

**IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI**

PHILLIP WEEKS,)	
)	
Plaintiff,)	
)	
v.)	Cause No.: _____
)	
CIVILIAN OVERSIGHT BOARD OF)	
THE CITY OF ST. LOUIS, MISSOURI,)	Division No.: _____
)	
)	
SERVE:)	
Michael Garvin)	
City Counselor)	
1200 Market Street, Rm. 314)	
St. Louis, Missouri 63103)	
)	
Defendant.)	

**PETITION SEEKING JUDICIAL ENFORCEMENT OF, AND STATUTORY
PENALTIES UNDER, THE MISSOURI SUNSHINE LAW AND FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1. The City of St. Louis Civilian Oversight Board’s stated mission is “[t]o provide transparency and accountability of the St. Louis Metropolitan Police Department while ensuring community confidence.” The board does this by reviewing and investigating citizen complaints regarding alleged misconduct by the St. Louis Metropolitan Police Department.

2. Contrary to the board’s stated mission to provide transparency and accountability, and in violation of the Sunshine Law, the board has attempted to hide from the public critical information about these complaints. Specifically, the board has redacted from citizen complaints produced in response to a Sunshine request the most critical piece of information for purposes of transparency and accountability—the name or badge number of officers identified by members of

the public when completing their complaint forms. The board has also improperly redacted information about individuals who filed these complaints.

3. Plaintiff Phillip Weeks seeks immediate access to unredacted copies of these complaint forms in accordance with the Sunshine Law and the transparency the board purports to provide.

PARTIES

4. Phillip Weeks is a resident of St. Louis, Missouri. He is an advocate for open government and police accountability.

5. Defendant Civilian Oversight Board of the City of St. Louis is an administrative or governmental entity created pursuant to § 590.653, RSMo, and City of St. Louis Ordinance No. 69984. The board is a public governmental body as that term is defined by § 610.010(4), RSMo, and its records are subject to the provisions of Missouri's Sunshine Law.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to § 610.027(1), RSMo.

7. Venue for this action is proper in this Court because the board and the city's principal place of business is located in the City of St. Louis, Missouri.

FACTUAL ALLEGATIONS

8. The Civilian Oversight Board is a division of the Public Safety Department of the City of St. Louis and comprised of members of the public.

9. The board was created through City of St. Louis Ordinance No. 69984, which became effective on June 5, 2015.

10. The board was created by the City of St. Louis pursuant to § 590.653, RSMo, which grants local governments the authority to establish civilian oversight boards to receive, review, and make independent findings and recommendations on complaints from members of the public against members of the Police Department.

11. The board's stated mission is to provide transparency and accountability of the St. Louis Metropolitan Police Department while ensuring community confidence.

12. The board's responsibilities include reviewing and investigating citizen complaints against alleged misconduct of the St. Louis Metropolitan Police Department. The board reviews, analyzes, investigates, and makes independent findings and recommendations on complaints from the community against officers of the St. Louis Metropolitan Police Department with respect to the rights of all parties involved. The board also offers mediation of appropriate complaints.

13. According to its 2018 annual report, the board's goal "is to provide professional and neutral services, without bias to either party involved."

14. The Civilian Oversight Board is not authorized hire, fire, discipline or promote police officers. *See* St. Louis Code § 3.140.040(1) (listing COB's authorized functions, none of which include "hiring, firing, disciplining or promoting" officers).

15. To the contrary, the ordinance creating the Civilian Oversight Board specifically requires that the ordinance "shall not be construed in any way to limit, interfere with, or impair the authority, power, or duties" of the entities that do have disciplinary authority. St. Louis Code § 3.140.070(4).

16. The ordinance that created the board specifies that the board is “an independent civilian review board,” which may “in some cases agree with the findings of internal police investigations” of officer misconduct, may in other cases “find in favor of citizens whose complaints were deemed to be unfounded by the Police Department,” and in other cases may “find in favor of the police officers who were deemed to have violated rules and regulations by the Police Department.”

17. State law prohibits the Civilian Oversight Board from exercising any authority over the disciplinary process. § 84.344.8, RSMo (requiring that “exclusive authority over the disciplinary process affecting [SLMPD] officers” shall be reserved to the St. Louis Civil Service Commission).

18. The Civilian Oversight Board only accepts complaints submitted by the public on the Joint Civilian Complaint Form.

19. Joint civilian complaint forms provide a method for members of the public to file a complaint against a St. Louis Metropolitan Police Department law enforcement officer regarding alleged misconduct, excessive use of force, abuse of authority, sexual harassment, discourtesy, racial profiling, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation, gender identify, immigrant status and disability.

20. Members of the public may submit a completed complaint form to the Civilian Oversight Board in person or by mail.

21. The complaint form requires information including contact information for the individual filing the complaint. The form also requires the complainant to complete a section titled, “Incident Report,” which includes: (a) the location, date and time of the incident; (b) the

names of the SLMPD officers involved and badge number, if known, (c) witness information; and (d) a “full and complete description of the incident.”

22. On September 9, 2019, Mr. Weeks submitted a Sunshine request for joint civilian complaint forms retained by the Civilian Oversight Board.

23. The City of St. Louis directs members of the public to submit records requests for certain governmental bodies, including the Civilian Oversight Board, via a central Sunshine Request portal. The requests go to Diedra Weaver, the City of St. Louis Sunshine Law Coordinator, who works with appropriate the custodian of records from various departments to complete records requests.

24. As directed by the city, Mr. Weeks submitted his request through the St. Louis City Sunshine Request portal.

25. On December 24, 2019, and on dates thereafter, Diedra Weaver of the City Counselor’s Office, on behalf of the board, produced civilian complaint forms in response to Mr. Weeks’ request.

26. The civilian complaint forms provided in response to Mr. Weeks’ request, however, were redacted to an extent greater than permitted by the Sunshine Law.

27. Specifically, the names and identification numbers of officers who were the subjects of the complaints were frequently redacted.

28. In addition, information pertaining to complainants or witnesses—including the complainants’ or witnesses’ contact information, race, and gender—was frequently redacted.

29. In a December 24, 2019, email to Mr. Weeks, Ms. Weaver asserted that redactions were made in accordance with §§ 610.021, 610.100, 610.150, and 610.200 RSMo, “and specifically Section 610.021(3).”

30. The exceptions cited, however, do not apply to the civilian complaint forms and do not allow the board to withhold the redacted information.

COUNT I

(Seeking Judicial Enforcement of the Sunshine Law under § 610.027.1)

31. Mr. Weeks realleges and incorporates by reference the allegations of paragraphs 1 through 30 as though fully set forth herein.

32. The Missouri Sunshine Law establishes the State’s public policy that “records . . . of public governmental bodies be open to the public unless otherwise provided by law.” § 610.011(1), RSMo. The Sunshine Law is codified at §§ 610.010 to 610.200, RSMo.

33. Pursuant to the Sunshine Law, unless otherwise provided by law, “all public records of public governmental bodies shall be open to the public for inspection and copying.” § 610.011(2), RSMo.

34. The Civilian Oversight Board is a “public governmental body” as defined by § 610.010(4), RSMo.

35. The joint civilian complaint forms are “public records” as defined in § 610.010(6) of the Sunshine Law because they are records of the board and are retained by the board.

36. Under the Sunshine Law, “public records” are “presumed to be open unless otherwise exempt pursuant to the provisions of [the Sunshine Law or other law].” § 610.022.5, RSMo.

37. The Sunshine Law must be “liberally construed” and any exceptions “strictly construed” to promote “the public policy of this State that . . . records . . . of public governmental bodies be open to the public unless otherwise provided by law.” § 610.011, RSMo.

38. The Sunshine Law provides that in addition to other remedies provided by law, “any aggrieved person, taxpayer to, or citizen of” Missouri may seek judicial enforcement of the Sunshine Law in the Circuit Court of the county where the public governmental body has its principal place of business.” § 610.027(1), RSMo.

39. The Sunshine Law provides that “once a party seeking judicial enforcement of [the Sunshine Law] demonstrates to the Court that the body in question is subject to the requirements of [the Sunshine Law] and has held a closed . . . record . . . , the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of [the Sunshine Law].” § 610.027(2), RSMo.

40. The board has not complied with the Sunshine Law, because the sections of the Sunshine law it relies upon to attempt to justify its redactions – §§ 610.021, 610.100, 610.150, and 610.200, “and specifically Section 610.021(3)” – do not permit the board to withhold the information it redacted from the joint civilian complaint forms.

41. Section 610.021 RSMo, includes 24 separate exceptions that authorize, but do not require, a public governmental body to close records in certain circumstances. The board may not rely on a blanket invocation of § 610.021 that does not specify the particular exception upon which it relies, as the Sunshine law requires the board to “cite the specific provision” upon which its denial is based. *See* § 610.023(4).

42. Section 610.021(3) RSMo authorizes, but does not require, a public governmental body to close records “relat[ing] to . . . [h]iring, firing, disciplining or promoting of particular employees by a public governmental body.”

43. The Sunshine Law mandates that this exception, including the phrase “relate to,” be strictly construed. *Spradlin v. City of Fulton*, 982 S.W.2d 255, 259 (Mo. 1998).

44. Because the Civilian Oversight Board does not play any role in hiring, firing, disciplining, or promoting officers, complaint forms completed by members of the public and maintained by the Civilian Oversight Board are not records that relate to the hiring, firing, discipline or promotion of employees. The board may not invoke § 610.021(3) to withhold officers' names and DSNs or badge numbers, complainants' contact information, and complainants' sex and race.

45. Section 610.150 RSMo likewise provides no basis for withholding information from the civilian complaint forms. Section 610.150 only applies to 911 calls, which are not at issue here. A joint civilian complaint form may only be submitted to the Civilian Oversight Board via email or in person.

46. Section 610.200 does not contain *any* authority for exempting information from disclosure. Rather, it merely lists data points that must be included in a law enforcement agency's "daily record or log." It does not permit the withholding of any portions of records, as would be required in order to overcome the Sunshine Law's presumption of openness. *See* R.S.Mo. § 610.011.2. Moreover, the Civilian Oversight Board is not a law enforcement agency.

47. Finally, § 610.100 RSMo also provides no basis for redacting the names or identification numbers of police officers or the contact information and race and sex data of complainants. Section 610.100 permits the withholding of certain records of law enforcement agencies. The Civilian Oversight Board is not a law enforcement agency because it "has neither the power nor the duty to make arrests." *Scroggins v. Missouri Dep't of Soc. Servs., Children's Div.*, 227 S.W.3d 498, 501 (Mo. App. W.D. 2007). Section 610.100 therefore has no application here. To the extent this section has any application, the Missouri Supreme Court has held that initial citizen complaints of officer misconduct constitute "incident reports" as defined by §

610.100.1(4), and are therefore “open record[s] that must be disclosed.” *Guyer v. City of Kirkwood*, 38 S.W.3d 412, 415 (Mo. 2001).

48. By citing these inapplicable exemptions and refusing to provide the unredacted joint civilian complaint forms in response to the Mr. Weeks’ request, the board has purposely or, alternatively, knowingly violated the Sunshine Law and is subject to civil penalties of up to \$5,000 and payment of Mr. Weeks’ costs and attorney fees pursuant to § 610.027(3)-(4), RSMo.

49. Mr. Weeks and the public are being irreparably damaged by the board’s refusal to comply with the Sunshine Law, and Mr. Weeks lacks an adequate remedy at law.

WHEREFORE, Mr. Weeks respectfully requests that this Court enter judgment in favor of Mr. Weeks, and:

- (a) declare that the joint civilian complaint forms retained by the Civilian Oversight Board are open records under the Missouri Sunshine Law and not subject to an exception that would require, or permit, the board to withhold information from the complaint forms;
- (b) enter an injunction pursuant to § 610.030, RSMo, requiring the board to immediately produce unredacted joint civilian complaint forms;
- (c) find that the board has purposely violated the Sunshine Law or, alternatively, that the board has knowingly violated the Sunshine Law;
- (d) impose a civil penalty against the board pursuant to the Sunshine Law;
- (e) award Mr. Weeks his attorneys’ fees and costs as authorized by the Sunshine Law; and
- (f) grant to Mr. Weeks such other and further relief as is just and proper.

Dated: December 22, 2020

Respectfully Submitted,

BY: _____

Anthony E. Rothert, #44827
ACLU of Missouri Foundation
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
Phone: (314) 652-3114
arothert@aclu-mo.org

Lisa S. Hoppenjans, #63890
1 Brookings Drive
Campus Box 1120
St. Louis, Missouri 63130
Telephone: (314) 935-8980
lhoppenjans@wustl.edu

Counsel for Plaintiff