



# Missouri Sunshine Law

MOALSO Meeting, January 23, 2023

*Presented by:*

**Jason K. Lewis**

Chief Counsel for Governmental Affairs

Missouri Attorney General's Office

# Disclaimer

This presentation does not constitute a formal opinion of the Attorney General, or legal advice from the Attorney General or the presenter.



# To Whom Does the Sunshine Law Apply?

## 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.



# To Whom Does the Sunshine Law Apply?

## Public Governmental Bodies



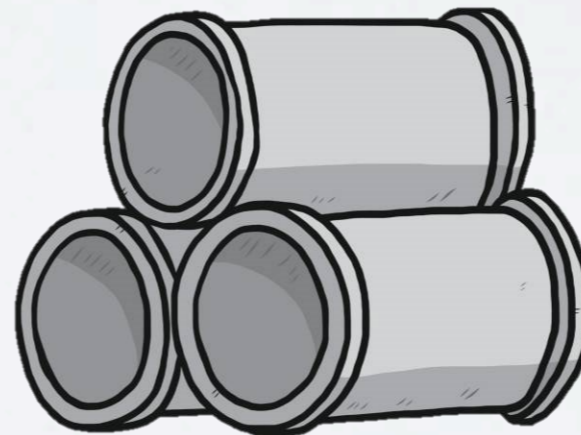
Municipalities



Counties



Police Departments



Sewer Districts



Committees



# To Whom Does the Sunshine Law Apply?

## Public Governmental Bodies

- Any legislative, administrative or governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district.
- “By its very nature, the quintessence of a ‘public governmental body’ is the power to govern by the formulation of policies and the promulgation of statutes, ordinances, rules and regulations, or the exercise of quasi-judicial power.” *Tribune Publishing Co. v. Curators of Univ. of Missouri*, 661 S.W.2d 575, 584 (Mo. App. W.D. 1983).





# To Whom Does the Sunshine Law Apply?

## Sub-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)



# 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

- 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
- 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

## 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

## 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

## Meeting minutes

- Meeting minutes must include minimal 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 35]

# Public Meetings

## Best practices for all public meetings

- 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
- Include the date and time the notice and agenda was posted
- Include the name and contact information of the Records Custodian on meeting notices and agendas





# 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



# 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

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

§ 610.021, [Pages 35-39]



# 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



# Public Records

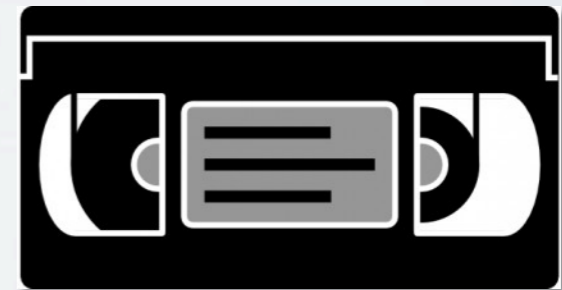




# What Is a Public Record?

“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”



# Public Records

## Electronic Transmission of Public Records

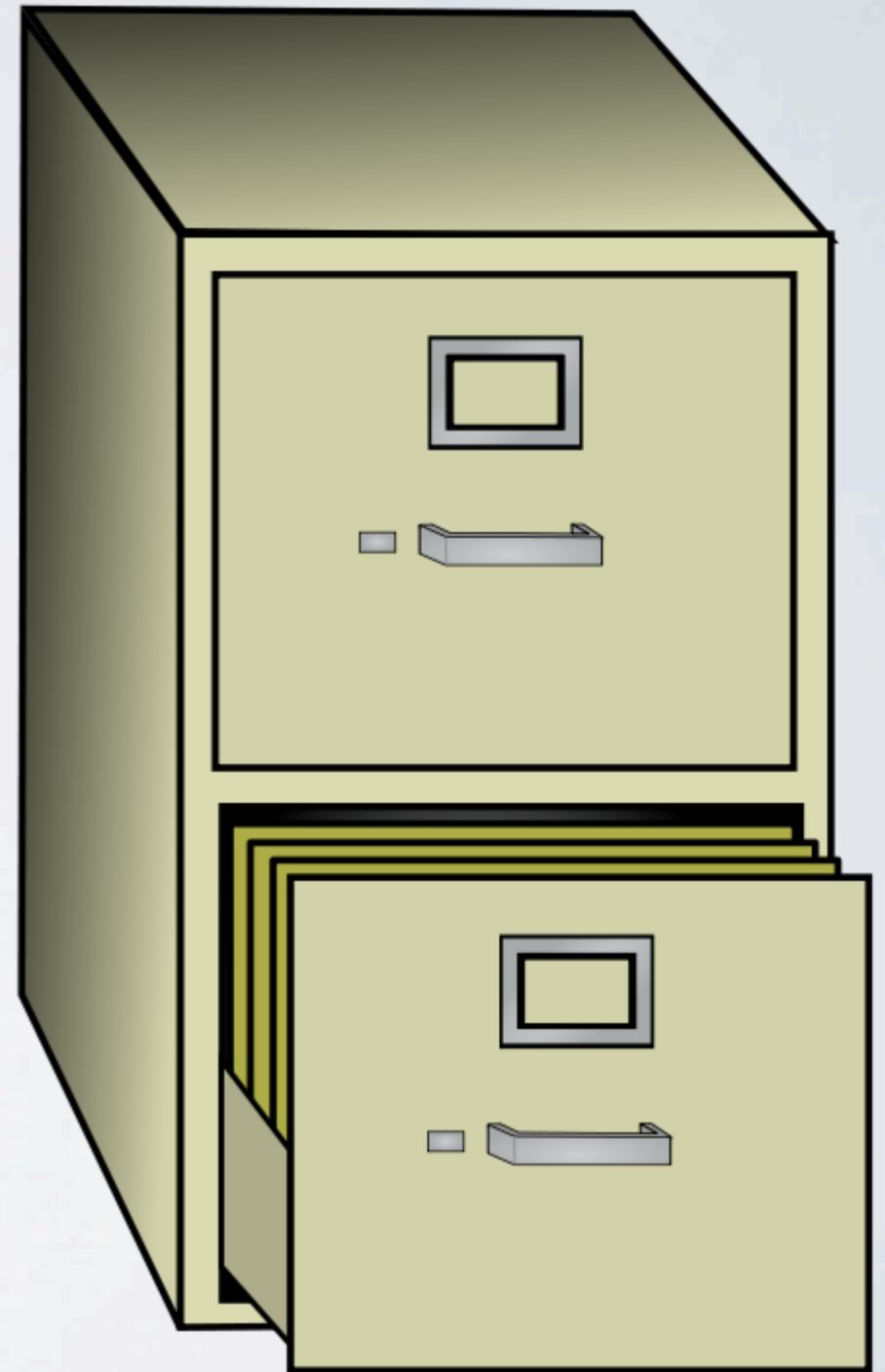
- May be considered a public record if...
  - Sent to a quorum of officials, this includes the sender
  - Relating to public business
- If the message meets the above requirements, best practice is to send to member's government-issued device, or to the custodian of records



# What Records Must Be Retained?

Chapter 109, RSMo  
governs retention  
obligations

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



# Requests for Public Records

## Submitting open records requests

- A requester can submit their 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

## Responding to open records requests

- Public governmental body must act on the request as soon as possible, no later than 3 business days after custodian receives it
- 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
- 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
- The requestor may request, and the custodian shall provide, a written statement of the grounds for denial of a request, including specific subsection of § 610.021 used to close records





# Requests for Public Records

## **Best practices for responding to public records requests**

- Immediately forward a copy of the request to custodian of records
- Contact the requestor in writing so that both parties have a copy of the response
- Note the day the initial 3-day response was sent
- Confirm the body's understanding of what is being requested
- 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



# Common Sunshine Law Issues



# Common Sunshine Law Issues

## Common findings in Missouri State Auditor reports

- Lack of Sunshine Law policies and procedures
  - See requirement in § 610.028 for written Sunshine Law policy
- No custodian of records
- Meeting notice/agenda issues:
  - Agenda not included
  - No documentation of when notice was posted
- Meeting minutes issues:
  - Items absent: meeting time, date, location, members present and absent
  - Votes not recorded
  - Improper or missing citations to § 610.021 provisions for closed sessions
- Improper closed sessions, deviating from closed topics



# Questions?



Jason K. Lewis

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

(573) 751-8905

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