

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

Aaron M. Malin,)	
)	
Plaintiff,)	
)	
v.)	NO.: _____
)	
Cole County Prosecuting Attorney,)	DIVISION: _____
)	
)	
SERVE: Mark A. Richardson)	
Cole County Prosecuting Attorney)	
311 E. High Street, 3rd Floor)	
Jefferson City, MO 65101)	
)	
Defendant.)	

PETITION

1. This action is brought pursuant to the Missouri Sunshine Law, Chapter 610 of the Missouri Revised Statutes,¹ to require public disclosure of certain documents retained by Mark A. Richardson in his official capacity as the Cole County Prosecuting Attorney (hereinafter “Richardson” or “Cole County Prosecuting Attorney”).

2. This Court has jurisdiction over this action pursuant to § 610.010, *et seq.*

3. This Court has jurisdiction to issue injunctions to enforce provisions of the Sunshine Law pursuant to § 610.030.

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

4. Venue for this action is proper in this Court because the principal place of business of the Cole County Prosecuting Attorney is in Cole County.

Parties

5. Plaintiff Aaron M. Malin is a resident of the State of Missouri.

6. Defendant Cole County Prosecuting Attorney is a governmental entity created by § 56.010.

Factual Allegations

7. Defendant Cole County Prosecuting Attorney is a “[p]ublic governmental body” as defined by § 610.010(4).

8. On April 1, 2015, Plaintiff made a written request to Defendant’s custodian of records seeking copies of documents. In particular, Plaintiff sought “[a]ny correspondence or communication between the Office of the Prosecuting Attorney of Cole County (or its associates/employees) and the MUSTANG drug task force (or its associates/employees).” A copy of the request is attached hereto as Exhibit 1 and is incorporated herein by reference.

9. Plaintiff specifically asked that the requested records “be provided without redactions” or “only redactions permitted by law.” Ex. 1.

10. In addition, Plaintiff asked that “[i]f any part of this request is denied, please list specific exemptions upon which you rely for each denial.” Ex. 1.

11. Plaintiff delivered his April 1, 2015, request to Defendant’s custodian of records by email and facsimile transmission.

12. Defendant Richardson denied Plaintiff's request in a letter dated April 8, 2015. A copy of this letter is attached hereto as Exhibit 2 and is incorporated herein by reference.

13. In relevant part, the denial letter stated:

The records you requested, even if they existed, would not be categorized. To search, categorize, and compile such records would be unduly burdensome. The costs to find and copy would be hard to calculate. Without confirming or denying the existence of records you requested, any official records of this office would be closed to the public.

Ex. 2.

14. Defendant Richardson cited only §§ 610.105, 610.100, and 610.120 as the authority for his denial of Plaintiff's request. Ex. 2.

15. Plaintiff engaged attorney David Roland for the purpose of responding to Defendant Richardson's letter dated April 8, 2015.

16. On April 13, 2015, Roland sent a letter to Defendant Richardson on behalf of Plaintiff explaining why Defendant Richardson's response was insufficient as a matter of law. A copy of Roland's letter is attached hereto as Exhibit 3 and is incorporated herein by reference.

17. On May 1, 2015, Roland sought to ensure that Defendant Richardson had received a copy of the April 13, 2015, letter by emailing an electronic copy of the letter to Defendant Richardson via his email address, mrichardson@colecopa.com.

18. Neither Plaintiff nor Roland received any further correspondence related to Plaintiff's April 1, 2015 request.

19. On October 22, 2015, Plaintiff made a second written request to Defendant's custodian of records seeking copies of documents. In particular, Plaintiff sought "[a]ny indictments handed down in Cole County between July 1 2014 and the present, limited to indictments for selling narcotics in public housing." A copy of the request is attached hereto as Exhibit 4 and is incorporated herein by reference.

20. Plaintiff specifically asked that the requested records "be provided without redactions" or "only redactions permitted by law." Ex. 4.

21. In addition, Plaintiff asked that "[i]f any part of this request is denied, please list specific exemptions upon which you rely for each denial." Ex. 4.

22. Plaintiff delivered his October 22, 2015 request to Defendant's custodian of records by email and facsimile transmission.

23. Defendant Richardson denied Plaintiff's request in a letter dated October 23, 2015. A copy of this letter is attached hereto as Exhibit 5 and is incorporated herein by reference.

24. In relevant part, the denial letter stated:

The records you have requested are not categorized. To search, categorize, and compile such records would be unduly burdensome. The costs to find and copy would be hard to calculate. Without confirming or denying the existence of records you requested, any official records of this office would be closed to the public.

Ex. 5.

25. Defendant Richardson cited only §§ 610.105, 610.100, and 610.120 as the authority for his denial of Plaintiff's October 22, 2015 request. Ex. 5.

26. Plaintiff did not receive any further correspondence related to his October 22, 2015 request.

27. On October 30, 2015, Plaintiff made a third written request to Defendant's custodian of records seeking copies of documents. In particular, Plaintiff sought "[a]ny Sunshine Law (or open records) requests received by the Cole County Prosecutor's Office, as well as any responses provided, between January 1 2015 and the present." A copy of the request is attached hereto as Exhibit 6 and is incorporated herein by reference.

28. Plaintiff specifically asked that the requested records "be provided without redactions" or "only redactions permitted by law." Ex. 6.

29. In addition, Plaintiff asked that "[i]f any part of this request is denied, please list specific exemptions upon which you rely for each denial." Ex. 6.

30. Plaintiff delivered his October 30, 2015 request to Defendant's custodian of records by email and facsimile transmission.

31. Defendant Richardson denied Plaintiff's request in a letter dated October 30, 2015. A copy of this letter is attached hereto as Exhibit 7 and is incorporated herein by reference.

32. In relevant part, the denial letter stated:

The records you have requested are not categorized. To search, categorize, and compile such records would be unduly burdensome. The costs to find and copy

would be hard to calculate. Without confirming or denying the existence of records you requested, any official records of this office would be closed to the public.

Ex. 7.

33. Defendant Richardson cited only §§ 610.105, 610.100, and 610.120 as the authority for his denial of Plaintiff's October 30, 2015 request. Ex. 7.

34. Plaintiff did not receive any further correspondence related to his October 30, 2015 request.

Violations of the Missouri Sunshine Law

35. Defendant Cole County Prosecuting Attorney is subject to the provisions of Chapter 610 of the Missouri Revised Statutes because it is a public governmental body.

36. The records requested on April 1, 2015 are public records subject to disclosure under the Sunshine Law.

37. None of the provisions of Chapter 610 permit Defendant to withhold the records requested on April 1, 2015.

38. Defendant's failure to produce the records requested on April 1, 2015 is a purposeful or, in the alternate, knowing violation of the Sunshine Law.

39. The records requested on October 22, 2015 are public records subject to disclosure under the Sunshine Law.

40. None of the provisions of Chapter 610 permit Defendant to withhold the records requested on October 22, 2015.

41. Defendant's failure to produce the records requested on October 22, 2015 is a purposeful or, in the alternate, knowing violation of the Sunshine Law.

42. The records requested on October 30, 2015 are public records subject to disclosure under the Sunshine Law.

43. None of the provisions of Chapter 610 permit Defendant to withhold the records requested on October 30, 2015.

44. Defendant's failure to produce the records requested on October 30, 2015 is a purposeful or, in the alternate, knowing violation of the Sunshine Law.

WHEREFORE Plaintiff prays that this Court enter judgment in his favor and against Defendant, and:

- A. Declare that the records requested on April 1, October 22, and October 30, 2015 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 Defendant to provide Plaintiff copies of the records requested;
- C. Find Defendant purposefully or, in the alternate, knowingly violated the Sunshine Law;
- D. Impose a civil penalty against Defendant pursuant to the Sunshine Law;
- E. Award Plaintiff's attorney fees and costs of litigation as authorized by the Sunshine Law; and

F. Grant to Plaintiff such other and further relief as is just and proper.

Respectfully submitted,

/s/ Anthony E. Rothert
Anthony E. Rothert, #44827
Jessie Steffan, #64861
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A handwritten signature in black ink, reading "David Roland", written over a horizontal line.

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ATTORNEYS FOR PLAINTIFF