

trial filings, the parties variously refer to the IAD "report" and "the file." As noted above, the parties stipulated to the introduction into evidence of Def.Ex. I, which purports to be the entire IAD investigation file, including the final report but also many other items, as noted above. The Court finds that plaintiff's claim for disclosure embraces not just the final report, but also all other materials comprising the record of the IAD investigation.

11. The Court finds, as a matter of fact, that the following portions of Def.Ex. I were prepared exclusively for the purpose of and relate to the disciplining of the arresting officers and sergeant identified therein, and discuss or record personal information about those officers and sergeant, that is, information relating to their performance of duty: (a) correspondence directed to plaintiff notifying him of the results of the IAD investigation, Def.Ex. I, pp. 1-5; (b) ARTS report dated 8/4/2014; (c) inventory list; (d) investigative information sheet; (e) inquiries to and statements from the accused officers, Def.Ex. I, pp. 39-61; (f) inter-office memoranda regarding the IAD investigation, Def.Ex. I, pp. 79, 80, 100; (g) personal information of the victim of the offense with which plaintiff was charged, Def.Ex. I, pp. 142-43.

12. The Court finds, as a matter of fact, that all other documents contained in Def.Ex. I, not identified in ¶11 hereof, are not records relating exclusively to the hiring, firing, or disciplining of identifiable employees of the Police Department nor are they individually identifiable personnel records of employees of the Police Department. The Court finds that plaintiff's initial

complaint, Pl.Ex. 1, and photographs of the claimed injuries to plaintiff, Def.Ex. I, unnumbered but apparently pp. 148–152, were submitted by plaintiff and cannot be considered prepared or submitted exclusively for disciplinary purposes. Plaintiff obviously wished to invoke any available remedy when he lodged his complaint; the fact that IAD chose to reject a criminal investigation does not mean that plaintiff's submissions did not have a dual purpose. On the contrary, they did.

13. To the extent that the contents of Def.Ex. I can be characterized, as a matter of fact, as incident reports, investigative reports, or arrest reports, the Court finds that no active investigation is pending with regard to such reports.

14. The City of St. Louis has adopted Ordinance 61952, regarding the closing of "personnel records," but the record in this case does not show that the City has adopted any civil service rules or regulations in accordance with §84.344.8, RSMo.

15. The Court finds by a preponderance of the evidence that the Police Department knowingly acted contrary to law in regard to the closing of the entirety of Def.Ex. I.

16. The Court finds that the Police Department did not act purposely with an intent to violate Missouri open records statutes in regard to Def.Ex. I.

17. Plaintiff presented no evidence regarding attorney's fees in this case, but the Court has had prior experience with plaintiff's counsel in similar matters and is aware of the record and the length

of trial of the case. The Court is also familiar with customary billing rates for litigation of this type in this jurisdiction.

Conclusions of Law

1. The Court has jurisdiction of the parties and subject matter. §§527.010 et seq., 610.027-.030, 610.100.6, RSMo. The Court concludes that, while it would be better practice to name the City of St. Louis as the defendant in cases involving its divisions or departments--of which the Police Department is now one, see *St. Louis Police Leadership Org. v. City of St. Louis,* 484 S.W.3d 882 (Mo.App.E.D. 2016)--the Court is authorized to exercise jurisdiction over the City's Police Department in that the Police Department is a public governmental body as defined in §610.010(4)(c).

2. The Court can take judicial notice of the judgments in *Chasnoff v. Board of Police Commissioners,* 22nd Cir. No. 0722-CC07278, consolidated with *Ishmon v. Board of Police Commissioners,* 22nd Cir. No. 1122-CC01598, in the interests of justice and to avoid creating unnecessary conflicting claims in applying the open records statutes to operations of the Police Department. See *State v. Flowers,* 437 S.W.3d 779, 787 n. 7 (Mo.App.W.D. 2014) and cases cited. The interests of justice in this case demand such judicial notice, and it is apparent from the record that the Police Department doggedly maintains its IAD files as closed records without regard to the Sunshine Law (or, for that matter, the commands of *Brady v. Maryland,* 373 U.S. 83 (1963)).

3. The open records statutes, known colloquially as the Sunshine Law, require that records of public governmental bodies be

open to the public unless the records come within various exceptions, as to which the governmental body may act to close the records. Section 610.021 defines various categories of permissibly closed records, and §610.100 defines a variety of records specific to law enforcement and also provides for the closure of some of those records. To the extent that there is any conflict between §610.021 and §610.100, the latter will control, as it is the more specific provision. See, e.g., *State ex rel. Director of Revenue v. Gaertner,* 32 S.W.3d 564 (Mo.banc 2000). However, the Court perceives no conflict in the context of this case.

4. The categories of records at issue in this case are investigative reports, §610.100(5), and records relating to the hiring, firing, disciplining or promoting of particular employees and individually identifiable personnel records pertaining to employees, generically referred to by Sunshine Law defendants as "personnel records." See §610.021(3)&(13). Records concerning hiring, firing, etc., may be closed "when personal information about employees is discussed or recorded." §610.021(3). Applying the statutory definitions, the Court concludes that Def.Ex. I is an amalgamation of open records under §610.100 and §610.022.5 and records which are properly closed under §610.021(3)&(13).

5. Section 610.024 provides the manner of handling records which include a combination of records exempt from disclosure ("closed" records) and material which is not exempt from disclosure ("open" records). The statute requires that, when a record includes both species of records, "the public governmental body shall separate

the exempt and nonexempt material and make the nonexempt material available for examination and copying." It is manifest from this record that the Police Department simply does not do this when it comes to IAD investigations, in flagrant disregard of the plain command of the statute.

6. Plaintiff's contention that the investigation of his complaint of police misconduct must necessarily be an "investigative report," as defined by §610.100.1(5), is not consistent with the current construction and application of the open records statutes. Certainly plaintiff's complaint that police officers assaulted him can be considered a report of a crime--i.e., an "incident report" triggering an investigation, see §610.100.1(4)--but it does not follow that an "investigative report" prepared in conjunction with such a complaint is necessarily an open record in its entirety.

7. A complaint of police misconduct can result in *both* a disciplinary proceeding *and also* a criminal investigation. See *Laut v. City of Arnold,* 417 S.W.3d 315 (Mo.App.E.D. 2013), distinguishing *Guyer v. City of Kirkwood,* 38 S.W.3d 412 (Mo.banc 2001). In *Laut*, the Court of Appeals construed *Guyer* as creating a *presumption* that an investigation in response to a complaint implicating an officer in criminal conduct is an investigation of criminal conduct, and not exempt from disclosure. The Court of Appeals held that this presumption can be overcome if the governmental body shows that *in fact* the investigation of a complaint of police officer misconduct was directed solely to disciplinary action. Thus, in the case at bar, the Court has found that the Police Department rejected the idea of a

criminal investigation out of hand, and accepted and investigated plaintiff's employee misconduct report as a disciplinary matter. The Sunshine Law does not dictate to police departments what complaints must be handled as criminal complaints, as employee misconduct complaints, or as both. It merely defines what police investigative records must be open and what records may be closed.

8. In the case at bar, because the employee misconduct report alleged misconduct that could constitute a crime, and not just some incident of discourteous or negligent behavior, the report itself must be regarded as an "incident report," i.e., a record of a law enforcement agency consisting of the date, time, location, victim and immediate facts and circumstances surrounding the initial report of a crime "or incident." §610.100.1(4). As such, it must be an open record. *Guyer v. City of Kirkwood,* 38 S.W.3d at 415; *Ishmon v. St. Louis Board of Police Commissioners*, 415 S.W.3d 144, 147 (Mo.App.E.D. 2013). However, given the findings of the Court that the Police Department never treated plaintiff's complaint as alleging a crime, the *Guyer* presumption is overcome in this case, and, under the reasoning of *Laut,* the "personnel record" portions of the IAD investigative record can be closed.

9. Section 84.344, RSMo, part of the act authorizing the assumption of control of the Police Department by the City of St. Louis, provides in part:

> 8. If the city not within a county elects to establish a municipal police force under this section, the city shall establish a separate division for the operation of its municipal police force. The civil service commission of the city may adopt rules and regulations appropriate for the unique operation of a police department. *Such rules and regulations shall reserve*

> *exclusive authority over the disciplinary process and procedures affecting commissioned officers to the civil service commission; however, until such time as the city adopts such rules and regulations, the commissioned personnel shall continue to be governed by the board of police commissioner's rules and regulations in effect immediately prior to the establishment of the municipal police force, with the police chief acting in place of the board of police commissioners for purposes of applying the rules and regulations.* Unless otherwise provided for, existing civil service commission rules and regulations governing the appeal of disciplinary decisions to the civil service commission shall apply to all commissioned and civilian personnel. *The civil service commission's rules and regulations shall provide that records prepared for disciplinary purposes shall be confidential, closed records available solely to the civil service commission and those who possess authority to conduct investigations regarding disciplinary matters pursuant to the civil service commission's rules and regulations*. . . . [Emphasis added.]

Because there is no indication in the record that the City's Civil Service Commission has adopted any rules or regulations in accordance with this statute, the Court concludes that the statute is irrelevant. Consequently, the plaintiff's unpleaded claim that §84.344 is an invalid "special law" need not be addressed—though the Court observes that it lacks merit. See *Boyd-Richardson Co. v. Leachman,* 615 S.W.2d 46 (Mo.banc 1981). Likewise irrelevant is Ordinance 61952 (Def.Ex. K). If the ordinance were in conflict with the Sunshine Law it would be invalid; on its face, it merely expresses the City's decision to close "individually identifiable personnel records" and is therefore consistent with §610.021(13)—but it does not serve to fulfill the proviso of §84.344.8 as it is not a civil service commission regulation.

10. If the other provisions of the Sunshine Law were ambiguous, §84.344.8 might shed light on the proper scope of the Police Department's authority to treat IAD investigatory files as closed records, but there is no ambiguity in the definitions of §610.021 or

§610.100. The reference in §84.344.8 to "records prepared for disciplinary purposes" is not fundamentally different than the definition of permissibly closed "personnel records" in §610.021(3). Rather, the role of §84.344.8 seems to be to command the Civil Service Commission to close such records in the case of the Police Department.

11. Notwithstanding the irrelevancy of §84.344.8 for present purposes, it is abundantly clear to this Court that it is high time for the Civil Service Commission to take control of disciplinary procedures of the Police Department. Section 84.344.8 mandates that the Commission do so. The IAD process described in the record seems contrary to the plain language of the statute, leaving, as it does, exclusive control over discipline in the hands of the Chief of Police. Under the City Charter (of which the Court can take judicial notice), the director of personnel is authorized to investigate all manner of issues relating to City civil servants, and must approve disciplinary actions of appointing authorities. Charter, art. XVIII, §9(i)&(j). In the Court's opinion, §84.344.8 contemplates that the Civil Service Commission and *a fortiori* the director of personnel are to assume the role of investigator of such complaints against police officers, leaving only the decision of what discipline to impose with the Chief of Police, thereby obviating the internal conflicts of interest that can arise when police officers are charged with investigating a citizen complaint as both a crime and a violation of rules and regulations. Moreover, if the director's investigation unearths evidence of crime, the director is in a position independently to notify the federal and state prosecuting authorities, thereby ensuring

an additional layer of protection for the citizenry from the rare but inevitable instances of criminal misconduct by police. Finally, the removal of investigatory authority for misconduct complaints from the Police Department would largely eliminate future disputes over what investigative records are open or closed. The Police Department's "two track" approach could continue, albeit with one track in charge of the director of personnel.

12. As evidenced by *Chasnoff v. Board of Police Commissioners,* this is not the first time this Court has been confronted with the peculiar cosmos of IAD investigations. While the City may continue to ignore the directive of §84.344.8, the Court cannot ignore the Police Department's persistence in disregarding the Sunshine Law in material respects. True, the Court has not found that the Police Department acted with the purpose of frustrating the Sunshine Law, in the Department's approach to closing IAD records, but the Police Department in the aftermath of *Chasnoff* knows that such records are not ineluctably closed. The Police Department therefore knowingly violated the open records laws by refusing to disclose the open records portions of the IAD investigatory file to plaintiff.

13. The Court has found and concluded that the most important parts of the IAD investigatory file, i.e., the final report and the so-called *Garrity* statements of individual officers, are records which may be closed records. Superficially, this seems to be inconsistent with the judgments in *Chasnoff v. Board of Police Commissioners*, and the Court hastens to explain. There can be no question on this record that the IAD report on plaintiff's complaint and the *Garrity*

statements reflected therein were and are records relating to the firing or disciplining of the named police officers, and that personal information about the officers was discussed or recorded in those records; withal, those documents contain "individually identifiable personnel records" beyond the officers' name, rank and serial number. See §610.021(3)&(13). The record in *Chasnoff* showed something quite different: the complaint and subsequent investigation did not simply "relate to" disciplining police officers for violations of police department rules and regulations, they were found by a court to entail accusations and investigation of criminal misconduct by officers from the beginning. The "two track" policy was nowhere in evidence until *after* the Court ruled that the records were open. Only then did the Board of Police Commissioners present evidence that an IAD disciplinary investigation was wholly separate from a criminal investigation. See *Chasnoff v. Mokwa*, 415 S.W.3d 152 (Mo.App.E.D. 2013); Amended Findings of Fact, Conclusions of Law and Judgment (Heagney, J.), ¶10, April 12, 2010, 22nd Cir. No. 0722-CC07278.

14. Unlike *Chasnoff,* the case at bar presents a situation similar to that discussed by the Court of Appeals in *Laut,* supra. For whatever reason, the IAD *never* treated plaintiff's complaint as anything but a complaint of employee misconduct requiring an investigation for possible discipline. While the misconduct alleged by plaintiff, i.e., assault, was and is a crime, the IAD did not treat it as such, did not prepare an "incident report," and did not prepare any sort of "investigative report" as those terms are defined in §610.100(4)&(5), and as those records are exemplified by the incident

report and supplemental reports pertaining to the underlying criminal charges against plaintiff, Def.Ex. I, pp. 101–132. Thus, the question of the nature of the IAD report and other materials in this case must be viewed as a question of fact, with the Police Department permitted to rebut the *Guyer* presumption that a complaint of misconduct against an officer which alleges a crime results in a criminal investigation and so the records thereof are open. In deciding the original claims in *Chasnoff,* Judge Heagney did not have the benefit of the *Laut* opinion and further found as a fact that the real IAD investigation was focused on criminal behavior. *Chasnoff* Judgment, ¶¶4, 13, 22. On remand after affirmance of Judge Heagney's judgment, this Court had no occasion to reexamine the issue of an exemption for the record of the IAD investigation: that issue had been decided in favor of opening the record.

15. In the final analysis, the crux of this Court's holding that portions of Def.Ex. I can be closed records is found in *Laut,* 417 S.W.3d at 323:

> . . . Section 610.010 contains the definition of a "public record" and applies to the term "as used in this chapter." The definition is quite broad, encompassing "any record . . . retained by or of any public governmental body." An investigative report is "a record . . .," Section [610.100(5)] retained by a type of public governmental body: a law enforcement agency. Thus, an investigative report is a type of public record under the statute. . . . Section 610.024.1 begins, "[i]f a *public record* contains material . . . ." (emphasis added). Thus, Section 610.024.1 applies to investigative reports, requiring the public governmental body to separate any exempt and non-exempt portions of the report, and to disclose the latter.
>
> This may seem at first look to contradict Guyer. However, according to the Missouri Supreme Court there [sic], where a document "fits equally" under an exemption and a provision requiring disclosure, the document should be disclosed,

> notwithstanding the fact that an exemption would otherwise apply. Guyer, 38 S.W.3d at 414. Thus, to the extent an internal police report, or portions thereof, can equally be considered *both* a personnel record and an investigative report, it, or those portions, should be disclosed. However, if the document can be separated into portions that qualify as one *or* the other, then any portion that can be considered exempt under Section 610.021, subsections 3 and 13 pertinent herein, and not part of the criminal investigation, may be withheld under 610.024.[9]
>
> [9]We acknowledge this distinction may prove difficult to apply, but that doing so not only fulfills the plain language of the statute, but also serves an important policy concern that is particularly present in the context of investigative reports involving law enforcement officers. This is because any citizen complaint against a police officer contained in an internal affairs report can involve an alleged criminal offense, as literally any complaint can be simultaneously labeled a criminal violation of the complainant's civil rights under federal law. Investigations of all such complaints would therefore result in investigative reports, and disallowing application of Section 610.024 would essentially result in police officers having no right to personnel or disciplinary privacy under the Sunshine Law. We find such a result is not mandated by the plain language of the statute. Also, we note that Section 610.024.2 encourages a public governmental body to design public records with the distinction between exempt and non-exempt information in mind, so that open portions are more easily distinguishable from exempt portions.

16. The Court has found that the Police Department knowingly violated the Sunshine Law, i.e. the Department knew that its failure to produce the open portions of the plaintiff's complaint file was contrary to the open records statutes. See *Laut v. City of Arnold,* 491 S.W.3d 191 (Mo.banc 2016). It does not matter that, in 2013, the Department was in transition, nor does it matter that §84.344.8 is on the books. The refusal to disclose records in this case occurred in 2016, not 2013. Moreover, as observed above, the City has never acted on the directive of §84.344.8 in the matter of adoption of civil service rules regarding police disciplinary investigations. The Department is therefore liable for an award of attorney's fees.

17. Plaintiff did not submit a claim for attorney's fees as part of the proof at trial, but plaintiff asserted such a claim in the petition. Given that the Court has found a knowing violation of the Sunshine Law by the Police Department, plaintiff is entitled to an award of fees and costs. §610.027.3. (Section 610.100.5 does not appear to the Court to apply in this context.) The Court cannot enter a final judgment until that issue is disposed of. However, the Court is familiar with counsel and with the issues tried in this case. The Court concludes that it has no need of additional evidence, but may award fees based on its own expertise, in light of the degree of success attained by plaintiff herein. See, e.g., *Soto v. Costco Wholesale Corp.,* 502 S.W.3d 38 (Mo.App.W.D. 2016).

18. A knowing violation of the Sunshine Law requires imposition of a penalty of up to $1,000. Having considered the size of the defendant governmental body, its record of violations of the Sunshine Law, and the fact that defendant's position was justified in part, the Court will fix a penalty less than the maximum.

19. The Police Department conceded in its post-trial brief that the employee misconduct report filed by plaintiff must be disclosed pursuant to the exception in §610.100.4, which requires disclosure of closed records to a party seeking to investigate a civil claim relating to a reported "incident." Plaintiff's petition does not allude to §610.100.4 but alleges that the IAD investigative report or file is an open record. The Court considers that it is bound by the petition in framing the relief in this case. See *Smith v. City of St. Louis,* 395 S.W.3d 20 (Mo.banc 2013). In any event, nothing herein

precludes plaintiff from seeking disclosure of the entire IAD file for complaint 13/131 under §610.100.4.

ORDER AND JUDGMENT

In light of the foregoing, it is

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against defendant Metropolitan Police Department, a division of the City of St. Louis, and that it is declared that the following records are open records which defendant Police Department has wrongfully and knowingly withheld from plaintiff, a member of the public, in violation of §§610.022, 610.024, 610.027, and 610.100, RSMo: (a) plaintiff's initial complaint of officer misconduct ("EMR"); (b) medical records release authorizations signed by plaintiff; (c) booking and prisoner processing information records; (d) arrest record printouts or "rap sheets" from the Regional Justice Information System ("REJIS"); (e) an arrest log showing arrests on the same date as plaintiff's arrest; (f) plaintiff's medical records from the City corrections facility; (g) the incident report recording the original citizen complaint and plaintiff's arrest as a result thereof, and the charges preferred; (h) "supplemental" reports reflecting activity after plaintiff's arrest, including presentation of charges to the Circuit Attorney; (i) a report, apparently from a credit reporting agency, concerning the complaining witness in the underlying incident leading to plaintiff's arrest and subsequent charges; and (j) photographs showing injuries to plaintiff's face and hip that were apparently supplied by plaintiff to IAD; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that defendant Metropolitan Police Department of the City of St. Louis, its officers, agents, employees and all persons acting in concert therewith having notice of this Order and Judgment be and they are hereby permanently restrained and enjoined from refusing to disclose Internal Affairs Investigation records which were not prepared and maintained exclusively for the purpose of hiring, firing, disciplining or promoting identifiable employees, and from refusing to disclose to plaintiff the items identified as open records by this Order and Judgment; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff have and recover of defendant Metropolitan Police Department of the City of St. Louis the sum of $5,000 as and for reasonable attorney's fees; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that defendant Metropolitan Police Department of the City of St. Louis shall pay the sum of $500 as and for a civil penalty herein; costs of this action taxed against defendant.

SO ORDERED:

ROBERT H. DIERKER
CIRCUIT JUDGE

DATED: APRIL 4, 2017
CC: COUNSEL/PARTIES PRO SE