

SENATE BILL NO. 930

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

3573S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 610.010, 610.021, and 610.026, RSMo, and to enact in lieu thereof three new sections relating to access to public records.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 610.010, 610.021, and 610.026, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 610.010, 610.021, and 610.026, to read as follows:

610.010. As used in this chapter, unless the context otherwise indicates, the following terms mean:

(1) "Closed meeting", "closed record", or "closed vote", any meeting, record or vote closed to the public;

(2) "Copying", if requested by a member of the public, copies provided as detailed in section 610.026, if duplication equipment is available;

(3) "Public business", all matters which relate in any way to the performance of the public governmental body's functions or the conduct of its business;

(4) "Public governmental body", 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, judicial entities when operating in an administrative capacity, or by executive order, including:

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 (a) Any body, agency, board, bureau, council,
18 commission, committee, board of regents or board of curators
19 or any other governing body of any institution of higher
20 education, including a community college, which is supported
21 in whole or in part from state funds, including but not
22 limited to the administrative entity known as "The Curators
23 of the University of Missouri" as established by section
24 172.020;

25 (b) Any advisory committee or commission appointed by
26 the governor by executive order;

27 (c) Any department or division of the state, of any
28 political subdivision of the state, of any county or of any
29 municipal government, school district or special purpose
30 district including but not limited to sewer districts, water
31 districts, and other subdistricts of any political
32 subdivision;

33 (d) Any other legislative or administrative
34 governmental deliberative body under the direction of three
35 or more elected or appointed members having rulemaking or
36 quasi-judicial power;

37 (e) Any committee appointed by or at the direction of
38 any of the entities and which is authorized to report to any
39 of the above-named entities, any advisory committee
40 appointed by or at the direction of any of the named
41 entities for the specific purpose of recommending, directly
42 to the public governmental body's governing board or its
43 chief administrative officer, policy or policy revisions or
44 expenditures of public funds including, but not limited to,
45 entities created to advise bi-state taxing districts
46 regarding the expenditure of public funds, or any policy
47 advisory body, policy advisory committee or policy advisory
48 group appointed by a president, chancellor or chief

49 executive officer of any college or university system or
50 individual institution at the direction of the governing
51 body of such institution which is supported in whole or in
52 part with state funds for the specific purpose of
53 recommending directly to the public governmental body's
54 governing board or the president, chancellor or chief
55 executive officer policy, policy revisions or expenditures
56 of public funds provided, however, the staff of the college
57 or university president, chancellor or chief executive
58 officer shall not constitute such a policy advisory
59 committee. The custodian of the records of any public
60 governmental body shall maintain a list of the policy
61 advisory committees described in this subdivision;

62 (f) Any quasi-public governmental body. The term
63 "quasi-public governmental body" means any person,
64 corporation or partnership organized or authorized to do
65 business in this state pursuant to the provisions of chapter
66 352, 353, or 355, or unincorporated association which either:

67 a. Has as its primary purpose to enter into contracts
68 with public governmental bodies, or to engage primarily in
69 activities carried out pursuant to an agreement or
70 agreements with public governmental bodies; or

71 b. Performs a public function as evidenced by a
72 statutorily based capacity to confer or otherwise advance,
73 through approval, recommendation or other means, the
74 allocation or issuance of tax credits, tax abatement, public
75 debt, tax-exempt debt, rights of eminent domain, or the
76 contracting of leaseback agreements on structures whose
77 annualized payments commit public tax revenues; or any
78 association that directly accepts the appropriation of money
79 from a public governmental body, but only to the extent that
80 a meeting, record, or vote relates to such appropriation; and

81 (g) Any bi-state development agency established
82 pursuant to section 70.370;

83 (5) "Public meeting", any meeting of a public
84 governmental body subject to sections 610.010 to 610.030 at
85 which any public business is discussed, decided, or public
86 policy formulated, whether such meeting is conducted in
87 person or by means of communication equipment, including,
88 but not limited to, conference call, video conference,
89 internet chat, or internet message board. The term "public
90 meeting" shall not include an informal gathering of members
91 of a public governmental body for ministerial or social
92 purposes when there is no intent to avoid the purposes of
93 this chapter, but the term shall include a public vote of
94 all or a majority of the members of a public governmental
95 body, by electronic communication or any other means,
96 conducted in lieu of holding a public meeting with the
97 members of the public governmental body gathered at one
98 location in order to conduct public business;

99 (6) "Public record", any record, whether written or
100 electronically stored, retained by or of any public
101 governmental body including any report, survey, memorandum,
102 or other document or study prepared for the public
103 governmental body by a consultant or other professional
104 service paid for in whole or in part by public funds,
105 including records created or maintained by private
106 contractors under an agreement with a public governmental
107 body or on behalf of a public governmental body; provided,
108 however, that personally identifiable student records
109 maintained by a public [educational institutions]
110 **governmental body** shall be open for inspection **only** by the
111 parents, guardian or other custodian of students under the
112 age of eighteen years and by the parents, guardian or other

113 custodian and the student if the student is over the age of
114 eighteen years. The term "public record" shall not include
115 any internal memorandum or letter received or prepared by or
116 on behalf of a member of a public governmental body
117 consisting of advice, opinions and recommendations in
118 connection with the deliberative decision-making process of
119 said body, unless such records are retained by the public
120 governmental body or presented at a public meeting. Any
121 document or study prepared for a public governmental body by
122 a consultant or other professional service as described in
123 this subdivision shall be retained by the public
124 governmental body in the same manner as any other public
125 record;

126 (7) "Public vote", any vote, whether conducted in
127 person, by telephone, or by any other electronic means, cast
128 at any public meeting of any public governmental body.

610.021. Except to the extent disclosure is otherwise
2 required by law, a public governmental body is authorized to
3 close meetings, records and votes, to the extent they relate
4 to the following:

5 (1) Legal actions, causes of action or litigation
6 involving a public governmental body and any confidential or
7 privileged communications between a public governmental body
8 or its representatives and its attorneys. However, any
9 minutes, vote or settlement agreement relating to legal
10 actions, causes of action or litigation involving a public
11 governmental body or any agent or entity representing its
12 interests or acting on its behalf or with its authority,
13 including any insurance company acting on behalf of a public
14 government body as its insured, shall be made public upon
15 final disposition of the matter voted upon or upon the
16 signing by the parties of the settlement agreement, unless,

17 prior to final disposition, the settlement agreement is
18 ordered closed by a court after a written finding that the
19 adverse impact to a plaintiff or plaintiffs to the action
20 clearly outweighs the public policy considerations of
21 section 610.011, however, the amount of any moneys paid by,
22 or on behalf of, the public governmental body shall be
23 disclosed; provided, however, in matters involving the
24 exercise of the power of eminent domain, the vote shall be
25 announced or become public immediately following the action
26 on the motion to authorize institution of such a legal
27 action. Legal work product shall be considered a closed
28 record;

29 (2) Leasing, purchase or sale of real estate by a
30 public governmental body where public knowledge of the
31 transaction might adversely affect the legal consideration
32 therefor. However, any minutes, vote or public record
33 approving a contract relating to the leasing, purchase or
34 sale of real estate by a public governmental body shall be
35 made public upon execution of the lease, purchase or sale of
36 the real estate;

37 (3) Hiring, firing, disciplining or promoting of
38 particular employees by a public governmental body when
39 personal information about the employee is discussed or
40 recorded. However, any vote on a final decision, when taken
41 by a public governmental body, to hire, fire, promote or
42 discipline an employee of a public governmental body shall
43 be made available with a record of how each member voted to
44 the public within seventy-two hours of the close of the
45 meeting where such action occurs; provided, however, that
46 any employee so affected shall be entitled to prompt notice
47 of such decision during the seventy-two-hour period before
48 such decision is made available to the public. As used in

49 this subdivision, the term "personal information" means
50 information relating to the performance or merit of
51 individual employees;

52 (4) The state militia or national guard or any part
53 thereof;

54 (5) Nonjudicial mental or physical health proceedings
55 involving identifiable persons, including medical,
56 psychiatric, psychological, or alcoholism or drug dependency
57 diagnosis or treatment;

58 (6) Scholastic probation, expulsion, or graduation of
59 identifiable individuals, including records of individual
60 test or examination scores; however, personally identifiable
61 student records maintained by public educational
62 institutions shall be open for inspection by the parents,
63 guardian or other custodian of students under the age of
64 eighteen years and by the parents, guardian or other
65 custodian and the student if the student is over the age of
66 eighteen years;

67 (7) Testing and examination materials, before the test
68 or examination is given or, if it is to be given again,
69 before so given again;

70 (8) Welfare cases of identifiable individuals;

71 (9) Preparation, including any discussions or work
72 product, on behalf of a public governmental body or its
73 representatives for negotiations with employee groups;

74 (10) Software codes for electronic data processing and
75 documentation thereof;

76 (11) Specifications for competitive bidding, until
77 either the specifications are officially approved by the
78 public governmental body or the specifications are published
79 for bid;

80 (12) Sealed bids and related documents, until the bids
81 are opened; and sealed proposals and related documents or
82 any documents related to a negotiated contract until a
83 contract is executed, or all proposals are rejected;

84 (13) Individually identifiable personnel records,
85 performance ratings or records pertaining to employees or
86 applicants for employment, except that this exemption shall
87 not apply to the names, positions, salaries and lengths of
88 service of officers and employees of public agencies once
89 they are employed as such, and the names of private sources
90 donating or contributing money to the salary of a chancellor
91 or president at all public colleges and universities in the
92 state of Missouri and the amount of money contributed by the
93 source;

94 (14) Records which are protected from disclosure by
95 law;

96 (15) Meetings and public records relating to
97 scientific and technological innovations in which the owner
98 has a proprietary interest;

99 (16) Records relating to municipal hotlines
100 established for the reporting of abuse and wrongdoing;

101 (17) Confidential or privileged communications between
102 a public governmental body and its auditor, including all
103 auditor work product; however, all final audit reports
104 issued by the auditor are to be considered open records
105 pursuant to this chapter;

106 (18) Operational guidelines, policies and specific
107 response plans developed, adopted, or maintained by any
108 public agency responsible for law enforcement, public
109 safety, first response, or public health for use in
110 responding to or preventing any critical incident which is
111 or appears to be terrorist in nature and which has the

112 potential to endanger individual or public safety or
113 health. Financial records related to the procurement of or
114 expenditures relating to operational guidelines, policies or
115 plans purchased with public funds shall be open. When
116 seeking to close information pursuant to this exception, the
117 public governmental body shall affirmatively state in
118 writing that disclosure would impair the public governmental
119 body's ability to protect the security or safety of persons
120 or real property, and shall in the same writing state that
121 the public interest in nondisclosure outweighs the public
122 interest in disclosure of the records;

123 (19) Existing or proposed security systems **or**
124 **procedures** and structural plans of real property owned or
125 leased by a public governmental body **including, but not**
126 **limited to, evacuation and lockdown procedures for the**
127 **buildings on such real property**, and information that is
128 voluntarily submitted by a nonpublic entity owning or
129 operating an infrastructure to any public governmental body
130 for use by that body to devise plans for protection of that
131 infrastructure **including, but not limited to, software or**
132 **surveillance companies that secure access to such building**,
133 the public disclosure of which would threaten public safety:

134 (a) Records related to the procurement of or
135 expenditures relating to security systems purchased with
136 public funds shall be open;

137 (b) When seeking to close information pursuant to this
138 exception, the public governmental body shall affirmatively
139 state in writing that disclosure would impair the public
140 governmental body's ability to protect the security or
141 safety of persons or real property, and shall in the same
142 writing state that the public interest in nondisclosure
143 outweighs the public interest in disclosure of the records;

144 (c) Records that are voluntarily submitted by a
145 nonpublic entity shall be reviewed by the receiving agency
146 within ninety days of submission to determine if retention
147 of the document is necessary in furtherance of a state
148 security interest. If retention is not necessary, the
149 documents shall be returned to the nonpublic governmental
150 body or destroyed;

151 (20) The portion of a record that identifies security
152 systems or access codes or authorization codes for security
153 systems of real property;

154 (21) Records that identify the configuration of
155 components or the operation of a computer, computer system,
156 computer network, or telecommunications network, and would
157 allow unauthorized access to or unlawful disruption of a
158 computer, computer system, computer network, or
159 telecommunications network of a public governmental body.
160 This exception shall not be used to limit or deny access to
161 otherwise public records in a file, document, data file or
162 database containing public records. Records related to the
163 procurement of or expenditures relating to such computer,
164 computer system, computer network, or telecommunications
165 network, including the amount of moneys paid by, or on
166 behalf of, a public governmental body for such computer,
167 computer system, computer network, or telecommunications
168 network shall be open;

169 (22) Credit card numbers, personal identification
170 numbers, digital certificates, physical and virtual keys,
171 access codes or authorization codes that are used to protect
172 the security of electronic transactions between a public
173 governmental body and a person or entity doing business with
174 a public governmental body. Nothing in this section shall
175 be deemed to close the record of a person or entity using a

176 credit card held in the name of a public governmental body
177 or any record of a transaction made by a person using a
178 credit card or other method of payment for which
179 reimbursement is made by a public governmental body;

180 (23) Records submitted by an individual, corporation,
181 or other business entity to a public institution of higher
182 education in connection with a proposal to license
183 intellectual property or perform sponsored research and
184 which contains sales projections or other business plan
185 information the disclosure of which may endanger the
186 competitiveness of a business; [and]

187 (24) Records relating to foster home or kinship
188 placements of children in foster care under section 210.498;

189 (25) **Email addresses and telephone numbers submitted**
190 **to a public governmental body by individuals or entities for**
191 **the sole purpose of receiving electronic or other**
192 **communications limited to newsletters, notifications,**
193 **advisories, alerts, and periodic reports;**

194 (26) **Individually identifiable customer usage and**
195 **billing records for customers of a municipally owned utility**
196 **unless the records are requested by the customer or**
197 **authorized for release by the customer, except that a**
198 **municipally owned utility shall make available to the public**
199 **the customer's name, billing address, location of service,**
200 **and dates of service provided for any commercial service**
201 **account;**

202 (27) **Any record retained by the office of a member of**
203 **the general assembly that is related to a constituent of the**
204 **member. As used in this subdivision, "constituent" shall**
205 **mean any person who is a resident of the legislative**
206 **district of the member, any person who owns real property**
207 **within the legislative district of the member, or any person**

208 who owns an interest in a business entity operating within
209 the legislative district of the member. The term
210 "constituent" shall not include a person who is registered
211 as a lobbyist or a lobbyist principal, as such terms are
212 defined in section 105.470, or a public official, regardless
213 of whether such person otherwise meets the definition of
214 "constituent". As used in this subdivision, the term
215 "public official" shall mean any statewide elected official
216 or any person holding elective office of any political
217 subdivision. Nothing in this subdivision shall authorize
218 the closure of a record that has been offered in a public
219 meeting of a house of the general assembly, or any committee
220 thereof; and

221 (28) Any record retained in the office of a member of
222 the general assembly, an employee of either house of the
223 general assembly, or an employee of a caucus of either the
224 majority or minority party of either house that contains
225 information regarding proposed legislation or the
226 legislative process; however, nothing in this subdivision
227 shall allow the closure of a record that has been offered in
228 a public meeting of a house of the general assembly, or any
229 committee thereof, nor any record addressed to, or from, in
230 whole or in part, a lobbyist or a lobbyist principal, as
231 such terms are defined in section 105.470.

610.026. 1. Except as otherwise provided by law, each
2 public governmental body shall provide access to and, upon
3 request, furnish copies of public records subject to the
4 following:

5 (1) Fees for copying public records, except those
6 records restricted under section 32.091, shall not exceed
7 ten cents per page for a paper copy not larger than nine by
8 fourteen inches, with the hourly fee for duplicating time

9 not to exceed the average hourly rate of pay for clerical
10 staff of the public governmental body. Research time
11 required for fulfilling records requests may be charged at
12 the actual cost of research time. Based on the scope of the
13 request, the public governmental body shall produce the
14 copies using employees of the body that result in the lowest
15 amount of charges for search, research, and duplication
16 time. Prior to producing copies of the requested records,
17 the person requesting the records may request the public
18 governmental body to provide an estimate of the cost to the
19 person requesting the records. Documents may be furnished
20 without charge or at a reduced charge when the public
21 governmental body determines that waiver or reduction of the
22 fee is in the public interest because it is likely to
23 contribute significantly to public understanding of the
24 operations or activities of the public governmental body and
25 is not primarily in the commercial interest of the requester;

26 (2) Fees for providing access to public records
27 maintained on computer facilities, recording tapes or disks,
28 videotapes or films, pictures, maps, slides, graphics,
29 illustrations or similar audio or visual items or devices,
30 and for paper copies larger than nine by fourteen inches
31 shall include only the cost of copies, staff time, which
32 shall not exceed the average hourly rate of pay for staff of
33 the public governmental body required for making copies and
34 programming, if necessary, and the cost of the disk, tape,
35 or other medium used for the duplication. Fees for maps,
36 blueprints, or plats that require special expertise to
37 duplicate may include the actual rate of compensation for
38 the trained personnel required to duplicate such maps,
39 blueprints, or plats. If programming is required beyond the
40 customary and usual level to comply with a request for

41 records or information, the fees for compliance may include
42 the actual costs of such programming.

43 2. Payment of such copying fees may be requested prior
44 to the making of copies. **A request for public records to a**
45 **public governmental body shall be considered withdrawn if**
46 **the requester fails to remit all fees within thirty days of**
47 **a request for payment of the fees by the public governmental**
48 **body, prior to the making of copies. If the same or a**
49 **substantially similar request for public records is made**
50 **within six months after the expiration of the thirty day**
51 **period, then the public governmental body may request**
52 **payment of the same fees made for the original request that**
53 **has expired in addition to any allowable fees necessary to**
54 **fulfill the subsequent request.**

55 3. Except as otherwise provided by law, each public
56 governmental body of the state shall remit all moneys
57 received by or for it from fees charged pursuant to this
58 section to the director of revenue for deposit to the
59 general revenue fund of the state.

60 4. Except as otherwise provided by law, each public
61 governmental body of a political subdivision of the state
62 shall remit all moneys received by it or for it from fees
63 charged pursuant to sections 610.010 to 610.028 to the
64 appropriate fiscal officer of such political subdivision for
65 deposit to the governmental body's accounts.

66 5. The term "tax, license or fees" as used in Section
67 22 of Article X of the Constitution of the State of Missouri
68 does not include copying charges and related fees that do
69 not exceed the level necessary to pay or to continue to pay
70 the costs for providing a service, program, or activity
71 which was in existence on November 4, 1980, or which was

72 approved by a vote of the people subsequent to November 4,
73 1980.

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