

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1970**  
**96TH GENERAL ASSEMBLY**

6167L.02C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 610.010, 610.020, 610.021, 610.022, 610.023, 610.027, and 610.100, RSMo, and to enact in lieu thereof seven new sections relating to sunset dates for exceptions to the public records law.

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

Section A. Sections 610.010, 610.020, 610.021, 610.022, 610.023, 610.027, and  
2 610.100, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as  
3 sections 610.010, 610.020, 610.021, 610.022, 610.023, 610.027, and 610.100, to read as follows:  
610.010. As used in this chapter, unless the context otherwise indicates, the following  
2 terms mean:

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

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

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

9 (4) "Public governmental body", any legislative, administrative or governmental entity  
10 created by the constitution or statutes of this state, by order or ordinance of any political  
11 subdivision or district, judicial entities when operating in an administrative capacity, or by  
12 executive order, including:

13 (a) Any body, agency, board, bureau, council, commission, committee, board of regents  
14 or board of curators or any other governing body of any institution of higher education, including  
15 a community college, which is supported in whole or in part from state funds, including but not

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 limited to the administrative entity known as "The Curators of the University of Missouri" as  
17 established by section 172.020;

18 (b) Any advisory committee or commission appointed by the governor by executive  
19 order;

20 (c) Any department or division of the state, of any political subdivision of the state, of  
21 any county or of any municipal government, school district or special purpose district including  
22 but not limited to sewer districts, water districts, and other subdistricts of any political  
23 subdivision;

24 (d) Any other legislative or administrative governmental deliberative body under the  
25 direction of three or more elected or appointed members having rulemaking or quasi-judicial  
26 power;

27 (e) Any committee appointed by or at the direction of any of the entities and which is  
28 authorized to report to any of the above-named entities, any advisory committee appointed by  
29 or at the direction of any of the named entities for the specific purpose of recommending, directly  
30 to the public governmental body's governing board or its chief administrative officer, policy or  
31 policy revisions or expenditures of public funds including, but not limited to, entities created to  
32 advise bi-state taxing districts regarding the expenditure of public funds, or any policy advisory  
33 body, policy advisory committee or policy advisory group appointed by a president, chancellor  
34 or chief executive officer of any college or university system or individual institution at the  
35 direction of the governing body of such institution which is supported in whole or in part with  
36 state funds for the specific purpose of recommending directly to the public governmental body's  
37 governing board or the president, chancellor or chief executive officer policy, policy revisions  
38 or expenditures of public funds provided, however, the staff of the college or university  
39 president, chancellor or chief executive officer shall not constitute such a policy advisory  
40 committee. The custodian of the records of any public governmental body shall maintain a list  
41 of the policy advisory committees described in this subdivision;

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

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

49 b. Performs a public function as evidenced by a statutorily based capacity to confer or  
50 otherwise advance, through approval, recommendation or other means, the allocation or issuance  
51 of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the

52 contracting of leaseback agreements on structures whose annualized payments commit public  
53 tax revenues; or any association that directly accepts the appropriation of money from a public  
54 governmental body, but only to the extent that a meeting, record, or vote relates to such  
55 appropriation; and

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

57 (5) "Public meeting", any meeting of a public governmental body subject to sections  
58 610.010 to 610.030 at which any public business is discussed, decided, or public policy  
59 formulated, whether such meeting is conducted in person or by means of communication  
60 equipment, including, but not limited to, conference call, video conference, Internet chat, or  
61 Internet message board. The term "public meeting" shall not include an informal gathering of  
62 members of a public governmental body for ministerial or social purposes when there is no intent  
63 to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority  
64 of the members of a public governmental body, by electronic communication or any other means,  
65 conducted in lieu of holding a public meeting with the members of the public governmental body  
66 gathered at one location in order to conduct public business;

67 (6) "Public record", any record, whether written or electronically stored, retained by or  
68 of any public governmental body including any report, survey, memorandum, or other document  
69 or study prepared for the public governmental body by a consultant or other professional service  
70 paid for in whole or in part by public funds, including records created or maintained by private  
71 contractors under an agreement with a public governmental body or on behalf of a public  
72 governmental body; provided, however, that personally identifiable student records maintained  
73 by public educational institutions shall be open for inspection by the parents, guardian or other  
74 custodian of students under the age of eighteen years and by the parents, guardian or other  
75 custodian and the student if the student is over the age of eighteen years. The term "public  
76 record" shall not include any internal memorandum or letter received or prepared by or on behalf  
77 of a member of a public governmental body consisting of advice, opinions and recommendations  
78 in connection with the deliberative decision-making process of said body, unless such records  
79 are retained by the public governmental body or presented at a public meeting. Any document  
80 or study prepared for a public governmental body by a consultant or other professional service  
81 as described in this subdivision shall be retained by the public governmental body in the same  
82 manner as any other public record. **Any lease, sublease, rental agreement, or similar**  
83 **instrument entered into by any public governmental body, or any sublease of a publicly**  
84 **owned facility entered into between any party and the entity which shall have the rights**  
85 **to manage said facility, or any other agreement for the rental, construction, or renovation**  
86 **of said facility shall be a public record;**

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

610.020. 1. All public governmental bodies shall give notice of the time, date, and place  
2 of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public  
3 of the matters to be considered, and if the meeting will be conducted by telephone or other  
4 electronic means, the notice of the meeting shall identify the mode by which the meeting will be  
5 conducted and the designated location where the public may observe and attend the meeting. If  
6 a public body plans to meet by Internet chat, Internet message board, or other computer link, it  
7 shall post a notice of the meeting on its website in addition to its principal office and shall notify  
8 the public how to access that meeting. Reasonable notice shall include making available copies  
9 of the notice to any **member of the public or** representative of the news media who requests  
10 notice of meetings of a particular public governmental body concurrent with the notice being  
11 made available to the members of the particular governmental body and posting the notice on  
12 a bulletin board or other prominent place which is easily accessible to the public and clearly  
13 designated for that purpose at the principal office of the body holding the meeting, or if no such  
14 office exists, at the building in which the meeting is to be held.

15 2. Notice conforming with all of the requirements of subsection 1 of this section shall  
16 be given at least [twenty-four] **forty-eight** hours, **or twenty-four hours for the general**  
17 **assembly and any committee thereof**, exclusive of weekends and holidays when the facility  
18 is closed, prior to the commencement of any meeting of a governmental body unless for good  
19 cause such notice is impossible or impractical, in which case as much notice as is reasonably  
20 possible shall be given. Each meeting shall be held at a place reasonably accessible to the public  
21 and of sufficient size to accommodate the anticipated attendance by members of the public, and  
22 at a time reasonably convenient to the public, unless for good cause such a place or time is  
23 impossible or impractical. Every reasonable effort shall be made to grant special access to the  
24 meeting to handicapped or disabled individuals.

25 3. A public body shall allow for the recording by audiotape, videotape, or other  
26 electronic means of any open meeting. A public body may establish guidelines regarding the  
27 manner in which such recording is conducted so as to minimize disruption to the meeting. No  
28 audio recording of any meeting, record, or vote closed pursuant to the provisions of section  
29 610.021 shall be permitted without permission of the public body; any person who violates this  
30 provision shall be guilty of a class C misdemeanor.

31 4. When it is necessary **for such governmental bodies** to hold a meeting on less than  
32 [twenty-four] **forty-eight** hours' notice, **or twenty-four hours' notice for the general assembly**  
33 **and any committee thereof**, or at a place that is not reasonably accessible to the public, or at

34 a time that is not reasonably convenient to the public, the nature of the good cause justifying that  
35 departure from the normal requirements shall be stated in the minutes.

36 5. A formally constituted subunit of a parent governmental body may conduct a meeting  
37 without notice as required by this section during a lawful meeting of the parent governmental  
38 body, a recess in that meeting, or immediately following that meeting, if the meeting of the  
39 subunit is publicly announced at the parent meeting and the subject of the meeting reasonably  
40 coincides with the subjects discussed or acted upon by the parent governmental body.

41 6. If another provision of law requires a manner of giving specific notice of a meeting,  
42 hearing or an intent to take action by a governmental body, compliance with that section shall  
43 constitute compliance with the notice requirements of this section.

44 7. A journal or minutes of open and closed meetings shall be taken and retained by the  
45 public governmental body, including, but not limited to, a record of any votes taken at such  
46 meeting. The minutes shall include, **but not be limited to**, the date, time, place, members  
47 present, members absent, and a record of any votes taken. When a roll call vote is taken, the  
48 minutes shall attribute each "yea" and "nay" vote or abstinence if not voting to the name of the  
49 individual member of the public governmental body. **Minutes shall reflect a summary of the**  
50 **discussions occurring during any closed meeting, but nothing in this subsection shall**  
51 **require the disclosure of records or votes that are properly closed under section 610.021.**

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

4 (1) Legal actions, causes of action or litigation involving a public governmental body  
5 and any confidential or privileged communications between a public governmental body or its  
6 representatives and its attorneys. However, any minutes, vote or settlement agreement relating  
7 to legal actions, causes of action or litigation involving a public governmental body or any agent  
8 or entity representing its interests or acting on its behalf or with its authority, including any  
9 insurance company acting on behalf of a public government body as its insured, shall be [made  
10 public] **publicly disclosed in an open meeting** upon final disposition of the matter voted upon  
11 or upon the signing by the parties of the settlement agreement, unless, prior to final disposition,  
12 the settlement agreement is ordered closed by a court after a written finding that the adverse  
13 impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations  
14 of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public  
15 governmental body shall be disclosed; provided, however, in matters involving the exercise of  
16 the power of eminent domain, the vote shall be [announced or become public] **publicly**  
17 **disclosed in an open meeting** immediately following the action on the motion to authorize  
18 institution of such a legal action. Legal work product shall be considered a closed record. **When**

19 **public disclosure in an open meeting is prescribed, such disclosure shall be done orally or**  
20 **in writing, or both, and shall occur at the next scheduled open meeting of the public body,**  
21 **or at the resumption of a recessed or subsequent open meeting, whatever is applicable**  
22 **soonest to the time lines for disclosure as prescribed in this section. Where the public**  
23 **governmental body shall close meetings, records, and votes due to a "cause of action" as**  
24 **provided in this subdivision, the body shall have received evidence that a lawsuit has been**  
25 **filed, although not yet served, or shall have actual correspondence from a party stating that**  
26 **litigation shall be filed under certain circumstances stated in said correspondence;**

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

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

40 As used in this subdivision, the term "personal information" means information relating to the  
41 performance or merit of individual employees;

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

43 (5) Nonjudicial mental or physical health proceedings involving identifiable persons,  
44 including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or  
45 treatment;

46 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including  
47 records of individual test or examination scores; however, personally identifiable student records  
48 maintained by public educational institutions shall be open for inspection by the parents,  
49 guardian or other custodian of students under the age of eighteen years and by the parents,  
50 guardian or other custodian and the student if the student is over the age of eighteen years;

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

53 (8) Welfare cases of identifiable individuals;

- 54 (9) Preparation, including any discussions or work product, on behalf of a public  
55 governmental body or its representatives for negotiations with employee groups;
- 56 (10) Software codes for electronic data processing and documentation thereof;
- 57 (11) Specifications for competitive bidding, until either the specifications are officially  
58 approved by the public governmental body or the specifications are published for bid;
- 59 (12) Sealed bids and related documents, until the bids are opened; and sealed proposals  
60 and related documents or any documents related to a negotiated contract until a contract is  
61 executed, or all proposals are rejected;
- 62 (13) Individually identifiable personnel records, performance ratings or records  
63 pertaining to employees or applicants for employment, except that this exemption shall not apply  
64 to the names, positions, salaries and lengths of service of officers and employees of public  
65 agencies once they are employed as such, and the names of private sources donating or  
66 contributing money to the salary of a chancellor or president at all public colleges and  
67 universities in the state of Missouri and the amount of money contributed by the source;
- 68 (14) Records which are protected from disclosure by law;
- 69 (15) Meetings and public records relating to scientific and technological innovations in  
70 which the owner has a proprietary interest;
- 71 (16) **Records, data, and reports that are in possession of a business entity formed**  
72 **under section 537.620, and used by such business entity in the calculation of rates or**  
73 **assessments, or in adjusting claims;**
- 74 (17) Records relating to municipal hotlines established for the reporting of abuse and  
75 wrongdoing;
- 76 [(17)] (18) Confidential or privileged communications between a public governmental  
77 body and its auditor, including all auditor work product; however, all final audit reports issued  
78 by the auditor are to be considered open records pursuant to this chapter;
- 79 [(18)] (19) Operational guidelines and policies developed, adopted, or maintained by any  
80 public agency responsible for law enforcement, public safety, first response, or public health for  
81 use in responding to or preventing any critical incident which is or appears to be terrorist in  
82 nature and which has the potential to endanger individual or public safety or health. Nothing in  
83 this exception shall be deemed to close information regarding expenditures, purchases, or  
84 contracts made by an agency in implementing these guidelines or policies. When seeking to  
85 close information pursuant to this exception, the agency shall affirmatively state in writing that  
86 disclosure would impair its ability to protect the safety or health of persons, and shall in the same  
87 writing state that the public interest in nondisclosure outweighs the public interest in disclosure  
88 of the records. This exception shall sunset on December 31, [2012] **2016**;

89            [(19)] **(20)** Existing or proposed security systems and structural plans of real property  
90 owned or leased by a public governmental body, and information that is voluntarily submitted  
91 by a nonpublic entity owning or operating an infrastructure to any public governmental body for  
92 use by that body to devise plans for protection of that infrastructure, the public disclosure of  
93 which would threaten public safety:

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

96            (b) When seeking to close information pursuant to this exception, the public  
97 governmental body shall affirmatively state in writing that disclosure would impair the public  
98 governmental body's ability to protect the security or safety of persons or real property, and shall  
99 in the same writing state that the public interest in nondisclosure outweighs the public interest  
100 in disclosure of the records;

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

105            (d) This exception shall sunset on December 31, [2012] **2016**;

106            [(20)] **(21)** Records that identify the configuration of components or the operation of a  
107 computer, computer system, computer network, or telecommunications network, and would  
108 allow unauthorized access to or unlawful disruption of a computer, computer system, computer  
109 network, or telecommunications network of a public governmental body. This exception shall  
110 not be used to limit or deny access to otherwise public records in a file, document, data file or  
111 database containing public records. Records related to the procurement of or expenditures  
112 relating to such computer, computer system, computer network, or telecommunications network,  
113 including the amount of moneys paid by, or on behalf of, a public governmental body for such  
114 computer, computer system, computer network, or telecommunications network shall be open;

115            [(21)] **(22)** Credit card numbers, personal identification numbers, digital certificates,  
116 physical and virtual keys, access codes or authorization codes that are used to protect the security  
117 of electronic transactions between a public governmental body and a person or entity doing  
118 business with a public governmental body. Nothing in this section shall be deemed to close the  
119 record of a person or entity using a credit card held in the name of a public governmental body  
120 or any record of a transaction made by a person using a credit card or other method of payment  
121 for which reimbursement is made by a public governmental body; and

122            [(22)] **(23)** Records submitted by an individual, corporation, or other business entity to  
123 a public institution of higher education in connection with a proposal to license intellectual

124 property or perform sponsored research and which contains sales projections or other business  
125 plan information the disclosure of which may endanger the competitiveness of a business.

610.022. 1. Except as set forth in subsection 2 of this section, no meeting or vote may  
2 be closed without an affirmative public vote of the majority of a quorum of the public  
3 governmental body. The vote of each member of the public governmental body on the question  
4 of closing a public meeting or vote and the specific reason for closing that public meeting or vote  
5 by reference to a specific section of this chapter shall be announced publicly at an open meeting  
6 of the governmental body and entered into the minutes.

7 2. A public governmental body proposing to hold a closed meeting or vote shall give  
8 notice of the time, date and place of such closed meeting or vote and the reason for holding it by  
9 reference to the specific exception allowed pursuant to the provisions of section 610.021. Such  
10 notice shall comply with the procedures set forth in section 610.020 for notice of a public  
11 meeting.

12 3. Any meeting or vote closed pursuant to section 610.021 shall be closed only to the  
13 extent necessary for the specific reason announced to justify the closed meeting or vote. Public  
14 governmental bodies shall not discuss any business in a closed meeting, record or vote which  
15 does not directly relate to the specific reason announced to justify the closed meeting or vote.  
16 **Only members of a public governmental body, their attorney and staff assistants, and any**  
17 **other person necessary to provide information needed by or requested by the public**  
18 **governmental body in regard to the matter being discussed shall be permitted in a closed**  
19 **meeting.** Public governmental bodies holding a closed meeting shall close only an existing  
20 portion of the meeting facility necessary to house the members of the public governmental body  
21 in the closed session, allowing members of the public to remain to attend any subsequent open  
22 session held by the public governmental body following the closed session.

23 4. Nothing in sections 610.010 to 610.028 shall be construed as to require a public  
24 governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

25 5. Public records shall be presumed to be open unless otherwise exempt pursuant to the  
26 provisions of this chapter.

27 6. In the event any member of a public governmental body makes a motion to close a  
28 meeting, or a record, or a vote from the public and any other member believes that such motion,  
29 if passed, would cause a meeting, record or vote to be closed from the public in violation of any  
30 provision in this chapter, such latter member shall state his or her objection to the motion at or  
31 before the time the vote is taken on the motion. The public governmental body shall enter in the  
32 minutes of the public governmental body any objection made pursuant to this subsection. Any  
33 member making such an objection shall be allowed to fully participate in any meeting, record  
34 or vote that is closed from the public over the member's objection. In the event the objecting

35 member also voted in opposition to the motion to close the meeting, record or vote at issue, the  
36 objection and vote of the member as entered in the minutes shall be an absolute defense to any  
37 claim filed against the objecting member pursuant to section 610.027.

610.023. 1. Each public governmental body is to appoint a custodian who is to be  
2 responsible for the maintenance of that body's records. The identity and location of a public  
3 governmental body's custodian is to be made available upon request. **Each custodian of a  
4 public governmental body is encouraged to create and maintain an index of all public  
5 records maintained by its public governmental body.**

6 2. Each public governmental body shall make available for inspection and copying by  
7 the public of that body's public records. No person shall remove original public records from the  
8 office of a public governmental body or its custodian without written permission of the  
9 designated custodian. No public governmental body shall, after August 28, 1998, grant to any  
10 person or entity, whether by contract, license or otherwise, the exclusive right to access and  
11 disseminate any public record unless the granting of such right is necessary to facilitate  
12 coordination with, or uniformity among, industry regulators having similar authority.

13 3. Each request for access to a public record shall be acted upon as soon as possible, but  
14 in no event later than the end of the third business day following the date the request is received  
15 by the custodian of records of a public governmental body. If records are requested in a certain  
16 format, the public body shall provide the records in the requested format, if such format is  
17 available. If access to the public record is not granted immediately, the custodian shall give a  
18 detailed explanation of the cause for further delay and the place and earliest time and date that  
19 the record will be available for inspection. This period for document production may exceed  
20 three days for reasonable cause.

21 4. If a request for access is denied, the custodian shall provide, upon request, a written  
22 statement of the grounds for such denial. Such statement shall cite the specific provision of law  
23 under which access is denied and shall be furnished to the requester no later than the end of the  
24 third business day following the date that the request for the statement is received.

610.027. 1. The remedies provided by this section against public governmental bodies  
2 shall be in addition to those provided by any other provision of law. Any aggrieved person,  
3 taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek  
4 judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce  
5 sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the  
6 public governmental body has its principal place of business. Upon service of a summons,  
7 petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the  
8 provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject  
9 matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the

10 public record sought to be inspected and examined, notwithstanding the applicability of an  
11 exemption pursuant to section 610.021 or the assertion that the requested record is not a public  
12 record until the court directs otherwise.

13         2. [Once a party seeking judicial enforcement of sections 610.010 to 610.026  
14 demonstrates to the court that the body in question is subject to the requirements of sections  
15 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall  
16 be on the body and its members to demonstrate compliance with the requirements of sections  
17 610.010 to 610.026.] **In any legal proceeding, there shall be a presumption that a meeting,  
18 record, or vote is open to the public. The burden shall be on a public governmental body  
19 or a member of a public governmental body to prove that such meeting, record, or vote  
20 may be closed to the public.**

21         3. Upon a finding by a preponderance of the evidence that a public governmental body  
22 or a member of a public governmental body has knowingly violated sections 610.010 to 610.026,  
23 the public governmental body or the member shall be subject to a civil penalty in an amount up  
24 to one thousand dollars. If the court finds that there is a knowing violation of sections 610.010  
25 to 610.026, the court may order the payment by such body or member of all costs and reasonable  
26 attorney fees to any party successfully establishing a violation. [The court shall determine the  
27 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the  
28 offense, and whether the public governmental body or member of a public governmental body  
29 has violated sections 610.010 to 610.026 previously.]

30         4. Upon a finding by a preponderance of the evidence that a public governmental body  
31 or a member of a public governmental body has purposely violated sections 610.010 to 610.026,  
32 the public governmental body or the member shall be subject to a civil penalty in an amount up  
33 to five thousand dollars. If the court finds that there was a purposeful violation of sections  
34 610.010 to 610.026, then the court shall order the payment by such body or member of all costs  
35 and reasonable attorney fees to any party successfully establishing such a violation. The court  
36 shall determine the amount of the penalty by taking into account the size of the jurisdiction, the  
37 seriousness of the offense, and whether the public governmental body or member of a public  
38 governmental body has violated sections 610.010 to 610.026 previously.

39         5. Upon a finding by a preponderance of the evidence that a public governmental body  
40 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in  
41 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case  
42 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs  
43 the public interest in sustaining the validity of the action taken in the [closed] meeting, record  
44 or vote. Suit for enforcement shall be brought within one year from which the violation is  
45 ascertainable and in no event shall it be brought later than two years after the violation. This

46 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence  
47 of indebtedness of a public governmental body if a public hearing, election or public sale has  
48 been held regarding the bonds or evidence of indebtedness.

49 6. A public governmental body which is in doubt about the legality of closing a particular  
50 meeting, record or vote may bring suit at the expense of that public governmental body in the  
51 circuit court of the county of the public governmental body's principal place of business to  
52 ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an  
53 attorney for the governmental body.

610.100. 1. As used in sections 610.100 to 610.150, the following words and phrases  
2 shall mean:

3 (1) "Arrest", an actual restraint of the person of the defendant, or by his or her  
4 submission to the custody of the officer, under authority of a warrant or otherwise for a criminal  
5 violation which results in the issuance of a summons or the person being booked;

6 (2) "Arrest report", a record of a law enforcement agency of an arrest and of any  
7 detention or confinement incident thereto together with the charge therefor;

8 (3) "Inactive", an investigation in which no further action will be taken by a law  
9 enforcement agency or officer for any of the following reasons:

10 (a) A decision by the law enforcement agency not to pursue the case;

11 (b) Expiration of the time to file criminal charges pursuant to the applicable statute of  
12 limitations, or ten years after the commission of the offense; whichever date earliest occurs;

13 (c) Finality of the convictions of all persons convicted on the basis of the information  
14 contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such  
15 persons;

16 (4) "Incident report", a record of a law enforcement agency consisting of the date, time,  
17 specific location, name of the victim and immediate facts and circumstances surrounding the  
18 initial report of a crime or incident, including any logs of reported crimes, accidents and  
19 complaints maintained by that agency;

20 (5) "Investigative report", a record, other than an arrest or incident report, prepared by  
21 personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in  
22 response to an incident report or in response to evidence developed by law enforcement officers  
23 in the course of their duties.

24 2. Each law enforcement agency of this state, of any county, and of any municipality  
25 shall maintain records of all incidents reported to the agency, investigations and arrests made by  
26 such law enforcement agency. All incident reports and arrest reports shall be open records.  
27 Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6  
28 of this section or section 320.083, investigative reports of all law enforcement agencies are

29 closed records until the investigation becomes inactive. If any person is arrested and not charged  
30 with an offense against the law within thirty days of the person's arrest, the arrest report shall  
31 thereafter be a closed record except that the disposition portion of the record may be accessed  
32 and except as provided in section 610.120.

33         3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a  
34 record or document of a law enforcement officer or agency, other than an arrest report, which  
35 would otherwise be open, contains information that is reasonably likely to pose a clear and  
36 present danger to the safety of any victim, witness, undercover officer, or other person; or  
37 jeopardize a criminal investigation, including records which would disclose the identity of a  
38 source wishing to remain confidential or a suspect not in custody; or which would disclose  
39 techniques, procedures or guidelines for law enforcement investigations or prosecutions, that  
40 portion of the record shall be closed and shall be redacted from any record made available  
41 pursuant to this chapter.

42         4. Any person, including a family member of such person within the first degree of  
43 consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a  
44 person involved in any incident or whose property is involved in an incident, may obtain any  
45 records closed pursuant to this section or section 610.150 for purposes of investigation of any  
46 civil claim or defense, as provided by this subsection. Any individual, his or her family member  
47 within the first degree of consanguinity if such individual is deceased or incompetent, his or her  
48 attorney or insurer, involved in an incident or whose property is involved in an incident, upon  
49 written request, may obtain a complete unaltered and unedited incident report concerning the  
50 incident, and may obtain access to other records closed by a law enforcement agency pursuant  
51 to this section. Within thirty days of such request, the agency shall provide the requested  
52 material or file a motion pursuant to this subsection with the circuit court having jurisdiction  
53 over the law enforcement agency stating that the safety of the victim, witness or other individual  
54 cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If,  
55 based on such motion, the court finds for the law enforcement agency, the court shall either order  
56 the record closed or order such portion of the record that should be closed to be redacted from  
57 any record made available pursuant to this subsection.

58         5. Any person may bring an action pursuant to this section in the circuit court having  
59 jurisdiction to authorize disclosure of the information contained in an investigative report of any  
60 law enforcement agency, which would otherwise be closed pursuant to this section. The court  
61 may order that all or part of the information contained in an investigative report be released to  
62 the person bringing the action. In making the determination as to whether information contained  
63 in an investigative report shall be disclosed, the court shall consider whether the benefit to the  
64 person bringing the action or to the public outweighs any harm to the public, to the law

65 enforcement agency or any of its officers, or to any person identified in the investigative report  
66 in regard to the need for law enforcement agencies to effectively investigate and prosecute  
67 criminal activity. The investigative report in question may be examined by the court in camera.  
68 The court [may] **shall** find that the party seeking disclosure of the investigative report shall [bear  
69 the] **have its** reasonable and necessary costs and attorneys' fees [of both parties, unless the court  
70 finds that the] **paid if it finds that the** decision of the law enforcement agency not to open the  
71 investigative report was substantially unjustified under all relevant circumstances[, and in that  
72 event, the court may assess such reasonable and necessary costs and attorneys' fees to the law  
73 enforcement agency].

74           6. Any person may apply pursuant to this subsection to the circuit court having  
75 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest  
76 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance  
77 of the evidence that the law enforcement officer or agency has knowingly violated this section,  
78 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.  
79 If the court finds that there is a knowing violation of this section, the court may order payment  
80 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the  
81 court finds by a preponderance of the evidence that the law enforcement officer or agency has  
82 purposely violated this section, the officer or agency shall be subject to a civil penalty in an  
83 amount up to five thousand dollars and the court shall order payment by such officer or agency  
84 of all costs and attorney fees, as provided in section 610.027. The court shall determine the  
85 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the  
86 offense, and whether the law enforcement officer or agency has violated this section previously.

87           7. The victim of an offense as provided in chapter 566 may request that his or her  
88 identity be kept confidential until a charge relating to such incident is filed.

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