

SC101018

IN THE SUPREME COURT OF MISSOURI

Phillip Weeks,

Appellant,

v.

City of Saint Louis,

Respondent.

Eastern District Court of Appeals Case No. ED112624

City of St. Louis Circuit Court Case No. 1922-CC11987

Appellant's Amended Substitute Brief

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JURISDICTIONAL STATEMENT

Petitioner/Appellant Phillip Weeks filed this lawsuit against the City of St. Louis following its failure to produce vehicle stops data, inclusive of officers' Department Serial Numbers ("DSNs") pursuant to Missouri's Sunshine Law, RSMo. § 610.010, et seq. The Honorable Joan L. Moriarty, Division 20, Circuit Court of the City of St. Louis, the 22nd Judicial Circuit, conducted a bench trial on June 26, June 27, and July 20, 2023, and entered judgment in favor of the City of St. Louis on December 21, 2023. Mr. Weeks filed a timely motion for a new trial on January 22, 2024. That motion was heard and submitted on April 2, 2024. On April 17, 2024, the Circuit Court denied Mr. Weeks' motion for new trial.

Phillip Weeks filed a timely notice of appeal on April 26, 2024, appealing the Circuit Court's decision in favor of the City of St. Louis pursuant to Mo. Const. Art. V § 3 and RSMo. § 512.020. The Court of Appeals issued its decision on January 28, 2025, affirming the Circuit Court's decision. Judge Torbitzky dissented. Mr. Weeks filed a motion for rehearing or transfer, which was denied on March 3, 2025.

On March 14, 2025, Mr. Weeks filed a timely application for transfer to this Court. The Missouri Supreme Court accepted transfer of this case on April 29, 2025, pursuant to Mo. Const. Art. V § 10 and Rule 83.04.

STATEMENT OF FACTS

This is a Sunshine suit stemming from the St. Louis Metropolitan Police Department's failure to produce vehicle stops records in response to Appellant Phillip

Weeks' July 5, 2019 Sunshine request (the "Request").¹ In his Request, Mr. Weeks asked St. Louis Metropolitan Police Department ("SLMPD") to produce databases containing data generated from vehicle traffic stops, including officer DSNs.² Tr. pp. 77-78; D29. He clarified that "this open records request is for files containing the databases (in worksheet, ie excel workbook formatting) created from the raw data transmitted upon completion of the vehicle stop forms." D29 p.6. Mr. Weeks explained that he was requesting the database be produced in worksheet format based on what he learned from prior Sunshine requests. D12 ("According to past sunshine responses I have received from REJIS, SLMPD is a client of REJIS for whom REJIS has a SLMPD database of the Vehicle Stop data that is available in worksheet format.").

I. SLMPD collects vehicle stops data to ensure compliance with Missouri's racial profiling law, RSMo. § 590.650.

The data Mr. Weeks requested is collected and maintained by SLMPD pursuant to RSMo. §590.650, a Missouri statute that prohibits law enforcement agencies from racial profiling practices. This statute imposes two separate but related obligations on law enforcement agencies. *First*, they must annually report certain vehicle stops statistics to the Missouri Attorney General. RSMo. §§ 590.650.2-650.3. *Second*, law enforcement agencies must adopt a policy that prohibits race-based traffic stops, and periodically review traffic

¹ It was undisputed in the trial court that the St. Louis Metropolitan Police Department is a division of the City's department of public safety, and therefore a public governmental body subject to the requirements to the Missouri Sunshine law. D20 ¶¶9, 11. It was also undisputed that Mr. Weeks properly sent his Request to SLMPD's custodian of records.

² A "DSN" is an officer's Department Serial Number – a unique identifying number for SLMPD officers.

stops data to determine whether any officers have demonstrated a pattern of racial profiling in traffic stops. *Id.* § 590.650.5.

Vehicle traffic stops data collected by SLMPD is maintained and stored by Regional Justice Information Services Commission (“REJIS”) on SLMPD’s behalf, in a SQL databased managed by REJIS.³ A structured query language (“SQL”) database, as described at trial by database expert Andrew Arkills, “is a data repository that stores data from any number of systems that can write to it. It’s generally a system of record for the specific subject matter that’s being stored.” Tr. pp. 153, 180-181.⁴ This data becomes static (meaning it is no longer changed) during or before March of each year, at which time SLMPD submits its annual vehicle stops report to the Attorney General. Tr. pp. 156-157.

II. SLMPD’s vehicle stops data is stored by REJIS, but routinely and automatically shared with SLMPD in .CSV format.

SLMPD can generate reports of traffic stops data using a REJIS application called LE Web. Tr. pp. 23, 25, 31-37, 197. One such report is a Traffic Analysis Report, which is itself a derivative of SLMPD’s database stored by REJIS. Tr. pp. 129-130, 189-190. By the City’s own admissions, these Traffic Analysis Reports are not directly related to the hiring or firing of SLMPD officers and are not typically found in officers’ personnel files. Tr. pp. 28-30; D38. Sgt. Wall also testified that supervising officers do not review Traffic

³ REJIS was initially named as a defendant in the trial court, but was voluntarily dismissed on September 16, 2020.

⁴ The transcript on appeal is cited herein as “Tr.” Documents in the legal file are cited to by their docket number (e.g., “D39”).

Analysis Reports with officers they supervise. Tr. p. 30. And they are not stored in internal affairs files. *Id.*

Evidence presented at trial demonstrated that REJIS automatically shares vehicle stops data (including officer DSNs) with SLMPD on a periodic basis, in .CSV format. Tr. pp. 130-31, 192; Exhibits P15-18.⁵ These data files are regularly pulled from REJIS's system, without need for individual SLMPD programmers to manually extract the data. Tr. pp. 186-187, 192-194. At trial, expert Mr. Arkills testified that reusing codes to automatically pull from a SQL database on a certain cadence, without the need to rewrite the query code every time data is pulled, is common practice in the industry; programmers often store query codes for reuse to automatically pull from a SQL database on a pre-set cadence, such as monthly or annually. Tr. p. 194. As Mr. Arkills explained at trial, "when the time window that it was set to run on turns over, it would automatically kick off, extract the data that is in the data base at that point in time, and then provide the output." Tr. pp. 187. This is how SLMPD came into possession of data files responsive to Mr. Weeks' Request, which were produced during discovery in the trial court and admitted at trial. D38; Exhibits P15-P18.

Expert witness Mr. Arkills compared the data files in question to facsimiles or paper copies of the system of record:

The text file output could generally be viewed as a facsimile of the data that is present in the database. So if you have a paper file that was in a cabinet and that was commonly agreed upon record, any copy made on a copy machine of that would be a

⁵ Trial Exhibits P15-P18 are confidential and were physically deposited with the Appeal Court pursuant to R. 81.16.

facsimile. In the same way, a text file output from the database is a facsimile of the data that's in the database.

Tr. p. 186. The data files Mr. Weeks requested were derivatives of the system of record.

Tr. p. 189.

I. SLMPD's response confirmed SLMPD understood Mr. Weeks was seeking raw data.

The City initially characterized Mr. Weeks' Request as seeking "vehicle stop forms." Mr. Weeks promptly corrected the City, clarifying that he was seeking data files, not vehicle stop forms: "[M]y request is not for the vehicle stop forms, but the database in spreadsheet formatting (preferably in excel) that contains the data from the vehicle stop forms." Tr. pp. 48-50; D32. At trial, Mr. Weeks again confirmed he did not intend to limit his Request to data maintained in Excel. Tr. pp. 89, 94. In fact, in response to Mr. Weeks, the City acknowledged that it understood Mr. Weeks was requesting vehicle stops data, not vehicle stop forms: "We do understand the requested information is for the data generated from the vehicle stop forms." Tr. p. 52; D32.

At the time Mr. Weeks submitted his Request, SLMPD Sergeant Charles Wall was detached to SLMPD's Legal Division. Tr. p. 15. Although Sgt. Wall had no training in the Sunshine law, he was responsible for assisting the City in responding to Sunshine requests, including Mr. Weeks' Request. Tr. pp. 15-16. The evidence at trial established that at the time Mr. Weeks submitted his Request to SLMPD, Sgt. Wall knew that if someone requested open records in a particular format, the Sunshine law required those records to be provided in the requested format, if possible. Sgt. Wall also understood that Mr. Weeks was requesting data files, preferably in spreadsheet or Excel format. Tr. p. 26. Sgt. Wall

conferred with Sherry Schaefer, who was an IT employee at the time, but did not provide data files to Mr. Weeks. Tr. pp. 21, 32-36.

Instead, on August 9, 2024, the City provided Mr. Weeks with a sample Traffic Analysis Report in PDF, explaining:

[W]e are unable to specifically identify what you mean by a “file of a database containing data generated from vehicle stop forms for 2014 through and including 2018, including officer PINs/DSNs, that are kept pursuant to Mo. Rev. Stat. § 590.650. Upon information and belief, these databases are generated from information transmitted to REJIS by SLMPD Officers during or after each vehicle stop.” We believe the “Vehicle Stop Form” referred to in your request is what we consider a “Traffic Analysis Report,” as these reports are completed during or after each vehicle stop.

Tr. pp. 22, 58-59; D39. SLMPD also indicated that the Traffic Analysis Reports include officers’ DSN, which they would redact before producing. D16 p.2. SLMPD charged Mr. Weeks \$1,040.00 for Traffic Analysis Reports from January 1, 2016 through December 31, 2018; Mr. Weeks did not pay for these records because they were not what he requested. Tr. pp. 59; D39. SLMPD also told Mr. Weeks, “[t]here is no existing record of any ‘file of a database containing data generated from vehicle stop forms’” as he had requested, and SLMPD did not believe it had an obligation to “create a new record” under Missouri Sunshine law. D39.

Mr. Weeks clarified in multiple emails to the City, and at trial, that his Request sought records consisting of *data* from vehicle stops conducted by SLMPD officers—not traffic analysis reports. Tr. pp. 59-61; D39. SLMPD acknowledged this in responding to Mr. Weeks’ Request. Tr. pp. 52; D31. Because Mr. Weeks understood that .CSV files could

be easily opened in Microsoft Excel, he asked for the data in spreadsheet (or Excel) formatting. Tr. pp. 51, 65.

III. SLMPD had responsive data files in its custody or possession at the time of the Request, but did not provide them to Mr. Weeks.

The record at trial unequivocally demonstrated that SLMPD had .CSV data files containing vehicle stops data for 2015, 2016, 2017, and 2018 in its possession, custody, or control at the time it received Mr. Weeks' Request. Tr. pp. 125-126; D38; Exhibits P15-P18. Both Mr. Weeks and Ms. Schaefer testified that these .CSV files are a type of file that can commonly be opened in Excel. Tr. pp. 51, 113. These data files were automatically pulled from REJIS's system, without need for individual SLMPD programmers to manually extract the data. Tr. pp. 186-187, 192-194. SLMPD conceded this before trial, in response to Petitioner's Rule 59.01 requests for admission. Tr. pp. 133-134; D38.

At trial, Mr. Arkills explained the process through which data (like vehicle stops data) can be automatically pulled from a SQL database on a certain "cadence," such as monthly or annually, without need to re-write the query code every time the data is pulled. Tr. pp. 186-87. He described this practice of storing query codes as common practice in data analytics. Tr. pp. 193-94. Contrary to Mr. Arkills, Ms. Schaefer is not an expert in database management. Tr. pp. 112-13. Yet at trial even Ms. Shaefer acknowledged that SLMPD automated data pulls from REJIS as much as possible. Tr. pp. 118, 120. Ms. Schaefer, who Sgt. Wall consulted with regarding Mr. Weeks' Request, also was aware at the time of the Request that SLMPD had .CSV files containing traffic stop data. Tr. p. 135. The City produced these .CSV files during discovery, and Mr. Weeks confirmed at trial

that, “the formatting of the data files was exactly what I was requesting.” Tr. p. 65. These files also were admitted at trial—both in raw format, and in Excel format. D34, D38; Exhibits P15-P18.

IV. The trial court entered judgment in SLMPD’s favor; a timely appeal and application for transfer followed.

It is undisputed that SLMPD did not provide Mr. Weeks the records he requested, despite possessing those records. Its failure to do so, without justification under the Sunshine law, prompted this lawsuit. A bench trial was held in St. Louis City Circuit Court on June 26, June 27, and July 20, 2023. In addition to Mr. Weeks and expert Andrew Arkills, the trial court also heard testimony from SLMPD Sergeant Charles Wall and City employee Sherri Schaefer. On December 21, 2023, the Court entered its judgment in this case. *See* Dec. 21, 2023 Judgment, D21; App. A003.

The trial court concluded that Mr. Weeks sought creation of a new record, and that raw data gathered from traffic stops “could not be transmitted in its native form or organized in spreadsheet format without using computer programming to extract it.” D21 at p. 9. Despite the plain language of Mr. Weeks’ Request expressly requesting DSNs, the trial court wrongly interpreted his Request as not including DSNs; therefore the trial court did not determine whether DSNs are public records subject to Missouri’s Sunshine law. D21 at p. 9. Mr. Weeks filed a motion for new trial, which the trial court denied on April 17, 2024. D24. Thereafter, Mr. Weeks appealed the decision to the Eastern District Court of Appeals. D25-26. In a 2-1 decision, the Court of Appeals affirmed the trial court’s decision. After the Court of Appeals denied his timely motion for rehearing or transfer, Mr.

Weeks filed an application for transfer to this Court, which was granted on April 29, 2025. App. A046-A052.

POINTS RELIED ON

I. The trial court erred in entering judgment in favor of the City on the basis that it did not retain records responsive to Mr. Weeks' Request because that ruling was against the weight of the evidence in that the City admitted it retained records responsive to Mr. Weeks' Request at the time it received that Request, and evidence adduced at trial also demonstrated the City retained such records, but nonetheless withheld those records in contravention of Missouri Sunshine law.

- *Roland v. St. Louis City Bd. of Election Comm'rs*, 590 S.W.3d 315 (Mo. 2019)
- *Guyer v. City of Kirkwood*, 38 S.W.3d 412 (Mo. banc 2001)
- *Chasnoff v. Mokwa*, 466 S.W.3d 571 (Mo. App. E.D. 2015)
- *Laut v. City of Arnold*, 417 S.W.3d 315 (Mo. App. E.D. 2013)
- RSMo. § 610.021
- RSMo. § 590.650

STANDARD OF REVIEW

Judgments entered in bench-tryed cases are reviewed under the standard provided by *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976); see *Chasnoff v. Mokwa*, 466 S.W.3d 571, 576-77 (Mo. App. E.D. 2015). "This Court will affirm the judgment of the trial court unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law, accepting all evidence and inferences therefrom in the light most favorable to the prevailing party and disregarding all contrary evidence." *Essex Contracting Inc. v. Jefferson Cnty.*, 277 S.W.3d 647, 652 (Mo. banc 2009).

ARGUMENT

I. The trial court erred in entering judgment in favor of the City on the basis that it did not retain records responsive to Mr. Weeks' Request because

that ruling was against the weight of the evidence in that the City admitted it retained records responsive to Mr. Weeks' Request at the time it received that Request, and evidence adduced at trial also demonstrated the City retained such records, but nonetheless withheld those records in contravention of Missouri Sunshine law.

The trial court's judgment should be reversed by this Court because it is against the weight of the evidence in the record. The most compelling evidence—which the trial court wholly ignores in its judgment—is the City's own admissions that SLMPD had responsive data files in its possession at the time Mr. Weeks submitted his Sunshine Request. The City withheld those records in contravention of Missouri Sunshine law. The trial court's evidentiary error here warrants reversal pursuant to the Sunshine law.⁶

A. The overwhelming weight of the evidence at trial demonstrated SLMPD had custody of public records responsive to Mr. Weeks' Request.

To state a claim for violation of the Missouri Sunshine law, a petitioner must demonstrate that a request for access to a public record was made, the request was received by the custodian of records, and the public records were not provided in response to the request within the timeframe required by Section 610.023.3. *Anderson v. Vill. of Jacksonville*, 103 S.W.3d 190, 194–95 (Mo. App. W.D. 2003). Once a petitioner has made such a showing, the burden of persuasion shifts to the government to demonstrate compliance with the law's requirements. RSMo. § 610.027.2. At trial it was uncontested that Mr. Weeks properly submitted a request for public records to the City's custodian of

⁶ This issue was preserved for appeal in Mr. Weeks' Motion for New Trial, wherein Mr. Weeks argued *inter alia* that the trial court overlooked the City's admissions (D22 p.4), and was raised again in Mr. Weeks' appeal to the Eastern District Court of Appeals (D25) and Application for Transfer to this Court.

records. The dispute lies with the trial court's conclusion that the City possessed no records responsive to his request. This conclusion was against the weight of the evidence.

1. The vehicle stops data are public records subject to Missouri Sunshine law.

Mr. Weeks' Request sought access to raw data collected from SLMPD traffic stops, and such data is undoubtedly a public record under the Sunshine law. The Sunshine law defines a public record as "any record, *whether written or electronically stored*, retained by or of any public governmental body ... including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body" RSMo. § 610.010.6 (emphasis added). This statutory definition of a public record is broad. It only has two requirements: that the record be (1) retained (2) by a public governmental body. *Id.* More specifically, Missouri Sunshine Law expressly acknowledges that data files or databases, like those requested by Mr. Weeks, may be open under the law. In fact, it requires governmental bodies to provide data to the public in electronic format:

A public governmental body keeping its records in an electronic format is strongly encouraged to provide access to its public records to members of the public in an electronic format. A public governmental body is strongly encouraged to make information available in usable electronic formats to the greatest extent feasible...*if the public governmental body keeps a record on a system capable of allowing the copying of electronic documents into other electronic documents, the public governmental body shall provide data to the public in such electronic format, if requested.*

RSMo. § 610.029 (emphasis added). Courts are instructed to liberally interpret these and other provisions of the Sunshine law in favor of government transparency:

It is the public policy of [the State of Missouri] 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.

RSMo. § 610.011.1; *see also* *Roland v. St. Louis City Bd. of Election Commissioners*, 590 S.W.3d 315, 320 (Mo. 2019) (en banc) (“Exceptions to the sunshine law must be strictly construed in favor of open records.”); *Guyer v. City of Kirkwood*, 38 S.W.3d 412, 414 (Mo. 2001) (en banc). Missouri law also provides a presumption of openness for records maintained pursuant to Missouri Sunshine law, such as the vehicle stops data in question here. RSMo. § 109.180.

Consistent with this analysis, in a similar case, this Court concluded that raw data files are a “record” under Section 610.010(6). *Weeks v. St. Louis County*, 696 S.W.3d 333, 339 (Mo. banc 2024). There, this Court pointed to several aspects of the Sunshine law that explicitly envision open access to electronically stored governmental records:

In fact, the Sunshine Law explicitly encourages public governmental bodies to provide access in an electronic format to those public records kept in an electronic format and “to make information available in usable electronic formats to the greatest extent feasible” and further provides, “if the public governmental body keeps a record on a system capable of allowing the copying of electronic documents into other electronic documents, the public governmental body shall provide data to the public in such electronic format, if requested.” Sec. 610.029.1.9.

Id.

2. Evidence conclusively demonstrates that SLMPD had custody or possession of responsive vehicle stops data files at the time Mr. Weeks submitted his Request.

Despite conclusive admissions to the contrary, SLMPD maintained it did not have custody or possession of the requested records, and that it would have to create a new record in order to respond to Mr. Weeks' Request. The parties agree that the Sunshine law does not impose upon a public governmental body an obligation to generate a new record or report in response to a Sunshine request. *Jones v. Jackson Cnty. Circuit Court*, 162 S.W.3d 53, 59 (Mo. App. W.D. 2005). Such an undue obligation did not exist here.

The overwhelming evidence demonstrates that SLMPD had vehicle stops data in its custody when it received Mr. Weeks' Request. Yet the trial court ignored the weight of this evidence in reaching its judgment in favor of the City.

The trial court's judgment makes no mention of the clearest and most compelling evidence that SLMPD did in fact have records responsive to Mr. Weeks' Request: its own admissions. D38. During discovery, the City produced vehicle stop data files that it had in its possession at the time Mr. Weeks submitted his Request. Mr. Weeks was able to open these .txt files in Excel and testified at trial that they were responsive to his Request. In response to requests for admission served pursuant to Rule 59.01, the City admitted that it had these data files in their possession at the time of the Request. D38. And the City admitted that these data were provided to SLMPD automatically, without the need to write any lines of code to pull the data. D38. These responses to Requests for Admission were admitted as trial evidence, as were the data files themselves, in both .txt and Excel formats. D38; Exhibits P15-18. Tr. pp. 169, 219.

The trial court should have treated facts admitted to in the City’s responses to these Requests for Admission as conclusively established per Rule 59.01(b). “A failure to timely respond to requests for admissions in compliance with this Rule 59.01 shall result in each matter being admitted.” Rule 59.01(a). “Admissions under Rule 59.01 are treated like stipulations, judicial admissions, and admissions in a pleading.” *Curry Inv. Co. v. Santilli*, 494 S.W.3d 18, 25 (Mo. App. W.D. 2016), citing *Waters v. Meritas Health Corp.*, 478 S.W.3d 448, 458 n. 5 (Mo. App. W.D. 2015); see also *N.R. v. A.D.*, 655 S.W.2d 733, 736 (Mo. App. E.D. 1983). Any matters admitted are “conclusively established,” Rule 59.01(b), and “not subject to dispute by the respondent at trial.” *Dynamic Comput. Sols., Inc. v. Midwest Mktg. Ins. Agency, L.L.C.*, 91 S.W.3d 708, 718 (Mo. App. W.D. 2002). But the trial court failed to cite these admissions in its judgment. As a result, it is unclear whether the trial court considered the City’s critical factual admissions at all—when, in fact, the admissions should have been treated as stipulated facts or judicial admissions. *Santilli*, 494 S.W.3d at 25. These admissions outweigh any evidence to the contrary, and warrant reversal of the trial court’s decision.

3. The trial court’s conclusion that Mr. Weeks was specifically requesting an Excel file, as opposed to vehicle stops data (in whatever electronic format it is maintained), goes against the weight of the evidence.

The trial court took an overly narrow view of Mr. Weeks’ Request, interpreting it as specifically a request for an Excel spreadsheet, rather than for the data themselves. But on the whole, the evidence made clear that Mr. Weeks was requesting data files. His initial Request asked for “[f]iles of the databases containing data” generated from vehicle stops. D29. He clarified his understanding that REJIS maintains “data responsive to this request”

on behalf of the City and SLMPD. D29. When the City initially mischaracterized the Request, Mr. Weeks promptly corrected them: “[M]y request is not for the vehicle stop forms, but the database in spreadsheet formatting (preferably in excel) that contains the data from the vehicle stop forms.” Tr. pp. 48-50; D32 p.4. At trial, Mr. Weeks testified that he did not intend to limit his Request to data maintained in Excel. Tr. pp. 89, 94.

The record also demonstrates SLMPD understood Mr. Weeks to be asking for data files, not exclusively data maintained in Excel. The City told him on July 19, 2019: “We do understand the requested information is for the data generated from the vehicle stop forms.” Tr. p. 52; D32 pp. 3-4. SLMPD Sgt. Wall testified at trial that he also understood that Mr. Weeks was requesting data files, preferably (but not exclusively) in spreadsheet or Excel format. Tr. pp. 26. And despite the City’s representation to the contrary in an email to Mr. Weeks (D34 p.2), it knowingly had custody of responsive data files, in .CSV formats, at the time it received the Request. Tr. Pp. 125-126; D38; Exhibits P15-P18.

The trial court’s conclusion seems solely based on Mr. Weeks’ parenthetical reference in his Request he would *prefer* the data in spreadsheet or Excel format, and that Excel format is different from .CSV format. D39 p. 6. This conclusion is outweighed by the aforementioned evidence, which shows (1) that Mr. Weeks was seeking the production of data files, and (2) the City understood this request.⁷

⁷ It also overlooks evidence in the record that there is no meaningful difference between data in “Excel format” and .CSV format. Both Mr. Weeks and City witness Ms. Schaefer testified that .CSV files are a type of file that can commonly be opened in Excel. Tr. pp. 51, 113. Indeed, Mr. Weeks suggested the data be produced in spreadsheet (or Excel) formatting because he understood that .CSV files could be easily opened in Microsoft

This discrepancy (if any) between .CSV and Excel files is a red herring because the Sunshine law does not require a person requesting records to specify the exact file format in which responsive records might be maintained. As aptly noted by Judge Torbitzky in the appellate court below:

The Sunshine Law only requires a public body to “provide the records in the requested format, if such format is available.” Section 610.023.3 (emphasis added). But it does not alleviate the public body’s obligation to produce public information if it is kept in a different format. To hold otherwise, would incentivize any public body to store public records in an esoteric electronic format and deny disclosure based upon the public’s failure to identify that exact format utilized. This holding undermines the public policy of open records, § 610.011.1, and the requirement that there must be a specific legal provision which allows the denial of a Sunshine Law request, § 610.023.4.

A052. This obligation to produce existing data in electronic format, even if it is in different format than that specified by the requestor, presents significantly different circumstances than cases cited by the City and trial court wherein a petitioner asks a governmental body to create a wholly new record in response to a Sunshine request.

The trial court relied on *Jones v. Jackson Cnty. Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. W.D. 2005) for the proposition that, “[t]he Sunshine Law only requires access to existing records and does not mandate a public governmental body to generate a new record or report from raw data available that is typically not generated by the public governmental body.” D21 at p. 7. In *Jones*, the petitioner asked the Circuit Court to provide

Excel. Tr. pp. 51, 65. And at trial Mr. Weeks testified that he was easily able to open the .CSV file in the Excel application. Tr. pp. 96-97.

him a CD-ROM of various data points related to various kinds of landlord petitions. 162 S.W.3d at 58. The Circuit Court had no preexisting record containing the specific information Mr. Jones sought, nor did Mr. Jones allege that the Circuit Court denied him access to an existing record of aggregated data already held by the Court. *Id.* at 59–60. The appellate court concluded it did not violate the Sunshine law by denying the petitioner’s request to “create a new, customized record from information contained in its existing records.” *Id.*

Here, unlike the petitioner in *Jones*, Mr. Weeks did not ask the City to aggregate or analyze select information from multiple records into a new type of record not typically generated in the normal course of business. Records including vehicle stops data and DSNs were extracted from REJIS’s database and provided to SLMPD on a regular cadence. Copies of these preexisting data files were in the City’s custody or possession and were admitted at trial, but the judgment makes no mention of this evidence. In short: There is no evidence in the record to support the conclusion that producing the data files Mr. Weeks requested would necessitate the creation of a new record.

Indeed, even if the City did not have possession of those data files, extracting the data from REJIS database would not constitute the creation of a new file. Extracting data from a database is analogous to making a photocopy of an existing document. In neither situation is a new record created. As noted by Chief Justice Russell in *Weeks v. St. Louis County*:

If Weeks were seeking information Webster Groves maintained in physical documents in a file cabinet, then such information would indisputably be subject to disclosure. In that

scenario, Webster Groves would have to review the file and copy the documents for production. Such copying would not be the creation of a new record. Section 610.026 (“[E]ach public governmental body shall provide access to, and, upon request, furnish copies of public records[.]”); *see also* [*Comptroller of Treasury v. Immanuel*, 85 A.3d 878, 886 (Md. 2014)] (hypothesizing the only functional difference between a request for physical documents and data “is that IT professionals would perform here the work that clerical professionals would perform on a paper file”). In other words, Weeks is seeking an existing “public record.” *Extracting existing data into a useable electronic format is not the creation of a new record. Holding otherwise essentially prohibits access to public records maintained in a public governmental body’s database.*

696 S.W.3d at 347 (Mo. banc 2024) (CJ Russell, concurring in part, dissenting in part) (emphasis added). Further, the City is not permitted to evade its obligations under the Sunshine law by claiming open data is inaccessibly stored by a third party (REJIS). Missouri law requires that any contract for storage of public records in a database not allow any impediment to the public being able to inspect and copy the records. RSMo. § 610.029.

This simply is not a case where SLMPD would have to create a new record to comply with Mr. Weeks’ Request. There is no evidence in the record to support that theory. The evidence adduced at trial conclusively demonstrates that the City was in custody or possession of the data files Mr. Weeks requested.

B. SLMPD presented no evidence at trial permitting closure of these public records.

The evidence adduced at trial overwhelmingly demonstrated the City possessed the data Mr. Weeks requested in an accessible electronic format, and the City was required to produce those data files to Mr. Weeks absent specific statutory authority to close them. The

City provided no lawful justification to close those records. Because the trial court erroneously concluded the City did not possess responsive records, it did not address the merits of SLMPD's arguments that it could withhold traffic stops data based on the exception set forth in RSMo. § 610.021(13). This Court should reverse the trial court's decision and enter an opinion confirming that the data Mr. Weeks requested are public and open records.

As noted above, because the vehicle stops data Mr. Weeks requested are collected pursuant to Missouri statute, they are presumptively open. RSMo. § 109.180 ("Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen"). Missouri's racial profiling statute places no limitations on whether vehicle stops data or other related records are open under the Sunshine law. Nor does the Sunshine law impose any explicit restrictions on access to such information.

The City maintains that the data files are "personnel records." Section 610.021(13) authorizes—but does not require—a public governmental body to close records to the extent they relate to personnel records:

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

RSMo. § 610.021(13) (emphasis added). Similarly, Chapter 4.15.010 closes “[i]ndividually identifiable personnel records pertaining to officers and employees in the City’s service....” Neither of these provisions warrant closure of all or even a portion of the vehicle stops data, because the data are not personnel records.

In the policing context, Missouri courts historically interpreted “personnel records” to encompass internal affairs and disciplinary records. *See Chasnoff v. Mokwa*, 466 S.W.3d 571 (Mo. App. E.D. 2015) (transfer denied) (police disciplinary records could be closed at department’s discretion); *Laut v. City of Arnold*, 491 S.W.3d 191, 193 (Mo. banc 2016) (records related to internal affairs investigation of police officer are closed, with the exception of internal affairs report, which trial court properly concluded was not a personnel record); *see also Guyer v. City of Kirkwood*, 38 S.W.3d 412, 414 (Mo. banc 2001) (in discussing difference between investigative reports and incident reports, noting specific statute requires disclosure of public record, personnel records exemption in 600.021 “may not be relied on to maintain closure, although it would otherwise apply”).

Although no Missouri court has yet considered whether vehicle stops data constitutes a personnel record, the data files in question are markedly different from what Missouri courts deem personnel records.⁸ They are not internal affairs records, nor are they

⁸ In *Weeks v. St. Louis County*, this Court did not address whether DSNs constitute a personnel record, and the dissent noted a genuine issue of material fact remained as to whether a DSN, alone, would reveal individually identifiable personnel records. 696 S.W.3d at 342. But the Court noted that the fact that an officer *may* be identified by DSN and *may* be disciplined or promoted based on their compliance or noncompliance with Section 590.650 was not enough to justify closing public records under Section 610.021. *Id.*

stored in internal affairs files. They are not investigative reports related to non-criminal behavior. Sgt. Wall conceded they do not relate to the hiring or firing of SLMPD officers. Tr. pp. 30-31. Further, the DSNs that Respondent insists should be redacted under Sunshine law appear in many other public records. *Id.* at 28-30.

Sgt. Wall testified that he believed the traffic stop reports were only internally used to ensure compliance with SLMPD's reporting obligation under RSMo. § 590.650, and thus the DSN should be redacted under Sunshine law. Tr. pp. 28-30. While that might be a collateral use of this information, the City provided no evidence that it was in fact how SLMPD used the data. Even if it did, that does not mean the data relates to personnel records, performance ratings, or hirings and firings. Any argument on this point by the City is speculative and unsupported by the record.

The true purpose of SLMPD's collection of this data, including officer DSNs, is to comply with Missouri law requiring collection of the data for the purpose of abating racial profiling in traffic stops. As noted above, because the vehicle stops data are maintained pursuant to Missouri statute, there is a presumption that they be made open for personal inspection. RSMo. § 109.180 ("Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen"). The City presented no evidence at trial that the data, with DSNs, are or were connected with any investigation or personnel matter. In fact, Sgt. Wall testified that they are not typically found in officers' personnel files. *Id.* at 28.

The City wants this Court to affirm a carveout to the Sunshine law that does not

exist. But “[t]his Court is not free to fashion additional exceptions to the sunshine law.” *Roland*, 590 S.W.3d at 321. Missouri’s racial profiling statute, RSMo. § 590.650, does not control what constitutes a public and open record—Chapter 610 controls. And that statute, as well as countless opinions interpreting it, reiterate that “all records of public governmental bodies are presumed to be open records, and the exceptions are to be strictly construed to promote that policy.” *Guyer*, 38 S.W.3d at 414. This express policy should prevail over any privacy argument from the City drawn from RSMo. § 590.650. *See Laut v. City of Arnold*, 417 S.W.3d 315, 322 (Mo. App. E.D. 2013) (stating the express public policy statement of the Sunshine Law in favor of open records “should be used as a tiebreaker in favor of disclosure when records fit equally well under two specific but opposite provisions of the Sunshine Law.”) (quoting *Guyer*, 38 S.W.3d at 414).

CONCLUSION

Mr. Weeks respectfully requests that this Court to reverse the trial court judgment as against the weight of the evidence, and direct it to (1) enter judgment in his favor on the Sunshine law violation, (2) order the City to produce the requested vehicle stops data files (with DSNs), and (3) enter a modified judgment based on this opinion and the facts in the record.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies the following:

- (1) This brief complies with the limitations contained in Rule 84.06(b) in that it does not exceed 31,000 words.
- (2) The brief was prepared using Times New Roman font and contains 6,519 words.
- (3) The brief complies with Rule 55.03. Pursuant to Rule 55.03, the undersigned attorney signed the original brief, and it is being maintained by counsel for Petitioner.
- (4) Service was made upon counsel of record for Respondent pursuant to Rule 103.08 through the electronic filing system.

By: /s/ Amy E. Malinowski