

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

American Civil Liberties Union)
of Missouri Foundation, Inc.,)
)
Jeffrey A. Mittman, and)
)
Mustafa A. Abdullah,)
)
Plaintiffs,)
)
v.)
)
Missouri Department of Corrections,)
)
SERVE: George Lombardi)
2729 Plaza Drive)
Jefferson City, Missouri 65102,)
)
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 Missouri Department of Corrections.
2. This Court has jurisdiction over this action pursuant to Mo. Rev. Stat. § 610.010, *et seq.*,
3. This Court has jurisdiction to issue injunctions to enforce provisions of the Sunshine Law pursuant to Mo. Rev. Stat. § 610.030.
4. Venue for this action is proper in this Court because Missouri Department of Corrections maintains its headquarters in Cole 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 Jeffrey A. Mittman is a resident of the State of Missouri.
7. Plaintiff Mustafa A. Abdullah is resident of the State of Missouri.
8. Defendant Missouri Department of Corrections (DOC) is a governmental entity created by statutes of the State of Missouri and is a political subdivision of the State of Missouri.

Factual Allegations

9. Troubled by the secrecy surrounding Missouri's execution process and Missouri's use of execution witnesses to vouch for its narrative that those killed by the state do not suffer, Plaintiffs began investigating the process by which such witnesses are selected.
10. The Director of the Missouri Department of Corrections has discretion to decide which qualified individuals to permit to be present as state and media witnesses for executions.
11. Defendant Missouri Department of Corrections is a "[p]ublic governmental body" within the definition of Mo. Rev. Stat. § 610.010(4).
12. To better understand how the Director exercises his discretion to pick execution witnesses, Plaintiffs requested public records from Defendant.
13. On May 2, 2014, Plaintiffs made a written request to Defendant's custodian of records seeking copies of public records. In particular, Plaintiffs sought "any and all records in the possession of the Department of Corrections (DOC), regardless of who produced them, regarding witnesses to executions, including but not limited to:

- A. All records indicating or identifying invitees of the Director of the Department of Corrections to witness scheduled executions in the past 12 months;
 - B. All records indicating responses of invitees of the director of the department of corrections to witness scheduled executions in the past 12 months;
 - C. All records indicating requests by the public or the media to witness executions in the past 12 months;
 - D. All records indicating consideration of the requests by the public or the media to witness executions in the past 12 months;
 - E. All records indicating responses to requests by the public or the media to witness executions in the past 12 months; and
 - F. All records indicating actual witnesses to executions in the past 12 months.” A copy of the request is attached hereto as Exhibit 1 and is incorporated herein by reference.
14. 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 we may appeal. Mo. Rev. Stat. § 610.023.4.” Ex. 1.
15. Plaintiffs delivered their written request to DOC’s custodian of records on May 2, 2014, by placing a copy in the United States Mail.
16. Plaintiffs also attempted to deliver their written request to Defendant’s custodian of records by facsimile on May 2, 2014, but were not able to achieve a successful transmission. Plaintiffs delivered a copy of their request by email instead.

17. On May 6, 2014, Defendant's Custodian of Records responded to Plaintiffs, stating that Defendant had "received and reviewed [Plaintiffs'] request of records" and that Defendant's response to the request would "be provided approximately three weeks from the date [Plaintiffs'] request was received." A copy of the response is attached hereto as Exhibit 2 and is incorporated herein by reference.
18. On May 27, 2014, over three weeks after the initial request and response, Plaintiffs had still not received the requested documents. Plaintiffs requested an update on the status of the documents and were told they would be delivered within the week.
19. On July 3, 2014, Defendant produced redacted documents.
20. On July 9, 2014, Defendant sent additional redacted documents.
21. On July 16, 2014, Defendant sent additional redacted documents. A copy of the records produced on July 3rd, 9th, and 16th is attached hereto as Exhibit 3 and is incorporated herein by reference.
22. The records released by the Department of Corrections are not a full and complete all records of requests responsive to Plaintiffs' Sunshine Law request.
23. The documents produced by Defendant were redacted, and the redactions were not authorized by law.
24. Defendant did not produce a written statement of the grounds for redacting the documents until July 30, 2014, four business days after Plaintiffs again requested a writing stating the reasons for the redaction of the documents.
25. Defendant has refused to provide the contact information for the official to whom Plaintiffs may appeal the denial of documents and the redaction of the documents that were produced.

Violation of the Missouri Sunshine Law

26. Defendant Missouri Department of Corrections is subject to the provisions of Chapter 610 of the Missouri Revised Statutes because it is a public governmental body.
27. The records requested by Plaintiffs are open records. Mo. Rev. Stat. § 610.100.2.
28. None of the provisions of Chapter 610 permit Defendant to withhold the requested documents from the public.
29. None of the provisions of Chapter 610 permit Defendant to redact the information in the documents that were produced.
30. Defendant's failure to produce the requested records - without redactions not authorized by law- 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 ¶ 13 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 that 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,

/s/ Anthony E. Rothert

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