



# Missouri Sunshine Law

County Commissioners Association – February 29, 2024

*Presented by:*

**Jay Turner**, Director of Sunshine Law Compliance  
Missouri Attorney General's Office

# Disclaimer

This presentation does not constitute a formal opinion or an on-the-record position of the Attorney General, or legal advice from the Attorney General or the presenter.



# Governmental Transparency

*“Democracies die behind closed doors. When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation.”*

*-Judge Damon Keith, U.S. Court of Appeals  
Detroit Free Press v. Ashcroft  
No. 02-1437 (6<sup>th</sup> Cir. Apr. 19, 2002)*



# What is the Sunshine Law?

## Construction of the Sunshine Law

- It is 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.
- Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.
- Takeaway: “public business” is the “public’s business”



# To Whom Does the Sunshine Law Apply?

## Public Governmental Bodies



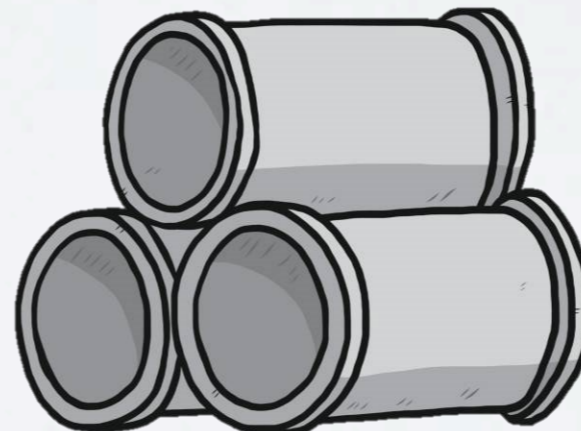
Municipalities



Counties



Police Departments



Special Districts



Committees



# What about Committees of a Public Governmental Body?

## Committees of Public Governmental Bodies

- “any **committee** appointed by or at the direction of any of the entities and which is authorized to report to any of the above-named entities, **any advisory committee** appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body’s governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds...”



# Not covered by the Sunshine Law?

## Non-public governmental bodies

Common examples:

- Private entities
- Homeowners associations
- Non-Missouri governmental entities
- Judicial entities when not operating in an administrative capacity
- Non-profit corporations
  - Unless qualifying as a quasi-public governmental body, § 610.010(4)(f)
- Most individual employees or Board members
  - *State ex rel. Moore v. Brewster*, 116 S.W.3d 630, 636 (Mo. App. W.D. 2003) (individual Board members and President are not governmental bodies)
  - Note: *Charlier v. Corum*, 774 S.W.2d 518 (Mo. App. W.D. 1989) (Sheriff is a public governmental body)



# Sunshine Law Policy

## Section 610.028

- Every public governmental body must have a policy “open to public inspection, regarding the release of information on any meeting, record or vote”
- The Sunshine Law policy under Section 610.028 can be detailed, so consider including provisions about how meetings are held, procedures for searching and producing records, and how fees are calculated when responding to records requests
- Include details regarding who the Sunshine Law policy applies to (the entire public body, departments within the public body, etc.)
- Visit the Attorney General’s Office website for a sample Sunshine Law policy under Section 610.028 and a sample request form





# Public Meetings



# Public Meetings

## Public Meeting Definition

- Any meeting of a quorum of a public governmental body subject to section 610.010. to 610.030 at which public business is discussed, decided, or public policy formulated, whether:
  - In person
  - Electronic communication (email or text)
  - Conference call
  - Online chat, or internet message board



# Public Meetings

## Public Meeting Definition (continued)

- The term shall include a public vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location in order to conduct public business.



# Public Meetings

## What is not a public meeting

- The term public meeting shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter.

*Colombo v. Buford*, 935 S.W.2d 690 (Mo. App. W.D. 1996)

- Event is “totally unstructured” with “no agenda”
- No one “gaveled the occasion to order”
- People “did not take turns talking to the entire group”
- No “trappings of an official meeting”
- No vote “was taken or any policy established”



# Public Meetings

## Types of public meetings

- Two types: Open and closed
- Sunshine Law does not define or reference other common terms such as “executive session,” “special session,” or “work session”
- Best practice: use only “open” or “closed” to avoid confusion



# Public Meetings

## Public meeting notice requirements

- Notice must include:
  - Time
  - Date
  - Place
  - Tentative Agenda
  - If the meeting will be conducted by telephone or electronic means, include the location the public may observe and attend the meeting



# Public Meetings

## Public meeting notice requirements

- A notice must be posted at least twenty-four hours in advance of all public meetings, both open and closed:
  - Prominent place, easily accessible to the public
  - Do not count weekends and holidays towards the twenty-four hours
- Emergency or short-notice meetings:
  - Still must post a meeting notice as soon as practicable
  - Explain the reason for holding the meeting on short notice
- Location requirements:
  - A place that is “reasonably accessible to the public”
  - A place that is “of sufficient size to accommodate the anticipated attendance.”



# Public Meetings

## Tentative agenda requirement

### Potentially insufficient agenda

- Unfinished business
  - Budget
  - Park permits
- New business
  - Grants
  - Nominations
  - City Hall parking lot

### Likely sufficient agenda

- Unfinished business
  - City budget proposals for Police Department
  - Park permits: New Year's Eve Fireworks
- New business
  - Federal grant funding for road improvements
  - Nominations to Board task force on education
  - Draft the RFP for the City Hall parking lot resurfacing project





# Public Meetings

## Recording meetings

- The body shall allow members of the public to record all open public meetings
  - Both audio & video recording is allowed
- The body may establish guidelines regarding the matter in which meetings are recorded
- Closed meetings may not be recorded without permission of the public body (Class C Misdemeanor)



# Public Meetings

## Best practices for all public meeting notices

- Post meeting notices and agendas in an area that is accessible to the public even after business hours, and consider posting more than one physical notice
- Post a notice online whenever possible
  - This is required for online meetings, § 610.020.1
- Include the date and time the notice and agenda was posted
- Include the name and contact information of the Records Custodian

Be as specific as possible when drafting tentative agenda items



# Public Meetings

## Meeting minutes

- Meeting minutes must include the following information:
  - Date
  - Time
  - Place
  - Members present/absent
  - Record of all votes taken (including a vote to close a meeting)
    - Roll call votes must specify each member's individual vote
  - Citation to Section 610.021 subsection used to close a meeting
  - If applicable, the “good cause” to hold a meeting on less than 24 hours' notice

Best practice: be narrative and detailed about topics discussed

§ 610.020.7, [Page 37]



# Closed Meetings

## Usually permissive, rarely mandatory

- “Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following...”
  - There are 25 separate reasons to close meetings within 610.021
- Not just a best practice, a requirement:
  - All public business must remain open unless specifically authorized to be closed
- Liability most often happens for improper closure, not for over *disclosure*



# Closed Meetings

## Common closed meeting authorizations

- 610.021(1) Legal\*
- 610.021(2) Real Estate\*
- 610.021(3) Hiring, Firing, Disciplining or Promoting\*
- 610.021(6) Scholastic Records
- 610.021(11) Bid Process\*
- 610.021(12) Sealed Bids & Contracts\*
- 610.021(13) Personnel Records
- 610.021(14) Prohibited from disclosure by law
  - Cannot stand alone; must be used in conjunction with another law
- 610.021(17) Auditor communications and work product

**\*Keep in mind some subsections in § 610.021 have event-based cutoffs to open certain items in the future\***

§ 610.021, [Pages 37-41]



# Closed Meetings

## How to close a meeting

“The statute sets forth two methods:

- 1) a public governmental body may vote, by an affirmative public vote of a majority of a quorum of the body, to close a meeting; or
- 2) a public governmental body may give notice of its intention to hold a closed meeting and cite a specific exception from § 610.021.”

*Kansas City Star Co. v. Fulson*, 859 S.W.2d 934, 942 (Mo. App. W.D. 1993)

Only close a portion of the facility used for the closed meeting.

Only discuss the business necessary that justifies a meeting’s closure.



# Closed Meetings

## Best practices for closed meetings

- While the two subsections of Section 610.022 appear to operate independently, it may be useful for an agency to apply both processes when closing a meeting
- By announcing a closed meeting with a public notice, including the citation of the specific provision allowing the closure; along with having a vote during open session to close a portion of the meeting, there can be little doubt as to the propriety of the closure
- Stick to the topic at hand – do not deviate from the limited reason authorized to close a meeting



# Public Records

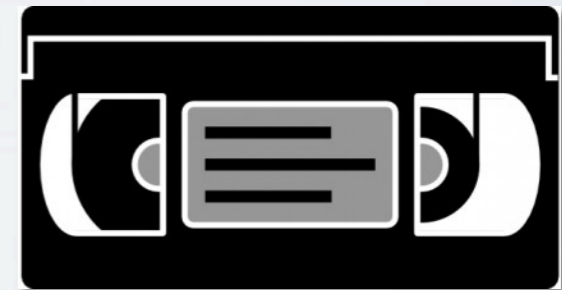




# What Is a Public Record?

“Any record, whether written or electronically stored, retained by or of any public governmental body . . . .”

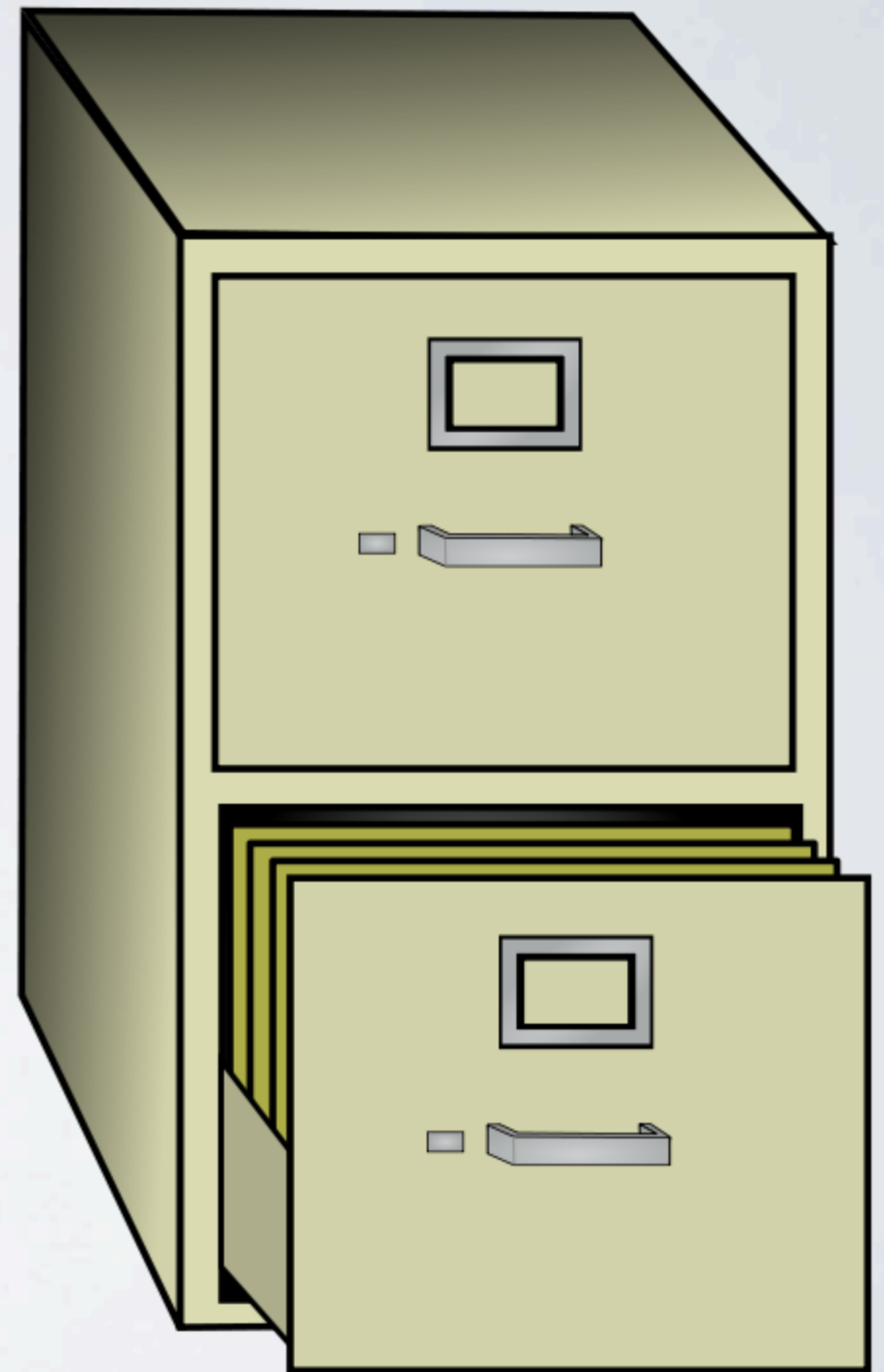
Courts construe “record” broadly, such as “something that serves to record”



# What Records Must Be Retained?

Chapter 109, RSMo  
governs retention  
obligations

The State Records Commission  
and the Local Records Board  
adopt records retention schedules



# Public Records

## Electronic Transmission of Public Records

- Always remember the general rule of public records: “Any record, whether written or electronically stored, retained by or of any public governmental body . . . .” § 610.010(6).
- But also, under § 610.025, an electronic record may be considered a public record if it is:
  - Sent to a quorum of officials, which includes the sender; and
  - Relating to public business
- If the message meets the above requirements, best practice is to send to member’s government-issued device, or to the custodian of records
- Best practice: each member of a public governmental body should have a government-issued email account

§ 610.025, [Page 44]



# Requests for Public Records

## Submitting open records requests

- A requester can submit an open records requests in multiple ways:
  - Letter
  - Email
  - Phone Call
  - In person
- Sunshine Law does not require a specific submission method
- Public governmental body must act on the request as soon as possible, no later than 3 business days after custodian receives it



# Requests for Public Records

## Submitting open records requests

- Address request to the custodian of records by name or by title
  - *Starr v. Jackson Cnty. Prose. Att'y*, 635 S.W.3d 185 (Mo. App. W.D. 2021)
- Phrase request with specificity using “language that a reasonably competent custodian of the records would understand.”
  - *Anderson v. Vill. of Jacksonville*, 103 S.W.3d 190 (Mo. App. W.D. 2003)
- Best-practice examples:
  - Date ranges
  - Names or titles of employees
  - Topics of the documents
  - Include a fee threshold
  - Requested format: in-person access, papers copies, electronic documents

§ 610.023, [Page 42-43]



# Requests for Public Records

## Responding to open records requests – Initial Response

- Public governmental body must act on the request as soon as possible, no later than 3 business days after custodian receives it
- If records are not provided in that 3-day period:
  - “Give a detailed explanation of the cause for further delay”
  - Provide “the place and earliest time and date that the record will be available for inspection”
  - There must be a “reasonable cause” for the delay
- Best practice: Address any fee estimates in the initial response letter (see future slide)
- Best practice: Do the initial search and estimate how many documents may be responsive, and identify that in the letter



# Requests for Public Records

## Responding to open records requests – Best Practices

- All employees should know the identity of the custodian of records
- Employees should forward public records requests to the custodian
- Records can be held in more than one location, especially electronically. A diligent search of all locations must be done.
- Contact the requestor in writing
- Note the day the initial 3-day response was sent
- Confirm the body's understanding of what is being requested and engage with the requester to clarify any items Address possible fees
- Confirm the way that records will be produced
- Be very specific when explaining reasons why records cannot be provided within 3 business days



# Requests for Public Records

## Responding to open records requests - Production

- If there are no records responsive to a request, the body will still need to send a response to the requester to let them know
- Redact when possible instead of closing an entire record
- Obvious reasons for closure (e.g., work product) are encouraged to be stated on the document itself when it is created
- The Sunshine Law does not require a public governmental body to create a new record upon request, but only to provide access to existing records held or maintained by the body.
  - *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53 (Mo. App. W.D. 2005)





# Requests for Public Records

## Closed records

- Same provisions of § 610.021 apply
- If records responsive to a request are closed, provide a response that generally describes the material exempted, unless that description would reveal the contents of the exempt information
- Redact when possible instead of withholding an entire record
- Best practice: when closing records, provide information to the requestor about what documents have been closed in the final response letter
  - Note: the public governmental body must always provide a “written statement of the grounds for denial (closure)” under Section 610.023.4 upon request within 3 business days



# Final Thoughts



# Final Thoughts

## Top 10 Things to Know about the Sunshine Law

- When in doubt, a **meeting or record** of a public body should be open to the public
- The Sunshine Law applies to all **records**, regardless of what form they are kept in, and all **meetings**, regardless of the manner in which they are held
- The Sunshine Law allows a public body to close meetings and records to the public in some limited circumstances but **almost never requires** a public body to do so.
- Except in emergency situations, a public body must give a least 24 hours' public notice before holding a meeting. If the meeting will be closed to the public, the notice must state the specific provision within Section 610.021 that allows the meeting to be closed.



# Final Thoughts

## Top 10 Things to Know about the Sunshine Law

- Each public body must have a written **Sunshine Law policy** and a custodian of records whose name is available to the public upon request.
- The Sunshine Law requires a custodian of records to respond to a records request as soon as possible but no more than **three business days** after the custodian receives it.
- When responding to a request for copies of its records, the Sunshine Law limits how much a public body can charge – per page, and per hour – for copying and research fees.
- There are specific provisions governing access to **law enforcement and judicial records.**



# Final Thoughts

## Top 10 Things to Know about the Sunshine Law

- The Sunshine Law allows for open public meetings to be both audio and video recorded by attendees. Each public governmental body may set up guidelines regarding the recording process. These guidelines should be included in the body's Sunshine Law policy. No one is allowed to record a closing meeting, if they are not given permission to do so.
- The **Sunshine Law** deals with whether a public body's records must be open to the public, but it generally does not state what records the body must keep or for how long. For more information concerning records retention schedules call the Secretary of State or visit their website at [www.sos.mo.gov/archives/localrecs](http://www.sos.mo.gov/archives/localrecs).



# Assistance to Public Governmental Bodies

## **In addition to providing training to public governmental bodies, we can also:**

- Attend public meetings to observe and provide feedback on Sunshine Law compliance
- Review forms created by or utilized by public governmental bodies to help ensure conformity with Sunshine Law best practices
- Observe public governmental bodies responding to or fulfilling Sunshine Law requests to provide feedback and offer guidance
- These services are not meant to provide legal advice but only to provide hands-on and real-world assistance to public governmental bodies in their efforts to comply with the Sunshine Law.



# Questions?



Contact us:

[SunshineComplaint@ago.mo.gov](mailto:SunshineComplaint@ago.mo.gov)

(573) 751-8905

[www.ago.mo.gov](http://www.ago.mo.gov)