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**MISSOURI ATTORNEY GENERAL**

# Missouri Sunshine Law

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Missouri Rural Water Association



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### Disclaimer:

- This presentation is meant as a summary of relevant provisions of the Sunshine Law; not an official opinion of the AGO. In providing this presentation, we do not suggest that we are providing you legal advice or otherwise treating you as a client of the Attorney General's Office.



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# Responding to Open Records Requests



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### Open Records Request Format

- A requester can submit their open records request in multiple formats
  - Public Governmental Body's Official Request Form
  - Written: letter or email
  - Verbal: phone call or in person



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### Custodian of Records

- Body must appoint a custodian of records
  - The identity and location of a public governmental body's custodian is to be made available upon request
- § 610.023.1, [Page 40]



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### Public Record Definition

- “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...”



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### Electronic Transmission of Messages

- May be considered a public record if...
    - Sent to a quorum of officials, this includes the sender
    - Relating to public business
  - If the message meets the above requirements please send to member's device, or custodian of records
- § 610.025 [Page 41]



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### Construction of the 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.
- § 610.011 [Page 32]





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### Statutory Requirement

- Body must act on the request as soon as possible
- No later than three days after the request was received by the Custodian of Records

Exclusive of weekends and holidays

- § 610.023.3, [Page 40]



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### Practical Tips

- Contact the requester in writing so both parties have a copy of the response,
  - Include the date the response was sent
  - Confirm the records that were requested
  - Request clarification, if necessary
  - Address possible fees
  - Confirm the way the records will be provided



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### More Time to Produce Requested Records

- If you cannot produce the records within three days, you will still need to contact the requester within this [three-day] time frame
- § 610.023(3) [page14]



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### Practical Tips & Statutory Requirements

- Provide a letter to the requester to let them know the records cannot be produced within three days
- Requirements for the response letter
  - Estimated time of when the request can be fulfilled
  - Reasonable cause for the delay



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### No Records Responsive to the Request

- 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 that there are no records responsive to their request
- § 610.023.3 [Page 40]



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# Closed Records



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### Closed Record Authorizations

- 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 records within 610.021
- Multiple other reasons to close records in other statutes, these can be used with 610.021(14)

•§610.021, [Pages35-39]



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### Most Recent Authorization

- “Individually identifiable customer usage and billing records for customers of a municipally owned utility, unless the records are requested by the customer or authorized for release by the customer, except that a municipally owned utility shall make available to the public the customer’s name, billing address, location of service, and dates of service provided for any commercial service account.”

•§610.021.25





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### Closed Records

- If a record is closed, provide the requester with the reason for closure
  - Cite to the specific provision of law
  - Written as **610.021(X), RSMo**

•§ 610.023.4, [Page 41]



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### Statutory Requirement

- If the records responsive to the request are closed:  
Provide a response that generally describes the material exempted, unless that description would reveal the contents of the exempt information

•§610.024.2, [Page 41]



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### Statutory Requirement

- If the records responsive to the request contain closed information the body will be required to separate the exempt and non-exempt material
  - Redaction

•§610.024.1, [Page 41]



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# Fees for Open Records Requests



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### Duplication Costs

- A public governmental body is allowed to charge fees for fulfilling open records requests
- Fees must be the lowest amount for search, research and duplication time
- A body may charge 10 cents a page for paper that is legal size or smaller
- A body can charge the exact cost of duplicating photos, maps, etc.

•§ 610.026.1(1), [Pages 41-42]



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# Public Meetings



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### Public Meeting Definition

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

•§ 610.010(5), [Page 32]



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### Public Meeting Definition cont.

- 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.

•§ 610.010(5), [Page 32]





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### Not a 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

•§ 610.010(5), [Page 32]



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### Types of Public Meetings

- Open
  - Public may attend all open meetings
- Closed
  - Public may not attend closed meetings
- Executive, Work Session, Etc. are not defined meeting types in the Sunshine Law



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### Public Meeting Notice

- A notice must be posted at least twenty-four hours in advance of all public meetings, both open and closed
- Exclusive of weekends and holidays

•§ 610.020.2 [Page 34]



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### Statutory Requirements

- Meeting Notice Requirements
  - Time
  - Date
  - Place
  - Tentative Agenda
    - Must be reasonably calculated to inform the public of the matters to be considered
  - If the meeting will be conducted by telephone or electronic means
- § 610.020.1, [Pages 33-34]



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### Meeting Notice Example - Agenda

- Unfinished Business
    - City Budget
    - Park Permits
  - New Business
    - Sunshine Law Policy
    - City Hall parking lot
- Unfinished Business
    - City Budget: Police Dept. Proposal for 2022
    - Park Permits: New Year's Eve Fireworks
  - New Business
    - Approve the new Sunshine Law Policy
    - Draft the RFP for the City Hall parking lot resurfacing



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### Tips for Posting Meeting Notices

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



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### Statutory Requirements for Recording a Meeting

The body shall allow members of the public to record all public meetings

- Both audio & video recording are allowed

The body may establish guidelines regarding the matter in which recordings are conducted

Closed meetings may not be recorded without permission of the public body

- Class C Misdemeanor



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# Closed Meetings





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•§610.021, [Pages 35-39]



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### Closed Meeting Authorizations

610.021(14)“Records which are protected from disclosure by law;”

- This cannot be used as a stand alone exception
- Used in conjunction with other laws

Ex: FERPA, DPPA, HIPAA, etc.



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### Closing a Meeting

- Have an affirmative public vote of the majority of a quorum of a public governmental body in open session with reference to a specific section of 610.021
- Post a meeting notice with reference to a specific section of 610.021
  - § 610.022.(1) & (2), [Page 39]



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### Practical Tips

- While the two subsections 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



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### Closed Meeting Requirement

- Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote.
- § 610.022.3, [Page 39]



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### Statutory Requirements for Meeting Minutes

- Date
  - Time
  - Place
  - Members Present/Absent
  - Record of all votes taken (including the vote to close)
    - Including a record of each member's individual vote cast during a roll-call
- § 610.020.7, [Page 35]



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# Sunshine Law Policy



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### Sunshine Law Policy

- “Each public governmental body shall provide a reasonable written policy in compliance with sections 610.010 to 610.030, open to public inspection, regarding the release of information on any meeting, record or vote”
- § 610.028.2, [Page 44-45]





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