

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

FILED
JAN 02 2009

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

JOHN CHASNOFF,)
)
 Plaintiff,)
)
 v.) No. 0722-CC-007278
)
) Division 10
 BOARD OF POLICE COMMISSIONERS,)
 By Its Individual Members in Their Official)
 Capacities,)
)
 Defendants.)

ORDER RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

The Court has before it the parties' cross motions for summary judgment: Plaintiff John Chasnoff's Motion for Summary Judgment and Defendant Board of Police Commissioners' Motion for Summary Judgment.¹

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. The Board of Police Commissioners 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 reviewed the submissions of the parties and the relevant authorities, and rules as follows.

A. Legal Basis for Summary Judgment Motions

Plaintiff's lawsuit arises out of John Chasnoff's request to the St. Louis Metropolitan Police Department for information from the Department's Internal Affairs Division (IAD) file concerning the investigation of a citizen complaint that St. Louis police officers seized tickets from scalpers in October of 2006 and then allowed certain family members

¹ Aaron Norris, a third-year law student at St. Louis University, provided the Court with valuable help in researching and writing this ruling.

and friends to use the seized tickets to attend World Series baseball games. John Chasnoff's original and first amended petitions allege that Missouri's Sunshine Law, which is set out in Chapter 610 of the Revised Statutes of Missouri, requires the Department, as a public law enforcement agency, to make the requested information available to members of the public as the documents in question constitute open records.

In response, the Board of Police Commissioners contends that the records John Chasnoff has requested are closed records under Section 610.021 RSMo of the Sunshine Law. For this reason, which the Board argues is supported by substantial public policy considerations, Plaintiff has no basis for obtaining either the original citizen complaint about improper use of seized World Series tickets or any information in the Internal Affairs Division's file created as a result of IAD's subsequent investigation of the complaint. The Board notes that the Department's legal counsel has already provided John Chasnoff with copies of the press release which the Board issued showing the action it had taken at the end of the IAD investigation and of the Board secretary's letter to Chief Joseph Mokwa advising him of the discipline the Board had adopted against the eight police officers who were involved in passing seized World Series tickets to family members and friends.

B. Undisputed Material Facts

In November 2006, the St. Louis Metropolitan Police Department received a complaint from a citizen that his confiscated baseball tickets were inappropriately used by vice squad police officers to attend games during the 2006 World Series in St. Louis.

The Police Department's Internal Affairs Division (IAD) conducted an investigation into the alleged misuse of the baseball tickets. The IAD investigation concluded that eight police officers had improperly allowed family members and friends to use baseball tickets seized from persons who were arrested for ticket scalping. At

the end of this investigation, Chief Joseph Mokwa recommended demotions and other disciplinary action against the eight police officers. On April 18, 2007, the Board followed the Chief's recommendations.

During this same time period, the St. Louis City Circuit Attorney's Office also conducted an investigation into the use of World Series tickets which St. Louis police officers had seized from scalpers. The IAD investigators cooperated with the Circuit Attorney's investigation and provided the Circuit Attorney's Office with requested information and documents. At the close of her office's investigation of the incident, the St. Louis City Circuit Attorney concluded that she did not have a basis for filing criminal charges against the eight police officers, although she noted that the officers' actions in passing seized tickets on to family members and friends were "ethically and morally wrong, and they breached the trust of the community."

On April 6, 2007, John Chasnoff, a citizen of St. Louis County wrote to the Metropolitan Police Department and requested copies of all documents related to the investigation of the officers involved in the misuse of World Series tickets. On April 13, 2007, Jane Berman Shaw, General Counsel for the Metropolitan Police Department, replied to Plaintiff's request, noted that IAD's investigation of the World Series ticket complaint was still in process and advised that she would provide Mr. Chasnoff with open record information within seventy-two hours of the Board of Police Commissioner's final vote on disciplinary action, as the Department's internal investigation would not be concluded until that time.

On April 18, 2007, at the conclusion of IAD's investigation and in accordance with recommendations made by Chief of Police Mokwa, the Board voted to suspend the eight officers for two weeks and to demote them for one year. On April 20, 2007, the Department's General Counsel mailed John Chasnoff copies of the Board's press

release and its letter to Chief Mokwa concerning its final action² but did not include copies of the citizen's original complaint or any other documents from IAD's file on its follow-up investigation. On April 22, 2007, Mr. Chasnoff wrote back to Jane Berman Shaw requesting "full documentation of the Internal Affairs' investigation" Ms. Shaw and Mr. Chasnoff corresponded about the law applicable to Chasnoff's request for documents from IAD's file, and, on May 23, 2007, Ms. Shaw sent Mr. Chasnoff a letter indicating that she had sent him all of the Department's open records for the World Series tickets investigation and that she was closing her file on the matter.

On May 25, 2007, counsel for the ACLU, on behalf of Mr. Chasnoff, wrote to Jane Berman Shaw and requested that the Police Department provide John Chasnoff with copies of the documents he had previously requested. On June 1, 2007, Ms. Shaw replied to the attorney for the ACLU advising that she disagreed with his interpretation of the Sunshine Law, that she had already provided Mr. Chasnoff with copies of the open records the Police Department held concerning the World Series tickets matter and that he could write to Chief Mokwa to request a review of her decision. ACLU counsel sent a letter to the Chief of Police on June 8, 2007, asking that he reverse Ms. Shaw's legal decision. Chief Mokwa did not reply to this request.

On July 18, 2007, John Chasnoff filed his original petition under Missouri's Sunshine Law and against the Metropolitan Police Department of St. Louis and Chief Joseph Mokwa. The petition contended that the Defendants had unlawfully withheld certain documents which are part of the IAD investigatory file and which constitute public records under Section 610.100.2 RSMo.

² These documents provide information about the disciplinary action taken against the eight police officers who were the subject of the IAD investigation. They provide no details about the original complaint or about the subsequent investigation of the complaint. See Plaintiff's Motion for Summary Judgment – Exhibit A-5.

C. Analysis of Legal Issues

As a preliminary matter, the Court notes that Plaintiff has not complied with all of the procedural requirements of Rule 74.04 of the Missouri Rules of Civil Procedure. In his motion for summary judgment, John Chasnoff filed a combined motion and statement of uncontroverted material facts rather than setting out the uncontroverted material facts as a separate attachment to the motion, as required by Rule 74.04(c)(1). Plaintiff did set out the materials facts which he believes to be uncontroverted in separately numbered paragraphs and did attach an affidavit to the motion, as required by Rule 74.04(c)(1). Defendants have raised valid questions about the wording of Mr. Chasnoff's introductory paragraph and about the extent of some of Mr. Chasnoff's assertions in his affidavit. However, after reading the parties' statements of uncontroverted material facts and the attachments to each statement, the Court concludes that the parties are in agreement as to the basic facts which give rise to their dispute about the proper application of the provisions of Missouri's Sunshine Law to John Chasnoff's request for documents contained in IAD's file for its investigation of police officers' misuse of 2006 World Series tickets.

The Court also notes that Plaintiff's original petition included three parties who are no longer part of this lawsuit. John Chasnoff initially named Chief Joseph Mokwa and the Metropolitan Police Department as defendants. In his First Amended Petition, he added as defendants the five individual members of the Board of Police Commissioners, who control and operate the St. Louis Metropolitan Police Department pursuant to Sections 84.010 – 84.340 RSMo. On March 20, 2008, the Court granted Defendants' motion to dismiss Chief Joseph Mokwa and the Metropolitan Police Department as party defendants. In addition, John Chasnoff was originally joined by the Coalition against Police Crimes and Repression (CAPCAR), an unincorporated

association of citizens, as a party plaintiff. On March 20, 2008, CAPCAR voluntarily withdrew from the lawsuit.

The Court now addresses the substantive issues raised by the parties' cross motions.

To be entitled to summary judgment, the moving party must demonstrate that: (1) there is no genuine dispute as to the material facts on which the party relies for summary judgment; and (2) on those facts, the party is entitled to judgment as a matter of law. Rule 74.04. The moving party's right to summary judgment differs depending on whether the moving party is a "claimant" or a "defending party." ITT Commercial Finance Corp. v. Mid-America Marine Supply Corporation, 854 S.W.2d 371, 381 (Mo. banc 1993). A "claimant" is one who seeks "to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment." Rule 74.04(a). A "defending party" is one "against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought. Rule 74.04(b). To prevail on a motion for summary judgment a "claimant" must establish that there is no genuine dispute as to those material facts upon which the claimant would have the burden of persuasion at trial, and that any affirmative defenses fail as a matter of law. ITT, at 381. A defending party may establish a right to judgment as a matter of law by showing any one of the following: (1) undisputed facts that negate any one of the elements of the claimant's cause of action; (2) the non-movant, after an adequate period of discovery, has not produced and would not be able to produce evidence sufficient to allow the trier of fact to find the existence of any one of the claimant's elements; or (3) there is no genuine dispute as to the existence of each of the facts necessary to support the movant's properly-pleaded affirmative defense. Id. at 381. "A 'genuine issue' is a dispute that is real, not merely argumentative, imaginary or frivolous." Id. at 382. A genuine issue exists where the record contains competent evidence of "two plausible, but contradictory, accounts of the essential facts." Id. "If

movant requires an inference to establish his right to judgment as a matter of law, and [the summary judgment record] reasonably supports any inference other than (or in addition to) the movant's inference, a genuine dispute exists," and thus, the movant is not entitled to summary judgment. Id.

To prevail on his motion, Plaintiff must show that there is no genuine issue of material fact that the requested documents related to the IAD investigation are open records under Chapter 610 of the Revised Missouri Statutes, Missouri's Sunshine Law.

Plaintiff argues that the Board of Police Commissioners must release the requested documents because: 1) the original citizen complaint is an incident report as defined in Section 610.100.1(4) RSMo and all incident reports are open records under Section 610.100.2 RSMo; and 2) the IAD report is an investigative report under Section 610.100.1(5) and, although the investigative report was a closed record during the course of IAD's active investigation of the World Series tickets complaint, it is now an open record because the investigation has become inactive under Section 610.100.2 RSMo.

In support of his position, Plaintiff relies on the language of certain provisions of Chapter 610 of the Revised Statutes of Missouri. Plaintiff also puts great weight on the 2001 decision of the Missouri Supreme Court in Guyer v. City of Kirkwood, 38 S.W.3d 412 (Mo en banc 2001). The Guyer case involved a commissioned officer of the Kirkwood Police Department who 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 prohibited release of information that constituted 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 and 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 the conflict, the Supreme Court looked at the plain language of Section 610.021 RSMo, considered the public policy set out in Section 610.011.1 RSMo and concluded that the Sunshine Law required disclosure. The Court explained:

However, the 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 section 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.

The Supreme Court ruled that Kirkwood must disclose the citizen's original complaint because it constituted an incident report, which is an open record under Section 610.100.2 RSMo. 38 S.W.3d at 415. However, the subsequent investigation report would qualify as an investigative report subject to disclosure under Section 610.100.2 RSMo "only if it is shown that the investigation was directed to alleged criminal conduct." 38 S.W.3d at 415. The Supreme Court remanded the case to the trial

court "to determine whether the citizen complaint implicated (the police officer) in any criminal conduct." 38 S.W.3d at 415.

The Court notes that, in interpreting statutory provisions, it should be guided first by the text of the statute and by the intent of the legislature in passing that statute. See Scroggins v. Missouri Department of Social Services, 227 S.W.3d 498, at 500 (Mo.App.W.D. 2007). The Court must give the language of the statute "its plain and ordinary meaning" and must read the statute as a whole. Scroggins, supra at 501.

The Court also notes that Section 610.011.1 RSMo provides that "(i)t is the public policy of this state that . . . records . . . of public governmental bodies be open to the public unless otherwise provided by law" and that the provisions of Chapter 610 "shall be liberally construed and their exceptions strictly construed to promote this public policy." And, Section 610.011.2 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," except as otherwise provided by law. As the Court in Scroggins noted "the provisions of the Sunshine Law are to be liberally construed to promote this public policy" and "(s)tatutory exceptions allowing records to be closed are to be strictly construed." 227 S.W.3d at 500 (citations omitted). With these ground rules in mind, the Court examines the specific legal issues in this case.

Under Missouri law, all incident reports are open records. Section 610.100.2 RSMo. An incident report is defined as "a record of a law enforcement agency consisting of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident..." Section 610.100.1(4) RSMo. The Missouri Supreme Court has held that a citizen's complaint against a police officer qualifies as an incident report. Guyer v. City of Kirkwood, 38 S.W.3d at 415.

An investigative report is a record, other than an arrest or incident report, prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in response to an incident report or in response to evidence developed by law enforcement officers. Section 610.100.1(5) RSMo. An IAD report qualifies as an investigative report only if it is shown that the investigation was directed at alleged criminal conduct. Guyer v. City of Kirkwood, 38 S.W.3d at 415.

Here, the citizen's complaint is clearly an incident report and, therefore, must be released as an open record under Section 610.100.2. RSMo. The next question is whether the citizen complaint implicated the officers in any criminal conduct. If so, it can be presumed that such alleged criminal conduct was the subject of the investigation and that the IAD report must be disclosed. Guyer v. Kirkwood, 38 S.W.3d at 415. In this case, the IAD report was in response to a citizen's complaint claiming that undercover police officers improperly allowed others to use baseball tickets seized from persons who were arrested for ticket scalping. These allegations raise issues of stealing and related criminal misconduct. The fact that the Circuit Attorney for the City of St. Louis also investigated the allegations reinforces the conclusion that criminal misconduct was an issue raised in the investigation. Since the IAD report was made in response to alleged criminal conduct, the IAD report becomes an open record once the underlying investigation is completed. Section 610.100.2 RSMo.

Defendants argue that the reports are closed records under Section 610.021 RSMo because they constitute disciplinary and personnel records. Such records are to be closed "[e]xcept to the extent disclosure is otherwise required by law." Section 610.021 RSMo. However, where a specific statute requires disclosure of a specific type of public record, Section 610.021 RSMo may not be relied on to maintain closure, although it would otherwise apply. Guyer v. Kirkwood, 38 S.W.3d at 414. Here, as in

Guyer, the provisions of Section 610.100.2 RSMo requiring disclosure render the closure requirement of Section 610.021 RSMo inapplicable.

Defendants take issue with the application of Guyer in this case. The Board claims that Guyer is limited to its facts and that neither document in the instant case is an open record under Missouri's Sunshine Law. Defendant argues that privacy concerns and Sections 610.021 and 610.100.3, 4, & 5 RSMo mandate that IAD files, when sought by someone other than the police officer who was investigated, are closed records in total. Defendant further claims that release of such records to the general public would "produce absurd, illogical and onerous results."

The Court finds no reason to support the contention that Guyer is not applicable to the facts of this case. Nowhere in its decision in Guyer did the Supreme Court limit its ruling to situations where an officer is requesting his own records. In fact, throughout the opinion, the Court speaks in broad terms, never limiting its holding to only those open record requests made by police officers. See also, State ex rel. City of Springfield v. Brown, 181 S.W.3d 219 (Mo.App.S.D. 2005) where the Court of Appeals applies the Supreme Court's holding in Guyer to support release information from citizen complaint files to a defendant in a criminal case. 181 S.W.3d at 222 - 223.

Furthermore, the breakdown of privacy and confidentiality that Defendants bemoan applies equally when an officer is able to obtain his own records as when such documents are available to the general public. In both situations, the documents could be used to embarrass, threaten, or provoke any person named in the reports. Like any other citizen, a police officer could use the information contained in the documents for retaliatory or improper purposes. In Guyer, the Supreme Court was not moved by the privacy concerns that the Board raises here. There the Court found that where the records fall under two competing statutes, all records are presumed to be open and any exceptions are to be strictly construed. Guyer, 38 S.W.3d at 414. As a result, this Court

finds that that public policy of open records contained in Section 610.011.1 outweighs the concerns raised by the Board.

The Court also notes that Sections 610.100.3 – 610.100.5 of Missouri's Sunshine Law provide tools for the Board of Police Commissioners or the Court to use to balance the Legislature's interest in open government operations with legitimate concerns of law enforcement agencies as to a particular case. The statutory provisions in question indicate that the Court should perform this balancing test on a case-by-case basis rather than in the blanket manner proposed by the Board in its motion for summary judgment and supporting memorandum of law.

Orders

WHEREFORE, the Court orders and decrees that:

1. Defendants' Motion for Summary Judgment is denied.
2. Plaintiff's Motion for Summary Judgment is granted in part and is denied in part as follows:
 - a. The Court orders the Board of Police Commissioners to promptly provide Plaintiff with a copy of the original citizen complaint as described in Plaintiff's first amended petition. And,
 - b. After Defendants have disclosed the original citizen complaint and Plaintiff has had an opportunity to review the complaint, the Court will set this case for a status conference to decide what steps need to be taken for the Court to consider whether and to what extent the investigative reports connected with the Internal Affairs Division's investigation of the original citizen complaint should be disclosed, pursuant to the provisions of Section 610.100 RSMo.
 - c. Unless the parties present some other schedule which the Court approves, the Court sets this case for a status conference on Thursday, January 29, 2009, at 1:30 p.m., in Division 10.

SO ORDERED:

January 2, 2009

Philip D. Heagney #27434
Circuit Judge, Division 10

Cc: Anthony E. Rothert, Attorney for Plaintiff (454 Whittier Street 63108)
Jane Berman Shaw, Attorney for Defendants (1200 Clark Avenue, Room 609,
63103)