



5. Venue is proper in this Court because the principal place of business of MPDSL is in the City of St. Louis.

*Statement of Facts*

6. On March 18, 2013, Plaintiff filed a complaint with the MPDSL alleging officer misconduct; specifically, he alleged that several MPDSL officers had physically abused him and threatened to falsify evidence against him in July 2011.

7. The MPDSL Internal Affairs Division investigated Plaintiff's complaint.

8. At the conclusion of the investigation, the Internal Affairs Division informed Plaintiff that the allegations were found to be unsustainable.

9. Plaintiff's appeal of the Internal Affairs Division's decision was denied.

10. Plaintiff has no further appeal rights.

11. The officers against whom Plaintiff filed a complaint were not criminally prosecuted.

12. The Internal Affairs Division investigation was closed and inactive on or before October 31, 2015.

13. On November 3, 2015, Plaintiff made a written request to Defendant under the Sunshine Law seeking a copy of the investigative report (including all purported *Garrity* statements made during the investigation) related to his March 2013 complaint against the MPDSL officers and the Internal Affairs Investigation that followed.

14. On November 5, 2015, Plaintiff received a letter from the City of St. Louis, Law Department, Police Section, informing him that they had received his Sunshine Law request, such requests "are generally processed in the order in which they are received," and the City "would anticipate responding concerning the availability of records sometime during the week of November 16, 2015." The letter further stated: "The Metropolitan Police Department will advise

you of all open record material in its possession which falls within the scope of your request. You will be advised of what is available, the time required for, and cost of production once we are able to ascertain those details.”

15. Plaintiff did not receive any response from Defendant during the week of November 16, 2015.

16. Plaintiff made repeated calls to Defendant to inquire about his Sunshine Law request, all of which were ignored by Defendant for the following three months.

17. On March 28, 2016, Plaintiff sent a follow-up letter to Defendant and also called to alert Defendant that the follow-up letter had been mailed.

18. On this call to Defendant regarding his follow-up letter, Plaintiff was informed that “the attorney” in the City’s Law Department made the decision whether to disclose requested records.

19. On April 6, 2016, Plaintiff received a written denial of his Sunshine Law request from Defendant. In the denial, Defendant stated that the records he sought were closed pursuant to RS Mo. § 84.344.8 (governing MPDSL disciplinary records) and RS Mo. § 610.021(13) (governing individual personnel records).

20. Defendant is subject to the provisions of Chapter 610 of the Missouri Revised Statutes because it is a public governmental body.

21. 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. *See Guyer v. City of Kirkwood*, 38 S.W.3d 412, 415 (Mo. banc 2001).

22. Plaintiff's complaint alleged criminal conduct in that it stated that the police officers physically abused him and threatened to falsify evidence against him.

23. The personnel-record exemption, RS Mo. § 610.021(13), does not permit a law enforcement agency to close investigative reports relating to inactive investigations. *See Guyer*, 38 S.W.3d at 414; *see also Chasnoff v. Mokwa*, 466 S.W.3d 571, 580 (Mo. App. E.D. 2015).

24. RS Mo. § 84.344.8 does not permit closure of investigative reports relating to inactive investigations because that statute's "confidentiality provision for disciplinary reports does not have the effect of exempting the St. Louis Police Department from application of the Sunshine Law." *Archev v. Carnahan*, 373 S.W.3d 528, 532 (Mo. App. W.D. 2012).

25. The law is clear that investigative reports relating to inactive investigations are open records and neither Chapter 610 nor RS Mo. § 84.344.8 permit their closure.

26. MPDSL has previously been a party to litigation involving investigative reports and knows they are open and must be disclosed pursuant to a Sunshine Law request. *See Chasnoff v. Mokwa*, 466 S.W.3d 571, 577, 580 (Mo. App. E.D. 2015) (holding that there was no right under the Sunshine Law and no constitutional, statutory, or common-law right that compelled closure of public records regarding MPDSL "officers' substantiated misconduct in the performance of their official duties," that *Garrity* statements were open public records despite MPDSL's custom and practice of informing officers the statements were confidential, affirming the trial court judgment previously entered in Case No. 0722-CC07278 that "ordered disclosure of the [Internal Affairs Division] investigation records based on section 610.021 of the Sunshine Law", lifting the stay in Case No. 0722-CC07278 of the June 2010 order, and directing release of the remaining documents from the Internal Affairs Investigation); *Chasnoff v. Bd. of Police Comm'rs*, No. 0722-CC07278 (Mo. 22d Jud. Cir., June 7, 2010) (finding that investigative

reports and files from Internal Affairs investigations performed by the MPDSL are open records under the Sunshine Law and ordering their disclosure).

27. Defendant knows that it is subject to the requirements of the Sunshine Law.

28. Defendant knows that investigative reports are open records subject to disclosure under the Sunshine Law.

29. Despite this knowledge, as of the date of this Petition, Defendant has refused to disclose the records requested by Plaintiff.

30. Due to Defendant's intentional refusal to disclose the requested records, Plaintiff has filed this Petition in order to obtain a court order requiring disclosure of the requested documents, as well as an award of attorneys' fees and a civil penalty against Defendant.

31. Defendant's refusal to disclose open records is part of a conscious design, intent, or plan to violate the Sunshine Law with an awareness of the probable consequences.

32. Defendant's failure to produce the requested records is a purposeful, or, in the alternate, knowing violation of the Sunshine Law.

**WHEREFORE**, Plaintiff prays that this Court enter judgment in his favor and against Defendant, and:

- A. Declare that the records requested are open under the Sunshine Law and not subject to any exception that would permit Defendant to close them or any portion thereof;
- B. Enter an injunction requiring Defendant to provide Plaintiff copies of the records requested;
- C. Find Defendant purposefully or, in the alternate, knowingly violated the Sunshine Law;

- D. Impose a civil penalty against Defendant pursuant to the Sunshine Law;
- E. Award Plaintiff's attorney fees and costs of litigation as authorized by the Sunshine Law; and
- F. Grant to Plaintiff such other and further relief as is just and proper.

Respectfully submitted,

/s/ Anthony Rothert

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