



CITY OF ST. LOUIS MENTAL HEALTH BOARD OF TRUSTEES Sunshine Law Policy

CUSTODIAN OF RECORDS

Cassandra Kaufman
Executive Director
St. Louis Mental Health Board
701 Market Street, Suite 200
St. Louis, MO 63101

ckaufman@stlmhb.org
314.535.6964 extension 17

Sunshine Law—A Commitment to Openness and Transparency in Government

In 1973, Missouri was one of the earliest advocates of openness in government through its passage of Senate Bill 1 also known as the Sunshine Law (Section 610.011 RSMo.). The Sunshine Law is Missouri’s public policy that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. The law sets out limited circumstances when meetings, records, and votes may be

closed, while stressing that these exceptions are to be strictly interpreted to promote the public policy of openness.

Public meetings, including meetings conducted by telephone, internet, or other electronic means are to be held at reasonably convenient times and must be accessible to the public. Meetings should be held in facilities that are large enough to accommodate anticipated attendance by the public and accessible to persons with disabilities.

Sunshine Law—Top 10 Things You Should Know
1. When in doubt, a meeting or record of a public body should be opened to the public.
2. The Sunshine Law applies to all records, regardless of what form they are kept in, and to all meetings, regardless of the manner in which they are held.
3. The Sunshine Law allows a public body to close meetings and records to the public in some limited circumstances, but it almost never requires a public body to do so.
4. Except in emergency situations, a public body must give 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, RSMo., that allows the meeting to be closed.
5. Each public body must have a written Sunshine Law policy and a custodian of records whose name is available to the public upon request.
6. The Sunshine Law requires a custodian or records to respond to a records request as soon as possible but not later than three business days after the custodian receives it
7. 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. A body cannot, however, avoid a records request by destroying records after it receives a request for those records.
8. The Sunshine Law allows for 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 can be found in the body’s Sunshine Law policy. No one is allowed to record a closed meeting if they are not given permission to do so.
9. 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 costs.
10. There are specific provisions governing access to law enforcement and judicial records.

Public Policy Favoring Openness

Except when closure is allowed by law, all public meetings and public records of public governmental bodies must be open and available to the public, and all of their public votes shall be recorded. Meetings and records of public governmental bodies may (though not “shall”) be closed for the reasons listed in Section 610.021, RSMO. (including but not limited to, privileged discussions with a body’s lawyers or auditors, certain personnel matters, sealed bids until opened, social security numbers, and certain public safety, security system, and computer access information.)

The Sunshine Law applies to “public governmental bodies” – virtually all arms of state and local government, as well as “quasi-public governmental bodies,” which are persons or corporations which, primarily, enter into contracts with public governmental bodies, accept public funds, or perform public functions. Subcommittees appointed to make recommendations to public bodies are also covered by the law.

Each public governmental body must have a written Sunshine Law policy available to members of the public, and a Custodian of Records whose name is available to the public upon request.

Enforcement of the Sunshine Law

A lawsuit to enforce the Sunshine Law may be brought by any citizen, county prosecutor, of the Attorney General, in the circuit court of the county where the public governmental body has its principal place of business. Suit must be filed within one year from when the violation is ascertainable, and in no event later than two years after the violation occurred.

Statute provides specific consequences for violating the Sunshine Law. “Knowing” violations result in civil fines up to \$1,000.00. “Purposeful” violations result in civil fines up to \$5,000.00, plus attorney’s fees. Injunctive relief is also available. When the public interest requires, courts may void actions taken in violation of the Sunshine Law.

Complaints and concerns regarding enforcement of Missouri’s Sunshine Law may be directed to the Missouri Attorney General’s Office or any local prosecuting attorney.

Meetings of Public Government Bodies

Meetings of public governmental bodies, where a quorum is present, and public business is discussed, are subject to Sunshine Law. This includes telephone conferences, and internet chat sessions, as well as meetings, or a series of meetings. Each involving fewer than a quorum of the members, but collectively involving a quorum of the public body, where the body’s members deliberately attempt to discuss public business while evading the Sunshine Law.

Notice of all meetings must be posted at least 24 hours in advance. If the meeting will be conducted by telephone, or by other electronic means, the notice must identify how the meeting will be conducted, as well as instructions explaining how the public may observe.

Notices of open meetings must contain the **date, time, place, and tentative agenda** of the meeting.

Notices of closed meetings must contain the date, time, and place of the meeting, and the specific reason in Section 610.021, RSMo., that allows for closing the meeting. In closed meetings, only

business directly related to the reason for closure may be discussed. Roll call votes must be taken on the motion to close a meeting, and each vote during a closed meeting must be a roll call vote, with each vote recorded in the meeting minutes.

Meeting minutes must record the date, time, and place of the meeting, the members present and absent, and records of all votes taken. Topics about which members of the public did not receive at least 24 hours' notice should not be discussed during the meeting, unless it is impossible or impractical to provide 24 hours' notice, in which case the reason for not providing 24 hours' notice must be noted in the minutes.

Public governmental bodies are required to allow recording at open meetings, though they may set rules within their Sunshine Law policy to minimize disruption. Recording a closed meeting without permission of the public governmental body is a class C misdemeanor.

While the Sunshine Law mandates that most meetings of public government bodies shall be open to the public, it does not require that members of the public be permitted to speak at these meetings.

Records of Public Government Bodies

Records prepared or retained by or for public governmental bodies are subject to the Sunshine Law. Law enforcement records are subject to the same presumption of openness applicable to other public records and receive separate treatment under the Sunshine Law.

Record requests should be directed to a public governmental body's Custodian of Records. While not required, it may be helpful to submit requests in writing. A request for general information or stray data is not necessarily the same thing as a request for records unless that information or data is found within an existing record. Requests should be prepared carefully and precisely, and the best practice is to cite Chapter 610, RSMO., in a written request. Public governmental bodies are not required to create records in order to respond to a records request.

The Custodian of Records must respond to requests within three business days, by: (1) providing the requested records; (2) informing the requestor that the records sought are closed and citing the proper provision for closure; or, (3) explaining the cause of the delay and estimating when the records will be provided. The day a request is received by the Custodian of Records does not count as one of the three business days. The time for providing access may exceed three business days for reasonable cause.

Public governmental bodies are strongly encouraged to make information available in useable electronic formats, and requests that records be provided in a particular format must be honored if the public governmental body is able to produce the record in the format requested.

If the Custodian of Records determines that the requested records are closed, then he or she must explain the reason for the closure in writing, citing the specific provision permitting closure, within three days of request for explanation.

If a record contains both open and closed material, access must be provided to the open material.

Charges Allowed

Copy fees of not more than 10 cents per page 9" x 14", or smaller, plus research time, (billed at actual cost of employees that result in the lowest amount of charges for search, research, and duplication time), are allowed. Persons requesting public records may request an estimate of the cost. Public governmental bodies may require advance payment of fees and may also decide to reduce or waive fees in the public interest.

Brief Summary Regarding Law Enforcement Records

Records relating to law enforcement operations are addressed in a specific set of statutes within Chapter 610. In general, all incident and arrest reports are open records, but mobile video recordings and investigative reports are closed records until the investigation becomes inactive, as is an arrest record if the person arrested is not charged within 30 days. Other exceptions apply with respect to certain mobile video recordings and portions of records which, if released, would endanger victims, witnesses, undercover officers, or other persons, or which would jeopardize a criminal investigation. Special rules apply to information gained from 911 calls, and particularly graphic crime scene photographs and videos are generally closed.

Conclusion

Again, this brief summary is included in order to give a broad understanding of Sunshine Law basics. Before making any decision on behalf of a public governmental body, be sure to review all relevant sections within Chapter 610, RSMo.

Frequently Asked Questions—Public Governmental Body

- 1. How much can a public governmental body charge for records request?** Section 610.026.1(1), RSMo., allows a public governmental body to charge up to 10 cents per page for standard paper copies, the average hourly rate for clerical staff to duplicate documents, and the actual cost of the research time for fulfilling the request. This provision also requires that the public governmental body use the lowest salaried employees capable of searching, researching, and copying the records. Fees for accessing records on other media, or non-standard paper copies, shall reflect actual cost involved. The requestor may wish to ask for a breakdown of all costs associated with the request to determine how the public governmental body arrived at the final charge.
- 2. Our board goes in to closed session and we don't know what they are going to talk about. Don't they have to let us know why they are closing the meeting?** Yes. Section 610.022, RSMo., requires that public governmental bodies give at least 24 hours' notice of each proposed closed meeting and the reason for holding it by reference to the specific exception allowed under Section 610.021, RSMo. Section 610.022, RSMo., also states that no public governmental body can move from an open meeting into a closed meeting without a roll call vote, and that the vote and the specific section of 610.021, RSMo., shall be publicly announced and entered into the minutes.
- 3. I was told my request would be ready in 2 weeks. Doesn't the Sunshine Law say they have to give me the records in 3 days?** Section 610.023.3, RSMo., requires that each request be responded to as soon as possible, but not later than the end of the third business day following the custodian of records' receipt of the request. If access is not granted immediately, the custodian of records is required to explain the reason for the delay and the

earliest date and time the records will be available. Therefore, public governmental bodies are allowed to exceed the three days for production, but they are required to notify you of the delay and explain when they anticipate the records will be ready.

4. **Can a public governmental body add items to the agenda after it has been posted?**

Section 610.020.1, RSMo., requires public governmental bodies to post a notice and a tentative agenda for each meeting, and that the agenda be constructed in a manner reasonable calculated to advise the public of the matters to be considered. Further, Section 610.020.2, RSMo., requires that this notice be posted at least 24 hours in advance of the meeting. However, Section 610.020, RSMo., includes an exception that, if for good cause, 24-hours' notice is impossible or impractical, the public governmental body shall give as much notice as possible. Also, the nature of the good cause justifying the departure from normal requirements shall be stated in the minutes.

5. **Members of the board get together and talk about business outside of meetings. Is that a violation?** Under the Sunshine Law, a meeting takes place when a majority or quorum of a public governmental body gathers to discuss or vote on public business (Section 610.010(5), RSMo., and *Colombo v. Buford*, 935 S.W.2d 690 (MO. App. W.D. 1996)).

Therefore, if less than a quorum of the public body meets to discuss public business, it is not a "meeting" as defined under the Sunshine Law. However, the Sunshine Law will apply to meetings of groups with less than a quorum when the entity is deliberately attempting to evade the Sunshine Law. See, *Colombo*, cited above. For example, a public governmental body may not purposely meet in groups with less than a quorum to discuss public business and then ratify those decisions in a subsequent public meeting.

6. **Board members e-mail each other about public business—is that considered a meeting?**

Pursuant to Section 610.010(5), RSMo., a public meeting exists when a public body meets and public business is discussed, decided, or public policy is formulated. A single e-mail about an issue would not in and of itself constitute a meeting requiring advance notice. However, by Section 610.025, RSMo., any member of a public governmental body who sends an e-mail relating to public business to a majority of the body shall also send a copy to the member's public office computer or to the custodian of records to be retained as a public record.

7. **A requestor refuses to use our request form and sends numerous e-mails with requests for records. Can we require that they fill out our standard request form?**

Section 610.023.3, RSMo., requires that each request for access to public records is to be responded to as soon as possible; it does not specify a manner in which these requests must be submitted. Therefore, a public governmental body may ask that requestors fill out a form, but it can't require them to do so.

8. **Who can impose penalties for Sunshine Law violations?** Only a court can impose penalties if it finds that the Sunshine Law has been violated, and penalties are assessed only if the violation is found to be knowing or purposeful. A court may also void any action that was taken in violation of the law, but it is at the court's discretion, after considering if it is in the public interest to do so.

9. **How may we state our motion when we want to enter into a closed session?** One sample motion is "I move that this meeting be closed, and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, subsection(s)____, RSMo., for the purpose of (insert the language of the provisions(s) cited)."

Please note that the public governmental body should only cite those subsections that are applicable to the material it intends to close (not a standard list of several subsections).

10. **Who is subject to the Sunshine Law?** To determine if the Sunshine Law applies to a body, refer to the definition of public governmental body in Section 610.010, RSMo., p. 4, which includes, but is not limited to:

- Public bodies created by state constitution or statutes;
- Public bodies created by order or ordinance of any political subdivision or district;
- Judicial entities when operating in an administrative capacity;
- Public bodies created by executive order, including:
 - ✓ Any advisory committee or commission created by the governor by executive order;
 - ✓ Any department or division of the state;
 - ✓ Any department or division of any political subdivision of the state;
 - ✓ Any department or division of any county or of any municipal government
 - ✓ Any department or division school district;
 - ✓ Any department or division of a special purpose district including but not limited to sewer districts and water districts; and
 - ✓ Other subdistricts of any political subdivision;
- Any other legislative or administrative governmental deliberative body under the direction of three or more elected or appointed members having rulemaking or quasi-judicial power; and
- Certain committees or advisory boards appointed by any of the above entities. **Note:** The custodian of records of any public governmental body shall maintain a list of the policy advisory committees described in this section.

Or, a body may qualify as a quasi-governmental body under the Sunshine Law, which is defined in Section 610.010(4), RSMo., p. 5, and includes, but is not limited to:

- Any person, corporation or partnership organized or authorized to do business in this state by the provisions of chapter 352, 353, 355, RSMo., or an unincorporated association with either:
 - I. Has it primary purpose to:
 - ✓ Enter into contracts with public governmental bodies; or
 - ✓ Engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies; or
 - II. Performs a statutorily based public function to:
 - ✓ Allocate or issue tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain; or
 - ✓ Contract leaseback agreements on structures whose annualized payments commit public tax revenues.
- Any association that directly accepts the appropriation of money from a public governmental body, but only to the extent that a meeting, record, or vote relates to such appropriation.



CITY OF SAINT LOUIS MENTAL HEALTH BOARD OF TRUSTEES

Sunshine Law Records Request Form

Custodian of Records

Cassandra Kaufman, Executive Director
City of St. Louis Mental Health Board of Trustees
701 Market Street, Suite 200
St. Louis, MO 63101
ckaufman@stlmhb.org
314.535.6964 extension 17

This is a request for records under the Missouri Sunshine Law, Chapter 610, Revised Statutes of Missouri.

I request that you make available to me the following records: _____
(Describe the records as specifically as possible. Where you are asking for records that cover only a particular period, such as last year or a specific month, identify that time period.)

If you know the subject matter of the records, but do not have additional information, use this alternative: _____

I request that you make available to me all records that relate to: _____
(Be as specific as possible; include dates if you can)

If you want and are willing to pay for copies of the records, rather than just being able to see them: I request that the records responsive to my request be copied and sent to me at the following address: _____

If you believe your request serves the public interest, and is not just for personal or commercial interest, you may ask that fees be waived: _____

I request that all fees for locating and copying the records be waived. The information I obtain through this request will be used to: _____
(Tell how you will use the information and why that use is in the public interest)

Please let me know in advance of any search or copying if the fees will exceed \$_____ **(Insert amount you are willing to pay without additional information about the documents)**

If portions of the requested records are closed, please segregate the closed portions and provide me with the rest of the records. If any part of my request for access is denied, please provide a written statement for each legal ground for such denial.

(Insert your name, address, phone number, or electronic mail address)