

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 Substitute Reply Brief

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INTRODUCTION

Missouri's Sunshine Law enshrines the public's right to demand transparency and accountability from their state and local governments. *See Guyer v. City of Kirkwood*, 38 S.W.3d 412 (Mo. Banc 2001); *Roland v. St. Louis City Bd. Of Election Comm'rs*, 590 S.W.3d 315 (Mo. Banc 2019). Under the Sunshine Law, government entities have a legal duty to disclose records in their possession upon request unless an exception explicitly permits a record to be closed from the public. *See* RSMo. §§ 610.023, 610.021, 610.024, 610.035. The Sunshine Law expressly envisions access to public records that are stored electronically—including raw data. RSMo. §§ 610.010.6, 610.029; *Weeks v. St. Louis County*, 696 S.W.3d 333, 338-39 (Mo. banc 2024).

Here, the trial court ignored conclusive evidence that the City possessed the open records that Mr. Weeks requested under the Sunshine law, and that it understood that Mr. Weeks was requesting access to data files. On appeal, the City argues that, despite this evidence, the trial court's decision should be upheld because Mr. Weeks failed to specify the exact file format in which response records might be maintained. This argument is not supported by the record at trial or by Missouri law, and it overlooks the City's obligation to produce public information even if kept in a format other than that requested.

Considering the totality of the evidence, the trial court's conclusion that the City did not possess records responsive to Mr. Weeks' request is erroneous. Any evidence supporting that conclusion is substantially outweighed by probative evidence to the contrary—evidence which is not mentioned in the trial court's judgment and was thus presumably ignored. The trial court's judgment should be reversed.

ARGUMENT

I. Evidence overlooked by the trial court demonstrated both that Mr. Weeks' Request was for data files, and that the City understood as much; the City's spreadsheet argument is factually wrong and legally irrelevant.

The City's brief makes no mention of its admissions at trial that SLMPD had responsive data files in its possession at the time Mr. Weeks submitted his Sunshine Request. This is the same highly probative evidence the trial court overlooked in its judgment, and which requires reversal. Rather than address this conclusive admission, the City focuses its argument on evidence in the record supporting an overly narrow interpretation of Mr. Weeks' Request: one for a spreadsheet, specifically, as opposed to data files (in any format). This "red herring spreadsheet" argument is addressed in Mr. Weeks' opening brief, and will not be reargued here per Rule 84.04(g). *See* Appellant's Sub. Br. at 13-17. Suffice it to say that the City's argument on this point does not excuse their failure to comply with the Sunshine law. *See id.*

When someone requests records under the Sunshine law, they must word their request such that a custodian of records may determine with "reasonable specificity" the records being sought. *Anderson v. Village of Jacksonville*, 103 S.W.3d 190, 196 (Mo. App. W.D. 2003). The Missouri Sunshine Law does not place a burden upon members of the public to painstakingly and exhaustively articulate what records they are seeking from the government—including the exact format in which the records might be kept. To the contrary, the underlying policy and legislative intent of the Sunshine law "require[] a reasonable attempt by the custodian to understand the request by considering the entire communication." *Id.*

Any evidence supporting the City’s red herring spreadsheet argument is overcome by probative evidence that clearly demonstrates Mr. Weeks was seeking access to data files—a request which might include, but certainly is not limited to, records maintained in a spreadsheet format. His initial request sought access to “files of the databases containing data generated from vehicle stop forms....” D29. This Request was sufficiently clear for the City to understand, especially when considering the whole of his communications with the City. 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 confirmed it understood that his request was for data files—not traffic analysis reports, and not only a spreadsheet: “We do understand the requested information is for the data generated from the vehicle stop forms.” Tr. p. 52; D32.¹ Its argument now that his request was unintelligible is disingenuous and refuted by the overwhelming weight of the evidence adduced at trial.

The record contains back-and-forth email communications between Mr. Weeks and the City regarding his Request. Several times, Mr. Weeks clarified that he was seeking data files. At trial, he testified that he considered a spreadsheet and data file to be materially indistinguishable. (This fact was corroborated by undisputed testimony from expert witness Andrew Arkills, who testified that text file output from a CSV file is essentially a “facsimile of the data that is present in the database.” Tr. p. 186.) Thus, in clarifying

¹ On this point, the City’s argument that Mr. Weeks rejected “responsive records” in the form of traffic analysis reports is not well taken. *See* Appellee’s Sub. Resp. Br. at 13. He consistently requested data files, clarified that to the City, and the City confirmed it understood he was asking for data files, not traffic analysis reports.

communications with the City, he asked for data in a spreadsheet because of his understanding that .CSV files could easily be opened in Microsoft Excel. Tr. pp. 51, 65. The City admitted it knew Mr. Weeks was asking for data files, and it admitted it had those data files in its possession at the time it received the Request. Tr. pp. 133-134; D38. The trial court erred in ignoring conclusive evidence demonstrating those facts.

On appeal, the City feigns confusion over Mr. Weeks' Request, arguing his Request was one for spreadsheets (specifically and exclusively) or that his Request was "unintelligible." Br. at 12. This is not factually supported by the record for reasons discussed above. What's more, the City's red herring spreadsheet argument demonstrates the danger associated with the trial court's judgment as it currently stands. Perhaps most telling is the City's statement in its brief that, "if something other than a spreadsheet, like the CSV text files, would have satisfied his request, Appellant should have communicated such." Appellee's Sub. Resp. Br. at 12. The Sunshine law does not impose such a burden on a layperson seeking access to public government records. To do so would put the public at an incredible disadvantage in seeking access to public records, especially when such records are stored electronically, and especially when the person seeking access to the records is not an expert in data science or databases. *See, e.g.*, A052 (J. Torbitzky noting that such a position "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"). If an ordinary requestor like Mr.

Weeks was able to understand that .CSV files and Excel spreadsheets are functionally the same, the weight of the evidence demonstrates that SLMPD's own IT experts should have been able to discern with reasonable specificity the files being sought. *See Anderson*, 103 S.W.3d at 196. Regardless, the law does not require Mr. Weeks to specify the exact format in which the City's own records are stored.²

The trial court overlooked conclusive evidence—evidence akin to stipulations or judicial admissions—in the form of the City's responses to Rule 59.01 requests for admission. There, the City conceded it had responsive data files in its possession when it received Mr. Weeks' Request. Any argument now that the City did not understand Mr. Weeks' Request is a convenient, late-in-the-game argument not supported by the record. Any argument that Mr. Weeks was asking specifically and exclusively for spreadsheets, not raw data, is legally irrelevant with respect to the City's obligations under the Sunshine law. Because the trial court's decision is against the weight of the evidence, it should be reversed.

II. The record is devoid of evidence justifying closure of the data files because of the inclusion of officer DSNs.

At trial the City bore the burden of proving that DSNs may be closed under RSMo. § 610.021. RSMo. § 610.027.2. As this Court noted in a similar case resolved last year, "For a record to be exempt from disclosure under section 610.021, the public governmental body must show the record in question relates directly to or has a clear nexus to the invoked

² Even if this Court were to conclude that Mr. Weeks' Request sought spreadsheets, not data files, that does not excuse the City's obligation to produce the subject data. *See Appellant's Sub. Br.* at 14-15.

exemption.” *Weeks v. St. Louis County*, 696 S.W.3d 333, 342 (Mo. banc 2024), citing *Spradlin v. City of Fulton*, 982 S.W.2d 255, 259 (Mo. banc 1998) (noting the public body challenging disclosure must show the challenged record “relate[s] directly” to the invoked exemption); *Wyrick v. Henry*, 592 S.W.3d 47, 57 (Mo. App. 2019) (holding records must have a “clear nexus” to the claimed section 610.021 exemption); *Tuft v. City of St. Louis*, 936 S.W.2d 113, 118 (Mo. App. 1996) (holding the public body bears a heavy burden in showing a “clear nexus” between the challenged record and invoked exemption). The City did not produce evidence demonstrating that traffic stop data, inclusive of DSNs, is related directly to personnel decisions such that the records may be closed under Section 610.021.

The only evidence adduced at trial remotely supporting the City’s DSN argument was testimony from Sgt. Wall that the reason DSNs are tracked is to ensure compliance with RSMo. § 590.650. Sgt. Wall also testified that he does not know what records are typically contained within an officer’s personnel file, and that he has never seen a traffic analysis report within a personnel file. Tr. p. 29. The record is devoid of any evidence that traffic stops data, including DSNs, are in fact used to discipline officers based on their noncompliance (or promote them based on compliance). Speculation from the City that the information could *possibly* be used for that purpose is insufficient to warrant closing the data files in light of the clear direction from Missouri courts that all exceptions to maintaining governmental records as open records “be strictly construed” to promote government transparency. *Guyer v. City of Kirkwood*, 38 S.W.3d 412, 414 (Mo. banc 2001); see also *Weeks v. St. Louis County*, 696 S.W.3d at 342.

In *Weeks v. St. Louis County*, this Court determined that, based on a summary judgment record, the County had not demonstrated DSN had a clear nexus to or was related to either exemption invoked by the County. 696 S.W.3d at 342. There, as here, the record contained no evidence that DSNs were directly related to “any action involving the hiring, firing, disciplining, or promoting of any employees; the merit or performance of any employee; or any individually identifiable personnel record” or that the DSN was part of any personnel file. *Id.* This Court noted:

All St. Louis County has indicated is that an officer, identified by his or her DSN, *may* be disciplined or promoted based on his or her compliance or noncompliance with section 590.650 and that a DSN, by definition, identifies individual police officers. These facts alone are insufficient to establish the type of clear nexus or direct relationship the Sunshine Law exemptions require to close a public record under section 610.021.

696 S.W.3d at 342 (emphasis original). The City overstates the probative value of the testimony provided from Sgt. Wall on this point. In truth, the record is devoid of evidence demonstrating a clear nexus or direct relationship between officer DSNs and Sections 610.021(3) or (13). The City thus had no basis in Missouri Sunshine law to withhold DSNs from the traffic stops data files.

III. Mr. Weeks’ statement of facts complies with Rule 84.04.

Lastly, Mr. Weeks strongly contests the City’s argument that portions of his statement of facts should be disregarded for failure to comply with Rule 84.04(c). It is true that Rule 84 requires facts to be presented without argument. Mr. Weeks’ statement of facts fully complies with Rule 84.04. Although the City argues that the statement of facts

contains impermissible legal conclusions, it fails to point to a single alleged assertion of a legal conclusion. The City cannot point to anywhere in the facts where, for example, Mr. Weeks alleges that the City violated the Sunshine law, or that the trial court's decision is against the weight of the evidence. Despite the City's attempts to paint a different picture, it simply does not contain the type of argumentative statements which warrant dismissal or disregard for failure to comply with Rule 84.04.

CONCLUSION

At trial, Mr. Weeks demonstrated that SLMPD understood precisely what he was requesting when he asked for "files of the databases containing data generated from vehicle stop forms" in his July 2019 Sunshine request. The City admitted it had these data files in its possession. But the trial court ignored this compelling evidence. For these reasons, and because the City has not met its burden of demonstrating an applicable exemption to disclosure, this Court should 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.

By: /s/ Amy E. Malinowski

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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 7,750 words.
- (2) The brief was prepared using Times New Roman font and contains 2,378 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 Appellant/Petitioner.
- (4) Service was made upon counsel of record for Appellee/Respondent pursuant to Rule 103.08 through the electronic filing system.

By: /s/ Amy E. Malinowski