

**MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)**

JOHN CHASNOFF,	)	
	)	
Plaintiff,	)	
	)	No. 0722-CC07278
v.	)	
	)	Division 10
BOARD OF POLICE COMMISSIONERS,	)	
By Its Individual Members in Their Official	)	
Capacities,	)	
	)	
Defendants.	)	

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This case is before the Court on Plaintiff John Chasnoff's First Amended Petition, which Plaintiff filed on October 5, 2007. Defendants filed their answer to Plaintiff's First Amended Petition on April 23, 2008.

This case is also before the Court on Plaintiff's Motion for Summary Judgment, which the Court previously granted, in part, on January 2, 2009. On the same date, the Court denied Defendants' Motion for Summary Judgment. Defendants have requested that the Court reconsider and reverse its January 2, 2009 rulings on the parties' cross motions for summary judgment.

This case is also before the Court on Defendants' Motion to Amend the Judgment, Vacate Findings of Fact and Conclusions of Law, or, in the Alternative, for New Trial. The Court has issued a separate order dated April 12, 2010, granting Defendants' request that it vacate its original Findings of Fact and Conclusions of Law dated December 11, 2009, and denying Defendants' request for a new trial.

These Amended Findings of Fact, Conclusions of Law and Judgment dated April 12, 2010, replace the Court's original Findings of Fact, Conclusions of Law and Judgment dated December 11, 2009.

Plaintiff John Chasnoff is a citizen of the State of Missouri and lives in St. Louis County. He is also a member of the Coalition against Police Crimes and Repression, an unincorporated citizens' group. Defendants are the members of the Board of Police Commissioners. The Board is the legal body created by Chapter 84 of the Revised Statutes of Missouri to control and operate the Metropolitan Police Department of the City of St. Louis.

The Court has considered the pleadings, the exhibits, and the other evidence presented by the parties through January 29, 2009 and after December 11, 2009, along with the written and oral arguments of the parties' attorneys. Pursuant to Rules 73.01, 74.04, 78.01 and 78.06 of the Missouri Rules of Civil Procedure, and based on the evidence and the law, the Court enters its amended findings of fact, conclusions of law and orders as follows:<sup>1</sup>

#### PROCEDURAL HISTORY

1. On July 18, 2007, Plaintiff John Chasnoff filed his original petition, in one count, against Colonel Joseph Mokwa and the Metropolitan Police Department of the City of St. Louis, as Defendants.

The petition alleged that Chief Mokwa and the Metropolitan Police Department were in violation of the Missouri Sunshine Law, Chapter 610 of the Revised Statutes of Missouri, by failing to turn over to John Chasnoff records from the Internal Affairs Division's investigation of Eric Johnson's complaint in connection with his arrest on October 27, 2006 for unlawfully selling tickets to the 2006 World Series. John Chasnoff contended that the Internal Affairs

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<sup>1</sup> The Court adopts and incorporates into these Findings, Conclusions and Orders its Order Ruling on Cross Motions for Summary Judgment dated January 2, 2009.

Division (IAD) had completed its investigation and had closed its file on the Johnson complaint in April of 2007, that, beginning in April of 2007, he had repeatedly asked the Metropolitan Police Department for copies of the original Johnson complaint and of the contents of the investigative file and that the Metropolitan Police Department refused to provide him with any documents other than a copy of the Board of Police Commissioner's one-page press release announcing disciplinary action to be taken against seven police officers and one sergeant and a copy of a letter to Chief Mokwa from the Board advising of the disciplinary action to be taken against the police officers and the sergeant. John Chasnoff's petition alleged that Section 610.100 RSMo of Missouri's Sunshine Law required the Metropolitan Police Department to turn over copies of all of the documents in the Internal Affairs Division's investigative file concerning the Johnson complaint.

2. On August 28, 2007, the original Defendants filed their motion to dismiss on the ground that they were not the proper defendants in connection with Plaintiff's claim of violation of the Missouri Sunshine Law.

3. On September 7, 2007, John Chasnoff requested leave to file his First Amended Petition naming the individual members of the Board of Police Commissioners as additional defendants. On October 5, 2007, the Court granted Plaintiff's request.

4. On November 27, 2007, Defendants filed their motion to dismiss Chief Mokwa and the Metropolitan Police Department as named defendants in Plaintiff's First Amended Petition. On January 8, 2008, Defendants filed their amended motion to dismiss. On March 20, 2008, the Court granted Defendants' Motion to Dismiss as to Chief Joseph Mokwa and as to the Metropolitan Police Department of St. Louis.<sup>2</sup>

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<sup>2</sup> On March 20, 2008 the Coalition against Police Crimes and Repression (CAPCAR), the other original plaintiff in the case, voluntarily withdrew as a party. John Chasnoff remained as the sole plaintiff in the case.

5. John Chasnoff filed his Motion for Summary Judgment on February 15, 2008. The Board of Police Commissioners filed their Response to Plaintiff's Motion for Summary Judgment on April 23, 2008. On the same date, Defendants filed their own Motion for Summary Judgment and filed their Answer to Plaintiff's First Amended Petition.

6. On June 20, 2008, Judge Edward Sweeney took the parties' cross motions for summary judgment under submission. On June 24, 2008, Judge Sweeney voluntarily recused himself from the case, and, on June 30, 2008, Presiding Judge Thomas Grady reassigned the case to Judge Philip D. Heagney in Division 10.

7. On January 2, 2009, the Court entered its order granting John Chasnoff's Motion for Summary Judgment, in part, on the ground that Eric Johnson's original complaint was an open record under the Missouri Sunshine Law and so the Board of Police Commissioners was legally obligated to provide John Chasnoff with a copy of the complaint. In the same order, the Court denied the Board of Police Commissioners' Motion for Summary Judgment on the grounds that the Missouri Sunshine Law (in particular Section 610.100 RSMo) applied to the records in question and that the Board of Police Commissioners had shown no public policy reasons, to that point, which would negate the Board's legal obligation to make the records in question public.

The Court ordered the parties to appear on January 29, 2009, to review the status of Plaintiff's lawsuit. The Court believed that the Board of Police Commissioners would request an evidentiary hearing to address issues which the Court identified but left unresolved in its January 2, 2009 ruling.

8. The parties appeared by their attorneys in Division 10 on January 29, 2009. The Board of Police Commissioners elected not to offer any additional evidence and elected to submit the case on the record as it stood. The Board of Police Commissioners also asked the

Court to reverse its January 2, 2009 ruling denying Defendants' Motion for Summary Judgment. John Chasnoff's attorney entered one exhibit into evidence – Eric Johnson's Allegation of Employee Misconduct Report received by the Metropolitan Police Department on October 31, 2006 (Exhibit 1).<sup>3</sup> The parties' attorneys argued their legal positions to the Court, and the Court then took the case under submission on January 29, 2009.

9. On December 11, 2009, the Court entered its original Findings of Fact, Conclusions of Law and Judgment ruling that Missouri's Sunshine Law required the Board of Police Commissioners to turn over to John Chasnoff copies of the contents of the Internal Affairs Division's investigative file for Eric Johnson's citizen complaint.

10. On January 11, 2010, the Board of Police Commissioners filed its Motion to Amend the Judgment, Vacate Findings of Fact and Conclusions of Law, or, in the Alternative, for a New Trial. The Board filed two affidavits in support of its post-trial motion, along with a memorandum of law on behalf of its position. In its post-trial motion, the Board of Police Commissioners explained, for the first time in this lawsuit, that it had used a two-tiered system for investigating Eric Johnson's citizen complaint.

On February 1, 2010, John Chasnoff filed a memorandum in opposition to the Board's post-trial motion, and the Board filed its reply memo on February 9, 2010. On the same date, the Court met with the parties' attorneys and agreed to rule by March 1, 2010, on the Board's request to present additional evidence in support of its post-trial motion. On February 16, 2010, the parties' attorneys filed supplemental motions in support of their positions.

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<sup>3</sup> In its orders of January 2, 2009, the Court ruled that Eric Johnson's original complaint was an open record under Section 610.100.2 RSMo and required the Board to provide John Chasnoff with a copy of the complaint. The Board complied with this order on January 13, 2009, by sending a copy of the complaint to John Chasnoff's lawyer.

11. On March 1, 2010, the Court entered its order granting the Board's request to present additional evidence in support of its post-trial motion.

12. On March 15, 2010, the Board presented testimony from Captain John Hayden, the current commander of the Internal Affairs Division. Captain Hayden became commander of the Internal Affairs Division shortly after the IAD began its investigation of Eric Johnson's citizen complaint. The Court also heard testimony from Sergeant Stanley Mierzejewski at the March 15 hearing. The Court admitted into evidence a number of documents at the March 15 hearing. Subsequently, the Court has admitted into evidence copies of Section 5.250 and of Rule 7 of the Police Manual. The Court then took this case under submission on the Board of Police Commissioner's post-trial motion.

#### FINDINGS OF FACT

1. On October 31, 2006, Eric Johnson filed a complaint with the Internal Affairs Division of the Metropolitan Police Department of St. Louis. See Plaintiff's Exhibit 1. In his complaint, Mr. Johnson alleged that, when two St. Louis police officers arrested him on October 27, 2006, for offering to sell World Series tickets at more than face value, they seized \$2,600.00 in cash from him. According to Mr. Johnson's complaint, the police officers refused to give him a receipt for his money, and, when he was released from custody, only \$539.00 was returned to him with his property.

2. The Internal Affairs Division conducted an investigation of Eric Johnson's complaint. The IAD investigation apparently did not address the issue as to whether the arresting police officers had stolen money from Eric Johnson, but the investigation did conclude that seven police officers and one sergeant of the Metropolitan Police Department had allowed family members and friends to use World Series tickets seized from Eric Johnson and from other persons who had been arrested for ticket-scalping.

3. At the end of the IAD's investigation, Chief Joseph Mokwa recommended one-year demotions for and other disciplinary action against the eight police officers, as well as lesser unspecified discipline against several higher-ranking officers of the Metropolitan Police Department.

4. During this same time period, the St. Louis City Circuit Attorney's Office conducted an investigation into the issues arising out of Eric Johnson's complaint. The IAD investigators cooperated with the Circuit Attorney's Office by providing requested information and documents. At close of her office's investigation, Circuit Attorney Jennifer Joyce concluded that she did not have a basis for filing criminal charges against the seven police officers and the sergeant, although she noted that the officers' actions in passing seized World Series tickets to family members and friends were "ethically and morally wrong, and they breached the trust of the community."

5. On April 6, 2007, John Chasnoff wrote to the Metropolitan Police Department and requested "all documents related to the investigation of the officers connected to the use of Cardinal baseball tickets during the 2006 World Series."

On April 13, 2007, the General Counsel for the Metropolitan Police Department advised John Chasnoff that the IAD's investigation of the World Series ticket case was still in process and that she would provide Mr. Chasnoff with open record information within seventy-two hours of the Board of Police Commissioners' final vote on disciplinary action.

6. On April 18, 2007, the Board of Police Commissioners voted to take specific disciplinary action against eight named police officers and to take unspecified disciplinary action against six unnamed command-rank officers.

At this point, the IAD had completed its investigation of Eric Johnson's complaint and so closed its investigative file.

7. On April 20, 2007, the Board's General Counsel mailed John Chasnoff "the documents responsive to your request dated April 6, 2007." These documents included a copy of the Board of Police Commissioners' letter to Chief Joseph Mokwa dated April 18, 2007, advising the Chief of the disciplinary action that had been approved against the eight police officers and a copy of the Board's one-page press release dated April 18, 2007, summarizing the Board's decisions. The two documents provided information about the disciplinary action taken against the eight police officers. They provided no information about the original complaint from Eric Johnson or about the IAD's subsequent investigation of the complaint. See Plaintiff's Motion for Summary Judgment, Exhibit A-5.

8. On April 22, 2007, John Chasnoff wrote to the Board's General Counsel requesting "full documentation of the Internal Affairs investigation . . . ." The General Counsel and Mr. Chasnoff then corresponded about the law applicable to Mr. Chasnoff's request for documents from the IAD's file. In her letter dated May 4, 2007 to John Chasnoff, the General Counsel noted that the Board of Police Commissioners had provided "all the open documents related to your request. The allegations did not involve criminal activity . . . ."

9. On May 23, 2007, the General Counsel wrote to John Chasnoff again advising him that "(t)he allegations did not involve criminal activity", that Mr. Chasnoff had "all the open records" and that she was "closing (her) file on this matter."

10. On May 25, 2007, Anthony Rothert, as counsel for John Chasnoff, wrote to the Board's General Counsel and requested that the Metropolitan Police Department provide Mr. Chasnoff with copies of the documents he had requested. On June 1, 2007, the General Counsel wrote back to Mr. Rothert advising that she had already provided Mr. Chasnoff with copies of all of the open records, that she disagreed with his interpretation of the requirements of Missouri's Sunshine Law and that he could appeal her decisions to Chief Mokwa.



11. Anthony Rothert wrote a letter to Chief Joseph Mokwa on June 8, 2007, asking him to reverse the General Counsel's legal decisions. Chief Mokwa did not reply to Mr. Rothert's letter.

12. The Board of Police Commissioners contends that, even if Section 610.100 RSMo of Missouri's Sunshine law makes Eric Johnson's original complaint and the IAD's file of its subsequent investigation open records, important public policy considerations require that the Metropolitan Police Department be allowed to keep the records closed. The Board of Police Commissioners has provided no evidence to support its public policy argument.

13. The Board of Police Commissioners represented that the allegations in Eric Johnson's October 31, 2006 complaint did not involve criminal activity. Exhibit 1 directly refutes this representation. The Board of Police Commissioners repeatedly represented that Eric Johnson's October 31, 2006 complaint raised the issue of the misuse of World Series tickets seized by the police from scalpers. Exhibit 1 shows that Eric Johnson made no mention of the misuse of World Series tickets in his original complaint.

14. Rule 7 of the Board of Police Commissioners' Police Manual for the Metropolitan Police Department sets out the Board's policies and procedures concerning the Department's investigation of citizen complaints. Rules 7.003 and 7.006 indicate that Rule 7 applies to citizen complaints such as Eric Johnson's complaint in this case. Rule 7.008 requires that all citizen complaints be referred to the Internal Affairs Division for investigation.

15. In his affidavit attached to Defendants' post-trial motion and in his testimony on March 15, 2010, Captain John W. Hayden testified that he became the commander of the Internal Affairs Division shortly after Eric Johnson filed his complaint against the police officers who arrested him. Captain Hayden explained that the IAD conducted two separate investigations as a result of Eric Johnson's complaint. One investigation was a criminal

investigation to determine whether any police officers had engaged in criminal misconduct. The other investigation was an administrative investigation to determine whether any police officers had violated Departmental rules, causing them to be subject to discipline. A separate police sergeant directed each of these investigations. The director of the administrative investigation had access to information and materials collected in the criminal investigation. However, the director of the criminal investigation was not allowed access to any information or materials collected in the administrative investigation. The IAD maintained one file for the criminal investigation and a separate file for the administrative investigation.

16. Captain Hayden explained in his affidavit and through his testimony on March 15, 2010, that the administrative and the criminal investigations in this case were kept separate because officers of the Metropolitan Police Department have a constitutional right to remain silent so as not to incriminate themselves and, at the same time and under the Board's rules and regulations, officers of the Metropolitan Police Department must answer questions from police investigators about their conduct as a condition of their continued employment.

Captain Hayden stated that the decision of the United States Supreme Court in Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967), allowed IAD investigators to question police officers but not to use the officers' statements as part of a criminal investigation or to release any of these statements to criminal prosecutors.

Captain Hayden stated that all of the police officers whom IAD investigators questioned in connection with their investigation of Eric Johnson's complaint chose to make their statements under the protection of Garrity v. New Jersey.

17. Rule 7 of the Police Manual does not provide any detailed description of the two-tiered investigation system which Captain Hayden said IAD used in its investigation of Eric Johnson's complaint. However, Rule 7.015(c) provides that, in any investigation involving an

alleged criminal violation, IAD investigators must advise police officers of their Miranda rights prior to questioning them. If an officer waives his constitutional rights, then his or her statements shall be included "in both the internal investigation report and the criminal offense report." Police Manual, Page 52 (Rev. 1). However, if an officer does not waive his or her constitutional rights, then his or her statements "shall not be used against him in any criminal prosecution, however, the statement will be included in the internal investigative report." Police Manual, Page 52 (Rev. 1).

18. For a number of years prior to Eric Johnson filing his complaint after his arrest in October of 2006, the Internal Affairs Division has used the two-tiered investigation system for citizen complaints against police officers which include allegations of criminal misconduct. In these investigations, the IAD has consistently maintained a separate file for the criminal investigation and a separate file for the administrative investigation.

19. The IAD's administrative file for its World Series tickets investigation consists of 24 separate categories of materials. IAD's criminal file for its World Series tickets investigation consists of five separate categories of materials.

20. Sergeant Stanley Mierzejewski directed the IAD's criminal investigation concerning 2006 World Series tickets. This investigation included Eric Johnson's complaint.

In his affidavit attached to the Board's post-trial motion and in his testimony on March 15, 2010, Sergeant Mierzejewski testified that he maintained a separate file for the criminal investigation, that he did not participate in any interviews of police officers who refused to waive their constitution rights and that he did not have access to any of the statements made by these police officers.

Sergeant Mierzejewski took his criminal investigation file to the St. Louis City Circuit Attorney's Office in connection with the Circuit Attorney's investigation of possible criminal

conduct by police officers who had seized World Series tickets. This file did not include any information beyond the five categories of materials included in the file. This file did not include any statements from police officers who refused to waive their constitutional rights.

Sergeant Mierzejewski did not prepare any formal police report concerning the criminal investigation. Sergeant Mierzejewski did not conduct any investigation of Eric Johnson's allegation that the police officers who arrested him stole \$2,000.00 from him in connection with the arrest.

Sergeant Mierzejewski testified that the criminal investigation file and the administrative investigation file for the World Series tickets case were both kept in IAD's office and were maintained in separate folders in the same storage box(es).

21. After the Court entered its original Findings, Conclusions and Judgment on December 11, 2009, the Board of Police Commissioners elected to turn over to John Chasnoff the contents of its criminal investigation file.

22. The Court has reviewed materials from the criminal investigation file that were introduced into evidence at the post-trial hearing on March 15, 2010. See Plaintiff's Post-Trial Exhibits 1 – 10. These materials contain little information beyond the complaints filed by Eric Johnson and others arrested for allegedly scalping World Series tickets and the police reports prepared incident to these arrests. These records show an incomplete investigation.

#### CONCLUSIONS OF LAW

1. The Board of Police Commissioners and the Metropolitan Police Department of St. Louis constitute a public governmental body as defined by Section 610.010(4) RSMo of Missouri's Sunshine Law.

2. In general, records maintained by the Board of Police Commissioners and the Metropolitan Police Department of St. Louis are public records as defined by Section 610.010(6) RSMo of Missouri's Sunshine Law.

3. As provided in Section 610.011.1 RSMo of Missouri's Sunshine Law, it is the public policy of Missouri that the records of public governmental bodies "are to be open to the public unless otherwise provided by law." Missouri's Sunshine Law directs courts to "liberally construe" its provisions and to "strictly construe" any exceptions in order "to promote this public policy."

Section 610.011.2 RSMo provides that "all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026 . . . ."

4. Eric Johnson's October 31, 2006 complaint to the Internal Affairs Division of the Metropolitan Police Department constitutes an incident report under Section 610.100.2 RSMo of Missouri's Sunshine Law. See Section 610.100.1(4) for the Sunshine Law's definition of an "incident report". In addition, in Guyer v. City of Kirkwood, 38 S.W.3d 412 (Mo banc 2001), the Missouri Supreme Court held that a citizen's complaint against a police officer qualifies as an incident report. 38 S.W.3d at 415.

Section 610.100.2 provides that "all incident reports . . . shall be open records." As a result, the Board of Police Commissioners should have provided John Chasnoff with a copy of Eric Johnson's complaint within three business days after the Internal Affairs Division closed its investigation on April 18, 2007. See Section 610.023.3 RSMo of Missouri's Sunshine Law. The Board did not comply with this requirement.<sup>4</sup>

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<sup>4</sup> Neither of the two documents the Board mailed to John Chasnoff on April 18, 2007, included Eric Johnson's original complaint, and neither of these two documents was from the IAD's investigative file.

5. The file that was produced as the result of the Internal Affairs Division's investigation of Eric Johnson's October 31, 2006 complaint constitutes an investigative report under Section 610.100.2 RSMo of Missouri's Sunshine Law. See Section 610.100.1(5) for the Sunshine Law's definition of an "investigative report".

Section 610.100.2 provides that "investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive." In this case, the IAD's investigation became inactive no later than April 18, 2007.

6. In Guyer v. City of Kirkwood, supra, the Missouri Supreme Court held that investigative reports become open records once the investigation is closed and provided "it is shown that the investigation was directed to alleged criminal conduct." 38 S.W.3d at 415.

The Board of Police Commissioners originally took the position that Eric Johnson's "allegations did not involve criminal activity . . . ." See the General Council's letters dated May 4, 2007 and May 23, 2007.

However, at the January 29, 2009 hearing, the parties' attorneys agreed that Eric Johnson's complaint alleged that police officers had stolen money from him and so the IAD's investigation was directed to alleged criminal conduct. 1/29/09 Tr. at Page 9, Line 9 to Page 11, Line 4. Eric Johnson's complaint unquestionably alleged criminal misconduct.

7. The Board of Police Commissioners contends that Eric Johnson's original complaint and the file prepared by the Internal Affairs Division to document its subsequent investigation of this complaint are closed records under Section 610.021 RSMo because the complaint and the investigation deal with personnel matters. Section 610.021(3) RSMo allows the Board of Police Commissioners to close records which are related to "disciplining . . . particular employees . . . when personal information about the employee is discussed or recorded."

The Missouri Supreme Court addressed this issue in Guyer v. City of Kirkwood, supra. In Guyer, a commissioned police officer of the Kirkwood Police Department was the subject of a citizen complaint that the officer had engaged in misconduct. 38 S.W.3d at 413. The Bureau of Internal Affairs of the St. Louis County Police Department investigated the complaint and concluded that the complaint was unfounded. 38 S.W.3d at 413. Subsequently, the police officer asked the City of Kirkwood for the name of the complainant and for a copy of the investigative report, but the City refused to provide any of the requested information and cited Missouri's Sunshine Law in support of its position. 38 S.W.3d at 413. The City argued that the nondisclosure provisions of Section 610.021 RSMo prohibit release of information that constitutes personnel records. 38 S.W.3d at 413.

The Supreme Court concluded that the records in question constituted incident and investigative reports under Section 610.100.1 RSMo, all of which would be open records subject to disclosure under Section 610.100.2 RSMo since the underlying investigation was now closed. At the same time, the Court agreed that the reports could also be classified as personnel records, which are treated as closed records under Section 610.021 RSMo. To resolve this conflict, the Supreme Court looked at the language of Section 610.021 RSMo, considered the public policy set out in Section 610.011.1 RSMo and concluded that Missouri's Sunshine Law required disclosure. The Court explained:

. . . (T)he permissive closure available in section 610.021 is qualified by its own terms, that is, records may not be closed under that section "to the extent disclosure is otherwise required by law." Where, as here, a specific statute requires disclosure of a specific type of public record, section 610.021 may not be relied on to maintain closure, although it would otherwise apply.

Furthermore, in cases like this, where more than one provision of Chapter 610 applies to a record, the decision to open or close the record must be informed by the express public policy stated in section 610.011.1, which is that all records of public governmental bodies are

presumed to be open records and that the exceptions in sections 610.010 to 610.028, including those in section 610.021, are to be strictly construed to promote that policy. In effect, section 610.011.1 should be used as a tiebreaker in favor of disclosure when records fit equally well under two specific but opposite provisions of the Sunshine Law. 38 S.W.3d at 414.

In light of the Supreme Court's holding in Guyer, the Board of Police Commissioners' reliance on Section 610.021 RSMo in this case is misplaced. Although the Internal Affairs Division's investigation of Eric Johnson's complaint required the IAD and the Board to become involved in personnel matters concerning a number of commissioned police officers, the Board's responsibilities under Missouri's Sunshine Law are controlled by Section 610.100.2 RSMo. This provision makes investigative reports closed records only so long as the investigation in question is ongoing. Here, the IAD closed its investigation of Eric Johnson's complaint on April 18, 2007. The investigative record then became an open record and subject to disclosure.

8. The Board of Police Commissioners argues that the Supreme Court's decision in Guyer v. City of Kirkwood, supra, is limited to its facts, that the Court should construe the Supreme Court's holdings in Guyer narrowly and that, at most, the Guyer decision only allows police officers who were the subject of an investigation such as the one conducted by the IAD in this case to use Missouri's Sunshine Law to subsequently obtain records from the investigation.

The Court has read Guyer v. City of Kirkwood and finds no language in the Supreme Court's decision to support the Board's interpretation that the holdings in Guyer must be construed narrowly and so should not be applied to the facts of this case. Nowhere in Guyer does the Supreme Court limit its rulings to situations where a police officer is requesting records about an investigation of allegations against him or her. In fact, throughout the opinion, the Court speaks in broad terms and does not limit its holding to only records requests



made by police officers. The Board cites no language in the Guyer decision to support its position that the Supreme Court's decision must be interpreted narrowly because it applies only to requests for records from police officers, and the Court finds no language in the decision to this effect.

The Southern District of the Missouri Court of Appeals has applied the Supreme Court's holdings in Guyer to a different fact situation in State ex rel. City of Springfield v. Brown, 181 S.W.3d 209 (Mo.App.S.D. 2005). In the Brown case, a citizen, who was also a defendant in a criminal case, sought records from the City of Springfield concerning a complaint that he had filed against three police officers and records concerning other complaints filed against the same officers over a specific period of time. 181 S.W.3d at 221. The Southern District agreed with the Supreme Court's holding in Guyer that incident reports are open records and that investigative reports are also open records once the investigation that produces them are closed. 181 S.W.3d at 222. The Southern District also accepted the Supreme Court's holding that records that otherwise would remain closed records under Section 610.021 RSMo of Missouri's Sunshine Law must be treated as open records if they are covered by Section 610.100 RSMo. 181 S.W.3d at 222 – 223. In its ruling in State ex rel. City of Springfield v. Brown, the Southern District makes no mention that the Supreme Court's holdings in Guyer are limited to the facts of that case or are to be construed narrowly.

9. The Board of Police Commissioners argues that Sections 610.100.3, 610.100.4 and 610.100.5 RSMo of Missouri's Sunshine Law block the disclosure of any of the materials contained in the IAD's file for its investigation of Eric Johnson's complaint. However, the Court finds nothing in the record to support this argument.

Section 610.100.3 RSMo applies to open police department records which contain information "that is reasonably likely to pose a clear and present danger to the safety of any

victim, witness, undercover officer, or other person; or jeopardize a criminal investigation, including records which would disclose the identity of a source wishing to remain confidential or a suspect not in custody; or which would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions . . . .” Section 610.100.3 provides that such “portion of a record shall be closed and shall be redacted from any record made available pursuant to this chapter.”

In this case, the Board has provided no detailed evidence as to what records and/or other materials are in the IAD’s investigative report on the Eric Johnson complaint and has provided no detailed evidence that any of the documents and/or other materials in the investigative report would fall into any of the categories listed in Section 610.100.3 RSMo. The Board asks the Court to accept its conclusion that the records in this case should be covered by the categories listed in Section 610.100.3 RSMo, but the Board provides the Court with no evidence on which the Court could base such a conclusion.

Section 610.100.4 RSMo concerns persons seeking information from an investigative report that may relate to issues in a civil claim or defense. This provision has no application to the facts of this case.

Section 610.100.5 RSMo allows any person to bring an action in court to determine whether closed law enforcement records should be released to the person bringing the action.

Section 610.100.5 provides in part that:

In making the determination as to whether information contained in an investigative report shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the law enforcement agency or any of its officers or to any person identified in the investigative report in regard to the need for law enforcement agencies to effectively investigate and prosecute criminal activity. The investigative report in question may be examined by the court in camera.

John Chasnoff's lawsuit has provided the Board with the opportunity to present evidence to show that records in the IAD's investigative report meet one or more of the criteria set out in Section 610.100.5 RSMo. The Board has elected to present no detailed evidence about the contents of the IAD's administrative investigative file and so has waived its rights to have the Court review the records in camera and determine whether certain records or parts of records should not be disclosed.

10. The Board of Police Commissioners argues that the records in the IAD's investigative report for the Eric Johnson complaint should remain closed in order to protect "a wealth of privacy concerns related to the content of each and every document or item within (the) IAD file." Suggestions in Support of Defendants' Motion for Summary Judgment, Page 11. The Board has provided no evidence in this case of any specific privacy concern or of any specific document or other item whose disclosure would cause an invasion of privacy. The Board asks the Court to accept its conclusion that disclosure of records in this case would violate privacy rights, but the Board provides the Court with no evidence on which the Court could base such a conclusion.

11. The Board of Police Commissioners argues that, if it is required to provide John Chasnoff with records from the IAD's investigative report, then "IAD investigators would no longer be able to assure witnesses confidentiality. . . . The availability of witnesses would greatly decrease once they knew that every word they said to IAD and exactly how they helped IAD will soon be available for anyone to read. . . . The effect of opening up these sensitive, confidential IAD files would clearly jeopardize IAD's ability to conduct future investigations." Suggestions in Support of Defendants' Motion for Summary Judgment, Page 11. In support of these contentions, the Board has provided an affidavit, dated April 16, 2008, from Captain

John Hayden, who became commander of the Metropolitan Police Department's Internal Affairs Division on January 3, 2007.

The Court does not question Captain Hayden's credibility as to Paragraphs 1 through 10 of his affidavit concerning the IAD's investigation of Eric Johnson's complaint, although the Court notes that Captain Hayden also fails to mention that the issue raised by Eric Johnson's complaint was an allegation of stealing against two police officers. As to the assertions set out in Paragraphs 11 through 22 of the affidavit, the Court finds some of Captain Hayden's statements to be reasonable and credible and within the scope of his knowledge as an experienced police officer. Other statements fall into the category of general opinions and conclusions, which, by themselves, are hardly sufficient to enable the Court to make the kinds of findings required by Section 610.100.5 RSMo that would be necessary for the Court to order records or portions of records to be kept closed. Although Captain Hayden testified at the March 15, 2010 post-trial hearing, the Board has not to make Captain Hayden available to testify as to his opinion testimony in his motion for summary judgment affidavit. Thus, Captain Hayden has not been subjected to cross-examination on these opinion matters. The Board asks the Court to accept its conclusion that disclosure of records in this case would severely hamper the Internal Affairs Division's ability to conduct future investigations, but the Board provides the Court with no evidence on which the Court could base such a conclusion.

12. The Board of Police Commissioners argues that, if it is required to provide John Chasnoff with records from the IAD's investigative report, then nosy citizens, along with gang members and criminal defendants, will demand to see the IAD's investigative reports for other investigations because these files "contain extremely sensitive, detailed and private information". Suggestions in Support of Defendants' Motion for Summary Judgment, Page 11. (See also Page 12 of Defendants' Suggestions.) However, the Board offers no evidence in

support of these arguments. Moreover, the Board fails to recognize that Sections 610.100.3 and 610.100.5 RSMo of Missouri's Sunshine Law address these concerns and provide concrete remedies to deal with them. The Board asks the Court to accept its conclusion that many people, including people who would misuse the information contained in such files, would routinely request IAD investigative reports if such reports become open records after investigations are completed, but the Board provides the Court with no evidence on which the Court could base such a conclusion.

13. The Board of Police Commissioners argues that "(a)ll persons who come to IAD expect their statements and assistance to be held in the strictest of confidence (and), (i)f this confidential and sensitive information is violated and held open for public viewing, all witnesses will be less willing to help IAD and less willing to talk freely if they do help." Suggestions in Support of Defendants' Motion for Summary Judgment, Page 12. However, the Board offers no evidence in support of these arguments.

In addition, the Board fails to explain how the Metropolitan Police Department can engage in investigations daily as to a wide variety of criminal matters without routinely offering confidentiality to the people its police officers and detectives talk to but can't do the same thing when the investigations are being conducted by the Internal Affairs Division. It is reasonable to believe that in any given case the police may need to consider offering confidentiality in order to obtain important information. Experienced police officers make these decisions daily. There is no evidence in the record for this case to suggest that offering confidentiality to prospective informants and witnesses is the rule rather than the exception. The Board asks the Court to accept its conclusion that IAD investigators must offer confidentiality to every person they speak with in order to successfully carry out their work, but

the Board provides the Court with no evidence on which the Court could base such a conclusion.

14. The Board of Police Commissioners argues that “it is wholly impractical and extremely burdensome to expect IAD to read through boxes of documents every time someone requests an IAD file and point to which portion of (Chapter) 610 supports closing each sentence and paragraph.” Suggestions in Support of Defendants’ Motion for Summary Judgment, Page 13. The Board also argues that “(c)learly the legislature could not have intended such an onerous burden on a government agency.” Suggestions in Support of Defendants’ Motion for Summary Judgment, Page 13. However, the Board offers no evidence in support of these arguments. Although Missouri’s Sunshine Law has been in effect for more than 30 years and has been repeatedly amended since its original adoption in 1973, the Board offers no legislative history and no Missouri case law (or decisions from other jurisdictions with similar Sunshine Law statutes) to support its contention that law enforcement agencies should not have to comply with open records rules because it would be too hard to do so. In particular, the record is bare of any evidence showing what work the Metropolitan Police Department would have to do to comply with John Chasnoff’s request for the investigative report which the IAD prepared in response to Eric Johnson’s complaint of October 31, 2006.

Moreover, after the Court entered its original Findings, Conclusions and Judgment on December 11, 2009, the Board determined that it was able to turn over to John Chasnoff all of the materials making up its criminal investigation file in this case.

The Board asks the Court to accept its conclusion that it would be wholly impractical and extremely burdensome for the Metropolitan Police Department to obey the law in connection with John Chasnoff’s request for an investigative report, but the Board provides the Court with no evidence on which the Court could base such a conclusion.

15. The Board of Police Commissioners argues that court rules and decisions about disclosure of information to defendants in criminal cases should control how the Court interprets and applies the provisions of Missouri's Sunshine Law. In making this argument, the Board ignores the fact that Missouri's Sunshine Law already contains provisions showing how the law should be interpreted and applied. The Board has provided no case law indicating that the application of Missouri's Sunshine Law is controlled or guided by decisions about discovery in criminal cases.<sup>5</sup>

16. In its post-trial motion, the Board of Police Commissioners explains that the Internal Affairs Division used a two-tiered investigation system to follow up on Eric Johnson's complaint that the police officers who arrested him stole money from him. The Board points out that, under this two-tiered system, the IAD maintains separate investigations, one criminal and the other administrative, and that the IAD maintains completely separate files for each investigation.

The Board argues that this system is required by the United States Supreme Court's decision in Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967). The Board contends that the Garrity decision prohibits prosecutors from using statements from police officers, who have not waived their constitutional rights against self-incrimination, in any subsequent criminal action against the same police officers. This means that investigations must be divided into separate criminal and administrative components and that the materials which are contained in the administrative component, including, but not limited to, Garrity statements themselves, can only be used in connection with the administrative discipline of

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<sup>5</sup> The Board's arguments in this area imply that criminal law is inherently more important or weightier than the law concerning the disclosure of public records. If this is the Board's position, then the Court does not accept it.

police officers. This means that the materials in the administrative file are used exclusively for personnel purposes. And, Section 610.021.3 of Missouri's Sunshine Law provides that the Board is "authorized to close . . . records . . . to the extent they relate to . . . (3) . . . disciplining . . . of particular employees . . . when personal information about the employee is discussed or recorded. . . . (T)he term 'personal information' means information relating to the performance or merit of individual employees . . . ."

The Court has already explained above why this argument cannot stand in light of the Missouri Supreme Court's decision in Guyer v. City of Kirkwood, supra. See Conclusion of Law Number 7, Pages 14 – 15.

But, the Board's argument also requires a careful look at the United States Supreme Court's decision in Garrity v. New Jersey, supra. The Garrity decision arises out of an investigation by the New Jersey Attorney General's Office into allegations that police officers and other municipal employees in some New Jersey boroughs were fixing traffic tickets. State investigators questioned a number of police officers after first advising the officers that their statements could be used against them in subsequent criminal proceedings, that they had the right to remain silent rather than make statements that might incriminate them and that, if they refused to answer the questions, they could be removed from office as public employees. The police officers answered the investigators questions. Later, some of the officers' statements were used in criminal prosecutions against them. The officers were convicted and the New Jersey courts upheld these convictions despite the officers' claim that they had been coerced into making the statements by the threat of losing their jobs if they didn't answer the investigators' questions. 385 U.S. 494 – 495, 87 S.Ct. 617 – 618, 17 L.Ed.2d 564.



The Supreme Court concluded that the investigators had forced the police officers to choose between self-incrimination on the one hand or losing their jobs on the other. 385 U.S. 496, 87 S.Ct. 618, 17 L.Ed.2d 565. The Court concluded that putting police officers in this position constituted coercion and then ruled:

We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under the threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic. 385 U.S. 500, 87 S.Ct. 567, 17 L.Ed.2d 567.

Despite the position taken by the Board of Police Commissioners in this case, the Garrity decision says nothing about the structure of police investigations of citizen complaints nor does it say anything about what information can or cannot be delivered to prosecutors in connection with the results of these investigations. Instead, Garrity stands for the proposition that, when, in a criminal investigation, a police officer is forced to provide self-incriminating statements under threat of losing his or her employment if he or she remains silent, then the prosecuting authorities cannot thereafter use the self-incriminating statement as evidence against the police officer in a criminal prosecution.

17. With this review of the United States Supreme Court's holdings in Garrity v. New Jersey, supra, in mind, the Court reviews the Board of Police Commissioner's post-trial evidence concerning the Internal Affairs Division's two-tiered investigation system and reaches two conclusions.

First, while the Garrity decision does not prohibit the IAD's current two-tiered system for investigating citizen complaints against police officers, it certainly does not require or even

recommend such a system. The Garrity decision says little about the investigative process which the New Jersey Attorney General's Office used to find out if local police were fixing tickets. Instead, the Court made clear that, at the end of the investigation, prosecutors could not take self-incriminating statements, which police officers gave investigators in the hope of avoiding being fired, as evidence against the same police officers in any subsequent criminal prosecutions. The Garrity decision sets rules which prosecutors must follow after an investigation of police misconduct is completed. The Board has turned the Garrity ruling on its head to say that it dictates how police misconduct investigations involving allegations of criminal activity must be conducted in the first place. But, the Garrity decision sets out no such rules. The Board attempts to expand the Garrity decision beyond its plain meaning. This Court finds no basis for accepting the Board's interpretation, especially in a case involving the application of Missouri's Sunshine Law to a citizen complaint involving an allegation of criminal misconduct against arresting police officers.

18. Second, the Board of Police Commissioners' two-tiered investigation system classifies too many materials as being part of the administrative investigation. In investigating Eric Johnson's complaint, which unquestionably alleges criminal misconduct (stealing) against two undercover police officers, the IAD places five categories of information and materials in the criminal investigation file and 24 categories of information and materials in the administrative investigative file. The Court has reviewed documents from the criminal investigative file. The substantive content of these materials is modest at best.

The Board's operation of its two-tiered investigation system violates Section 610.011 of Missouri's Sunshine Law. Section 610.011.1 RSMo requires government agencies to construe what constitutes open records as liberally as possible and what constitutes closed records as

narrowly as possible. Guided by the language of Section 5.250 of its own Police Manual, the Board of Police Commissioners has taken the opposite approach in this case.

The Board of Police Commissioners seems determined to keep the public from learning substantive information which has been uncovered as a result of the IAD's investigation of Eric Johnson's complaint. Forty-one months have passed since Eric Johnson was arrested. The IAD took more than five months to investigate Eric Johnson's complaint. The Board has spent 36 months resisting John Chasnoff's request to review the contents of the IAD's investigative file. Section 610.100.2 of Missouri's Sunshine Law says that the investigative file is an open record and so should be disclosed.

19. The Court respects the Board of Police Commissioners' concerns about both practical and policy problems which could arise for the Metropolitan Police Department if citizens are allowed to obtain copies of documents included in investigative reports produced by the Internal Affairs Division as a result of its investigations of complaints against police officers.<sup>6</sup> Undoubtedly, the Board will find, in some instances, that it is either at least partially contrary to other police goals or burdensome or both to comply with the disclosure requirements of Missouri's Sunshine Law, although the Sunshine Law provides a number of tools to address these potential problems. See, for example, Sections 610.023, 610.026, 610.027, 610.100.3 and 610.100.5 RSMo.

The Court is confident that the Board of Police Commissioners believes that, if anyone should obey the law, the Metropolitan Police Department should. Nevertheless, the defenses

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<sup>6</sup> The Board accepts the decision of the Missouri Supreme Court in Guyer v. City of Kirkwood, supra, that police officers have a right to obtain documents from IAD investigative reports under Missouri's Sunshine Law. It is not clear to the Court how the Sunshine Law provides these rights to one group of citizens but not to any other citizens.

that the Board has raised in this case and that the Board has repeated again and again, lead the Court to believe that the Board of Police Commissioners simply wants have itself and the Metropolitan Police Department be declared exempt from complying with any requirements of Missouri's Sunshine Law that it finds to be contrary to traditional police ways of doing business.

The Board of Police Commissioners and the Metropolitan Police Department are government agencies and so are engaged in public business. Their existence and their authority arise from a grant of power to them from the people they police. The Board and the Metropolitan Police Department can maintain authority and effectiveness in enforcing the law to the extent that they maintain the trust of the public who created them. The Board's and the Metropolitan Police Department's ability to maintain the trust of the people they serve depends substantially on conducting their operations openly – in the clear view of the public – rather than privately and behind closed doors or behind closed files. Missouri's Sunshine Law is based upon and promotes this fundamental principle of democratic government. The Sunshine Law reminds the Board of Police Commissioners and the Metropolitan Police Department of the importance of operating in plain view of the public they serve.

In accordance with Missouri's Sunshine Law, public business should be carried out in public. The Sunshine Law requires the Board of Police Commissioners and the Metropolitan Police Department to operate in the open. It is time for the Board to obey the law.

#### ORDERS

Based on its findings and conclusions set out in this decision, the Court orders, adjudges and decrees that:

1. The Court finds in favor of Plaintiff John Chasnoff and against Defendants on Plaintiff's Motion for Summary Judgment and on Plaintiff's First Amended Petition. The Court

lifts its seal on the original complaint which the Board of Police Commissioners provided to John Chasnoff's attorney on January 13, 2009, and the Court orders Defendants to provide John Chasnoff with the documents and other items which make up the Internal Affairs Division's full investigative report (criminal files and administrative files) arising out of the complaint filed by Eric Johnson on October 31, 2006.

2. The Court adopts and affirms its ruling of January 2, 2009 denying Defendants' Motion for Summary Judgment.

3. The Court taxes the costs of this case against Defendants.

4. These orders are the Court's final, appealable orders in this case.

SO ORDERED:

April 12, 2010

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Philip D. Heagney #27434  
Circuit Judge, Division 10

Cc: Anthony E. Rothert, Attorney for Plaintiff (454 Whittier Street 63108)  
Mark Lawson, Attorney for Defendants (1200 Clark Avenue 63103)  
Matthew Murphy, Public Information Officer, 22<sup>nd</sup> Judicial Circuit