

SECOND REGULAR SESSION

SENATE BILL NO. 1227

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Read 1st time February 27, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5227S.011

AN ACT

To repeal sections 610.021 and 610.100, RSMo, and to enact in lieu thereof three new sections relating to confidential law enforcement information, with a penalty provision.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 610.021 and 610.100, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 546.092, 610.021,
3 and 610.100, to read as follows:

**546.092. 1. Notwithstanding any other provision of law or rule
2 to the contrary, court personnel shall, prior to disclosure to the public,
3 omit the Social Security number, date of birth, address of any law
4 enforcement officer other than the address of the law enforcement
5 agency that employs the officer, or any other personal identifier for a
6 law enforcement officer, from any case record involving any criminal
7 case filed, whether written or published on the Internet, unless the law
8 enforcement officer is named as the defendant.**

**9 2. If the court determines that a person or entity who is
10 requesting a record has a legitimate interest in obtaining any
11 information listed in subsection 1 of this section, the court may allow
12 access, but only if the court determines that disclosure will not cause
13 harm to the officer or the family of the officer whose Social Security
14 number, date of birth, address, or other personal identifiers are
15 disclosed.**

**16 3. Any person who discloses any information listed in subsection
17 1 of this section, when such disclosure is not authorized under**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 **subsection 2 of this section and results in physical or financial harm to**
19 **a law enforcement officer or any member of his or her family, shall be**
20 **guilty of a class A misdemeanor for a first offense and a class D felony**
21 **for any second or subsequent offense.**

610.021. Except to the extent disclosure is otherwise required by law, a
2 public governmental body is authorized to close meetings, records and votes, to
3 the extent they relate to the following:

4 (1) Legal actions, causes of action or litigation involving a public
5 governmental body and any confidential or privileged communications between
6 a public governmental body or its representatives and its attorneys. However,
7 any minutes, vote or settlement agreement relating to legal actions, causes of
8 action or litigation involving a public governmental body or any agent or entity
9 representing its interests or acting on its behalf or with its authority, including
10 any insurance company acting on behalf of a public government body as its
11 insured, shall be made public upon final disposition of the matter voted upon or
12 upon the signing by the parties of the settlement agreement, unless, prior to final
13 disposition, the settlement agreement is ordered closed by a court after a written
14 finding that the adverse impact to a plaintiff or plaintiffs to the action clearly
15 outweighs the public policy considerations of section 610.011, however, the
16 amount of any moneys paid by, or on behalf of, the public governmental body
17 shall be disclosed; provided, however, in matters involving the exercise of the
18 power of eminent domain, the vote shall be announced or become public
19 immediately following the action on the motion to authorize institution of such
20 a legal action. Legal work product shall be considered a closed record;

21 (2) Leasing, purchase or sale of real estate by a public governmental body
22 where public knowledge of the transaction might adversely affect the legal
23 consideration therefor. However, any minutes, vote or public record approving
24 a contract relating to the leasing, purchase or sale of real estate by a public
25 governmental body shall be made public upon execution of the lease, purchase or
26 sale of the real estate;

27 (3) Hiring, firing, disciplining or promoting of particular employees by a
28 public governmental body when personal information about the employee is
29 discussed or recorded. However, any vote on a final decision, when taken by a
30 public governmental body, to hire, fire, promote or discipline an employee of a
31 public governmental body shall be made available with a record of how each
32 member voted to the public within seventy-two hours of the close of the meeting

33 where such action occurs; provided, however, that any employee so affected shall
34 be entitled to prompt notice of such decision during the seventy-two-hour period
35 before such decision is made available to the public. As used in this subdivision,
36 the term "personal information" means information relating to the performance
37 or merit of individual employees;

38 (4) The state militia or national guard or any part thereof;

39 (5) Nonjudicial mental or physical health proceedings involving
40 identifiable persons, including medical, psychiatric, psychological, or alcoholism
41 or drug dependency diagnosis or treatment;

42 (6) Scholastic probation, expulsion, or graduation of identifiable
43 individuals, including records of individual test or examination scores; however,
44 personally identifiable student records maintained by public educational
45 institutions shall be open for inspection by the parents, guardian or other
46 custodian of students under the age of eighteen years and by the parents,
47 guardian or other custodian and the student if the student is over the age of
48 eighteen years;

49 (7) Testing and examination materials, before the test or examination is
50 given or, if it is to be given again, before so given again;

51 (8) Welfare cases of identifiable individuals;

52 (9) Preparation, including any discussions or work product, on behalf of
53 a public governmental body or its representatives for negotiations with employee
54 groups;

55 (10) Software codes for electronic data processing and documentation
56 thereof;

57 (11) Specifications for competitive bidding, until either the specifications
58 are officially approved by the public governmental body or the specifications are
59 published for bid;

60 (12) Sealed bids and related documents, until the bids are opened; and
61 sealed proposals and related documents or any documents related to a negotiated
62 contract until a contract is executed, or all proposals are rejected;

63 (13) Individually identifiable personnel records, performance ratings or
64 records pertaining to employees or applicants for employment, except that this
65 exemption shall not apply to the names, positions, salaries and lengths of service
66 of officers and employees of public agencies once they are employed as such, and
67 the names of private sources donating or contributing money to the salary of a
68 chancellor or president at all public colleges and universities in the state of

69 Missouri and the amount of money contributed by the source;

70 (14) Records which are protected from disclosure by law;

71 (15) Meetings and public records relating to scientific and technological
72 innovations in which the owner has a proprietary interest;

73 (16) Records relating to municipal hotlines established for the reporting
74 of abuse and wrongdoing;

75 (17) Confidential or privileged communications between a public
76 governmental body and its auditor, including all auditor work product; however,
77 all final audit reports issued by the auditor are to be considered open records
78 pursuant to this chapter;

79 (18) Operational guidelines and policies developed, adopted, or maintained
80 by any public agency responsible for law enforcement, public safety, first
81 response, or public health for use in responding to or preventing any critical
82 incident which is or appears to be terrorist in nature and which has the potential
83 to endanger individual or public safety or health. Nothing in this exception shall
84 be deemed to close information regarding expenditures, purchases, or contracts
85 made by an agency in implementing these guidelines or policies. When seeking
86 to close information pursuant to this exception, the agency shall affirmatively
87 state in writing that disclosure would impair its ability to protect the safety or
88 health of persons, and shall in the same writing state that the public interest in
89 nondisclosure outweighs the public interest in disclosure of the records. This
90 exception shall sunset on December 31, [2008] **2012**;

91 (19) Existing or proposed security systems and structural plans of real
92 property owned or leased by a public governmental body, and information that is
93 voluntarily submitted by a nonpublic entity owning or operating an infrastructure
94 to any public governmental body for use by that body to devise plans for
95 protection of that infrastructure, the public disclosure of which would threaten
96 public safety:

97 (a) Records related to the procurement of or expenditures relating to
98 security systems purchased with public funds shall be open;

99 (b) When seeking to close information pursuant to this exception, the
100 public governmental body shall affirmatively state in writing that disclosure
101 would impair the public governmental body's ability to protect the security or
102 safety of persons or real property, and shall in the same writing state that the
103 public interest in nondisclosure outweighs the public interest in disclosure of the
104 records;

105 (c) Records that are voluntarily submitted by a nonpublic entity shall be
106 reviewed by the receiving agency within ninety days of submission to determine
107 if retention of the document is necessary in furtherance of a state security
108 interest. If retention is not necessary, the documents shall be returned to the
109 nonpublic governmental body or destroyed;

110 (d) This exception shall sunset on December 31, [2008] **2012**;

111 (20) Records that identify the configuration of components or the
112 operation of a computer, computer system, computer network, or
113 telecommunications network, and would allow unauthorized access to or unlawful
114 disruption of a computer, computer system, computer network, or
115 telecommunications network of a public governmental body. This exception shall
116 not be used to limit or deny access to otherwise public records in a file, document,
117 data file or database containing public records. Records related to the
118 procurement of or expenditures relating to such computer, computer system,
119 computer network, or telecommunications network, including the amount of
120 moneys paid by, or on behalf of, a public governmental body for such computer,
121 computer system, computer network, or telecommunications network shall be
122 open; and

123 (21) Credit card numbers, personal identification numbers, digital
124 certificates, physical and virtual keys, access codes or authorization codes that
125 are used to protect the security of electronic transactions between a public
126 governmental body and a person or entity doing business with a public
127 governmental body. Nothing in this section shall be deemed to close the record
128 of a person or entity using a credit card held in the name of a public
129 governmental body or any record of a transaction made by a person using a credit
130 card or other method of payment for which reimbursement is made by a public
131 governmental body; **and**

132 **(22) Records and documents of, and pertaining to, internal**
133 **investigations by law enforcement agencies into matters of fitness and**
134 **conduct of law enforcement officers employed by such investigating law**
135 **enforcement agencies used solely in connection with matters relating**
136 **to the employment of such law enforcement officers, and records and**
137 **documents pertaining to any determinations or actions relating to an**
138 **officer's employment status taken in connection with or following such**
139 **investigations. Notwithstanding whether the subject matter or**
140 **allegations involved in the internal investigation involve criminal**

141 **conduct on the part of a law enforcement officer, such records shall be**
142 **considered records authorized to be closed under this section,**
143 **including subdivisions (3) and (13) of this section, and not incident**
144 **reports, investigative reports, or other documents covered under**
145 **section 610.100, unless such records and documents are used or shared**
146 **by the agency in a criminal investigation by the law enforcement**
147 **agency involving the officer.**

610.100. 1. As used in sections 610.100 to 610.150, the following words
2 and phrases shall mean:

3 (1) "Arrest", an actual restraint of the person of the defendant, or by his
4 or her submission to the custody of the officer, under authority of a warrant or
5 otherwise for a criminal violation which results in the issuance of a summons or
6 the person being booked;

7 (2) "Arrest report", a record of a law enforcement agency of an arrest and
8 of any detention or confinement incident thereto together with the charge
9 therefor;

10 (3) "Inactive", an investigation in which no further action will be taken
11 by a law enforcement agency or officer for any of the following reasons:

12 (a) A decision by the law enforcement agency not to pursue the case;

13 (b) Expiration of the time to file criminal charges pursuant to the
14 applicable statute of limitations, or ten years after the commission of the offense;
15 whichever date earliest occurs;

16 (c) Finality of the convictions of all persons convicted on the basis of the
17 information contained in the investigative report, by exhaustion of or expiration
18 of all rights of appeal of such persons;

19 (4) "Incident report", a record of a law enforcement agency consisting of
20 the date, time, specific location, name of the victim and immediate facts and
21 circumstances surrounding the initial report of a crime or incident, including any
22 logs of reported crimes, accidents and complaints maintained by that agency;

23 (5) "Investigative report", a record, other than an arrest or incident report,
24 prepared by personnel of a law enforcement agency, inquiring into a crime or
25 suspected crime, either in response to an incident report or in response to
26 evidence developed by law enforcement officers in the course of their duties.

27 **2. Investigative reports, incident reports, or other law**
28 **enforcement records covered under this section, shall not include any**
29 **record or document pertaining to internal investigations by a law**

30 **enforcement agency into matters of fitness and conduct of a law**
31 **enforcement officer employed by such investigating law enforcement**
32 **agency and used solely in connection with such officer's employment,**
33 **as described in subdivision (22) of section 610.021.**

34 **3.** Each law enforcement agency of this state, of any county, and of any
35 municipality shall maintain records of all incidents reported to the agency,
36 investigations and arrests made by such law enforcement agency. All incident
37 reports and arrest reports shall be open records. Notwithstanding any other
38 provision of law other than the provisions of subsections [4,] 5 [and], 6, **and 7**
39 of this section or section 320.083, RSMo, investigative reports of all law
40 enforcement agencies are closed records until the investigation becomes inactive.
41 If any person is arrested and not charged with an offense against the law within
42 thirty days of the person's arrest, the arrest report shall thereafter be a closed
43 record except that the disposition portion of the record may be accessed and
44 except as provided in section 610.120.

45 **[3.] 4.** Except as provided in subsections [4,] 5, 6 [and], 7, **and 8** of this
46 section, if any portion of a record or document of a law enforcement officer or
47 agency, other than an arrest report, which would otherwise be open, contains
48 information that is reasonably likely to pose a clear and present danger to the
49 safety of any victim, witness, undercover officer, or other person; or jeopardize a
50 criminal investigation, including records which would disclose the identity of a
51 source wishing to remain confidential or a suspect not in custody; or which would
52 disclose techniques, procedures or guidelines for law enforcement investigations
53 or prosecutions, that portion of the record shall be closed and shall be redacted
54 from any record made available pursuant to this chapter.

55 **[4.] 5.** Any person, including a family member of such person within the
56 first degree of consanguinity if such person is deceased or incompetent, attorney
57 for a person, or insurer of a person involved in any incident or whose property is
58 involved in an incident, may obtain any records closed pursuant to this section
59 or section 610.150 for purposes of investigation of any civil claim or defense, as
60 provided by this subsection. Any individual, his or her family member within the
61 first degree of consanguinity if such individual is deceased or incompetent, his or
62 her attorney or insurer, involved in an incident or whose property is involved in
63 an incident, upon written request, may obtain a complete unaltered and unedited
64 incident report concerning the incident, and may obtain access to other records
65 closed by a law enforcement agency pursuant to this section. Within thirty days

66 of such request, the agency shall provide the requested material or file a motion
67 pursuant to this subsection with the circuit court having jurisdiction over the law
68 enforcement agency stating that the safety of the victim, witness or other
69 individual cannot be reasonably ensured, or that a criminal investigation is likely
70 to be jeopardized. If, based on such motion, the court finds for the law
71 enforcement agency, the court shall either order the record closed or order such
72 portion of the record that should be closed to be redacted from any record made
73 available pursuant to this subsection.

74 [5.] 6. Any person may bring an action pursuant to this section in the
75 circuit court having jurisdiction to authorize disclosure of the information
76 contained in an investigative report of any law enforcement agency, which would
77 otherwise be closed pursuant to this section. The court may order that all or part
78 of the information contained in an investigative report be released to the person
79 bringing the action. In making the determination as to whether information
80 contained in an investigative report shall be disclosed, the court shall consider
81 whether the benefit to the person bringing the action or to the public outweighs
82 any harm to the public, to the law enforcement agency or any of its officers, or to
83 any person identified in the investigative report in regard to the need for law
84 enforcement agencies to effectively investigate and prosecute criminal
85 activity. The investigative report in question may be examined by the court in
86 camera. The court may find that the party seeking disclosure of the investigative
87 report shall bear the reasonable and necessary costs and attorneys' fees of both
88 parties, unless the court finds that the decision of the law enforcement agency not
89 to open the investigative report was substantially unjustified under all relevant
90 circumstances, and in that event, the court may assess such reasonable and
91 necessary costs and attorneys' fees to the law enforcement agency.

92 [6.] 7. Any person may apply pursuant to this subsection to the circuit
93 court having jurisdiction for an order requiring a law enforcement agency to open
94 incident reports and arrest reports being unlawfully closed pursuant to this
95 section. If the court finds by a preponderance of the evidence that the law
96 enforcement officer or agency has knowingly violated this section, the officer or
97 agency shall be subject to a civil penalty in an amount up to one thousand
98 dollars. If the court finds that there is a knowing violation of this section, the
99 court may order payment by such officer or agency of all costs and attorneys' fees,
100 as provided by section 610.027. If the court finds by a preponderance of the
101 evidence that the law enforcement officer or agency has purposely violated this

102 section, the officer or agency shall be subject to a civil penalty in an amount up
103 to five thousand dollars and the court shall order payment by such officer or
104 agency of all costs and attorney fees, as provided in section 610.027. The court
105 shall determine the amount of the penalty by taking into account the size of the
106 jurisdiction, the seriousness of the offense, and whether the law enforcement
107 officer or agency has violated this section previously.

108 [7.] 8. The victim of an offense as provided in chapter 566, RSMo, may
109 request that his or her identity be kept confidential until a charge relating to
110 such incident is filed.

Unofficial ✓

Bill

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