

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

ARCHCITY DEFENDERS and)
MAUREEN HANLON,)
)
Plaintiffs,)
)
v.)
)
THE CITY OF ST. LOUIS, MISSOURI)
DIVISION OF CORRECTIONS)
)
)
SERVE:)
Matt Moak or Successor)
City Counselor)
1200 Market Street, Rm. 314)
St. Louis, Missouri 63103)
)
Defendant.)

Cause No.: _____

Division No.: _____

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

1. This action is brought pursuant to the Missouri Sunshine Law, Chapter 610 of the Missouri Revised Statutes (the “Sunshine Law”), to require public disclosure of use of force reports related to the use of a chemical agent at the City Justice Center, retained by the City of St. Louis Division of Corrections.

2. Plaintiffs ArchCity Defenders and Maureen Hanlon seek immediate access to the requested documents in accordance with the Sunshine Law.

PARTIES

3. Plaintiff ArchCity Defenders is a nonprofit organization created and operating under the laws of the State of Missouri. Its activities include advocating for the rights of people who are incarcerated within Missouri.

4. Plaintiff Maureen Hanlon is a resident of St. Louis, Missouri. She is a Staff Attorney for ArchCity Defenders.

5. Defendant City of St. Louis Division of Corrections is a public governmental body as that term is defined by § 610.010(4), RSMo.

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 Defendant’s principal place of business is located in the City of St. Louis, Missouri.

FACTUAL ALLEGATIONS

8. Defendant 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.

9. On April 30, 2021, Plaintiff Hanlon, on behalf of Plaintiff ArchCity Defenders, submitted a written Sunshine request to Defendant seeking copies of documents.

10. The City of St. Louis directs members of the public to submit records requests for certain governmental bodies, including the Division of Corrections, via a central Sunshine Request portal. The requests go to Joseph Sims of the City Counselor’s Office, the City of St. Louis Sunshine Law Coordinator, who works with the appropriate departmental Custodian of Records to complete records requests.

11. As directed by the City, Plaintiffs submitted the request through the St. Louis City Sunshine Request portal.

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

13. In particular, Plaintiffs sought “access to all use of force reports completed by correctional staff from October 2020 through present day that relate to the use of a chemical agent at the City Justice Center.”

14. Plaintiffs’ request further specified that: “Definitions of ‘chemical agents’ and ‘force’ can be found in Department of Public Safety / Division of Corrections Policy No. 3.1.21, Section V. This request encompasses all use of force reports and comments or review from the chain of command as laid out in Department of Public Safety / Division of Corrections Policy No. 3.1.21, Section VIII(C)(2)-(8). This request includes all other records, documents, and other material included as part of the use of force report.”

15. Plaintiffs’ request also asked that fees for locating and copying the records be waived, because the information requested is in the public’s right to know and it would be in the public interest for the information to be made freely and publicly available.

16. On May 3, 2021, the St. Louis City Records Center sent a general confirmation that Plaintiffs’ request was received and is being processed.

17. On May 6, 2021, Joseph Sims, Sunshine Law Coordinator for the St. Louis City Counselor’s Office, sent a message stating that the request has been sent to the Custodian of Records for the Corrections Division to be fulfilled. The message noted that additional time will be necessary to respond, because the City of St. Louis is taking efforts to help prevent the spread of COVID-19, staff availability and access is limited, and a review of documents will be conducted once the process of locating and identifying responsive documents is complete. This message provided that the earliest time and date records, if any, will be available is the close of business on June 3, 2021.

18. On June 3, 2021, Joseph Sims, Sunshine Law Coordinator for the St. Louis City Counselor's Office, sent a message stating that the request has been sent to the Custodian of Records for the Corrections Division to be fulfilled. The message noted that additional time will be necessary to respond, because the City of St. Louis is taking efforts to help prevent the spread of COVID-19, staff availability and access is limited, and a review of documents will be conducted once the process of locating and identifying responsive documents is complete. This message provided that the earliest time and date records, if any, will be available is the close of business on July 9, 2021.

19. On July 9, 2021, Joseph Sims, Sunshine Law Coordinator for the St. Louis City Counselor's Office, sent a message stating that the request has been sent to the Custodian of Records for the Corrections Division to be fulfilled. The message noted that additional time will be necessary to respond, because the City of St. Louis is taking efforts to help prevent the spread of COVID-19, staff availability and access is limited, and a review of documents will be conducted once the process of locating and identifying responsive documents is complete. This message provided that the earliest time and date records, if any, will be available is the close of business on August 10, 2021.

20. On August 10, 2021, Joseph Sims, Sunshine Law Coordinator for the St. Louis City Counselor's Office, sent a message stating, "the Custodian of Records has advised that additional time is necessary to locate and identify any records responsive to your request, and per the Custodian of Records a review of any such records will be conducted to determine whether those records contain any otherwise legally protected information. Due to the foregoing, additional time will be necessary to respond to your request." This message provided that the earliest time and date records, if any, will be available is the close of business on September 13, 2021.

21. On September 13, 2021, Joseph Sims, Sunshine Law Coordinator for the St. Louis City Counselor’s Office, sent another message stating, “the Custodian of Records has again advised that additional time is necessary to locate and identify any records responsive to your request, and per the Custodian of Records a review of any such records will be conducted to determine whether those records contain any otherwise legally protected information. Due to the foregoing, additional time will be necessary to respond to your request.” This message provided that the earliest time and date records, if any, will be available is the close of business on October 29, 2021.

22. Each message also stated that the costs incurred will be charged pursuant to Chapter 610.026, RSMo, and will be provided to the requestor at the conclusion of all research.

23. The correspondence received from Defendant between May 3, 2021 and September 13, 2021 is attached hereto as Exhibit 2.

24. No substantive response regarding the records request has been sent to Plaintiffs.

25. No further explanation of the ongoing delay has been provided to Plaintiffs.

26. No records have been provided to Plaintiffs.

COUNT I

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

27. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 26.

28. 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.

29. 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.

30. Defendant is a “public governmental body” as defined by § 610.010(4), RSMo, and thus subject to the provisions of the Sunshine Law.

31. The requested use of force reports are open “public records” as defined by § 610.010(6), RSMo, and thus subject to disclosure under the Sunshine Law.

32. 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.

33. The requested use of force reports may not be closed under any exception to the Sunshine Law.

34. 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.

35. 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.

36. RSMo 610.023 provides that, “[e]ach request for access to a public record shall 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 by the custodian of records of a public governmental body.... If access to the public record is not granted immediately, the custodian shall give a detailed

explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.”

37. The Missouri Supreme Court recently confirmed the requirements of the Sunshine Law, including that a detailed explanation of the cause for delay must be provided. *Gross v. Parson*, 624 S.W.3d 877 (Mo. banc 2021).

38. Defendant failed to act upon Plaintiffs’ Sunshine Law request as soon as possible or by the end of the third business day following the date the request was received.

39. Defendant has not provided a detailed explanation of the cause for further delay.

40. Defendant has not established reasonable cause for its ongoing failure to produce the records requested.

41. Defendant has failed to provide access to the requested open public records by continuously delaying any substantive response to Plaintiffs.

42. Defendant has violated the Sunshine Law.

43. Defendant is aware of the probable consequences of the Sunshine Law.

44. Defendant’s continued failure to act upon Plaintiffs’ Sunshine Law request is a purposeful and/or knowing violation under § 610.027, RSMo.

45. By failing to respond to Plaintiffs’ request, Defendant has purposefully and knowingly violated the Sunshine Law and is subject to civil penalties of up to \$5,000 and payment of Plaintiffs’ costs and attorney fees pursuant to § 610.027.3-4, RSMo.

46. Plaintiffs and the public are being irreparably damaged by Defendant’s refusal to comply with the Sunshine Law, and Plaintiffs lack an adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant, and:

- (a) Declare that the use of force reports related to the use of a chemical agent at the City Justice Center are open records under the Missouri Sunshine Law and not subject to an exception that would require, or permit, Defendant to withhold the records requested;
- (b) Enter an injunction pursuant to § 610.030, RSMo, requiring Defendant to immediately produce the records requested to Plaintiffs, without charging fees;
- (c) Find that Defendant purposely and knowingly violated the Sunshine Law;
- (d) Impose a civil penalty against Defendant pursuant to the Sunshine Law;
- (e) Award Plaintiffs their 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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