

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 132
100TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, February 21, 2019, with recommendation that the Senate Committee Substitute do pass.

0625S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 610.021 and 610.026, RSMo, and to enact in lieu thereof two new sections relating to access to public records, with an emergency clause.

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

Section A. Sections 610.021 and 610.026, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 610.021 and 610.026, to
3 read as follows:

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

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

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, policies and specific response plans
80 developed, adopted, or maintained by any public agency responsible for law
81 enforcement, public safety, first response, or public health for use in responding
82 to or preventing any critical incident which is or appears to be terrorist in nature
83 and which has the potential to endanger individual or public safety or
84 health. Financial records related to the procurement of or expenditures relating
85 to operational guidelines, policies or plans purchased with public funds shall be
86 open. When seeking to close information pursuant to this exception, the public
87 governmental body shall affirmatively state in writing that disclosure would
88 impair the public governmental body's ability to protect the security or safety of
89 persons or real property, and shall in the same writing state that the public

90 interest in nondisclosure outweighs the public interest in disclosure of the
91 records;

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

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

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

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

111 (20) The portion of a record that identifies security systems or access
112 codes or authorization codes for security systems of real property;

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

125 (22) Credit card numbers, personal identification numbers, digital

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

134 (23) Records submitted by an individual, corporation, or other business
135 entity to a public institution of higher education in connection with a proposal to
136 license intellectual property or perform sponsored research and which contains
137 sales projections or other business plan information the disclosure of which may
138 endanger the competitiveness of a business; [and]

139 (24) Records relating to foster home or kinship placements of children in
140 foster care under section 210.498;

141 **(25) Any record retained by the office of a member of the general**
142 **assembly that is related to a constituent of the member. As used in this**
143 **subdivision, "constituent" shall mean any person who is a resident of**
144 **the legislative district of the member, any person who owns real**
145 **property within the legislative district of the member, or any person**
146 **who owns an interest in, or is an employee of, a business entity**
147 **operating within the legislative district of the member. The term**
148 **"constituent" shall not include a person who is registered as a lobbyist**
149 **or a lobbyist principal, as such terms are defined in section 105.470,**
150 **regardless of whether such person otherwise meets the definition of**
151 **"constituent". Nothing in this subdivision shall authorize the closure of**
152 **a record that has been offered in a public meeting of a house of the**
153 **general assembly, or any committee thereof; and**

154 **(26) Any record retained in the office of a member of the general**
155 **assembly, an employee of either house of the general assembly, or an**
156 **employee of a caucus of either the majority or minority party of either**
157 **house that contains information regarding proposed legislation or the**
158 **legislative process, however, nothing in this subdivision shall allow the**
159 **closure of a record that has been offered in a public meeting of a house**
160 **of the general assembly, or any committee thereof.**

610.026. 1. Except as otherwise provided by law, each public

2 governmental body shall provide access to and, upon request, furnish copies of
3 public records subject to the following:

4 (1) Fees for copying public records, except those records restricted under
5 section 32.091, shall not exceed ten cents per page for a paper copy not larger
6 than nine by fourteen inches, with the hourly fee for duplicating time not to
7 exceed the average hourly rate of pay for clerical staff of the public governmental
8 body. Research time required for fulfilling records requests may be charged at
9 the actual cost of research time. Based on the scope of the request, the public
10 governmental body shall produce the copies using employees of the body that
11 result in the lowest amount of charges for search, research, and duplication
12 time. Prior to producing copies of the requested records, the person requesting
13 the records may request the public governmental body to provide an estimate of
14 the cost to the person requesting the records. Documents may be furnished
15 without charge or at a reduced charge when the public governmental body
16 determines that waiver or reduction of the fee is in the public interest because it
17 is likely to contribute significantly to public understanding of the operations or
18 activities of the public governmental body and is not primarily in the commercial
19 interest of the requester;

20 (2) Fees for providing access to public records maintained on computer
21 facilities, recording tapes or disks, videotapes or films, pictures, maps, slides,
22 graphics, illustrations or similar audio or visual items or devices, and for paper
23 copies larger than nine by fourteen inches shall include only the cost of copies,
24 staff time, which shall not exceed the average hourly rate of pay for staff of the
25 public governmental body required for making copies and programming, if
26 necessary, and the cost of the disk, tape, or other medium used for the
27 duplication. Fees for maps, blueprints, or plats that require special expertise to
28 duplicate may include the actual rate of compensation for the trained personnel
29 required to duplicate such maps, blueprints, or plats. If programming is required
30 beyond the customary and usual level to comply with a request for records or
31 information, the fees for compliance may include the actual costs of such
32 programming;

33 **(3) A minimum fee of five dollars may be charged by the public**
34 **governmental body for any request where there are allowable fees**
35 **under this section of less than five dollars. Such five dollar fee shall be**
36 **in place of any allowable fee of less than five dollars.**

37 2. Payment of such copying fees may be requested prior to the making of

38 copies. **A request for public records shall be considered withdrawn if**
39 **the requester fails to remit all fees within thirty days of a request for**
40 **payment of the fees by the public governmental body prior to the**
41 **making of copies.**

42 3. Except as otherwise provided by law, each public governmental body
43 of the state shall remit all moneys received by or for it from fees charged
44 pursuant to this section to the director of revenue for deposit to the general
45 revenue fund of the state.

46 4. Except as otherwise provided by law, each public governmental body
47 of a political subdivision of the state shall remit all moneys received by it or for
48 it from fees charged pursuant to sections 610.010 to 610.028 to the appropriate
49 fiscal officer of such political subdivision for deposit to the governmental body's
50 accounts.

51 5. The term "tax, license or fees" as used in Section 22 of Article X of the
52 Constitution of the State of Missouri does not include copying charges and related
53 fees that do not exceed the level necessary to pay or to continue to pay the costs
54 for providing a service, program, or activity which was in existence on November
55 4, 1980, or which was approved by a vote of the people subsequent to November
56 4, 1980.

Section B. Because of the need to protect constituent communications to
2 members of the general assembly and clarify the confidentiality of certain
3 legislative records, section A of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace and safety, and is hereby
5 declared to be an emergency act within the meaning of the constitution, and
6 section A of this act shall be in full force and effect upon its passage and
7 approval.

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