



THE SUNSHINE LAW

Missouri Municipal League Elected Officials Training Conference

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Today's Topics



Public Meetings



Notice of Meeting



Voting



Records & Records Requests



Law Enforcement Records



Best Practices

What is the Sunshine Law?

- Chapter 610, Revised Statutes of Missouri
- Missouri's **open meetings and records law** opens governmental records, meetings, & votes for public access
- Basic intent: **"It's the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law"** § 610.011 RSMo
- Some records, meetings, & votes can be "closed" to keep them confidential
- Liberally construed in favor of disclosure and openness

The Sunshine Law Does Not:

1

CREATE A RIGHT TO
SPEAK AT A PUBLIC
MEETING

2

EFFECT HOW LONG
A CITY MUST
RETAIN A RECORD

3

REQUIRE
PROVIDING
INFORMATION OR
ANSWER
QUESTIONS



I. PUBLIC MEETINGS

DEFINITION OF PUBLIC MEETING:

Any **meeting** of a public governmental body ...

at which any **public business** is discussed, decided, or **public policy** formulated,

whether corporeal or by means of communication equipment

610.010(5) RSMo.

What is a *meeting*?

- For a *meeting*, look at whether **QUORUM** exists – 1 more than ½
- BUT – applies to less than a quorum where group is attempting to circumvent Sunshine by having multiple, mini-meetings
 - “Includes a public vote of all or majority of members of Council by electronic communication or any other means, **conducted in lieu of holding a public meeting**”

610.010(5) RSMo.



What is a “public governing body”

- City Council/Board of Aldermen
- Also includes any group created by the Board/Council to provide recommendations or make decisions:
 - Board of Adjustment
 - Planning and Zoning Commission
 - Park Board/Commission
 - Historic Preservation Commission
 - Subset of Board established by the Board

WHAT IS NOT A MEETING?

Does not include informal gatherings for **ministerial** or **social** purposes *when there is no intent to avoid the purposes of the Sunshine law*

610.010(5) RSMo.



II. NOTICE OF MEETING

Notice Requirements



time, date, place, tentative agenda



if conducted by phone/electronically, must identify mode and designate location where public may observe/attend



if meeting by internet chat, message board, or other computer link, must also post notice on your website and notify public how to access meeting



If planning on going into closed session, place notice of such on the agenda with citation to reason governing body is closing the meeting



Time of Notice

- Section 610.020.2 – Notice “shall be given at least 24-hours, exclusive of weekends and holidays when the facility is closed”
- Section 89.050 – 15-day hearing notice requirement for zoning matters
- Section 67.2725 – 4 days notice for meetings where eminent domain or taxes are discussed

EXCEPTION:

610.020.4 allows meetings on *less than 24* hours notice for “good cause”

Closed Meetings – Procedures & Limitations



Reason for closure must be included in motion to enter into closed session and in open meeting minutes



Affirmative **roll call** vote by majority of quorum of governmental body is required



All votes taken in closed session must be by **roll call**



May only discuss the topic(s) for which they voted to close meeting & which were posted on tentative agenda (unless good cause)

Authorized reasons to close

- Litigation/legal advice (1)
- Leasing, purchase, or sale of real estate (2)
- Individually identified personnel records (13)
- Labor Negotiations (9)
- Otherwise protected by law (14)
- Hiring, firing, disciplining or promoting of particular employees (3)



Hiring, firing, disciplining or promoting of particular employees



Elected officials are not “employees”

AG Opinion No. 77-92



Appointments of **volunteers** to citizen boards are not eligible for closed session

AG Opinion No. 184-89

III. VOTING



Votes, how taken?

- ... All votes taken by **roll call** in meetings of a public governmental body consisting of members who are all **elected** shall be cast by members of the public governmental body **who are physically present** and in attendance at the meeting **or who are participating via videoconferencing**

610.015 RSMo.





Video Meetings

- Attorney General said member can participate in roll call vote if participating **via video-conference** and quorum can be met by counting those in physical attendance *or* participating via videoconferencing
- **Elected member's** video must be working so that member can be seen to vote via roll call and count towards quorum

When is roll call required?

To go in closed session

Any vote taken in closed

To pass an ordinance

Whenever specified number of
votes are required

Issue is important

actions of the convention at Springfield

The following Preamble and Resolutions
were presented:

IV. MEETING MINUTES

Resolved that the foregoing do not intend
to minimize the mission of the
missionary to withdraw
from this council
passed

Moved That a committee of 11 be
chosen to take into consideration the
forming of a Pillsbury Donelson Club

None at Large

A. Allen Marshall Stearns² W. M. ³

Minutes – Open & Closed

- “A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body, including, but not limited to, a **record of any votes** taken at such meeting.”
- “shall include the date, time, place, members present, members absent...”
- “When a **roll call vote** is taken, the minutes shall attribute each “yea” and “nay” vote or abstinence if not voting to the name of the individual member of the public governmental body.”



V. RECORDS & RECORD REQUESTS



What is a “Public Record?”

- **610.010. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms mean:
- **(6) “Public record”**, any record,
 - whether written or electronically stored,
 - retained by or of any public governmental body
 - including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds,
 - including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body;

What is *not* a “Public record?”

- (6) “Public record”, ... shall **not** include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body...
- **unless** such records are retained by the public governmental body or presented at a public meeting.

Record Retention

- Not governed by the Sunshine Law
- Section 109.255 RSMo. designates authority for determining document retention schedules to the Local Records Board
- Record retention schedules available online at the Secretary of State's website: <http://www.sos.mo.gov/archives/localrecs/schedules/>
- No penalty for violating record retention policies



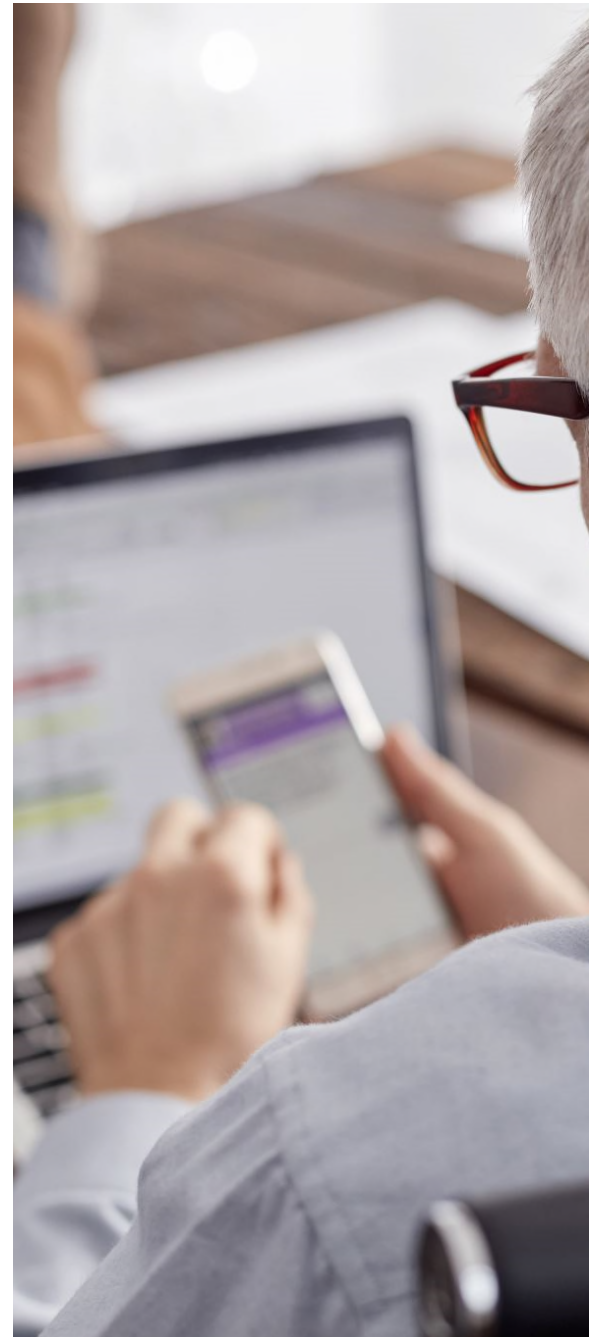
Electronic Communications

- Any member ... who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the custodian of records in the same format
- Only when sent to a majority of council/board

610.025 RSMo.

Text messages or e-mails during meeting?

- Are they public records?
 - Private phone/account versus City phone/account
- Law settled in some other states
- Law unsettled in Missouri



Open or Closed?

- “A public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may...”
 1. Bring suit at the expense of that public governmental body in circuit court ... to ascertain the propriety of such action,
 2. Seek a formal opinion of the Attorney General, or
 3. Seek a formal opinion from attorney for the governmental body

Relevant closed records

Vote or settlement agreement related to legal actions, cause of actions, or litigation (1)

- Settlement agreement such shall be made public upon final disposition or signing of all parties

Real estate contract (if being made public will affect negotiation)

- Real estate contracts (purchase, sale or lease) must be made public on execution (2)

Individually identified personnel records, performance ratings, etc. (13)

- Only exceptions:
 - Name, position, length of service, and salary
 - Final decision to fire, hire, promote or discipline employee must be made public within 72 hours

Sealed Bids (12)

- Until opened, then public

Confidential or privileged communications with auditor (17)

- Final audit reports are public

Relevant closed record, continued

Personal identification numbers and credit card numbers (22)

Specifications for competitive bidding (11)

- Until such are published for bid or officially approved

Software codes for electronic data processing, operational guidelines and policies developed for law enforcement, existing or proposed security systems and structural plans (21)

Records relating to scientific and technological innovations in which owner has proprietary interest (15)

Confidential or privileged communications with attorney; attorney work product in anticipation of litigation (1)

Records protected by disclosure of law (14)

SB 28 (2023)

- (18) (a) Security measures, global positioning system (GPS) data, investigative information, or investigative or surveillance techniques of any public agency responsible for law enforcement or public safety that, if disclosed, has the potential to endanger the health or safety of an individual or the public.
- (b) Any information or data provided to a tip line for the purpose of safety or security at an educational institution that, if disclosed, has the potential to endanger the health or safety of an individual or the public.
- (c) Any information contained in any suspicious activity report provided to law enforcement that, if disclosed, has the potential to endanger the health or safety of an individual or the public.
- (d) Operational guidelines, policies and specific response plans developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident [which is or appears to be terrorist in nature] which has the potential to endanger individuals or public safety or health.

Custodian Issues

- Must appoint a custodian to be responsible for records and make available records for inspection/ copying
- Shall provide a reasonable written policy regarding "release of information on any meeting, vote, or record" in compliance with 610.010-.030
- Policy should also:
 - Provide method for records management
 - Designate closed records
 - Provide rules for virtual meetings

610.023; 610.028 RSMo.

The City's policy is your shield!

Any member **or employee** of the public governmental body who complies with a written policy is not guilty of a violation of Sunshine Act or subject to civil liability for any act arising out of following the written policy

RSMo Section 610.028.2



Record Requests



- Respond “as soon as possible, but in no event later than the end of the **third business day following the date the request is received...**”
- IF NOT producing records at end of third business day, give a “detailed explanation of the cause for further delay” **and give the place and earliest time and date the records will be available**
- Records to be provided in the format requested (if available)

610.023 RSMo.

Exempt/Nonexempt Materials

43. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

44. [REDACTED]
[REDACTED]
[REDACTED]

45. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

46. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

If record contains information that is both exempt **and** non-exempt from disclosure, **there is a duty to separate out the exempt and make the non-exempt material available**

Records Request: *Pro Tips*

- Have requester or City Clerk fill out a request form
- Attach request form to response so no confusion what request City is responding to
- Check to see if requestor asked for a written statement of the grounds for denial
- You do not have to create a new record
- You do not have to answer questions
- You do not have to “certify” records
- “reasonable clerk standard” *Anderson v. Village of Jackson*, 103 S.W.3d 190 (Mo. App. 2003)



Fees for Copying Public Records (610.026 RSMo.)

- Establishing the rate to charge for copies (not to exceed \$0.10 per page for 9"x14")
 - for 2-sided copy, can I charge \$0.10 per side?
- Hourly fee for **duplication** time
 - Not to exceed average hourly rate of pay for clerical staff
- Hourly fee for **research** time
 - Actual cost (610.026.1(1) RSMo.)
- Estimates, collecting fees "up front" ??
- Special Costs – see 610.026.1(2)

Violations and Court Actions

- If court finds City violated sunshine, court may declare the action taken void
- If court finds the **governing body or member knowingly** violated sunshine, the court:
 - **Shall** subject member or governing body up to \$1,000 fine
 - **May** order the member or governing body to pay **all costs and reasonable attorney fees**
- If court finds that governing body or member **purposefully** violated sunshine, the court **shall**:
 - **Subject member** or governing body up to \$5,000 fine
 - Order the member or governing body to **pay all costs and reasonable attorney fees**

FAQs



- Q: Are drafts required to be disclosed?
- Q: Can you admit the public into a closed session?
- Q: What about requests for information about a specific employee by the person who didn't get the job requesting the other person's age, experience & whether that other person is a resident?
- Q: Must you allow the public to remain in chambers when council moves to closed session?
- Q: Must you allow the public to record the meeting?
- Q: What about records held by your municipal court?
- Q: Employee lists, name address, and phone number - Public record?
- Q: What if a records request is received that is for a current lawsuit against the City?
- Q: Are City databases on the City's computer containing residents' names, addresses & phone numbers a Public record?

VI. LAW ENFORCEMENT RECORDS



Special Rules

- Sunshine Law distinguishes between records of law enforcement ("L.E.") agencies (§§610.100-150) and other records of public governmental bodies
- While some of the "ordinary" Sunshine Law still applies, there are special rules regarding law enforcement records

Unique Attributes of Law Enforcement Records

L.E. agencies are required to maintain records of all reported incidents, investigations, and arrests made (§ 610.100.2)



It is a crime to knowingly violate certain Sunshine Law provisions relating to L.E. agency records (§ 610.115)



MOST critical distinction is the three “special types” of records:

- Arrest reports

- Incident reports

- Investigative reports

Arrest Reports

- An “arrest report” is a record of a L.E. agency of an arrest and any detention or confinement and the charge
- “Arrest” is an actual restraint of a person or his or her submission to the custody of an officer *for a criminal violation that results in issuance of summons or person being booked*

610.100.1 RSMo.



Incident Reports

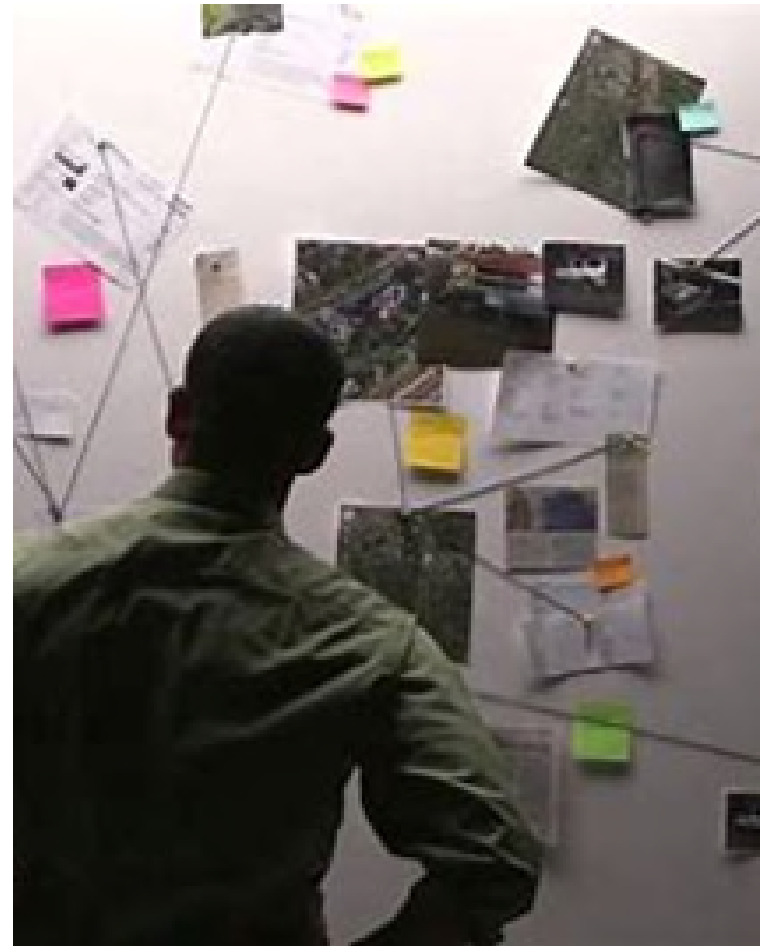
- A record of a L.E. agency pertaining to a “crime or incident” that consists of:
 - Date,
 - Time,
 - Specific location,
 - Name of victim, and
 - Immediate facts and circumstances surrounding the initial report of the “crime or incident”
- Includes the daily “log book”

610.100.1 RSMo.

Investigative Reports

- “Investigative report”: a record that is:
 - Not an arrest or incident report and
 - Prepared by personnel of L.E. agency inquiring into a crime or suspected crime, either in response to incident report or in response to “evidence developed by [LEOs] in the course of their duties”

- 610.100.1 RSMo.



Why It Matters

- Arrest reports are generally OPEN
 - Unless person is not charged within 30 days, then only the “disposition portion of the record may be accessed” and subject to § 610.120
 - also closed if found not guilty, SIS, etc.
- Incident reports are generally OPEN
- Investigative reports are generally CLOSED
 - *unless and until the investigation is “inactive”*

610.100 RSMo.

Closure Requirements

In some cases,
required to redact
information / close
the record

§ 610.1003 RSMo.)

911 calls and information –
§ 610.150 RSMo.

Juvenile Records –
§ 211.321 RSMo.

*"kept separate from the records of
persons eighteen years of age or over"*

But Wait – Other Closures

If SIS, records after completion of probation and closure of case

Investigative records pursuant to § 590.502

Mobile Video Recording - Closed record until investigation is inactive or a “nonpublic location”

Do victims have special access?

Access to certain records required
to person involved in an “incident” under
§ 610.100.4

VII. BEST PRACTICES

Suggested Best Practices

1. Bring Sunshine Book to meetings
(Here is where can order for free: 573-751-8844; <http://ago.mo.gov/sunshinelaw/>)
2. Have a clear, strong policy; review periodically
3. Adopt practice of writing time of posting on agenda to prove 24-hour compliance
4. When posting agenda, if must amend, label the agenda as amended
5. Do not answer questions under the Sunshine Law; never answer legal questions

Suggested Best Practices

6. Do not create new records to respond to a request
7. Use forms to avoid disagreement about request – clerk may fill out if necessary to confirm request. Send request form back with production
8. Get payment up front for large requests to ensure understand costs and encourages requester to limit scope of request to reduce costs (*ensure policy allows this*)
9. Remember the “reasonable clerk standard”
10. Only go into closed session when really need to not just because could be an authorized reason