

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

Aaron M. Malin,)	
)	
Plaintiff,)	
)	
v.)	
)	NO.: _____
Missouri Association of Community Task)	
Forces (d/b/a ACT Missouri),)	DIVISION: _____
)	
SERVE: Charles (Chuck) Daugherty)	
Registered Agent)	
Missouri Association of Community)	
Task Forces)	
428 E. Capitol Ave, 2nd 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, to require public disclosure of certain documents retained by the Missouri Association of Community Task Forces.

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

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

4. Venue for this action is proper in this Court because the principal place of business of the Missouri Association of Community Task Forces is in Cole County, Missouri.

Parties

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

6. Defendant Missouri Association of Community Task Forces (“Defendant” or “ACT Missouri”) is a nonprofit corporation created and operating under the laws of the State of Missouri.

Factual Allegations

7. Defendant ACT Missouri is a “quasi-public governmental body” under § 610.010(4)(f), RSMo., because its primary purpose is to enter into contracts with public governmental bodies or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies and because it is an association that directly accepts the appropriation of money from public governmental bodies.

8. ACT Missouri receives funds from the Missouri Department of Mental Health.

9. The Missouri Department of Mental Health is a public governmental body.

10. In past fiscal years, ACT Missouri has received over \$1 million dollars from the Department of Mental Health.

11. ACT Missouri contracts with the Missouri Department of Mental Health to administer a grant program.

12. ACT Missouri receives funding from the United States Department of Health and Human Services.

13. ACT Missouri receives funding from the Missouri Department of Transportation.

14. In its work, ACT Missouri collaborates with statewide agencies like the Missouri Pharmacy Association, Missouri Alliance for Drug Endangered Children, Missouri Department of Transportation, and Missouri Juvenile Justice Association.

15. ACT Missouri provides fiscal administration for governmental bodies that contract with ACT Missouri to provide fiscal services for various programs and grants.

16. ACT Missouri creates and retains documents related to the funding it receives from governmental entities, including the Missouri Department of Mental Health.

17. ACT Missouri creates and retains documents related to the grant program it administers pursuant to a contract with the Missouri Department of Mental Health.

18. On January 9, 2018, Plaintiff made a written request to Defendant seeking copies of: “1. Any and all documents relating to funding acquired from the Missouri Department of Mental Health during fiscal year 2016; and 2. Any and all documents relating to funding acquired from the Missouri Department of Mental Health during fiscal year 2017.” A copy of the January 9, 2018 request is attached hereto as Exhibit 1 and is incorporated herein by reference.

19. The January 9, 2018 request was directed to ACT Missouri’s custodian of records and stated that ACT Missouri is subject to the Sunshine Law as a quasi-public government body under § 610.010(4)(f).

20. Plaintiff sent the January 9, 2018 request via fax, email, and certified USPS first class mail and directed it to the “Custodian of Records for ACT Missouri.”

21. On January 12, 2018, Defendant responded via email through Chuck Daugherty, Executive Director.

22. The January 12, 2018 email stated the following: “We have received your previous requests for records and have responded to each request. To restate with respect to each and every request you have made, since ACT Missouri is not a covered entity under Chapter 610, RSMo and more specifically Section 610.010(4), there is no further response required.” A copy of Defendant’s January 12, 2018 response is attached hereto as Exhibit 2 and is incorporated herein by reference.

23. In refusing Plaintiff's January 9, 2018 request, ACT Missouri did not claim that the requested documents fell under any of the statutory exceptions of § 610.021, RSMo.

24. In his January 9, 2018 request, Plaintiff asked Defendant, in the event it denied access, to "list specific exemptions upon which you rely for each denial." Additionally, Plaintiff asked Defendant to segregate any portion of a record that is deemed closed but to provide the rest of those records.

25. Plaintiff has made several requests to ACT Missouri for documents under the Sunshine Law, most which have been denied for various reasons; however, Defendant did timely produce all responsive documents to two previous requests (made on May 12, 2014, and June 30, 2014).

26. Defendant knows that the Sunshine Law requires public governmental bodies and quasi-governmental bodies to respond to requests for public records and to disclose open records.

27. Defendant was aware of the requirements of the Sunshine Law before any of the requests at issue in this petition were made.

28. In denying Plaintiff's requests, Defendant had a conscious design, intent, or plan to violate the law and did so with awareness of the probable consequences.

Violations of the Missouri Sunshine Law

29. Defendant is subject to Missouri's Sunshine Law as a quasi-public governmental body because its primary purpose is to enter into contracts with public governmental bodies or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies and because it is an association that directly accepts the appropriation of money from public governmental bodies.

30. The records requested on January 9, 2018, are public records subject to disclosure under the Sunshine Law.

31. The records requested on January 9, 2018, may not be closed under any exception to the Sunshine Law.

32. ACT Missouri's failure to act upon Plaintiff's January 9, 2018 request is a knowing or purposeful violation of the Sunshine Law.

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

- A. Declare that ACT Missouri is a quasi-public governmental body for the purposes of the Sunshine Law;
- B. Enter an injunction requiring Defendant to provide Plaintiff copies of the records requested;
- C. Find Defendant knowingly and purposefully 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
American Civil Liberties Union of
Missouri Foundation
906 Olive Street, #1130
St. Louis, Missouri 63101
Phone: 314-652-3114
trothert@aclu-mo.org
jsteffan@aclu-mo.org

Gillian R. Wilcox, #61278
American Civil Liberties Union of
Missouri Foundation
406 West 34th Street, #420
Kansas City, Missouri 64111
Phone: 816-470-9933
gwilcox@aclu-mo.org

ATTORNEYS FOR PLAINTIFF

January 9, 2018

ACT Missouri
ATTN: Custodian of Records
428 E. Capitol Ave., 2nd Floor
Jefferson City, MO 65101

By Fax to 573-635-7257, Email to cdaugherty@actmissouri.org & kwieberg@actmissouri.org, and by Certified Mail via USPS

ATTN: Custodian of Records for ACT Missouri

This is a request for open records under Missouri's Sunshine Law, pursuant to RSMO Chapter 610. ACT Missouri is subject to the Sunshine Law as a 'quasi-public government body' as per RSMO §610.010-4(f).

I respectfully request the following records:

1. Any and all documents relating to funding acquired from the Missouri Department of Mental Health during fiscal year 2016; and
2. Any and all documents relating to funding acquired from the Missouri Department of Mental Health during fiscal year 2017.

I request that the records be provided digitally, in PDF or digital image form, to AaronMalin9@gmail.com. Alternatively, the records can be printed and sent to me at the following address:

Aaron Malin
287 Woodcliffe Place Dr.
Chesterfield, MO 63005

If any portion of the requested records are closed, please segregate the closed portions and provide me with the rest of the records. I request that these records be provided without redactions. If you are unable or unwilling to do so, I request that only redactions permitted by law be made to the records. If any redactions are made, please provide a written statement of the grounds for making each redaction and cite the specific provision of law that, in your opinion, authorizes each specific redaction.

If any part of this request is denied, please list specific exemptions upon which you rely for each denial. This request must "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" (610.023.3, RSMo). If this record is not provided within three (3) business days, I request a "detailed explanation of the cause for further delay."

Because this records request is being submitted in the public interest and "is likely to contribute significantly to public understanding of the operation or activities" of your organization, I ask that you waive any fees or charge a substantially reduced fee pursuant to RSMo 610.026.1(1). However, should you decline to waive or reduce fees, proceed without further approval if the cost does not exceed \$10.00 and send a detailed invoice with the records. If the cost will exceed \$10.00, please inform me of the cost in advance.

Please do not hesitate to contact me with any questions. I can be reached via email at AaronMalin9@gmail.com or via USPS correspondence. I appreciate your attention to this matter.

Sincerely,



Aaron Malin

EXHIBIT 1

From: Chuck Daugherty cdaugherty@actmissouri.org
Subject: RE: 2018.01.09 Sunshine Law Request
Date: January 12, 2018 at 7:35 AM
To: Aaron Malin aaronmalin9@gmail.com
Cc: Katrina Wieberg kwieberg@actmissouri.org

CD

Mr. Malin;

We have received your previous requests for records and have responded to each request. To restate with respect to each and every request you have made, since ACT Missouri is not a covered entity under Chapter 610, RSMo and more specifically Section 610.010(4), there is no further response required.

Sincerely,

Chuck Daugherty, MHD
 Executive Director
 ACT Missouri
 428 E Capitol Ave. 2nd Floor Jefferson City, MO
 573.635.6669 x107



From: Aaron Malin [<mailto:aaronmalin9@gmail.com>]
Sent: Tuesday, January 09, 2018 3:06 PM
To: Chuck Daugherty <cdaugherty@actmissouri.org>; Katrina Wieberg <kwieberg@actmissouri.org>
Subject: 2018.01.09 Sunshine Law Request

January 9, 2018

ACT Missouri

ATTN: Custodian of Records

428 E. Capitol Ave., 2nd Floor

Jefferson City, MO 65101

By Fax to 573-635-7257, Email to cdaugherty@actmissouri.org & kwieberg@actmissouri.org, and by Certified Mail via USPS

ATTN: Custodian of Records for ACT Missouri

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I respectfully request the following records:

1. Any and all documents relating to funding acquired from the Missouri Department of Mental Health

EXHIBIT 2

mental health

during fiscal year 2016; and

2. Any and all documents relating to funding acquired from the Missouri Department of Mental Health during fiscal year 2017.

I request that the records be provided digitally, in PDF or digital image form, to AaronMalin9@gmail.com. Alternatively, the records can be printed and sent to me at the following address:

Aaron Malin

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Chesterfield, MO 63005

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Sincerely,

Aaron Malin