

IN THE CIRCUIT COURT OF COLE COUNTY  
NINETEENTH JUDICIAL CIRCUIT  
STATE OF MISSOURI

Kimberly Harper and	)	
	)	
Sharon Kay Harper,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	NO.: _____
	)	
Missouri State Highway Patrol,	)	DIVISION: _____
	)	
	)	
SERVE: Missouri State Highway Patrol	)	
General Headquarters	)	
1510 East Elm Street	)	
Jefferson City, MO 65101	)	
	)	
and	)	
	)	
McDonald County Prosecuting Attorney,	)	
	)	
SERVE: McDonald County Prosecuting	)	
Attorney	)	
602 N. Main Street	)	
Pineville, MO 64856	)	
	)	
Defendants.	)	

**PETITION**

1. This action is brought pursuant to Missouri's Sunshine Law, Chapter 610 of the Revised Statutes of Missouri<sup>1</sup>, to require public disclosure of certain records maintained by the Missouri State Highway Patrol ("MSHP")

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<sup>1</sup> All statutory references are to Missouri Revised Statutes (2000), as updated, unless otherwise noted.

related to a criminal investigation following the 1994 shooting of MSHP Cpl. Bobbie J. Harper and by the McDonald County Prosecuting Attorney related to the 1994 arrest warrant for Robert Joos.

2. This Court has jurisdiction over this action pursuant to § 610.100 *et seq.*
3. This Court has jurisdiction to issue injunctions to enforce provisions of the Sunshine Law pursuant to § 610.030.
4. Venue for this action is proper in this Court because the principal place of business of Defendant MSHP is in Cole County.

#### Parties

5. Plaintiff Kimberly Harper is a resident of the State of Missouri.
6. Plaintiff Sharon Kay Harper is a resident of the State of Missouri.
7. Kimberly Harper is the daughter of, and Sharon Kay Harper is the widow of, the late Cpl. Harper, an officer of Defendant MSHP.
8. Defendant MSHP is a governmental entity created by § 43.020.
9. Defendant McDonald County Prosecuting Attorney is a governmental entity created by § 56.010.

#### Factual Allegations

10. Defendant MSHP is a “[p]ublic governmental body” as defined by § 610.010(4).
11. Defendant McDonald County Prosecuting Attorney is a “[p]ublic governmental body” as defined by § 610.010(4).

12. On September 16, 1994, in his McDonald County, Missouri home, Cpl. Harper was shot in the chest, allegedly by Timothy Coombs (“Coombs”). Cpl. Harper later died of an unrelated cause.
13. Coombs shot Cpl. Harper allegedly because Cpl. Harper had arrested one of his associates, Robert Joos, six weeks earlier, on June 29, 1994. Joos had assaulted Cpl. Harper during the course of that arrest, kicking him so hard the name of Joos’ bootmaker was visible in the resulting bruise.
14. Plaintiffs have made multiple unsuccessful Sunshine Law requests for all public records pertaining to the 1994 arrest of Joos and shooting of Cpl. Harper and the subsequent criminal investigation, including incident and investigative reports.
15. On April 18, 2012, Plaintiffs Kimberly Harper and Sharon Kay Harper (jointly “the Harpers”) met with Col. Ron Replogle, a friend of the late Cpl. Harper, who agreed to disclose to the Harpers the records sought at some later time.
16. Despite the agreement, MSHP did not disclose the records sought over the next two years.
17. On April 24, 2014, the Harpers contacted Col. Replogle by email and again requested to view the investigative file for Cpl. Harper’s case.
18. Col. Replogle responded that “[i]t is considered to be an active case, thus the file is a closed record to the public.” He wrote that “[l]egally, I don’t think we can allow you to view it.” Col. Replogle stated that he “will have

- to check on your request” and offered to set up a meeting between the Harpers and the lead investigator on the case, Sgt. Curt Wirths.
19. Upon arrival at MSHP headquarters to meet with Sgt. Wirths, the Harpers were not allowed to see the records.
  20. Instead, Sgt. Wirths informed the Harpers that Cpl. Harper’s case file would remain open indefinitely until the shooter’s arrest or confirmation of the shooter’s death, even if the shooter were believed to be dead. At that time, then-Captain Sarah Eberhard also indicated the records would remain open indefinitely.
  21. On July 13, 2015, Kimberly Harper submitted an online Sunshine Law request to MSHP’s Custodian of Records, Lt. Keverne McCollum, requesting disclosure of all records pertaining to the arrest of Coombs’ associate Joos (“Joos request”). In addition to specific requests, Kimberly Harper sought “any reports and paperwork related to the arrest,” which include but are not limited to photographs taken on that day.
  22. Kimberly Harper received no response for more than two months.
  23. On September 14, 2015, she emailed Lt. McCollum to follow up.
  24. The next day, Lt. McCollum responded, apologizing that her response “ha[d] taken so long.” Lt. McCollum attributed her delayed response to “difficulty finding reports” but that some materials had been located. Lt. McCollum stated she anticipated further delay as she was “waiting for

approval” from an unnamed lieutenant “to be able to send part of a record that is closed.”

25. On September 17, 2015, Kimberly Harper responded by email, requesting the name of the authorizing lieutenant.
26. Lt. McCollum did not respond to this email.
27. On September 28, 2015, Kimberly Harper followed up again to check the status of the July 13 request and to plead against the sealing of entire sets of records based on relevant sections of the Sunshine Law.
28. That same day, Sharon Kay Harper submitted a second online Sunshine Law request to Lt. McCollum, seeking disclosure of all records as defined by Section 610.010(6) pertaining to the shooting of Cpl. Harper and the subsequent investigation, pursuant to Section 610.100 of the Missouri Sunshine Law (“Cpl. Harper request”).
29. Lt. McCollum did not respond to the September 28 request within three days.
30. On October 5, 2015, the Harpers received some, but not all, of the records related to the July 13 Joos request. MSHP failed not only to provide photographs, a use-of-force report, and an injury report responsive to the request but also to indicate the photographs’ and reports’ existence.
31. On October 9, 2015, Lt. McCollum denied in its entirety the September 28 Cpl. Harper request verbally by telephone.

32. On October 13, 2015, the Harpers filed a Sunshine Law complaint with the Missouri Attorney General's Office ("AGO"), arguing that, as family members and witnesses to the incident, they should be granted access to the records.
33. Because MSHP is its client, the AGO forwarded the Harpers' complaint to MSHP General Counsel Tracy McGinnis.
34. On October 21, 2015, MSHP investigator Sgt. Wirths telephoned Kimberly Harper, explaining that MSHP Custodian of Records Lt. McCollum had brought to his attention the Harpers' Sunshine Law requests. Sgt. Wirths inquired into the Harpers' reasons and motivations for pursuing the records.
35. Sgt. Wirths offered to provide records pertaining only to the first "few weeks" of the investigation in Cpl. Harper's shooting. Kimberly Harper responded that the Harpers had requested records from at least the first six months of the investigation. Sgt. Wirths laughed and said he did not believe the Harpers would ever see the entire file.
36. Sgt. Wirths then offered to talk to his "chain-of-command" to see if it was possible to grant permission to make available select portions of Cpl. Harper's case file to be viewed in person under Sgt. Wirths' supervision either at the MSHP headquarters or potentially at Sharon Kay Harper's home in Neosho, Missouri.

37. Kimberly Harper told Sgt. Wirths that she would discuss the requests and the possibility that they might be granted permission to see select portions of the records with Sharon Kay Harper, her mother.
38. Before the Harpers could follow up with Sgt. Wirths, on October 28, 2015, MSHP's General Counsel, Tracy McGinnis, closed all records sought by the Harpers, stating that "[p]ursuant to Missouri Revised Statutes Section 610.100, the records [the Harpers] requested are closed records since the investigation into this matter remains an active investigation."
39. The Harpers replied on November 1, 2015, requesting again the records with redaction of sensitive information, especially since MSHP believes that Coombs, who was charged with the crime, is deceased.
40. MSHP General Counsel McGinnis did not respond the Harpers' November 1 email and, as of the date of filing of this suit, has made no response.
41. On November 10, 2015, Kimberly Harper sought the help of Bill Dobbs, the McDonald County Prosecuting Attorney, in an attempt to obtain certain records created or maintained by the Prosecuting Attorney.
42. Kimberly Harper specifically asked for copies of all the records related to a state arrest warrant issued on September 23, 1994, which charged Coombs with first-degree assault of a law enforcement officer.
43. Kimberly Harper received no response for more than two months.

44. On January 11, 2016, Prosecuting Attorney Dobbs informed Kimberly Harper by telephone that he had been unable to look for the records and that MSHP told him that he cannot release the records to her.
45. On March 7, 2016, the Harpers mailed Prosecuting Attorney Dobbs a written Sunshine Law request seeking the same records.
46. Prosecuting Attorney Dobbs did not respond.
47. After the Prosecuting Attorney did not respond to the Sunshine Law request, Kimberly Harper contacted an AGO Sunshine Law Coordinator of the Missouri Office of the Attorney General, who prompted the Prosecuting Attorney to respond.
48. On March 23, 2016, Prosecuting Attorney Dobbs denied in writing the Harpers' request, stating that he was "unable to release the records you have requested because the Missouri State Highway Patrol considers this matter to be an active investigation," and citing § 610.100.2.

### **PRAYER FOR RELIEF**

49. MSHP and the McDonald County Prosecuting Attorney are subject to the provisions of Chapter 610 of the Missouri Revised Statutes because they are public governmental bodies.
50. Among the open records requested from MSHP by the Harpers on July 13, 2015, September 28, 2015, and November 1, 2015, are incident reports related to the arrest of Robert Joos and the subsequent shooting of Cpl. Harper.



51. Incident reports are open public records subject to disclosure under the Sunshine Law.
52. None of the provisions of Chapter 610 permit MSHP to withhold the incident reports requested.
53. MSHP's ongoing refusal to produce the incident reports requested by the Harpers is a purposeful or, in the alternate, knowing violation of the Sunshine Law.
54. MSHP's investigation of the 1994 shooting of Cpl. Harper qualifies as an "investigative report" under Section 610.100.1(5), as the investigation was directed to criminal conduct.
55. Investigative reports become open public records once an investigation becomes inactive and must be disclosed under Section 610.100.2.
56. Because the investigation into the 1994 shooting of Cpl. Harper is inactive as a matter of law pursuant to Section 610.100.1(3), the investigative report is a public record subject to disclosure under the Sunshine Law.
57. None of the provisions of Chapter 610 permit MSHP to withhold investigative reports requested on July 13, 2015, September 28, 2015, and November 1, 2015.
58. MSHP's ongoing refusal to produce the investigative report is a purposeful or, in the alternate, knowing violation of the Sunshine Law.
59. Records related to the 1994 Coombs arrest warrant are open public records subject to disclosure under the Sunshine Law.

60. None of the provisions of Chapter 610 permit the McDonald County Prosecuting Attorney to withhold records related to the 1994 Coombs arrest warrant requested on March 7, 2016.
61. The McDonald County Prosecuting Attorney's ongoing refusal to produce records related to the 1994 Coombs arrest warrant 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 Defendants, and:

- A. Declare that the records requested on July 13, 2015, September 28, 2015, November 1, 2015, and March 7, 2016, are open records under the Sunshine Law and not subject to any exception that would require, or permit, Defendant to close them or any portion thereof;
- B. Enter an injunction requiring Defendants to provide Plaintiffs copies of the records requested;
- C. Find Defendants purposefully or, in the alternate, knowingly violated the Sunshine Law;
- D. Impose a civil penalty against Defendants pursuant to the Sunshine Law;
- E. Award Plaintiffs' attorney 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 Rothert

Anthony E. Rothert, #44827

Jessie Steffan, #64861

American Civil Liberties Union of Missouri  
Foundation

454 Whittier Street

St. Louis, Missouri 63108

(314) 652-3114

(314) 652-3112 (facsimile)

arothert@aclu-mo.org

jsteffan@aclu-mo.org

Gillian R. Wilcox, #61278

3601 Main Street

Kansas City, Missouri 64111

ACLU of Missouri Foundation

(816) 470-9938

gwilcox@aclu-mo.org

***ATTORNEYS FOR PLAINTIFFS***