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22ND JUDICIAL CIRCUIT
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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

ARCH CITY DEFENDERS, and)
MAUREEN HANLON)
)
Plaintiffs,) Cause No. 2122-CC09264
)
v.) Division 18
)
THE CITY OF ST. LOUIS, MISSOURI)
DIVISION OF CORRECTIONS)
)
Defendant.)

ORDER AND JUDGMENT

The Court has before it Plaintiffs Arch City Defenders ("Arch City") and Maureen Hanlon ("Hanlon") (collectively "Plaintiffs")'s Motion for Summary Judgment. The Court has reviewed the submissions of the parties, the relevant authorities, and the arguments of counsel, and now rules as follows.

On September 15, 2021, Plaintiffs initiated this action alleging that Defendant the City of St. Louis, Missouri Division of Corrections ("Defendant") violated the Sunshine Law. In their Petition, Plaintiffs seek the following: (a) a judgment declaring that the use of force reports related to the use of a chemical agent at the City Justice Center are open records under the Missouri Sunshine Law and not subject to an exception that would require, or permit, Defendant to withhold the records requested; (b) an injunction pursuant to Section 610.030 RSMo requiring Defendant to immediatly produce the records requested to Plaintiffs, without charging fees; (c) a finding that Defendant purposefully and knowingly violated the Sunshine Law; (d) the imposition of a civil penalty against Defendants pursuant to the Sunshine Law; and (e) an award of their attorney fees

and costs of litigation as authorized by the Sunshine Law. On April 19, 2023, Plaintiffs filed the instant Motion for Summary Judgment.

When ruling on a motion for summary judgment, the Court must determine whether the moving party has the "undisputed right to judgment as a matter of law," on the basis of the facts about which there is no genuine dispute. ITT Commercial Fin. Corp., 854 S.W.2d 371, 380 (Mo. banc 1993). The party moving for summary judgment bears the burden of establishing a right to judgment as a matter of law. Id. at 378.

"A movant's right to judgment as a matter of law differs significantly depending upon whether that movant is a claimant or a defending party." Id. at 381. "A 'claimant' must establish that there is no genuine dispute as to those material facts upon which the 'claimant' would have had the burden of persuasion at trial." Id.

Once the moving party has met the burden imposed by Rule 74.04(c) by establishing the right to judgment, the non-movant's only recourse is to show by affidavit, depositions, answers to interrogatories, or admissions on file, that one or more of the material facts shown by movant is in fact genuinely disputed. Id. A "genuine issue" exists where the record contains competent materials that evidence two plausible, but contradictory, accounts of the essential facts. Id. at 382. A "genuine issue" is a dispute that is real, not merely argumentative, imaginary, or frivolous. Id. If the non-movant cannot contradict the showing of the movant, judgment is properly entered against the non-movant because the movant has already established a right to judgment as a matter of law. Id.

STATEMENT OF UNCONTROVERTED FACTS

1. On April 30, 2021, Plaintiff Maureen Hanlon, on behalf of Plaintiff Arch City Defenders, made a Sunshine Law request, via the City of St. Louis' Sunshine Request portal, for "access

to all use of force reports completed by correctional staff from October 2020 through present day that relate to the use of a chemical agent at the City Justice Center."

2. Plaintiffs' request specified that: "Definitions of 'chemical agents' and 'force' can be found in Department of Public Safety / Division of Corrections Policy No. 3.1.21, Section V. This request encompasses all use of force reports and comments or review from the chain of command as laid out in Department of Public Safety / Division of Corrections Policy No. 3.1.21, Section VIII(C)(2)-(8). This request includes all other records, documents, and other material included as part of the use of force report."

3. On April 30, 2021, the St. Louis City Records Center sent a general confirmation that Plaintiffs' request was received and was being processed. That confirmation, although sent on April 30, 2021, also stated that the request was received May 3, 2021.

4. Joseph Sims, Sunshine Law Coordinator for the City of St. Louis, received the request and sent a response on May 6, 2021. Sims stated via email that Plaintiffs' "request ha[d] been sent to the Custodian of Records for the Corrections Division to be fulfilled" but "[s]taff availability and access to files/databases to locate responsive records [wa]s limited" due to the city's "efforts to help prevent the spread of the COVID-19 virus[.]"

5. Sims went on to state: "the earliest time and date records, if any, will be available . . . is the close of business on June 3, 2021."

6. On June 3, 2021, Sims again informed Plaintiffs via email that "[their] request ha[d] been sent to the Custodian of Records for the Corrections Division to be fulfilled." The message again noted "[s]taff availability and access to files/databases to locate responsive records [wa]s limited" due to the city's "efforts to help prevent the spread of the COVID-19 virus[.]"

7. Sims provided: "the earliest time and date records, if any, will be available . . . is the close of business on July 9, 2021."

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8. On July 9, 2021, Sims again informed Plaintiffs via email that "[their] request ha[d] been sent to the Custodian of Records for the Corrections Division to be fulfilled." The message again noted that "[s]taff availability and access to files/databases to locate responsive records is limited" due to COVID-19.

9. Sims provided: "the earliest time and date records, if any, will be available . . . is the close of business on August 10, 2021."

10. On August 10, 2021, Sims sent Plaintiffs an email stating "the Custodian of Records has advised that additional time is necessary to locate and identify any records responsive to your request, and per the Custodian of Records a review of any such records will be conducted to determine whether those records contain any otherwise legally protected information. Due to the foregoing, additional time will be necessary to respond to your request."

11. In the August 10, 2021 email, Sims provided: "the earliest time and date records, if any, will be available . . . is the close of business on September 13, 2021."

12. On September 13, 2021, Sims sent another email to Plaintiffs stating "the Custodian of Records has again advised that additional time is necessary to locate and identify any records responsive to your request, and per the Custodian of Records a review of any such records will be conducted to determine whether those records contain any otherwise legally protected information. Due to the foregoing, additional time will be necessary to respond to your request."

13. In the September 13, 2021 email, Sims provided: "the earliest time and date records, if any, will be available . . . is the close of business on October 29, 2021."

14. Each email from Sims also stated that "the costs incurred to research, retrieve, copy, and furnish responsive records will be charged, pursuant to Chapter 610.026, RSMo. The cost to

fulfill your request will be provided to you at the conclusion of all research for responsive records."

15. Plaintiffs filed this lawsuit on September 15, 2021.
16. Plaintiffs never received a substantive response granting or denying the records request or acting upon it in any way until after this lawsuit was filed.
17. Plaintiffs' records request was not denied with an explanation of the statutory basis for the denial before the lawsuit was filed.
18. Plaintiffs received requested records only after this lawsuit was filed.
19. At the time this lawsuit was filed, the records request had been pending for 139 days.
20. The Division of Corrections knew that the Sunshine Law requires public governmental bodies to timely respond to requests for records and to disclose open records.
21. The Division of Corrections knew that at least some of the records requested by Plaintiffs were open public records subject to timely disclosure under the Sunshine Law.
22. Plaintiffs submitted their request through the portal created by GovQA, which is "the Sunshine Law request management system for the City of St. Louis."
23. The City "encourage[s] the public to submit requests through the system."
24. The references to COVID-19 in Sims' emails to Plaintiffs were not based on any communications from the Division of Corrections records custodian.
25. In his May, June, and July emails to Plaintiffs, Sims supplied by himself the earliest dates on which records might be made available, rather than communicating information that was based on a cause for delay.
26. In his August email to Plaintiffs, Sims communicated a date he had set himself. The custodian had conveyed that the Division needed until September 3, but Sims added ten days.

27. Before sending his August email to Plaintiffs saying more time was needed, Sims did not ask why more time was needed to complete the request, and the custodian did not tell him.

28. The date communicated to Plaintiffs in the September 13, 2021, email also was supplied by Sims without any input from the Division of Corrections records custodian.

29. Defendant sent an internal, written communication on September 15, 2021, acknowledging that the City of St. Louis was being sued by Plaintiffs for an alleged violation of the Sunshine Law in connection with the subject request, stating: "Hello, Mr. Jones. FYI, the City of St. Louis is being sued because the requester for this request alleges that the City violated the Sunshine Law."

30. On September 24, 2021, Defendant provided approximately two thousand seven hundred pages of responsive documents to Plaintiffs.

ANALYSIS

Plaintiffs argue that Defendant violated the Sunshine Law by failing to act on Plaintiffs' request for open public records until Plaintiffs filed the instant cause of action, failing to provide a detailed explanation for the delay, and failing to provide an accurate date when access to the records would be provided. Plaintiffs request that the Court impose a civil penalty against Defendant pursuant to the Sunshine Law. Plaintiffs further request an award of attorney fees and costs of litigation pursuant to the Sunshine Law. Defendant argues that it fully complied with the Sunshine Law, that its September 24, 2021 disclosure of responsive documents renders Plaintiffs' cause of action moot, and that Plaintiffs fail to plead facts of a knowing or purposeful violation.

"The Sunshine Law establishes Missouri's public policy that meetings and records of public governmental bodies are open to the public unless otherwise provided by law." Farber v. Metro. Police Dep't, 558 S.W.3d 70, 73 (Mo. App. E.D. 2018) (citing § 610.011.1 RSMo).

"Chapter 610 embodies Missouri's commitment to open government and is to be construed liberally in favor of open government." Id.

Section 610.011.1 RSMo states:

> It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.

Section 610.023.3 RSMo states:

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

"Where a public governmental body allegedly refuses or fails to respond to a statutorily compliant request, a Sunshine Law violation exists if the following elements are present: (1) a request for access to a public record was made; (2) such request was received by the custodian of records; and (3) the custodian of records did not respond to the request within three business days of receiving the request." Starr v. Jackson Cty. Prosecuting Atty., 635 S.W.3d 185, 190 (Mo. App. W.D. 2021). In this case, it is undisputed that: (1) on April 30, 2021, Plaintiff [Hanlon] made a request for access to public records via the City of St. Louis' Sunshine Request portal; (2) the request was received May 3, 2021 by Joseph Sims, Sunshine Law Coordinator for the City of St. Louis, who sent Plaintiff an email on May 6, 2021 stating that the "request ha[d] been sent to the Custodian of Records for the Corrections Division to be fulfilled," but that "[s]taff availability and

access to files/databases to locate responsive records [wa]s limited" due to the city's "efforts to help prevent the spread of the COVID-19 virus, and that "the earliest time and date records, if any, will be available . . . is the close of business on June 3, 2021;" and (3) Plaintiffs never received a substantive response granting or denying the records request or acting upon it in any way until after Plaintiff brought this cause of action.

Defendant asserts, however, that it fully complied with the Sunshine Law by virtue of Sims's May 6, 2021 email to Hanlon, along with his subsequent monthly emails to her. Defendant argues it "cannot violate the Sunshine Law when the evidence shows that defendant was working on fulfilling the request and informed plaintiffs that more time was necessary."

Section 610.023.3 RSMo provides in pertinent part that "[i]f access to the public record is not granted immediately, the **custodian shall give a detailed explanation of the cause** for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause." (emphasis added). Plaintiffs argue that Sims' emails fail to satisfy the above quoted statutory provision because they do not provide a detailed explanation of the cause for the delay nor an accurate date on which Plaintiffs would be granted access to the records.

The first three of Sims' five monthly emails simply state that the delay is an ongoing consequence of the Covid-19 pandemic and that the request for documents will take at least another month to fulfill. Plaintiffs note that this explanation, along with the rolling dates on which documents might be produced, were merely posited by Sims without meaningful input from the custodian of the records. The final two of Sims's monthly emails omit the Covid-19 explanation and simply state that "[t]he custodian of records has advised that additional time is necessary to locate and identify any records responsive to your request." In his deposition testimony, Sims

confirmed that he and the custodian of records did not discuss the cause of the delay, and, with one exception, the custodian did not tell Sims when the request would be fulfilled.

The Court finds that Defendant did not comply with the Sunshine Law because the explanations of the cause for delay that Sims provided were neither detailed nor based on anything that the custodian of records articulated, and, similarly, because the earliest time and date that the records would be available was simply assumed by Sims without meaningful input form the custodian of records. It seems intuitive to the Court that a detailed explanation of the cause for the delay in producing records for inspection, along with the earliest time and date that the records will be available for inspection, cannot be provided without consulting the person tasked with producing the records for inspection.

Next, Defendant argues that Plaintiffs' claims are moot because Defendant produced responsive documents at no cost to Plaintiff. "A question is justiciable only where the judgment will declare a fixed right and accomplish a useful purpose." Buckner v. Burnett, 908 S.W.2d 908, 910 (Mo. App W.D. 1995). "A cause of action is moot when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered, would not have any practical effect upon any then existing controversy." Id.

In support of its argument, Defendant cites to Buckner v. Burnett, where the Appellate Court determined that the plaintiff's cause of action brought pursuant to the Sunshine Law was moot because the defendant produced responsive documents after plaintiff filed suit. Id. Plaintiff argues that Buckner is distinguishable from the instant case. In Buckner, the plaintiff only sought production of documents, whereas the Plaintiffs here seek production of documents *and* statutory penalties, costs, and attorney fees based on Defendant's alleged knowing or purposeful violation of the Sunshine Law. See Id. at 911-12. Plaintiffs' Petition avers in pertinent part as follows:

> 44. Defendant's continued failure to act upon Plaintiffs' Sunshine Law request is a purposeful and/or knowing violation under § 610.027, RSMo.
>
> 45. By failing to respond to Plaintiffs' request, Defendant has purposefully and knowingly violated the Sunshine Law and is subject to civil penalties of up to $5,000 and payment of Plaintiffs' costs and attorney fees pursuant to § 610.027.3-.4, RSMo.

Plaintiffs acknowledge that their claim for injunctive relief may be moot, but argue that their claim that Defendant knowingly and purposefully violated the Sunshine Law remains justiciable. The Court finds that Buckner is distinguishable from the instant case for the reason noted by Plaintiffs. The court in Buckner specifically held that "Chapter 610 [The Sunshine Law] would be a hollow law if it permitted a custodian intentionally to forestall production of public records until the requester sued." The court then noted that "Section 610.027.3 resolves the issue," [1] and stated that "[a] public official's intentionally forestalling production of public records until the requester sues would be a purposeful violation of Chapter 610 and would be subject to a fine and reasonable attorney fees."

The Court finds that Plaintiffs' claim for statutory penalties, costs, and attorney fees under Section 610.027 RSMo remains justiciable. Additionally, Plaintiffs' request for a declaration from this Court that the requested records are open under the Sunshine Law was not rendered moot when Defendant chose to produce them in this case. Closure of records under the Sunshine Law is permissive. See Chasnoff v. Mokwa, 466 S.W.3d 571, 577–78 (Mo. App. E.D. 2015) (finding that closure under the Sunshine Law is permissive and nothing in the law requires closure). Without such a declaration from this Court, Defendant could decide to close such records at a later date despite having produced them in this case. Section 610.021 RSMo lists twenty-five exceptions to

[1] Section 610.027 has long provided for civil penalties, costs, and attorney fees for violations of Chapter 610. The current, applicable version of this provision privides two levels of violations: "knowing" and "purposeful" (Sections 610.027.3 and 610.027.4 respectively). This Order and Judgment will discuss those two levels in more detail below.

the general rule in favor of disclosure. It does not appear that any of those exceptions apply to Plaintiffs' request here, nor has Defendant asserted that any exception applies. The Court declares that the requested records are open under the Sunshine Law.

Lastly, Defendant argues that "Plaintiffs fail to plead facts of a knowing or purposeful violation." As a preliminary matter, Defendant appears to conflate the requirements at the pleading stage and the summary judgment stage. In any event, Plaintiffs' Petition avers that Defendant knowingly and purposefully violated the Sunshine Law, and the Court must now determine whether the evidence in the summary judgment record supports a finding that Defendant committed a knowing or purposeful violation. See Sections 610.027.3 and 610.027.4 RSMo.

The Sunshine law provides for two levels of violation for purposes of civil penalties – a knowing violation and a purposeful violation. Section 610.027.3 treats a knowing violation as follows:

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

(emphasis added). In a similar fashion, Section 610.027.4 treats a purposeful violation as follows:

> Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has **purposely** violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount up to **five thousand dollars**. If the court finds that there was a **purposeful** violation of sections 610.010 to 610.026,

> then the court shall order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing such a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

(emphasis added).

A knowing violation requires proof that the public governmental body had "actual knowledge" that its conduct violated a statutory provision. White v. City of Ladue, 422 S.W.3d 439, 452 (Mo. App. E.D. 2013). A purposeful violation requires more than intent to engage in conduct that caused the violation. Spradlin v. City of Fulton, 982 S.W.2d 255, 263 (Mo. banc 1998). There must be evidence of conscious design, intent, or a plan to violate the Sunshine Law. Id. Intentionally delaying production of records is a purposeful violation. Buckner, 908 S.W.2d at 911. "Intent is most often proved by circumstantial evidence and may be inferred from surrounding facts or the act itself." Gross v. Parson, 624 S.W.3d 877, 892 (Mo. banc 2021) (internal quotation marks omitted).

It is undisputed that "Plaintiffs never received a substantive response granting or denying the records request or acting upon it in any way until after this lawsuit was filed [on September 15, 2021]." And, while Defendant contends that it was never served with notice of the lawsuit, it is undisputed that "Defendant sent an internal, written communication on September 15, 2021, acknowledging that the City of St. Louis was being sued by Plaintiffs for an alleged violation of the Sunshine Law in connection with the subject request."

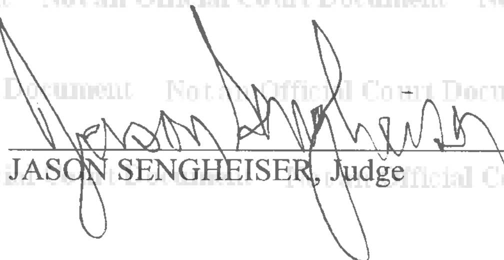
Defendant "knew that the Sunshine Law requires public governmental bodies to timely respond to requests for records and to disclose open records," and that "at least some of the records requested by Plaintiffs were open public records subject to timely disclosure under the Sunshine

Law." Defendant's monthly emails regarding the delay in producing responsive documents were not detailed nor were they based on any meaningful input from the custodian of records. In fact, Defendant failed to discuss the cause for the delay at all with the custodian of records before providing Plaintiffs with assumed causes for delay and simply stating dates upon which records would be ready—only to repeatedly extend those dates until Plaintiffs filed the instant cause of action. Then when a lawsuit was filed, the records were turned over nine days later.

Under these circumstances, the Court finds that Defendant purposefully violated the Sunshine Law, and Plaintiffs are entitled to a statutory penalty pursuant to Section 610.027.4.

THEREFORE, it is Ordered and Decreed that Plaintiffs Arch City Defenders and Maureen Hanlon's Motion for Summary Judgment is hereby GRANTED. Judgment is hereby entered in favor of Plaintiffs and against Defendant in the amount of $3,000.00. Plaintiffs are also entitled to costs and reasonable attorney fees. The Court will conduct a hearing on Plaintiffs' reasonable attorney fees on June 18, 2024 at 11:00 a.m. or some other mutually agreeable date if that does not work for the parties. Further, the Court declares that documents responsive to Plaintiffs' request in this case are open under the Sunshine Law.

SO ORDERED:



JASON SENGHEISER, Judge

Dated: June 10, 2024

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