

FIRST REGULAR SESSION

HOUSE BILL NO. 492

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROORDA (Sponsor) AND JONES (50) (Co-sponsor).

0258L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 610.010, 610.021, and 610.100, RSMo, and to enact in lieu thereof four new sections relating to closed records.

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

Section A. Sections 610.010, 610.021, and 610.100, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 610.010, 610.021, 610.055, and 610.100, to read as follows: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) **"Police shooting", any incident in which an individual is shot by a law enforcement officer regardless of whether the law enforcement officer was on duty or off duty at the time of the shooting;**

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

21 (b) Any advisory committee or commission appointed by the governor by executive
22 order;

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

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

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

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

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

52 b. Performs a public function as evidenced by a statutorily based capacity to confer or
53 otherwise advance, through approval, recommendation or other means, the allocation or issuance
54 of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the
55 contracting of leaseback agreements on structures whose annualized payments commit public
56 tax revenues; or any association that directly accepts the appropriation of money from a public
57 governmental body, but only to the extent that a meeting, record, or vote relates to such
58 appropriation; and

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

60 [(5)] (6) "Public meeting", any meeting of a public governmental body subject to
61 sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy
62 formulated, whether such meeting is conducted in person or by means of communication
63 equipment, including, but not limited to, conference call, video conference, internet chat, or
64 internet message board. The term "public meeting" shall not include an informal gathering of
65 members of a public governmental body for ministerial or social purposes when there is no intent
66 to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority
67 of the members of a public governmental body, by electronic communication or any other means,
68 conducted in lieu of holding a public meeting with the members of the public governmental body
69 gathered at one location in order to conduct public business;

70 [(6)] (7) "Public record", any record, whether written or electronically stored, retained
71 by or of any public governmental body including any report, survey, memorandum, or other
72 document or study prepared for the public governmental body by a consultant or other
73 professional service paid for in whole or in part by public funds, including records created or
74 maintained by private contractors under an agreement with a public governmental body or on
75 behalf of a public governmental body; provided, however, that personally identifiable student
76 records maintained by public educational institutions shall be open for inspection by the parents,
77 guardian or other custodian of students under the age of eighteen years and by the parents,
78 guardian or other custodian and the student if the student is over the age of eighteen years. The
79 term "public record" shall not include any internal memorandum or letter received or prepared
80 by or on behalf of a member of a public governmental body consisting of advice, opinions and
81 recommendations in connection with the deliberative decision-making process of said body,
82 unless such records are retained by the public governmental body or presented at a public
83 meeting. Any document or study prepared for a public governmental body by a consultant or
84 other professional service as described in this subdivision shall be retained by the public
85 governmental body in the same manner as any other public record;

86 [(7)] (8) "Public vote", any vote, whether conducted in person, by telephone, or by any
87 other electronic means, cast at any public meeting of any public governmental body.

610.021. 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:

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

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

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

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

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

- 37 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including
38 records of individual test or examination scores; however, personally identifiable student records
39 maintained by public educational institutions shall be open for inspection by the parents,
40 guardian or other custodian of students under the age of eighteen years and by the parents,
41 guardian or other custodian and the student if the student is over the age of eighteen years;
- 42 (7) Testing and examination materials, before the test or examination is given or, if it
43 is to be given again, before so given again;
- 44 (8) Welfare cases of identifiable individuals;
- 45 (9) Preparation, including any discussions or work product, on behalf of a public
46 governmental body or its representatives for negotiations with employee groups;
- 47 (10) Software codes for electronic data processing and documentation thereof;
- 48 (11) Specifications for competitive bidding, until either the specifications are officially
49 approved by the public governmental body or the specifications are published for bid;
- 50 (12) Sealed bids and related documents, until the bids are opened; and sealed proposals
51 and related documents or any documents related to a negotiated contract until a contract is
52 executed, or all proposals are rejected;
- 53 (13) Individually identifiable personnel records, performance ratings or records
54 pertaining to employees or applicants for employment, except that this exemption shall not apply
55 to the names, positions, salaries and lengths of service of officers and employees of public
56 agencies once they are employed as such, and the names of private sources donating or
57 contributing money to the salary of a chancellor or president at all public colleges and
58 universities in the state of Missouri and the amount of money contributed by the source;
- 59 (14) Records which are protected from disclosure by law;
- 60 (15) Meetings and public records relating to scientific and technological innovations in
61 which the owner has a proprietary interest;
- 62 (16) Records relating to municipal hotlines established for the reporting of abuse and
63 wrongdoing;
- 64 (17) Confidential or privileged communications between a public governmental body
65 and its auditor, including all auditor work product; however, all final audit reports issued by the
66 auditor are to be considered open records pursuant to this chapter;
- 67 (18) Operational guidelines and policies developed, adopted, or maintained by any public
68 agency responsible for law enforcement, public safety, first response, or public health for use in
69 responding to or preventing any critical incident which is or appears to be terrorist in nature and
70 which has the potential to endanger individual or public safety or health. Nothing in this
71 exception shall be deemed to close information regarding expenditures, purchases, or contracts
72 made by an agency in implementing these guidelines or policies. When seeking to close

73 information pursuant to this exception, the agency shall affirmatively state in writing that
74 disclosure would impair its ability to protect the safety or health of persons, and shall in the same
75 writing state that the public interest in nondisclosure outweighs the public interest in disclosure
76 of the records. This exception shall sunset on December 31, 2012;

77 (19) Existing or proposed security systems and structural plans of real property owned
78 or leased by a public governmental body, and information that is voluntarily submitted by a
79 nonpublic entity owning or operating an infrastructure to any public governmental body for use
80 by that body to devise plans for protection of that infrastructure, the public disclosure of which
81 would threaten public safety:

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

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

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

93 (d) This exception shall sunset on December 31, 2012;

94 (20) Records that identify the configuration of components or the operation of a
95 computer, computer system, computer network, or telecommunications network, and would
96 allow unauthorized access to or unlawful disruption of a computer, computer system, computer
97 network, or telecommunications network of a public governmental body. This exception shall
98 not be used to limit or deny access to otherwise public records in a file, document, data file or
99 database containing public records. Records related to the procurement of or expenditures
100 relating to such computer, computer system, computer network, or telecommunications network,
101 including the amount of moneys paid by, or on behalf of, a public governmental body for such
102 computer, computer system, computer network, or telecommunications network shall be open;

103 (21) Credit card numbers, personal identification numbers, digital certificates, physical
104 and virtual keys, access codes or authorization codes that are used to protect the security of
105 electronic transactions between a public governmental body and a person or entity doing business
106 with a public governmental body. Nothing in this section shall be deemed to close the record
107 of a person or entity using a credit card held in the name of a public governmental body or any

108 record of a transaction made by a person using a credit card or other method of payment for
109 which reimbursement is made by a public governmental body; [and]

110 (22) Records submitted by an individual, corporation, or other business entity to a public
111 institution of higher education in connection with a proposal to license intellectual property or
112 perform sponsored research and which contains sales projections or other business plan
113 information the disclosure of which may endanger the competitiveness of a business;

114 (23) **Records and documents of and pertaining to internal investigations by law
115 enforcement agencies into matters of fitness and conduct of law enforcement officers
116 employed by such investigating law enforcement agencies used solely in connection with
117 matters relating to the employment of such law enforcement officers, and records and
118 documents pertaining to any determinations or actions relating to an officer's employment
119 status taken in connection with or following such investigations. Notwithstanding whether
120 the subject matter of or allegations involved in the internal investigation involve criminal
121 conduct on the part of a law enforcement officer, such records shall be considered records
122 authorized to be closed under this section, including subdivisions (3) and (13) of this
123 section, and not incident reports, investigative reports or other documents covered under
124 section 610.100, unless such records and documents are used or shared by the agency in
125 a criminal investigation by the law enforcement agency involving the officer; and**

126 (24) Any records and documents pertaining to police shootings as defined in section
127 610.010 if they contain the name of any officer who did the shooting, unless the officer who
128 did the shooting has been charged with a crime as a result of the shooting, in which case
129 such records or documents shall not be closed.

**610.055. No law enforcement agency shall disclose the name of any officer who was
2 the shooter or one of the shooters involved in a police shooting as defined in section 610.010
3 unless such officer has been charged with a crime as a result of the shooting.**

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 **(6) Investigative reports and incident reports, or other law enforcement records**
25 **covered under this section, shall not include any records or documents pertaining to**
26 **internal investigations by law enforcement agencies into matters of fitness and conduct of**
27 **law enforcement officers employed by such investigating law enforcement agencies and**
28 **used solely in connection with such officers' employment, as described in subdivision (23)**
29 **of section 610.021.**

30 2. Each law enforcement agency of this state, of any county, and of any municipality
31 shall maintain records of all incidents reported to the agency, investigations and arrests made by
32 such law enforcement agency. All incident reports and arrest reports shall be open records
33 **unless those incident reports or arrest reports involve a police shooting as defined in**
34 **section 610.010 in which case such reports shall be closed if they contain the name of any**
35 **law enforcement officer who was a shooter or one of the shooters in the police shooting,**
36 **except that the incident reports or arrest reports shall be open if the name of the shooting**
37 **officer is redacted or the shooting officer has been charged with a crime as a result of the**
38 **shooting.** Notwithstanding any other provision of law other than the provisions of subsections
39 4, 5 and 6 of this section or section 320.083, investigative reports of all law enforcement
40 agencies are closed records until the investigation becomes inactive. If any person is arrested
41 and not charged with an offense against the law within thirty days of the person's arrest, the arrest
42 report shall thereafter be a closed record except that the disposition portion of the record may be
43 accessed and except as provided in section 610.120.

44 3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a
45 record or document of a law enforcement officer or agency, other than an arrest report, which
46 would otherwise be open, contains information that is reasonably likely to pose a clear and

47 present danger to the safety of any victim, witness, undercover officer, or other person; or
48 jeopardize a criminal investigation, including records which would disclose the identity of a
49 source wishing to remain confidential or a suspect not in custody; or which would disclose
50 techniques, procedures or guidelines for law enforcement investigations or prosecutions, that
51 portion of the record shall be closed and shall be redacted from any record made available
52 pursuant to this chapter.

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

69 5. Any person may bring an action pursuant to this section in the circuit court having
70 jurisdiction to authorize disclosure of the information contained in an investigative report of any
71 law enforcement agency, which would otherwise be closed pursuant to this section. The court
72 may order that all or part of the information contained in an investigative report be released to
73 the person bringing the action. In making the determination as to whether information contained
74 in an investigative report shall be disclosed, the court shall consider whether the benefit to the
75 person bringing the action or to the public outweighs any harm to the public, to the law
76 enforcement agency or any of its officers, or to any person identified in the investigative report
77 in regard to the need for law enforcement agencies to effectively investigate and prosecute
78 criminal activity. The investigative report in question may be examined by the court in camera.
79 The court may find that the party seeking disclosure of the investigative report shall bear the
80 reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the
81 decision of the law enforcement agency not to open the investigative report was substantially

82 unjustified under all relevant circumstances, and in that event, the court may assess such
83 reasonable and necessary costs and attorneys' fees to the law enforcement agency.

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

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

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