

IN THE SUPREME COURT OF MISSOURI

PHILLIP WEEKS,	)	
	)	Case No. _____
Appellant,	)	
	)	Eastern District Court of Appeals Case
v.	)	No. ED112624
	)	
City of Saint Louis,	)	City of St. Louis Circuit Court Case
	)	No. 1922-CC11987
Respondent.	)	

APPLICATION FOR TRANSFER TO MISSOURI SUPREME COURT

Pursuant to Rules 83.04 and 83.05, Petitioner/Appellant Phillip Weeks moves this Court to accept transfer of this matter.

This case involves questions of general interest related to government transparency and compliance with Missouri's Sunshine Law. Here, the Missouri Court of Appeals, Eastern District, issued a decision allowing the City of Saint Louis to wholly avoid its obligations under the Sunshine Law to provide Mr. Weeks access to data files not because of any exception under the Sunshine Law, but because Mr. Weeks failed to specify the exact format in which the City's data was maintained.

The Circuit Court's decision was against the weight of the evidence, and in affirming that decision, the Court of Appeals issued an opinion contrary to Missouri law, including *Guyer v. City of Kirkwood*, 38 S.W.3d 412, 414 (Mo. banc 2001); *Roland v. St. Louis City Bd. of Election Comm'rs*, 590 S.W.3d 315, 320 (Mo. banc 2019); and the language of the Sunshine Law itself. If permitted to stand, the decision could have far-reaching and negative consequences for Missouri's public policy of government transparency.

I. Statement of Facts

This case entails a request for open records related to vehicle stops submitted by Petitioner/Appellant Phillip Weeks to the Saint Louis Metropolitan Police Department (“SLMPD”) in July 2019.

A. Mr. Weeks’ request for data files

On July 5, 2019, Petitioner/Appellant Phillip Weeks submitted a Sunshine request to the City, asking the City to produce databases containing the data generated from vehicle traffic stops, including officer DSNs.¹ Tr. pp. 77-78; D29 (the “Request”). He specifically asked that the data be sent to him in electronic format:

Dear Ms. Davis ,

Within three business days of this request, please produce **electronic copies** of the following:

- (1) **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. Upon information and belief, these databases are generated from information transmitted to REJIS by SLMPD Officers during or after each vehicle stop.

D29 (highlighting added).

As demonstrated in the trial court, SLMPD (a subdivision of the City) gathers certain data points at every traffic stop pursuant to RSMo. § 590.650—a Missouri statute which 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

¹ A “DSN” is an officer’s Department Serial Number – a unique identifying number for SLMPD officers.

race-based traffic stops, and in order to do so, periodically review traffic 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 database managed by REJIS.² A structured query language (“SQL”) database, as described at trial by expert witness Mr. Arkills, “is a data repository that stores data from any number of systems...it’s generally a system of record for the specific subject matter that’s being stored.” Tr. pp. 153, 180-181.³ This data becomes static (meaning it is no longer changed) in or before March of each year, at which time SLMPD submits its annual vehicle stops report to the Attorney General. Tr. pp. 156-157.

Evidence presented at trial demonstrated that REJIS also automatically shares vehicle stops data (including officer DSNs) with SLMPD on a periodic basis, in .CSV format. Tr. pp. 130-31, 192; Exhibits P15-18.⁴ These data files are pulled from REJIS’s system on a regular cadence, without the need for individual SLMPD programmers to manually extract the data. Tr. pp. 186-187, 192-194. They were produced 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:

² REJIS was initially named as a defendant in the trial court, but was voluntarily dismissed on September 16, 2020.

³ The transcript on appeal is cited herein as “Tr.” Documents in the legal file are cited to by their docket number (e.g., “D39”).

⁴ Trial Exhibits P15-P18 are confidential and were physically deposited with the Appeal Court pursuant to R. 81.16.

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 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.

B. The City did not produce data files in response to Mr. Weeks' request despite having it in its possession

Although the City understood that Mr. Weeks was seeking access to data files containing traffic stops data, it refused to provide them until after this lawsuit was filed and a request for production of records was served.

The City initially characterized Mr. Weeks' Request as seeking vehicle stop *forms*. Mr. Weeks promptly corrected the City, and clarified that he was seeking data files, not vehicle stop forms: "my 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 testified that he would have accepted any spreadsheet format and that his request was not exclusively limited to responsive data in Excel format. 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 (emphasis added).

At the time Mr. Weeks submitted his Request, SLMPD Sgt. Charles Wall was detached to the Legal Division within SLMPD. 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 them to be provided in that format, if possible. Sgt. Wall also understood that Mr. Weeks was requesting data files, in spreadsheet or Excel format. Tr. pp. 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 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 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 this 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. In the trial court proceedings, the City admitted that it did in fact have the requested data in its possession and produced it as .CSV files. Exhibit P14.

C. Trial court judgment and appellate decision

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. A002.

The trial court concluded that Mr. Weeks sought the 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. The trial court interpreted the Request not to include DSNs, despite the plain language of Mr. Weeks’ Request in which he expressly requested DSNs, and therefore did not determine whether a DSN is a public record 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.

Mr. Weeks timely appealed the Circuit Court's decision to the Eastern District Court of Appeals, arguing its decision was against the weight of the evidence. The Court of Appeals issued its decision on January 28, 2025, affirming. Judge Torbitzky filed a dissenting opinion writing, in part:

The City had the data that Weeks requested in an easily accessible electronic format. There is no exception to the Sunshine Law allowing documents to be closed because they are kept in a different electronic format than requested. Although the databases were kept with a .CSV extension, rather than an Excel extension, the Department was still required to disclose the information to Weeks because it had no statutory authority to close these records. *See* section 610.210 (listing records that could be exempted from the Sunshine Law). Its failure to do so was a violation of the Sunshine Law.

Weeks v. City of St. Louis, ED112624 (Mo. App. ED Jan. 28, 2025), at 6 (Torbitzky, J., dissenting). Mr. Weeks filed a motion for rehearing or transfer, which was denied on March 3, 2025. This application follows.

II. Reasons for Transfer

Issues surrounding open records and government transparency are of general interest and importance in Missouri. When appellate courts overlook facts and misapply the law with regard to cases involving the Sunshine Law, all Missourians are harmed because such decisions erode the public policy of this State: to have an open and transparent government. The lower courts' opinions in this case give public governmental bodies a mechanism for avoiding transparency that is not grounded in Missouri's Sunshine Law or

cases interpreting the Law. Therefore, the decision in this case must be reexamined by this Court.

The Court of Appeals affirmed the trial court's decision in favor of the City, despite evidence in the record that the City understood Mr. Weeks' request was for data generated from vehicle stops (Tr. p. 52; D32), and despite the City's admissions that it in fact had those data files in its possession (Exhibit P14). In reaching this decision, the Court of Appeals interpreted Mr. Weeks' Request narrowly, as exclusively seeking data files in Excel format; and it created a new exception under the Sunshine Law that permits a governmental body to withhold open electronically-stored records when they are not requested in the specific electronic format in which they are maintained.

The Court of Appeals' overly narrow interpretation of Mr. Weeks' Request is contrary to evidence adduced at trial, including the City's acknowledgment that the Request was for data, not derivative reports: "We do understand the requested information is for the data generated from the vehicle stop forms." Tr. p. 52; D32. And Mr. Weeks' communications with the City, where he noted Excel was a *preference*, not a requirement. Tr. pp. 48-50; D32 ("my 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") (emphasis added).

Perhaps more importantly, the Court of Appeals' decision seemingly creates a new exception to the Sunshine Law that has no basis in Missouri statute or common law. Under the Court of Appeals' opinion, governmental authorities could withhold records not because they are closed pursuant to an exception delineated by § 610.021, but simply

because they are maintained in a different format than the format noted in the request. As noted in the dissenting opinion below, even if Mr. Weeks requested vehicle stops data exclusively in Excel format, that is not legally relevant to the City's obligation to disclose public records in response to a proper request:

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. The significance of the request is the information requested, not the format in which it is stored. 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.

Weeks, ED112624 at 5-6 (Torbitzky, J., dissenting). Especially as more and more agencies move to storing records electronically, and as technology continues to develop, this decision could sound the death knell for transparency in Missouri government.

This decision contradicts the explicit purpose behind Missouri's Sunshine Law, as well as its plain language. The decision violates the Law's instruction that "exceptions...be strictly construed to promote that policy" of open government. *Guyer*, 38 S.W.3d at 414; *see also Roland*, 590 S.W.3d at 320 ("Exceptions to the sunshine law must be strictly construed in favor of open records."). In Section 610.029, public governmental bodies are "strongly encouraged" to provide access to records in electronic format. Governmental bodies are further instructed that, if they "keep[] 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. Yet the City refused to provide the data in electronic format, despite admitting to having the data files in its possession, and despite the fact that the Sunshine Law clearly envisions public access to data files or databases. *See, e.g.*, RSMo. § 610.021(6) (defining “public record[s]” broadly as “*any* record, whether written *or electronically stored, retained by or of* any public governmental body....”) (emphasis added); *see also* RSMo. § 610.021(22) (referring to public records stored “in a file, document, *data file or database...*”) (emphasis added).

This decision also contradicts Missouri law because it seemingly creates an exception excusing the City’s non-disclosure that is not contained within Missouri Sunshine Law. But “[t]his Court is not free to fashion additional exceptions to the sunshine law.” *Roland*, 590 S.W.3d at 321.

The City’s characterization of Mr. Weeks’ Request as seeking data files *exclusively* in Excel format is an erroneous and self-serving interpretation of the Request. When the City offered Mr. Weeks traffic analysis reports instead of data files, Mr. Weeks clarified his request for data and explained that examples of data files include files in spreadsheet format or Excel format. His stated preference was for the data in Excel format. But, as the dissenting opinion correctly notes, Mr. Weeks never requested the data files in any exclusive format. *Weeks*, ED112624 at 5 (Torbitzky, J., dissenting).

Regardless, the Sunshine law does not provide an exception to a governmental body’s obligation to produce public information if that information happened to be maintained in a different electronic format than requested. The Sunshine law only requires

a public body to “provide the records in the requested format, *if such format is available*.” RSMo. § 610.023.3 (emphasis added). It does not grant the City authority to withhold the data files because they were stored with a .CSV extension rather than an .XLS (Excel) extension. (And, in any event, there is no meaningful difference between data files in Excel format and .CSV. Both Mr. Weeks and former City employer Ms. Schaefer testified that .CSV files are a type of file that can commonly be opened in Excel. Tr. pp. 51, 113; *see also Weeks*, ED112624 at 5 n.3 (Torbitzky, J., dissenting.)) Furthermore, 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”).

Lastly, the Circuit Court and Court of Appeals misapply Missouri law holding that a public governmental body has no obligation to generate a new record or report in response to a Sunshine request. *See Jones v. Jackson Cnty. Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. W.D. 2005). In *Jones*, the petitioner asked the Circuit Court to provide 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, and 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.* at 59-60.

Here, unlike the petitioner in *Jones*, Mr. Weeks did not ask the City to aggregate 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. Indeed, copies of these preexisting data files were admitted at trial. And extracting data to provide public access is no more creating a new record than is photocopying a paper document. This Court should reconsider the lower courts' opinions lest it permit bad law to be made on the basis of a misunderstanding of technology.

III. Conclusion

In affirming the trial court's decision, the Circuit Court created a new exception to Missouri Sunshine Law that has no basis in the law and is not warranted under the factual record here. Since this decision will have a significant general impact on public access to otherwise open governmental records, this Court should accept Mr. Weeks' application for transfer and review both the Circuit Court and Court of Appeals' opinions in this case.

Dated: March 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that: (1) on this 14th day of March, 2025, she e-mailed a copy of the foregoing to Abby Duncan, Associate City Counselor, 1200 Market Street, City Hall Room 314, St. Louis, MO 63103, 314-622-4694; DuncanA@stlouis-mo.gov; and (2) pursuant to Rule 84.015, the undersigned certifies that she complied with all redaction requirements.

By: /s/Amy E. Malinowski