

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

FILED
OCT 04 2013
COLE COUNTY
CIRCUIT COURT

Mustafa A. Abdullah, and)
Jeffrey A. Mittman)
Plaintiffs,)
v.)
Missouri Department of Corrections,)
SERVE: George Lombardi)
2729 Plaza Drive)
Jefferson City, Missouri 65102,)
Defendant.)

NO.:

DIVISION:

13ACCC00586

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 maintained by the Missouri Department of Corrections.
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 Missouri Department of Corrections maintains its headquarters in Cole County.

Parties

5. Plaintiff Mustafa A. Abdullah is resident of the State of Missouri.
6. Plaintiff Jeffrey A. Mittman is a resident of the State of Missouri.
7. Defendant Missouri Department of Corrections (DOC) is a governmental entity created by statutes of the State of Missouri and is a political subdivision of the State of Missouri.

Factual Allegations

8. Defendant is a “[p]ublic governmental body” within the definition of § 610.010(4), RSMo.
9. In light of recent revelations that Missouri wishes to execute individuals using propofol, the vigorous disagreement with that decision by the manufacturer of the drug and board-certified anesthesiologists, and serious questions about whether the Department of Corrections lawfully and ethically obtained and retained the drugs it wants to use to end human lives, Plaintiffs are interested in public records related to the source and description of DOC’s inventory of propofol.
10. On August 26, 2013, Plaintiffs made a written request to Defendant’s custodian of records seeking copies of documents. In particular, Plaintiffs sought “any and all records in the possession of the Department of Corrections (DOC), regardless of who produced them, regarding propofol, also known as Diprivan, including but not limited to:
 - A. All records indicating the DOC’s current inventory of propofol;
 - B. All records indicating the expiration date of all propofol in the DOC’s current inventory;
 - C. All records indicating the source of all propofol in the DOC’s current inventory;
 - D. All records indicating the shipment dates of all propofol in the DOC’s current inventory;
 - E. All records indicating the person that authorized the purchase(s) of propofol in the DOC’s current inventory;
 - F. All records indicating how much the state paid for the propofol in the DOC’s current inventory, how payment was made, and from which account;
 - G. All records regarding efforts by the DOC, either successful or unsuccessful, to obtain propofol over the past five years ending today (August 26, 2013);

- H. All records relating to the disposition of all expired propofol over the past five years ending today;
 - I. All phone records indicating calls between the DOC and Fresenius Kabi, Teva, or Hospira;
 - J. All email messages between the DOC and Fresenius Kabi (domain name, including but not limited to: @fresenius-kabi.com), Teva (domain name, including but not limited to: @tevapharm.com), and Hospira (domain name, including but not limited to: @hospira.com);
 - K. All packaging, labels, instructions, or documents that accompanied the propofol in the DOC's current inventory, including all writing on the packages containing the propofol in the DOC's current inventory; [and]
 - L. All package inserts for the propofol in the DOC's current inventory and all writing on the packages containing the propofol in the DOC's current inventory."
11. Plaintiffs specifically asked that "[i]f any or part of this request is denied, please send a letter listing the specific exemptions upon which you rely for each denial and provide the contact information for the official to whom we may appeal. Mo. Rev. Stat. § 610.023.4."
12. Plaintiffs delivered their written request to DOC's custodian of records on August 26, 2013, by facsimile and by placing a copy in the United States Mail.
13. DOC's custodian of records received the written request on or before August 28, 2013.
14. On August 28, 2013, April Gibson, an employee of DOC, wrote to Plaintiff Abdullah acknowledging receipt of the written request.
15. In her August 28, 2013, correspondence, Gibson stated, "It will take approximately three weeks to respond to your request."
16. No further communication has been received from DOC regarding the written request.
17. No records have been received in response to the written request.
18. No exemptions have been cited for the failure to provide records responsive to the written request.

19. Voicemail messages left for Gibson by counsel for Plaintiffs on September 30, 2013, and October 2, 2013, have not been returned.

20. The requested records do not fit within any exception to Sunshine Law's general rule that public records are open and must be disclosed upon request to the custodian of records.

21. A request for similar records was made by the American Civil Liberties Union on November 24, 2010, and DOC produced the records within two weeks.

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

WHEREFORE Plaintiffs pray that this Court enter judgment in their favor and against Defendant and:

- A. Declare that the records described in ¶ 10 are public records under the Sunshine Law and are not subject to any exception that would require, or permit, Defendant to close the records or any portion thereof;
- B. Enter an injunction requiring Defendant to provide Plaintiffs copies of the public records they requested;
- C. Find Defendant purposely, or in the alternate, knowingly, violated the Sunshine Law;
- D. Impose a civil penalty against Defendant pursuant to the Sunshine Law;
- E. Award Plaintiffs' attorneys' fees and costs of litigation as authorized by the Sunshine Law; and
- F. Grant to Plaintiffs such other and further relief as is just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anthony E. Rotherth", written over a horizontal line.

ANTHONY E. ROTHERTH, #44827

GRANT R. DOTY, #60788

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