

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI

American Civil Liberties Union)
of Missouri Foundation, Inc., and)

Mustafa A. Abdullah,)
)
Plaintiffs,)

v.)

County of Saint Louis,)

SERVE: Patricia Redington)
County Counselor)
County Government Cener)
41 South Central, 9th Floor)
Clayton, Missouri 63105)

Defendant.)

NO.: _____

DIVISION: _____

PETITION

1. This action is brought pursuant to the Missouri Sunshine Law, Chapter 610 of the Missouri Revised Statutes, to require public disclosure of certain documents maintained by the County of Saint Louis.
2. This Court has jurisdiction over this action pursuant to § 610.010, *et seq.*, RSMo.
3. This Court has jurisdiction to issue injunctions to enforce provisions of the Sunshine Law pursuant to § 610.030, RSMo.
4. Venue for this action is proper in this Court because County of Saint Louis maintains its headquarters in Saint Louis County.

Parties

5. Plaintiff American Civil Liberties Union of Missouri Foundation, Inc. (ACLU), is a not-for-profit organization created and operating under the laws of the State of Missouri. Amongst its activities is advocacy to protect and further civil liberties within Missouri.
6. Plaintiff Mustafa A. Abdullah is resident of the State of Missouri.
7. Defendant, County of Saint Louis, is a political subdivision of the State of Missouri.

Factual Allegations

8. Defendant is a “[p]ublic governmental body” within the definition of § 610.010(4), RSMo.
9. On July 2, 2014, Plaintiff Abdullah, on behalf of Plaintiff ACLU, made a written request to Defendant’s custodian of records seeking copies of documents. In particular, Plaintiffs sought “a copy of the following records that have been electronically stored or retained by Saint Louis County:
 - 1) The report prepared by the Federal Bureau of Investigation (FBI) regarding embezzlement of county funds by Edward Mueth (‘Mueth Report’);
 - 2) Any and all documents provided by the FBI to Saint Louis County as part of the Mueth Report; and
 - 3) Any and all documents regarding distribution of the Mueth Report written, electronically stored, or retained by Saint Louis County or any official or employee of Saint Louis County.”

A copy of the request is attached hereto as Exhibit 1 and is incorporated herein by reference.

10. Plaintiffs specifically asked that “[i]f any or part of this request is denied, please send a letter listing the specific exemptions upon which you rely for each denial and provide the contact information for the official to whom I may appeal. Mo. Rev. Stat. § 610.023.4.”

Ex. 1.

11. Plaintiffs delivered their written request to Defendant’s custodian of records on July 2, 2014, by facsimile and by placing a copy in the United States Mail.

12. On July 7, 2014, Patricia Redington, Defendant’s attorney and custodian of records, wrote to Plaintiff Abdullah and provided copies of “three letters that pertain to distribution of the FBI materials generated by their investigation of the Ed Mueth fraud.” A copy of the letter, with enclosures, is attached hereto as Exhibit 2 and is incorporated herein by reference.

13. Redington denied Plaintiffs request for “documents prepared by the FBI and provided to [her] office” solely “[f]or the reasons noted in those letters” that were enclosed with her July 7, 2014, letter. Ex. 2.

Violation of the Missouri Sunshine Law

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

15. The records requested by Plaintiffs are public records as defined in § 610.010(6), RSMo.

16. None of the provisions of Chapter 610 permit Defendant to withhold the requested records from the public.

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

WHEREFORE Plaintiffs pray that this Court enter judgment in their favor and against Defendant and:

- A. Declare that the records described in ¶ 9 are public records under the Sunshine Law and are not subject to any exception that would require, or permit, Defendant to close the records or any portion thereof;
- B. Enter an injunction requiring Defendant to provide Plaintiffs copies of the public records they requested;
- C. Find Defendant purposely, or in the alternate, knowingly, violated the Sunshine Law;
- D. Impose a civil penalty against Defendant pursuant to the Sunshine Law;
- E. Award Plaintiffs' attorneys' fees and costs of litigation as authorized by the Sunshine Law; and
- F. Grant to Plaintiffs such other and further relief as is just and proper.

Respectfully submitted,



Anthony E. Rothert, #44827
Grant R. Doty, #60788
ACLU of Missouri Foundation
454 Whittier Street
St. Louis, Missouri 63108
trothert@aclu-mo.org
gdoty@aclu-mo.org

Gillian R. Wilcox, #61278
ACLU of Missouri Foundation
3601 Main Street
Kansas City, Missouri 64111
gwilcox@aclu-mo.org

ATTORNEYS FOR PLAINTIFFS



July 2, 2014

Custodian of Records
Saint Louis County
41 South Central
Clayton, Missouri 63105

By mail and facsimile to (314) 615-3732

To Whom It May Concern:

This letter is a request under the Missouri Sunshine Law. Pursuant to the provisions of Chapter 610 of the Missouri Revised Statutes, I request that you provide a copy of the following records that have been electronically stored or retained by Saint Louis County:

- 1) The report prepared by the Federal Bureau of Investigation (FBI) regarding embezzlement of county funds by Edward Mueth ("Mueth Report");
- 2) Any and all documents provided by the FBI to Saint Louis County as part of the Mueth Report; and
- 3) Any and all documents regarding distribution of the Mueth Report written, electronically stored, or retained by Saint Louis County or any official or employee of Saint Louis County.

If any or part of this request is denied, please send a letter listing the specific exemptions upon which you rely for each denial and provide the contact information for the official to whom I may appeal. Mo. Rev. Stat. § 610.023.4. This request must "be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received." Mo. Rev. Stat. § 610.023.3.

Because this records request is being submitted in the public interest and "is likely to contribute significantly to public understanding of the operation or activities" of your department, we ask that you waive any fees or charge a substantially reduced fee pursuant to Mo. Rev. Stat. § 610.026.1(1). However, should you decline to waive or reduce fees, proceed without further approval if the cost does not exceed \$50.00 and send a detailed invoice with the records. If the cost will exceed \$50.00, please inform me of the cost in advance.

Do not hesitate to contact me with any questions. I appreciate your attention to this matter.

Sincerely,


Mustafa Abdullah
Program Associate

EXHIBIT

1

American Civil Liberties Union of Missouri Foundation
454 Whittier Street · Saint Louis, Missouri 63108

Charlie A. Dooley
County Executive

Saint Louis
COUNTY
COUNTY COUNSELOR

Patricia Redington
County Counselor

July 7, 2014

JUL 10 2014

Mr. Mustafa Abdullah
American Civil Liberties Union
454 Whittier Str.
St. Louis, MO 63108

Re: Request for records

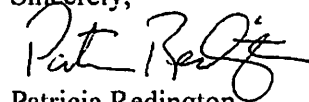
Dear Mr. Abdulla:

In response to your letter dated July 2nd, I'm enclosing three letters that pertain to distribution of the FBI materials generated by their investigation of the Ed Mueth fraud; I am custodian of only those records kept in this office but am not aware of other documents.

For the reasons noted in those letters, I am not providing documents prepared by the FBI and provided to this office. At such time as the FBI advises that we may release the records, we will do so. Of course, you are free to make a Freedom of Information Act request directly to the FBI if you believe the records should be released.

Please let me know if you have any questions about this matter.

Sincerely,



Patricia Redington
County Counselor

EXHIBIT

2

Charlie A. Dooley
County Executive

Saint Louis
COUNTY
COUNTY COUNSELOR

Patricia Redington
County Counselor

July 1, 2014

Hon. Hazel Erby, Chair
and Members of the County Council
Lawrence K. Roos County Govt. Bldg.
Clayton, MO 63105

Re: FBI audit of Ed Mueth fraud

Dear Councilmembers:

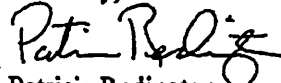
On January 31st of this year, FBI Special Agent in Charge Dean C. Bryant provided FBI reports concerning the Ed Mueth fraud, but simultaneously delivered a letter cautioning that the reports were FBI property and not for distribution. In March of this year, Special Agent Bryant delivered compact discs containing the reports along with another letter (attached) reiterating that the documents were the property of the FBI and that their release was governed by federal restrictions.

Far from trying to withhold any records, we contacted the FBI's Chief Division Counsel shortly after the investigation was closed to ask whether we could now release the reports. Our request was denied for the reasons that had already been noted in the previous two letters, and we have accordingly kept the FBI records confidential as instructed. It is my opinion that St. Louis County should continue to cooperate with the FBI rather than disregard the directives that have been given concerning its records.

FBI spokesperson Rebecca Wu has been quoted as saying "that it was now in the hands of the county, not the FBI, to release the audit information." Upon being contacted by this office, Ms. Wu advised that she had been referring to that information which might be contained in a County police investigation (which is still ongoing), not reports that had been furnished by the FBI. Special Agent Robert Hoelscher reiterated today that the County should continue to deny access pursuant to the January and March letters.

Please let me know if you have any questions about this matter.

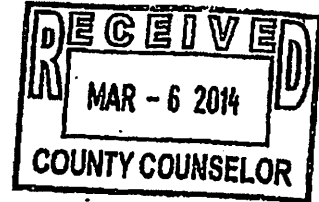
Sincerely,



Patricia Redington
County Counselor



U.S. Department of Justice
Federal Bureau of Investigation



In Reply, Please Refer to
File No. 194A-SL-3690350

2222 Market Street
St. Louis, Missouri 63103
(314) 231-4324
March 3, 2014

Mr. Robert H. Grant
Deputy County Counselor
St. Louis County Government
41 South Central
Clayton, Missouri 63105

RE: Edward D. Mueth (Gateway Technical Solutions)

Dear Mr. Grant:

Regarding the above captioned matter, Forensic Accountant Elizabeth A. Bess has been authorized by the Federal Bureau of Investigation (FBI) to provide an electronic version of FBI reports on a compact disc, for review by your office. Please be advised that the documents are loaned to your agency and remain the property of the FBI. The documents and their contents are not to be distributed outside your agency, and the documents must be returned to the FBI once your agency no longer needs them.

If you plan to use the documents in any State criminal proceeding or any civil proceeding or plan to call any FBI employee or Task Force Officer to testify, Federal regulations require that Department of Justice (DOJ) approval be obtained. In order to obtain this requisite authorization, the information described below will be required.

By way of background, Federal regulations published at Title 28, Code of Federal Regulations (C.F.R.), § 16.21 *et seq.*, governs the conduct of present and former DOJ employees as witnesses and the production of department files. These regulations, which apply to FBI employees, were promulgated pursuant to Title 5, United States Code, § 301, and have been upheld by the Supreme Court in U.S. ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

The regulations govern demands for information from or about DOJ files or for testimony from a present or former DOJ employee concerning information acquired in the course of their official duties. The purpose of the regulations is to provide the DOJ and the FBI with the opportunity to protect information from unwarranted and unconsidered disclosure.

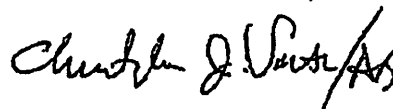
In order to properly assess whether information from our files may be released, your office will need to provide to us a jurisdictionally valid subpoena and an affidavit or statement setting forth a summary of the information sought and its relevance to the proceeding. Upon receipt of the subpoena and the referenced affidavit or summary by this office, requisite

authorization will be sought from the United States Attorney's Office to permit the requested production or testimony.

Questions concerning this letter or requests for additional information may be directed to Chief Division Counsel (CDC) Craig Severson at (314) 589-2722.

Sincerely,

Dean C. Bryant
Special Agent In Charge



By:
Christopher J. Smith
Supervisory Special Agent



U.S. Department of Justice
Federal Bureau of Investigation

In Reply, Please Refer to
File No. 194A-SL-3690350

2222 Market Street
St. Louis, Missouri 63103
(314) 231-4324
January 31, 2014

Mr. Robert H. Grant
Deputy County Counselor
St. Louis County Government
41 South Central
Clayton, Missouri 63105

RE: Edward D. Mueth (Gateway Technical Solutions)

Dear Mr. Grant:

Regarding the above captioned matter, Forensic Accountant Elizabeth A. Bess has been authorized by the Federal Bureau of Investigation (FBI) to provide FBI reports for review by your office. Please be advised that the documents are loaned to your agency and remain the property of the FBI. The documents and their contents are not to be distributed outside your agency, and the documents must be returned to the FBI once your agency no longer needs them.

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Sincerely,

Dean C. Bryant
Special Agent In Charge

Christopher J. Smith /DC

By: .
Christopher J. Smith
Supervisory Special Agent