

SECOND REGULAR SESSION

HOUSE BILL NO. 1402

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GOODMAN (Sponsor), HANAWAY, HOBBS, STEFANICK, MUNZLINGER, YATES, MORRIS, THRELKELD, BAKER, LeVOTA, DUSENBERG, SEIGFREID, DAVIS (122), LEMBKE, MYERS, NIEVES, ROARK, BRINGER AND MOORE (Co-sponsors).

Read 1st time February 5, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4476L.011

AN ACT

To repeal sections 610.010, 610.011, 610.020, 610.021, 610.022, 610.026, 610.027, 610.029, 610.100, and 610.200, RSMo, and to enact in lieu thereof ten new sections relating to public records.

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

Section A. Sections 610.010, 610.011, 610.020, 610.021, 610.022, 610.026, 610.027, 610.029, 610.100, and 610.200, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 610.010, 610.011, 610.020, 610.021, 610.022, 610.026, 610.027, 610.029, 610.100, and 610.200, to read as follows:

610.010. As used in sections 610.010 to 610.030 and sections 610.100 to 610.150, unless the context otherwise indicates, the following terms mean:

(1) "Closed meeting", "closed record", or "closed vote", any meeting, record or vote closed to the public;

(2) "Copying", if requested by a member of the public, copies provided as detailed in section 610.026, if duplication equipment is available;

(3) "Public business", all matters which relate in any way to the performance of the public governmental body's functions or the conduct of its business;

(4) "Public governmental body", any legislative, administrative or governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district, judicial entities when operating in an administrative capacity, or by executive order, including:

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

13 (a) Any body, agency, board, bureau, council, commission, committee, board of regents
14 or board of curators or any other governing body of any institution of higher education, including
15 a community college, which is supported in whole or in part from state funds, **specifically**
16 **including the administrative entity known as the "The Curators of the University of**
17 **Missouri" as established by section 172.020, RSMo;**

18 (b) Any advisory committee or commission appointed by the governor by executive
19 order;

20 (c) Any department or division of the state, of any political subdivision of the state, of
21 any county or of any municipal government, school district or special purpose district including
22 but not limited to sewer districts, water districts, and other subdistricts of any political
23 subdivision;

24 (d) Any other legislative or administrative governmental deliberative body under the
25 direction of three or more elected or appointed members having rulemaking or quasi-judicial
26 power;

27 (e) Any committee appointed by or at the direction of any of the entities and which is
28 authorized to report to any of the above-named entities, any advisory committee appointed by
29 or at the direction of any of the named entities for the specific purpose of recommending, directly
30 to the public governmental body's governing board or its chief administrative officer, policy or
31 policy revisions or expenditures of public funds including, but not limited to, entities created to
32 advise bi-state taxing districts regarding the expenditure of public funds, or any policy advisory
33 body, policy advisory committee or policy advisory group appointed by a president, chancellor
34 or chief executive officer of any college or university system or individual institution at the
35 direction of the governing body of such institution which is supported in whole or in part with
36 state funds for the specific purpose of recommending directly to the public governmental body's
37 governing board or the president, chancellor or chief executive officer policy, policy revisions
38 or expenditures of public funds provided, however, the staff of the college or university
39 president, chancellor or chief executive officer shall not constitute such a policy advisory
40 committee. The custodian of the records of any public governmental body shall maintain a list
41 of the policy advisory committees described in this subdivision; and

42 (f) Any quasi-public governmental body. The term "quasi-public governmental body"
43 means any person, corporation or partnership organized or authorized to do business in this state
44 pursuant to the provisions of chapter 352, 353, or 355, RSMo, or unincorporated association
45 which either:

46 a. Has as its primary purpose to enter into contracts with public governmental bodies,
47 or to engage primarily in activities carried out pursuant to an agreement or agreements with
48 public governmental bodies; or

49 b. Performs a public function as evidenced by a statutorily based capacity to confer or
50 otherwise advance, through approval, recommendation or other means, the allocation or issuance
51 of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the
52 contracting of leaseback agreements on structures whose annualized payments commit public
53 tax revenues; or any association that directly accepts the appropriation of money from a public
54 governmental body, but only to the extent that a meeting, record, or vote relates to such
55 appropriation; **and**

56 **c. Any bi-state development agency established pursuant to section 70.370, RSMo;**

57 (5) "Public meeting", any meeting of a public governmental body subject to sections
58 610.010 to 610.030 at which any public business is discussed, decided, or public policy
59 formulated, whether corporeal or by means of communication equipment. The term "public
60 meeting" shall not include an informal gathering of members of a public governmental body for
61 ministerial or social purposes when there is no intent to avoid the purposes of this chapter, but
62 the term shall include a public vote of all or a majority of the members of a public governmental
63 body, by electronic communication or any other means, conducted in lieu of holding a public
64 meeting with the members of the public governmental body gathered at one location in order to
65 conduct public business;

66 (6) "Public record", any record, whether written or electronically stored, retained by or
67 of any public governmental body including any report, survey, memorandum, or other document
68 or study prepared and presented to the public governmental body by a consultant or other
69 professional service paid for in whole or in part by public funds; provided, however, that
70 personally identifiable student records maintained by public educational institutions shall be
71 open for inspection by the parents, guardian or other custodian of students under the age of
72 eighteen years and by the parents, guardian or other custodian and the student if the student is
73 over the age of eighteen years[. The term "public record" shall not include any internal
74 memorandum or letter received or prepared by or on behalf of a member of a public
75 governmental body consisting of advice, opinions and recommendations in connection with the
76 deliberative decision-making process of said body, unless such records are retained by the public
77 governmental body or presented at a public meeting];

78 (7) "Public vote", any vote cast at any public meeting of any public governmental body.

 610.011. 1. It is the public policy of this state that meetings, records, votes, actions, and
2 deliberations of public governmental bodies be open to the public unless otherwise provided by
3 law. Sections 610.010 to [610.028] **610.200** shall be liberally construed and their exceptions
4 strictly construed to promote this public policy.

5 2. Except as otherwise provided by law, all public meetings of public governmental
6 bodies shall be open to the public as set forth in section 610.020, all public records of public

7 governmental bodies shall be open to the public for inspection and copying as set forth in
8 sections 610.023 to 610.026, and all public votes of public governmental bodies shall be
9 recorded as set forth in section 610.015.

610.020. 1. All public governmental bodies shall give notice of the time, date, and place
2 of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public
3 of the matters to be considered. Reasonable notice shall include making available copies of the
4 notice to any representative of the news media who requests notice of meetings of a particular
5 public governmental body concurrent with the notice being made available to the members of
6 the particular governmental body and posting the notice on a bulletin board or other prominent
7 place which is easily accessible to the public and clearly designated for that purpose at the
8 principal office of the body holding the meeting, or if no such office exists, at the building in
9 which the meeting is to be held.

10 2. Notice conforming with all of the requirements of subsection 1 of this section shall
11 be given at least twenty-four hours, exclusive of weekends and holidays when the facility is
12 closed, prior to the commencement of any meeting of a governmental body unless for good cause
13 such notice is impossible or impractical, in which case as much notice as is reasonably possible
14 shall be given. Each meeting shall be held at a place reasonably accessible to the public and of
15 sufficient size to accommodate the anticipated attendance by members of the public, and at a
16 time reasonably convenient to the public, unless for good cause such a place or time is
17 impossible or impractical. At any public meeting conducted by telephone or other electronic
18 means, the public shall be allowed to observe and attend the public meeting at a designated
19 location identified in the notice of the meeting. Every reasonable effort shall be made to grant
20 special access to the meeting to handicapped or disabled individuals.

21 3. When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a
22 place that is not reasonably accessible to the public, or at a time that is not reasonably convenient
23 to the public, the nature of the good cause justifying that departure from the normal requirements
24 shall be stated in the minutes.

25 4. A formally constituted subunit of a parent governmental body may conduct a meeting
26 without notice as required by this section during a lawful meeting of the parent governmental
27 body, a recess in that meeting, or immediately following that meeting, if the meeting of the
28 subunit is publicly announced at the parent meeting and the subject of the meeting reasonably
29 coincides with the subjects discussed or acted upon by the parent governmental body.

30 5. If another provision of law requires a manner of giving specific notice of a meeting,
31 hearing or an intent to take action by a governmental body, compliance with that section shall
32 constitute compliance with the notice requirements of this section.

33 6. A journal or minutes of open **and closed** meetings shall be taken and retained by the

34 public governmental body, including, but not limited to, a record of any votes taken at such
35 meeting. The minutes shall include the date, time, place, members present, members absent and
36 a record of any votes taken. When a roll call vote is taken, the minutes shall attribute each "yea"
37 and "nay" vote or abstinence if not voting to the name of the individual member of the public
38 governmental body.

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

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

19 (2) Leasing, purchase or sale of real estate by a public governmental body where public
20 knowledge of the transaction might adversely affect the legal consideration therefor. However,
21 any minutes, vote or public record approving a contract relating to the leasing, purchase or sale
22 of real estate by a public governmental body shall be made public [within seventy-two hours
23 after] **upon** execution of the lease, purchase or sale of the real estate;

24 (3) Hiring, firing, disciplining or promoting of particular employees by a public
25 governmental body when personal information about the employee is discussed or recorded.
26 However, any vote on a final decision, when taken by a public governmental body, to hire, fire,
27 promote or discipline an employee of a public governmental body must be made available with
28 a record of how each member voted to the public within seventy-two hours of the close of the
29 meeting where such action occurs; provided, however, that any employee so affected shall be
30 entitled to prompt notice of such decision during the seventy-two-hour period before such
31 decision is made available to the public. As used in this subdivision, the term "personal

32 information" means information relating to the performance or merit of individual employees;

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

34 (5) Nonjudicial mental or physical health proceedings involving identifiable persons,
35 including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or
36 treatment;

37 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including
38 records of individual test or examination scores; however, personally identifiable student records
39 maintained by public educational institutions shall be open for inspection by the parents,
40 guardian or other custodian of students under the age of eighteen years and by the parents,
41 guardian or other custodian and the student if the student is over the age of eighteen years;

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

44 (8) Welfare cases of identifiable individuals;

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

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

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

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

53 (13) Individually identifiable personnel records, performance ratings or records
54 pertaining to employees or applicants for employment, except that this exemption shall not apply
55 to the names, positions, salaries **and the names of private sources donating or contributing**
56 **money to the salary of a chancellor or president in the University of Missouri system and**
57 **the amount of money contributed by the source, hours worked, employee benefits**
58 **information such as the amount of sick leave and vacation leave available and used, and**
59 lengths of service of officers and employees of public agencies once they are employed as such
60 **or to the names of the final slate of candidates for the position of chief executive officer, or**
61 **its equivalent, of any public governmental body;**

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

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

65 (16) Records relating to municipal hot lines established for the reporting of abuse and
66 wrongdoing;

67 (17) Confidential or privileged communications between a public governmental body

68 and its auditor, including all auditor work product, **however, all final audit reports issued by**
69 **the auditor are to be considered open records pursuant to this chapter;**

70 (18) [A municipal utility receiving a public records request for information about
71 existing or proposed security systems and structural plans of real property owned or leased by
72 the municipal utility, the public disclosure of which would threaten public safety, shall within
73 three business days act upon such public records request, pursuant to section 610.023. Records
74 related to the procurement of or expenditures relating to security systems shall be open except
75 to the extent provided in this section] **Operational guidelines and policies developed, adopted,**
76 **or maintained by any public agency responsible for law enforcement, public safety, first**
77 **response, or public health for use in responding to or preventing any critical incident**
78 **which is or appears to be terrorist in nature and which has the potential to endanger**
79 **individual or public safety or health. Nothing in this exception shall be deemed to close**
80 **information regarding expenditures, purchases, or contracts made by an agency in**
81 **implementing these guidelines or policies. When seeking to close information pursuant to**
82 **this exception, the agency shall affirmatively state in writing that disclosure would impair**
83 **its ability to protect the safety or health of persons, and shall in the same writing state that**
84 **the public interest in nondisclosure outweighs the public interest in disclosure of the**
85 **records. This exception shall sunset on December 31, 2006;**

86 (19) Existing or proposed security systems and structural plans of real property owned
87 or leased by a public governmental body, the public disclosure of which would threaten public
88 safety. Records related to the procurement of or expenditures relating to security systems shall
89 be open [except to the extent provided in this section]. When seeking to close information
90 pursuant to this exception, the public governmental body shall affirmatively state in writing that
91 disclosure would impair the public governmental body's ability to protect the security or safety
92 of persons or real property, and shall in the same writing state that the public interest in
93 nondisclosure outweighs the public interest in disclosure of the records. This exception shall
94 sunset on December 31, 2006;

95 (20) Records that identify the configuration of components or the operation of a
96 computer, computer system, computer network, or telecommunications network, and would
97 allow unauthorized access to or unlawful disruption of a computer, computer system, computer
98 network, or telecommunications network of a public governmental body. This exception shall
99 not be used to limit or deny access to otherwise public records in a file, document, data file or
100 database containing public records. Records related to the procurement of or expenditures
101 relating to such computer, computer system, computer network, or telecommunications network,
102 including the amount of moneys paid by, or on behalf of, a public governmental body for such
103 computer, computer system, computer network, or telecommunications network shall be open

104 [except to the extent provided in this section]; and

105 (21) Credit card numbers, personal identification numbers, digital certificates, physical
106 and virtual keys, access codes or authorization codes that are used to protect the security of
107 electronic transactions between a public governmental body and a person or entity doing business
108 with a public governmental body. Nothing in this section shall be deemed to close the record
109 of a person or entity using a credit card held in the name of a public governmental body or any
110 record of a transaction made by a person using a credit card or other method of payment for
111 which reimbursement is made by a public governmental body.

610.022. 1. Except as set forth in subsection 2 of this section, no meeting or vote may
2 be closed without an affirmative public vote of the majority of a quorum of the public
3 governmental body. The vote of each member of the public governmental body on the question
4 of closing a public meeting or vote and the specific reason for closing that public meeting or vote
5 by reference to a specific section of this chapter shall be announced publicly at an open meeting
6 of the governmental body and entered into the minutes.

7 2. A public governmental body proposing to hold a closed meeting or vote shall give
8 notice of the time, date and place of such closed meeting or vote and the reason for holding it by
9 reference to the specific exception allowed pursuant to the provisions of section 610.021. Such
10 notice shall comply with the procedures set forth in section 610.020 for notice of a public
11 meeting.

12 3. Any meeting or vote closed pursuant to section 610.021 shall be closed only to the
13 extent necessary for the specific reason announced to justify the closed meeting or vote. Public
14 governmental bodies shall not discuss any business in a closed meeting, record or vote which
15 does not directly relate to the specific reason announced to justify the closed meeting or vote.
16 Public governmental bodies holding a closed meeting must close only an existing portion of the
17 meeting facility necessary to house the members of the public governmental body in the closed
18 session, allowing members of the public to remain to attend any subsequent open session held
19 by the public governmental body following the closed session.

20 4. Nothing in sections 610.010 to 610.028 shall be construed as to require a public
21 governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

22 5. Public records shall be presumed to be open unless otherwise exempt pursuant to the
23 provisions of this chapter.

24 **6. Any member of a public governmental body who believes that the body is**
25 **wrongfully closing a meeting or vote shall state his or her objection. The public**
26 **governmental body shall then enter such objection in the minutes of the public**
27 **governmental body. Once the objection is entered in the minutes, the member of the body**
28 **shall be allowed to stay in the meeting. The objection of the member as entered in the**

29 **minutes shall be an absolute defense to any claim pursuant to section 610.027.**

610.026. 1. Except as otherwise provided by law, each public governmental body shall
2 provide access to and, upon request, furnish copies of public records subject to the following:

3 (1) Fees for copying public records shall not exceed [the actual cost of document search
4 and duplication. Upon request, the governmental body shall certify in writing that the actual cost
5 of document search and duplication is fair, reasonable and does not exceed the actual cost
6 incurred by the public governmental body] **ten cents per page for a paper copy, with the
7 hourly fee for search time not to exceed the average hourly rate of pay for clerical staff of
8 the public governmental body, with the first half-hour of said time provided without
9 charge.** Documents may be furnished without charge or at a reduced charge when the public
10 governmental body determines that waiver or reduction of the fee is in the public interest because
11 it is likely to contribute significantly to public understanding of the operations or activities of the
12 public governmental body and is not primarily in the commercial interest of the requester;

13 (2) Fees for providing access to public records maintained on computer facilities,
14 recording tapes or discs, videotapes or films, pictures, slides, graphics, illustrations or similar
15 audio or visual items or devices, shall include only the cost of copies, staff time, **which shall not
16 exceed the average hourly rate of pay for clerical staff of the public governmental body,**
17 required for making copies and programming, if necessary, and the **cost of the** disk or tape used
18 for the duplication.

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

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

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

27 5. The term "tax, license or fees" as used in section 22 of article X of the Constitution
28 of the state of Missouri does not include copying charges and related fees that do not exceed the
29 level necessary to pay or to continue to pay the costs for providing a service, program, or activity
30 which was in existence on November 4, 1980, or which was approved by a vote of the people
31 subsequent to November 4, 1980.

610.027. 1. The remedies provided by this section against public governmental bodies
2 shall be in addition to those provided by any other provision of law. Any aggrieved person,
3 taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek
4 judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce

5 sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the
6 public governmental body has its principal place of business. **Upon service of a complaint,**
7 **counterclaim, or cross-claim in a civil action brought to enforce the provisions of sections**
8 **610.010 to 610.026, the custodian of the public record that is the subject matter of such civil**
9 **action shall not transfer custody, alter, destroy, or otherwise dispose of the public record**
10 **sought to be inspected and examined, notwithstanding the applicability of an exemption**
11 **pursuant to section 610.021 or the assertion that the requested record is not a public record**
12 **until the court directs otherwise.**

13 2. Once a party seeking judicial enforcement of sections 610.010 to 610.026
14 demonstrates to the court that the body in question is subject to the requirements of sections
15 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall
16 be on the body and its members to demonstrate compliance with the requirements of sections
17 610.010 to 610.026.

18 3. Upon a finding by a preponderance of the evidence that a public governmental body
19 or a member of a public governmental body has [purposely] **negligently** violated sections
20 610.010 to [610.027] **610.026**, the public governmental body or the member shall be subject to
21 a civil [fine in the amount of not more than five hundred dollars and] **penalty in amount**
22 **ranging from twenty-five dollars to one thousand dollars. If the court finds that there was**
23 **a negligent violation of sections 610.010 to 610.026**, the court may order the payment by such
24 body or member of all costs and reasonable attorney fees to any party successfully establishing
25 a violation [of sections 610.010 to 610.026] **The court shall determine the amount of the**
26 **penalty by taking into account the size of the jurisdiction, the seriousness of the offense,**
27 **and whether the public governmental body or member of a public governmental body has**
28 **violated sections 610.010 to 610.026 previously.**

29 4. Upon a finding by a preponderance of the evidence that a public governmental
30 body or a member of a public governmental body has purposely violated section 610.010
31 to 610.026, the public governmental body or the member shall be subject to a civil penalty
32 in an amount ranging from one thousand dollars to five thousand dollars. If the court
33 finds that there was a purposeful violation of sections 610.010 to 610.026, then the court
34 shall order the payment by such body or member of all costs and reasonable attorney fees
35 to any party successfully establishing such a violation. The court shall determine the
36 amount of the penalty by taking into account the size of the jurisdiction, the seriousness
37 of the offense, and whether the public governmental body or member of a public
38 governmental body has violated sections 610.010 to 610.026 previously.

39 5. Upon a finding by a preponderance of the evidence that a public governmental body
40 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in

41 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
42 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs
43 the public interest in sustaining the validity of the action taken in the closed meeting, record or
44 vote. Suit for enforcement must be brought within one year from which the violation is
45 ascertainable and in no event shall it be brought later than two years after the violation. This
46 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
47 of indebtedness of a public governmental body if a public hearing, election or public sale has
48 been held regarding the bonds or evidence of indebtedness.

49 [5.] 6. A public governmental body which is in doubt about the legality of closing a
50 particular meeting, record or vote may bring suit at the expense of that public governmental body
51 in the circuit court of the county of the public governmental body's principal place of business
52 to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or
53 an attorney for the governmental body.

610.029. 1. A public governmental body keeping its records in an electronic format is
2 strongly encouraged to provide access to its public records to members of the public in an
3 electronic format. A public governmental body is strongly encouraged to make information
4 available in usable electronic formats to the greatest extent feasible. **An agency must consider**
5 **when designing or acquiring an electronic recordkeeping system that such system is**
6 **capable of providing data in some common format such as, but not limited to, the**
7 **American Standard Code of Information Interchange. A public governmental body may**
8 **not enter into a contract for the creation or maintenance of a public records database if**
9 **that contract impairs the ability of the public to inspect or copy the public records of that**
10 **agency, including public records that are on-line or stored in an electronic recordkeeping**
11 **system used by the agency. Such contract may not allow any impediment that as a**
12 **practical matter makes it more difficult for the public to inspect or copy the records than**
13 **to inspect or copy the public governmental body's records.** The activities authorized
14 pursuant to this section may not take priority over the primary responsibilities of a public
15 governmental body. For purposes of this section the term "electronic services" means on-line
16 access or access via other electronic means to an electronic file or data base.

17 2. Public governmental bodies shall include in a contract for electronic services
18 provisions that:

19 (1) Protect the security and integrity of the information system of the public
20 governmental body and of information systems that are shared by public governmental bodies;
21 and

22 (2) Limit the liability of the public governmental body providing the services.

23 3. Each public governmental body may consult with the division of data processing and

24 telecommunications of the office of administration to develop the electronic services offered by
25 the public governmental body to the public pursuant to this section.

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

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

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

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

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

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

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

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

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

24 2. Each law enforcement agency of this state, of any county, and of any municipality,
25 shall maintain records of all incidents reported to the agency, investigations and arrests made by
26 such law enforcement agency. All incident reports and arrest reports shall be open records.
27 Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6
28 of this section or section 320.083, RSMo, investigative reports of all law enforcement agencies
29 are closed records until the investigation becomes inactive. If any person is arrested and not
30 charged with an offense against the law within thirty days of the person's arrest, the arrest report
31 shall thereafter be a closed record except that the disposition portion of the record may be
32 accessed and except as provided in section 610.120.

33 3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a
34 record or document of a law enforcement officer or agency, other than an arrest report, which

35 would otherwise be open, contains information that is reasonably likely to pose a clear and
36 present danger to the safety of any victim, witness, undercover officer, or other person; or
37 jeopardize a criminal investigation, including records which would disclose the identity of a
38 source wishing to remain confidential or a suspect not in custody; or which would disclose
39 techniques, procedures or guidelines for law enforcement investigations or prosecutions, that
40 portion of the record shall be closed and shall be redacted from any record made available
41 pursuant to this chapter.

42 4. Any person, attorney for a person, or insurer of a person involved in any incident or
43 whose property is involved in an incident, may obtain any records closed pursuant to this section
44 or section 610.150 for purposes of investigation of any civil claim or defense, as provided by this
45 subsection. Any individual, his or her attorney or insurer, involved in an incident or whose
46 property is involved in an incident, upon written request, may obtain a complete unaltered and
47 unedited incident report concerning the incident, and may obtain access to other records closed
48 by a law enforcement agency pursuant to this section. Within thirty days of such request, the
49 agency shall provide the requested material or file a motion pursuant to this subsection with the
50 circuit court having jurisdiction over the law enforcement agency stating that the safety of the
51 victim, witness or other individual cannot be reasonably ensured, or that a criminal investigation
52 is likely to be jeopardized. If, based on such motion, the court finds for the law enforcement
53 agency, the court shall either order the record closed or order such portion of the record that
54 should be closed to be redacted from any record made available pursuant to this subsection.

55 5. Any person may bring an action pursuant to this section in the circuit court having
56 jurisdiction to authorize disclosure of the information contained in an investigative report of any
57 law enforcement agency, which would otherwise be closed pursuant to this section. The court
58 may order that all or part of the information contained in an investigative report be released to
59 the person bringing the action. In making the determination as to whether information contained
60 in an investigative report shall be disclosed, the court shall consider whether the benefit to the
61 person bringing the action or to the public outweighs any harm to the public, to the law
62 enforcement agency or any of its officers, or to any person identified in the investigative report
63 in regard to the need for law enforcement agencies to effectively investigate and prosecute
64 criminal activity. The investigative report in question may be examined by the court in camera.
65 The court may find that the party seeking disclosure of the investigative report shall bear the
66 reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the
67 decision of the law enforcement agency not to open the investigative report was substantially
68 unjustified under all relevant circumstances, and in that event, the court may assess such
69 reasonable and necessary costs and attorneys' fees to the law enforcement agency.

70 6. Any person may apply pursuant to this subsection to the circuit court having

71 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest
72 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance
73 of the evidence that the law enforcement officer or agency has [purposely] **negligently** violated
74 this section, the officer or agency shall be subject to a civil penalty in an amount [not to exceed
75 five hundred dollars, and] **ranging from twenty-five dollars to one thousand dollars. If the**
76 **court finds that there was a negligent violation of this section,** the court [shall] **may** order
77 payment by such officer or agency of all costs and attorneys' fees, as provided by section
78 610.027. **If the court finds by a preponderance of the evidence that the law enforcement**
79 **officer or agency has purposely violated this section, the officer or agency shall be subject**
80 **to a civil penalty in an amount ranging from one thousand dollars to five thousand dollars**
81 **and the court shall order payment by such officer or agency of all costs and attorney fees,**
82 **as provided in section 610.027. The court shall determine the amount of the penalty by**
83 **taking into account the size of the jurisdiction, the seriousness of the offense, and whether**
84 **the law enforcement officer or agency has violated this section previously.**

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

610.200. [1. Except as provided in subsection 2 of this section] All law enforcement
2 agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints,
3 shall make available the following information for inspection and copying by the public:

4 (1) The time, substance, and location of all complaints or requests for assistance received
5 by the agency;

6 (2) The time and nature of the agency's response to all complaints or requests for
7 assistance; and

8 (3) If the incident involves an alleged crime or infraction:

9 (a) The time, date, and location of occurrence;

10 (b) The name and age of any victim, unless the victim is a victim of a crime under
11 chapter 566, RSMo;

12 (c) The factual circumstances surrounding the incident; and

13 (d) A general description of any injuries, property or weapons involved.

14 [2. Any law enforcement agency with custody of an accident report or incident report,
15 as defined in section 610.100, shall not release for sixty days after the date of the accident or
16 incident the report containing the factual circumstances or general description of any injuries as
17 provided in paragraphs (c) and (d) of subdivision (3) of subsection 1 of this section to a person
18 that is not an interested party. For the purposes of this subsection, an "interested party" is any
19 law enforcement agency, any person who was involved in the accident or incident, the street
20 department of the jurisdiction involved, the owner of any vehicle involved in the accident or

21 incident, the insurance company, physician or family member of any person involved in the
22 accident or incident or any attorney or any member of the news media.]