

SC101018

IN THE SUPREME COURT OF MISSOURI

PHILLIP WEEKS

Appellant

v.

CITY OF ST. LOUIS

Respondent

EASTERN DISTRICT COURT OF APPEALS CASE No. ED112624

CITY OF ST. LOUIS CIRCUIT COURT CASE No. 1922-CC11987

RESPONDENT'S SUBSTITUTE BRIEF

MICHAEL GARVIN
CITY COUNSELOR
Abby Duncan #67766
Associate City Counselor
1200 Market Street
City Hall, Room 314
St. Louis, Missouri 63103
Phone: 314-622-4694
Fax: 314-622-4956
DuncanA@stlouis-mo.gov

Attorney for Respondent City of St. Louis

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF FACTS	1
STANDARD OF REVIEW	6
ARGUMENT	6
I. In response to Point I.A, the trial court’s judgment should be affirmed as its holding was supported by the weight of the evidence that Appellant requested a spreadsheet that City did not have.....	6
II. In response to Point I.A, the trial court’s judgment should be affirmed where Appellant failed to communicate that something other than a spreadsheet would satisfy his request.....	10
III. In response to Point I.B, SLMPD did not close public records.....	13
CONCLUSION	16
CERTIFICATE OF SERVICE.....	17

TABLE OF AUTHORITIES

CASES

<u>Anderson v. Vill. Of Jacksonville</u> , 103 S.W.3d 190 (Mo. App. W.D. 2003).....	10
<u>Houston v. Crider</u> , 317 S.W.3d 178 (Mo. App. S.D. 2010).....	6
<u>Hynes v. Missouri Department of Corrections</u> , 689 S.W.3d 516 (Mo. App. W.D. 2024).....	10
<u>Jones v. Jackson City Circuit Court</u> , 162 S.W.3d 53 (Mo. App. W.D. 2005).....	5, 9, 10
<u>Murphy v. Carron</u> , 536 S.W.2d 30 (Mo. banc 1976).....	6
<u>Spradlin v. City of Fulton</u> , 982 S.W.2d 255 (Mo. banc 1998).....	10
<u>State ex rel. Plymesser v. Cleaveland</u> , 387 S.W.2d 556 (Mo. 1965).....	6
<u>Weeks v. City of St. Louis</u> , ED 112624, 2025 WL 309657 (Mo. App. E.D. Jan. 28, 2025)...	12
<u>Weeks v. St. Louis Cnty.</u> , 696 S.W.3d 333 (Mo. 2024).....	15
<u>White v. Director of Revenue</u> , 255 S.W.3d 571 (Mo. App. S.D. 2008).....	6, 15

STATUTES

RSMo. §109.180	14, 15
RSMo. § 590.650.....	3, 7, 14, 15
RSMo. § 610.021.....	13, 14, 15, 16
RSMo. § 610.023.....	6, 10

RULES

Rule 84.04.....	1, 2
-----------------	------

OTHER

“Spreadsheet,” Merriam-Webster, https://www.merriam-webster.com/dictionary/spreadsheet (accessed Jul. 21, 2025).....	11
--	----

STATEMENT OF FACTS

Preliminary Statement:

This Court should disregard portions of Appellant's Statement of Facts because, contrary to Rule 84.04(c), the statement does not contain a "fair and concise statement of the facts relevant to the questions presented for determination without argument." Instead, Appellant's Brief contains legal conclusions that are argumentative and improper.

For example, in subsection IV of his Statement of Facts Appellant makes the following assertion, "[i]t is undisputed that SLMPD did not provide [Appellant] with the records he requested, despite having them in its possession. Its failure to do so, without justification under the law, prompted the filing of this lawsuit." App. Br. p. 8. This statement is plainly argumentative on its face and contradicts the evidence adduced at trial as developed further in the argument below.

Additionally, Appellant attempts to create an inference that City employees Charles Wall (Wall) & Sherri Schaefer (Schaefer) intentionally refused to provide responsive records to Appellant in stating, "Sgt. Wall conferred with Sherri Schaefer, who was an IT employee at that time, but did not provide data files to [Appellant]." App. Br. pp. 5-6. The record, however, indicates that City employees who reviewed Appellant's Sunshine request testified that they did not have or retain the spreadsheet that Appellant was requesting. Tr. pp. 26, 44, 161. Schaefer further testified that when Wall offered to produce traffic analysis forms in PDF format, she believed that it was both from the system of record and responsive to Appellant's request. Tr. pp. 140-141. Schaefer additionally testified that she would have advised Wall to use the system of record to respond to Appellant's Sunshine Request because she would not

have trusted the point in time CSV files to be fully accurate and complete. Tr. pp. 151-155.¹

Likewise, Appellant's reference to his own testimony that "the formatting of the data files was exactly what I was requesting," app. br. pp. 7-8, is misleading. While this quote substantially restates what Appellant said at trial, it contradicts the plain written text of Appellant's original written Sunshine Request, tr. pp. 18-19, and his subsequent clarification of the same in his trial testimony, tr. pp. 50, 84.

Appellant also makes a misleading statement in regards to what Wall understood in regards to Appellant's request – "Sergeant Wall also understood that [Appellant] was requesting data files, *preferably* in spreadsheet or Excel format." App. Br. p. 5 (emphasis added). However, the actual interchange between Appellant's attorney and Wall was as follows:

Q. And you are aware that Mr. Weeks was asking for data files, correct?

A. (Wall) Yes, specifically in Excel format. Tr. pp. 26-27 (emphasis added).

Rule 84.04(f) provides, "If the respondent is dissatisfied with the accuracy or completeness of the jurisdictional statement or statement of facts in the appellant's brief, the respondent's brief may include a jurisdictional statement or statement of facts." Accordingly, because Appellant's Statement of Facts is incomplete, argumentative, and at some points inaccurate, Respondent offers this supplemental Statement of Facts.

¹ This sentiment was echoed by Appellant's own expert, Andrew Arkills, who testified that when a report from a database is sought, an individual should go "straight to the source" of that database and "extract the data from the database." Tr. p. 189. It is undisputed that the source of the database here was with the Regional Justice Information System (REJIS), not with City. Tr. p. 25. Yet, Appellant's request was directed to SLMPD who possessed merely a derivative of the database, tr. p. 199, and that is exactly what Appellant's expert advised against, tr. p. 189 ("you don't go to a derivative of that database").

Respondent's Statement of Facts:

On July 5, 2019, Appellant emailed a letter to the St. Louis Metropolitan Police Department (SLMPD) pursuant to Missouri's Sunshine Law requesting "data generated from vehicle stop forms" in "worksheet, ie excel worksheet formatting." The record request read as follows:

Files of the databases 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...To clarify: this open records request is for files containing the databases (in worksheet, ie (sic) excel workbook formatting) created from the raw data transmitted upon the completion of the vehicle stop forms. Tr. pp. 18-19; Tr. Ex. P1.

On August 9, 2019, SLMPD offered to provide Appellant with "Traffic Analysis Reports" that were in PDF format which contained the information that Appellant requested. Tr. p. 26; Tr. Ex. P19. Appellant declined SLMPD's offer to provide the "Traffic Analysis Reports," insisting that he sought the data in "spreadsheet" form. Tr. p. 50, 59. Wall understood Plaintiff to be requesting data files "specifically in Excel format." Tr. pp. 26-27. Appellant confirmed at trial that he wanted SLMPD to create a spreadsheet of the data he was requesting. Tr. p. 72 (Q: ...you were asking the St. Louis Metropolitan Police Department -- and correct me if I have this wrong -- to create a spreadsheet in a specific spreadsheet program, download data, and then create a data file in that program and transmit that to you. That's what you're asking, is it not, sir? A. Yes.).

SLMPD employees reviewed Appellant's request, and made internal inquiries, as well as external inquiries to Regional Justice Information Services Commission (REJIS), to

determine records responsive to Appellant’s request. Tr. pp. 20, 31-32; Tr. Ex. P6 (email from Evita Caldwell to Appellant on Aug. 9, 2019). SLMPD possessed the raw data from REJIS in CSV files. Tr. Ex. P15-18. A CSV file is a comma delimited file, or as Appellant’s expert put it “a [.csv] file is at its base a text file with commas that separate the values.” Tr. p. 185. An example of a CSV file is displayed below:

```
MOSPD0000,00806,2015-01-13,000,,P1501130460,M,W,C,16,,C,,,,,,,,,Y,W,,N,,,,,,,,,
,,,,,N,,,,,,,,,2015-01-23,07.15.14,#ANDRD1,,,,,301,,0925,N,Y,,,,,I,,

MOSPD0000,00806,2015-01-16,000,,P1501160826,M,W,B,5,,C,,E,,,,,,,,,Y,W,,N,,,,,,,,,
,,,,,N,,,,,,,,,2015-01-16,13.59.00,#ANDRD1,,,,,301,,1353,N,N,,,,,

MOSPD0000,00806,2015-01-18,000,,P1501180342,M,W,D,1,,C,,,,,,,,,N,,,N,,,,,,,,,
,,,,,N,,,,,,,,,2015-01-18,08.52.40,#ANDRD1,,,,,301,04668,0851,N,N,N,,,I,,

MOSPD0000,00806,2015-01-23,000,,P1501230339,F,W,C,2,,C,M,,,,,,,,,O,Y,W,,N,,,,,,,,,
,,,,,N,,,,,,,,,2015-01-23,08.06.22,#ANDRD1,,,,,301,04668,0755,N,N,,,,,

MOSPD0000,00806,2015-02-03,000,,P1502031161,F,W,C,16,,C,,,,,,,,,Y,W,,N,,,,,,,,,
,,,,,N,,,,,,,,,2015-02-10,20.08.01,#ANDRD1,,,,,301,04668,1936,N,Y,,,,,I,,

MOSPD0000,00806,2015-02-05,000,,P1502051201,M,B,D,16,,C,,,,,,,,,N,,,N,,,,,,,,,
,,,,,N,,,,,,,,,2015-02-05,20.29.50,#ANDRD1,,,,,301,04668,2029,N,N,N,,,I,,

MOSPD0000,00806,2015-02-11,000,,P1502111167,F,W,D,80,,C,,E,,,,,,,,,Y,W,,N,,,,,,,,,
,,,,,N,,,,,,,,,2015-02-11,19.52.29,#ANDRD1,,,,,301,04668,1951,N,Y,,,,,
```

Tr. Ex. P15 (excerpt).

At trial, Appellant testified that when he received the CSV files through discovery, he had to take extra steps to create a spreadsheet. Tr. 96. Appellant’s counsel admitted at trial that the Excel files, tr. ex. P7-10, were created by Appellant, tr. 167, 168, 170. And a systems development manager employed by SLMPD confirmed she “would not have considered” the CSV files responsive to Plaintiff’s request for data in a spreadsheet. Tr. p. 122-23.

Because the data did not exist in a spreadsheet as Appellant required, SLMPD informed

Appellant in August 2019 that “[t]here is no existing record of any ‘file of a database containing data generated from vehicle stop forms’ as you have requested.” Tr. Ex. P6 p. 2. Appellant filed suit.

After the trial on June 26 & July 30, 2023, the trial court entered judgment for City. Specifically, the Court found that “[t]here was no evidence adduced at trial that the SLMPD maintains any ‘vehicle stop’ information in ‘spreadsheet formatting’ or any other organized form.” App. p. A011. Consequently, the Court held City did not knowingly or purposely violate the Sunshine Law where Appellant’s request sought the creation of a new record that City did not possess – namely, the breakdown of data in a spreadsheet – and that, under the plain language of the Sunshine Law, City was not required to create a new record in response to Appellant’s request. App. pp. A011-A012, citing Jones v. Jackson City Circuit Court, 162 S.W.3d 53, 60 (Mo. App. W.D. 2005) (“There is nothing in the definition of ‘public records,’ however, that indicates that it includes written or electronic records that can be created by the public governmental body, even if the new record could be created from information culled from existing records.”).

The Missouri Court of Appeals affirmed. This appeal follows.

STANDARD OF REVIEW

This court's review of bench-trying cases is governed by Murphy v. Carron, 536 S.W.2d 30 (Mo. banc 1976). White v. Director of Revenue, 255 S.W.3d 571, 576 (Mo. App. S.D. 2008). The court will affirm the trial court's judgment unless it is not supported by substantial evidence, is against the weight of the evidence or erroneously declares or applies the law.² Id. The court will review the evidence in the light most favorable to the trial court's decision. Id. All reasonable inferences are drawn in favor of the verdict and all contrary evidence and inferences are disregarded. Id. If facts are contested, the court is obliged to defer to the trial court's determination of those facts. Id.

ARGUMENT

I. In response to Point I.A, the trial court's judgment should be affirmed as its holding was supported by the weight of the evidence that Appellant requested a spreadsheet that City did not have.

From its inception, Appellant's Sunshine request sought data in a worksheet/spreadsheet. The record shows that on or about July 5, 2019, Appellant made a request for records to SLMPD pursuant to RSMo. § 610.023, commonly referred to as the Sunshine Law, requesting: "[f]iles of the databases containing data generated from vehicle stop

² On appeal Appellant has argued solely that the trial court's findings were against the weight of the evidence, not that the trial court erroneously declared or applied the law. *See* App. Br; App. Doc. No. 22. As such, this Court must presuppose that there is sufficient evidence to support the judgment, and the trial court's judgment is against the weight of the evidence only if the circuit court could not have reasonably found, from the record at trial, the existence of a fact that is necessary to sustain the judgment. Houston v. Crider, 317 S.W.3d 178, 186 (Mo. App. S.D. 2010). Any argument related to the Court's declaration or application of law is waived. State ex rel. Plymester v. Cleaveland, 387 S.W.2d 556, 558 (Mo. 1965) ("Various assignments of error set out in appellant's motion for new trial are not briefed in appellant's brief on appeal. Those which are not so briefed are waived.").

forms for 2014 through and including 2018, including officer PINs/DSNs that are kept pursuant to Mo. Rev. Stat § 590.650.” Tr. Ex. P1. Appellant’s request also indicated that “this open records request is for files containing the databases (in worksheet, ie (sic) excel workbook formatting) created from the raw data transmitted upon the completion of the vehicle stop forms.” Tr. Ex. P1. Two weeks later, Appellant communicated his “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. p. 18-19; Tr. Ex. P3.

Respondent offered the information to Appellant, which Appellant refused because the information was not in a spreadsheet. On August 9, 2019, City informed Appellant that it had no records denominated “vehicle stop forms” in a spreadsheet, but that it did have records known as “traffic analysis reports.” Tr. Ex. P19. City provided Appellant with an exemplar of a Traffic Analysis Report. Tr. Ex. P19. Appellant indicated in his subsequent written response to SLMPD, tr. ex. P19, and his trial testimony, tr. p. 59, that these reports, containing the very data he requested, were not what he wanted because the information was not in a spreadsheet. At trial, Appellant reiterated that he wanted the records produced to him in a spreadsheet:

Q. And you requested of the St. Louis Metropolitan Police Department an Excel Spreadsheet with traffic analysis data; is that accurate?

A. [Appellant]: Yes, and I believe I later clarified that I would accept the spreadsheet, which doesn’t mean that it had to be an Excel spreadsheet.

Q. Okay. So you changed your request?

A. I clarified it saying that I did not want the forms, but I wanted it in spreadsheet formatting.

Tr. p. 84.

Respondent did not possess the data in a spreadsheet. The overwhelming evidence at trial demonstrated that City did not have an existing record with the data in any spreadsheet. For

example, Wall testified that the records Appellant sought did not exist in a spreadsheet:

Q. Is it your testimony that this data does not exist?

A [Wall]. My testimony would be that the data in the format that it was requested did not exist, yes.

Tr. p. 44.

Schaefer, the systems development manager for SLMPD at the time of Appellant's Sunshine Request, confirmed the same:

Q. Ma'am, the city of St. Louis Metropolitan Police Department does not maintain an Excel spreadsheet for traffic analysis or traffic stop data, does it?

A [Schaefer]. No.

Q. Okay. The City of St. Louis Metropolitan Police Department does not maintain any spreadsheet for traffic stop data or traffic analysis, does it?

A. Not that I'm aware of.

Tr. p. 161.

Appellant offered no evidence the City maintained the data in a spreadsheet.

The CSV files were not responsive to Appellant's request for a spreadsheet. Tr. pp. 26, 44, 161. A CSV file is not a spreadsheet, and Appellant admitted as much. Appellant himself confirmed that even when he received the CSV files through discovery, he needed to take extra steps to create the record that he was seeking:

Q. Yes, or no, sir. Did you take the CSV files and then create your own Excel spreadsheets with those documents?

A [Appellant]. The spreadsheets were not given to me as you said. They were given to my lawyers, and my lawyers asked me to convert the CSV to Excel, and that's exactly what I did.

Tr. p. 96.

Appellant's expert, Andrew Arkills, explained that a CSV file is not a spreadsheet, but a text file, that can then be imported into another system, like Excel, to do further analysis or to hand off to another database that it needs to be written to. Tr. pp. 185, 191. Notably, counsel for

Appellant conceded that the Excel files displaying the data from the CSV files were in fact a record created by Appellant. Tr. p. 170 (“We believe there's foundation in Mr. Weeks' testimony to enter both the CSV files and the Excel files which he testified that he created or saved directly from the CSV files.”).

Contrary to Appellant’s position, the conversion of the CSV text file to a spreadsheet is not akin to photocopying the data into a different electronic format. Schaefer explained that when a CSV file is opened in Excel, Excel makes assumptions about the data and converts the data it has assumed into a spreadsheet. Tr. pp. 164-65 (“Excel will make assumptions about your data”). Photocopying a document, on the other hand, does not make assumptions about data or otherwise interpret data outside of what the data is already. Hence, on this record, the key difference between photocopying or scanning to PDF an exact replica of a document and what Appellant requested here is the alteration, or assumption, of data. Tr. p. 164 (Schaefer explaining that “the data [in the CSV files] are a little different than Excel is interpreting the data.”). This assumption of data is what creates a new record, tr. p. 164-65, which is not required of a governmental body under the Sunshine Law. Jones, 162 S.W.3d at 60 (“There is nothing in the definition of “public records,” however, that indicates that it includes written or electronic records that *can* be created by the public governmental body, even if the new record could be created from information culled from existing records.”); *see* RSMo. § 610.023.2 (“Each public governmental body shall make available for inspection and copying by the public of that body's public records.”).

The trial court, relying on all testimony above and filtering for credibility, held that “[t]here was no evidence adduced at trial that the SLMPD maintains any ‘vehicle stop’

information in ‘spreadsheet formatting’ or any other organized form.” App. p. A011. The trial court correctly reasoned that the 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.” App. p. A009. Indeed, the Sunshine Law does “not require a public governmental body to create a new record upon request, but only to provide access to existing records held or maintained by the public governmental body.” Jones, 162 S.W.3d at 60. While this Court may have weighed the evidence differently and arrived at a different conclusion than the trial court, this Court must adhere to its standard of review and is not free to substitute its own judgment for that of the trial court. *See Spradlin v. City of Fulton*, 982 S.W.2d 255, 263 (Mo. banc 1998); Hynes v. Missouri Department of Corrections, 689 S.W.3d 516, 528-29 (Mo. App. W.D. 2024) (a trial court is free to believe or disbelieve witness testimony regarding their understanding of a request made under Missouri's Sunshine Law). Based on the record, judgment for City should be affirmed.

II. In response to Point I.A, the trial court’s judgment should be affirmed where Appellant failed to communicate that something other than a spreadsheet would satisfy his request.

“Although liberal access to public governmental records is the State’s expressed policy, one seeking access to public records must communicate a request in language that a reasonably competent custodian of the records would understand.” Anderson v. Vill. Of Jacksonville, 103 S.W.3d 190, 196 (Mo. App. W.D. 2003). “The custodian must be able to identify records with reasonable specificity in order to be able to provide access to them.” Id. If the custodian has to do research to determine what is being requested, the request fails. Id. at 196.

Appellant and the lower appellate court's dissenting opinion insists that City must recognize certain parts of Appellant's request (for the data), and ignore other parts of his request (that the data be in a spreadsheet). But the Sunshine Law does not require the governmental body to divine what records the requestor seeks. Instead, Missouri courts have rightly put the onerous on the requestor to communicate his/her request in an intelligible manner so that a reasonably competent custodian of records would understand the records being sought. Id.

Appellant specifically requested vehicle stop form information in a spreadsheet. The trial court adduced from the evidence at trial that Plaintiff was seeking data in a spreadsheet. App. pp. A004-007. A "spreadsheet," is defined as "a computer program that allows the entry, calculation, and storage of data in columns and rows." "Spreadsheet," Merriam-Webster, <https://www.merriam-webster.com/dictionary/spreadsheet> (accessed Jul. 21, 2025). The CSV files do *not* contain data in columns and rows, but instead, are comma delimited files showing undecipherable information as demonstrated below.

MOSPD0000,00806,2015-01-13,000,,P1501130460,M,W,C,16,,C,,,,,,,,,Y,W,,N,,,,,,,,,
 ,,,,,,N,,,,,,,,,2015-01-23,07.15.14,#ANDRD1,,,,,301,,0925,N,Y,,,,I,,

MOSPD0000,00806,2015-01-16,000,,P1501160826,M,W,B,5,,C,,E,,,,,,,,,Y,W,,N,,,,,,,,,
 ,,,,,,N,,,,,,,,,2015-01-16,13.59.00,#ANDRD1,,,,,301,,1353,N,N,,,,,

MOSPD0000,00806,2015-01-18,000,,P1501180342,M,W,D,1,,C,,,,,,,,,N,,,N,,,,,,,,,
 ,,,,,,N,,,,,,,,,2015-01-18,08.52.40,#ANDRD1,,,,,301,04668,0851,N,N,N,,,I,,

MOSPD0000,00806,2015-01-23,000,,P1501230339,F,W,C,2,,C,M,,,,,,,,,O,Y,W,,N,,,,,,,,,
 ,,,,,,N,,,,,,,,,2015-01-23,08.06.22,#ANDRD1,,,,,301,04668,0755,N,N,,,,,

MOSPD0000,00806,2015-02-03,000,,P1502031161,F,W,C,16,,C,,,,,,,,,Y,W,,N,,,,,,,,,
 ,,,,,,N,,,,,,,,,2015-02-10,20.08.01,#ANDRD1,,,,,301,04668,1936,N,Y,,,,I,,

MOSPD0000,00806,2015-02-05,000,,P1502051201,M,B,D,16,,C,,,,,,,,,N,,,N,,,,,,,,,
 ,,,,,,N,,,,,,,,,2015-02-05,20.29.50,#ANDRD1,,,,,301,04668,2029,N,N,N,,,I,,

MOSPD0000,00806,2015-02-11,000,,P1502111167,F,W,D,80,,C,,E,,,,,,,,,Y,W,,N,,,,,,,,,
 ,,,,,,N,,,,,,,,,2015-02-11,19.52.29,#ANDRD1,,,,,301,04668,1951,N,Y,,,,,

Tr. Ex. P15 (excerpt). CSV files do not fit the definition of a spreadsheet.

Because Appellant failed to communicate that something other than a spreadsheet would satisfy his request, his request fails. It is notable that multiple City employees, a trial court judge, and two appellate court judges, all of whom are undoubtedly reasonably competent, reviewed Appellant's request in its entirety and determined that Appellant requested data in a spreadsheet. Tr. pp. 26, 44, 161; App. pp. A004-007; Weeks v. City of St. Louis, ED 112624, 2025 WL 309657, at *3 (Mo. App. E.D. Jan. 28, 2025) ("In this case, Plaintiff's July 2019 request specifically asked for data in 'worksheet' or '[E]xcel workbook' format, and evidence adduced at trial supports the reasonable conclusion that the City did not possess the requested data in the requested format."). At the very least this fact demonstrates that Appellant's request was unintelligible if, in fact, something other than a spreadsheet would have satisfied his request. And if something other than a spreadsheet, like the CSV text files, would have satisfied his request, Appellant should have communicated such. Because

Appellant failed to do so, City did not violate the Sunshine Law and the judgment for City should be affirmed.

III. In response to Point I.B, SLMPD did not close public records.

SLMPD cannot be said to have closed public records when it offered responsive records to Appellant. In correspondence to Appellant on August 9, 2024, SLMPD explained that “[w]e 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. Ex. P19. SLMPD provided Appellant with a sample Traffic Analysis Report, and offered to produce 150,000 such reports, while explaining that the officer Department Serial Numbers (DSNs) would be redacted from the reports before production. Tr. Ex. P19. It is undisputed that Appellant refused the reports, insisting that the data be produced to him in a spreadsheet. These facts were firmly established by the trial court. App. pp. A005-006. Because SLMPD offered to produce documents, which it reasonably believed, were responsive to Appellant’s request, SLMPD did not close public records.

To the extent Appellant’s Point I.B asserts that he is entitled to officer DSN information, such information in this context is properly closed per RSMo. § 610.021(3) & (13). RSMo. § 610.021(3) provides exemptions of documents related to the “[h]iring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded...the term ‘personal information’ means information relating to the performance or merit of individual employees.” RSMo. § 610.021(13) exempts “[i]ndividually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment.”

The evidence adduced at trial was that DSNs are unique identifying numbers for each SLMPD employee. Tr. p. 27. In this context, the DSNs are “related to personnel reports that [are] part of [City’s] compliance and discipline for officers that may not be completing these reports as required by the attorney general’s office.” Tr. p. 28. “The only reason that the DSN is tracked on these particular reports is for [City] to be able to ensure compliance with the statute by [its] employees.” Tr. p. 29. On this record, SLMPD’s proposed redactions of officer DSNs was warranted under RSMo. § 610.021(3) & (13) as the DSNs are closed information related to the “hiring, firing, disciplining or promoting of particular employees” and are otherwise personnel records.

Contrary to Appellant’s argument, RSMo. § 109.180 does not make DSNs open where Section 590.650.2 does not mention or reference DSNs. Appellant cites to RSMo. § 109.180 in support of his argument that DSNs are presumed open when they are maintained pursuant to a Missouri statute. App. Br. p. 21. But § 590.650.2 does not reference officer DSNs, and therefore officer DSNs are not presumed open by virtue of § 109.180. Pursuant to RSMo. 590.650.2, an officer shall report the following information to the law enforcement agency each time the officer stops a driver of a motor vehicle: (1) The age, gender and race or minority group of the individual stopped; (2) The reasons for the stop; (3) Whether a search was conducted as a result of the stop; (4) If a search was conducted, whether the individual consented to the search, the probable cause for the search, whether the person was searched, whether the person's property was searched, and the duration of the search; (5) Whether any contraband was discovered in the course of the search and the type of any contraband discovered; (6) Whether any warning or citation was issued as a result of the stop; (7) If a warning or citation was issued, the violation charged or warning

provided; (8) Whether an arrest was made as a result of either the stop or the search; (9) If an arrest was made, the crime charged; and (10) The location of the stop. A DSN is not required in this or any other provision of Section 590.650. *See* RSMo. § 590.650.2; App. p. A010. Thus, by Appellant’s own logic, there is no presumption under § 109.180 that DSNs are open public records when such information is not sought in the underlying statute. RSMo. § 590.650.2.

In his brief, Appellant points to this Court’s recent rulings in one of Weeks’ other Sunshine lawsuits against St. Louis County and Webster Groves, where this Court reversed the trial court’s grant of summary judgment to the municipalities involving a nearly-identical request for records, and where the Court discussed, but did not issue a holding regarding, the disclosure of DSNs. Weeks v. St. Louis Cnty., 696 S.W.3d 333 (Mo. 2024). That case is not instructive here. Importantly, the court’s review in the other matter involved a record on summary judgment, which warrants a *de novo* review, unlike here, where all “reasonable inferences are drawn in favor of the verdict and all contrary evidence and inferences are disregarded.” White, 255 S.W.3d at 576.

Moreover, in Weeks v. St. Louis Cnty., this Court did not rule on the ultimate issue regarding whether DSN numbers under these circumstances must be disclosed, instead, it held that “whether any exemption to disclosure applies if the DSN is a ‘public record,’...[is an] issue[] [that] must be resolved on remand.” Id. at 343. This Court has not declared a bright-line rule that DSNs are open records under the Sunshine Law. In the absence of such, it can hardly be argued that City “knowingly” and “purposefully” violated the Sunshine Law by redacting the DSNs here, especially in light of credible testimony that the only purpose of listing the DSNs is “related to personnel reports.” Tr. p. 28; *see also*, RSMo. § 610.021(3) &

(13).

Lastly, the record on appeal is distinguishable here, where, unlike in the other Weeks matter, the summary judgment record was “devoid of evidence the DSN has a clear nexus to or relate[d] directly 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.” Weeks, 696 S.W.3d at 342. Here, City has conclusively demonstrated that the DSN information is “only” documented on the vehicle stop forms for purposes of personnel performance and discipline. Tr. p. 29. Thus, on this record, there is a clear nexus to the DSN numbers and the exemptions in subsection (3) and (13), and the trial court’s judgment should be affirmed.

CONCLUSION

Wherefore, City respectfully requests this Court affirm the trial court’s judgment in its favor.

MICHAEL GARVIN,
CITY COUNSELOR

/s/ Abby Duncan
Abby Duncan #67766
Associate City Counselor
1200 Market Street
City Hall, Room 314
St. Louis, Missouri 63103
Phone: 314-622-4694
Fax: 314-622-4956
DuncanA@stlouis-mo.gov
Attorney for Respondent City of St. Louis

CERTIFICATE OF COMPLIANCE AND SERVICE

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) This brief was prepared using Times New Roman font and contains 4,312 words.
- (3) This brief complies with Rule 55.03, the undersigned attorney signed the original brief, and it is being maintained by counsel for Respondent.
- (4) Service was made upon counsel of record for Appellant pursuant to Rule 103.08 through the electronic filing system.

By: /s/ Abby Duncan