

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2210
94TH GENERAL ASSEMBLY

Reported from the Special Committee on General Laws April 16, 2008 with recommendation that House Committee Substitute for House Bill No. 2210 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

4857L.04C

AN ACT

To repeal sections 105.955, 105.961, 610.010, 610.021, 610.022, 610.023, 610.027, 610.029, and 610.100, RSMo, and to enact in lieu thereof nine new sections relating to public records and meetings, with penalty provisions.

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

Section A. Sections 105.955, 105.961, 610.010, 610.021, 610.022, 610.023, 610.027, 2 610.029, and 610.100, RSMo, are repealed and nine new sections enacted in lieu thereof, to be 3 known as sections 105.955, 105.961, 610.010, 610.021, 610.022, 610.023, 610.027, 610.029, 4 and 610.100, to read as follows:

105.955. 1. A bipartisan "Missouri Ethics Commission", composed of six members, is 2 hereby established. The commission shall be assigned to the office of administration with 3 supervision by the office of administration only for budgeting and reporting as provided by 4 subdivisions (4) and (5) of subsection 6 of section 1 of the Reorganization Act of 1974. 5 Supervision by the office of administration shall not extend to matters relating to policies, 6 regulative functions or appeals from decisions of the commission, and the commissioner of 7 administration, any employee of the office of administration, or the governor, either directly or 8 indirectly, shall not participate or interfere with the activities of the commission in any manner 9 not specifically provided by law and shall not in any manner interfere with the budget request 10 of or withhold any moneys appropriated to the commission by the general assembly. All 11 members of the commission shall be appointed by the governor with the advice and consent of

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

12 the senate from lists submitted pursuant to this section. Each congressional district committee
13 of the political parties having the two highest number of votes cast for their candidate for
14 governor at the last gubernatorial election shall submit two names of eligible nominees for
15 membership on the commission to the governor, and the governor shall select six members from
16 such nominees to serve on the commission.

17 2. Within thirty days of submission of the person's name to the governor as provided in
18 subsection 1 of this section, and in order to be an eligible nominee for appointment to the
19 commission, a person shall file a financial interest statement in the manner provided by section
20 105.485 and shall provide the governor, the president pro tempore of the senate, and the
21 commission with a list of all political contributions and the name of the candidate or committee,
22 political party, or continuing committee, as defined in chapter 130, RSMo, to which those
23 contributions were made within the four-year period prior to such appointment, made by the
24 nominee, the nominee's spouse, or any business entity in which the nominee has a substantial
25 interest. The information shall be maintained by the commission and available for public
26 inspection during the period of time during which the appointee is a member of the commission.
27 In order to be an eligible nominee for membership on the commission, a person shall be a citizen
28 and a resident of the state and shall have been a registered voter in the state for a period of at
29 least five years preceding the person's appointment.

30 3. The term of each member shall be for four years, except that of the members first
31 appointed, the governor shall select three members from even-numbered congressional districts
32 and three members from odd-numbered districts. Not more than three members of the
33 commission shall be members of the same political party, nor shall more than one member be
34 from any one United States congressional district. Not more than two members appointed from
35 the even-numbered congressional districts shall be members of the same political party, and no
36 more than two members from the odd-numbered congressional districts shall be members of the
37 same political party. Of the members first appointed, the terms of the members appointed from
38 the odd-numbered congressional districts shall expire on March 15, 1994, and the terms of the
39 members appointed from the even-numbered congressional districts shall expire on March 15,
40 1996. Thereafter all successor members of the commission shall be appointed for four-year
41 terms. Terms of successor members of the commission shall expire on March fifteenth of the
42 fourth year of their term. No member of the commission shall serve on the commission after the
43 expiration of the member's term. No person shall be appointed to more than one full four-year
44 term on the commission.

45 4. Vacancies or expired terms on the commission shall be filled in the same manner as
46 the original appointment was made, except as provided in this subsection. Within thirty days of
47 the vacancy or ninety days before the expiration of the term, the names of two eligible nominees

48 for membership on the commission shall be submitted to the governor by the congressional
49 district committees of the political party or parties of the vacating member or members, from the
50 even- or odd-numbered congressional districts, based on the residence of the vacating member
51 or members, other than from the congressional district committees from districts then represented
52 on the commission and from the same congressional district party committee or committees
53 which originally appointed the member or members whose positions are vacated. Appointments
54 to fill vacancies or expired terms shall be made within forty-five days after the deadline for
55 submission of names by the congressional district committees, and shall be subject to the same
56 qualifications for appointment and eligibility as is provided in subsections 2 and 3 of this section.
57 Appointments to fill vacancies for unexpired terms shall be for the remainder of the unexpired
58 term of the member whom the appointee succeeds, and such appointees shall be eligible for
59 appointment to one full four-year term. If the congressional district committee does not submit
60 the required two nominees within the thirty days or if the congressional district committee does
61 not submit the two nominees within an additional thirty days after receiving notice from the
62 governor to submit the nominees, then the governor may appoint a person or persons who shall
63 be subject to the same qualifications for appointment and eligibility as provided in subsections
64 2 and 3 of this section.

65 5. The governor, with the advice and consent of the senate, may remove any member
66 only for substantial neglect of duty, inability to discharge the powers and duties of office, gross
67 misconduct or conviction of a felony or a crime involving moral turpitude. Members of the
68 commission also may be removed from office by concurrent resolution of the general assembly
69 signed by the governor. If such resolution receives the vote of two-thirds or more of the
70 membership of both houses of the general assembly, the signature of the governor shall not be
71 necessary to effect removal. The office of any member of the commission who moves from the
72 congressional district from which the member was appointed shall be deemed vacated upon such
73 change of residence.

74 6. The commission shall elect biennially one of its members as the chairman. The
75 chairman may not succeed himself or herself after two years. No member of the commission
76 shall succeed as chairman any member of the same political party as himself or herself. At least
77 four members are necessary to constitute a quorum, and at least four affirmative votes shall be
78 required for any action or recommendation of the commission.

79 7. No member or employee of the commission, during the person's term of service, shall
80 hold or be a candidate for any other public office.

81 8. In the event that a retired judge is appointed as a member of the commission, the judge
82 shall not serve as a special investigator while serving as a member of the commission.

83 9. No member of the commission shall, during the member's term of service or within
84 one year thereafter:

85 (1) Be employed by the state or any political subdivision of the state;

86 (2) Be employed as a lobbyist;

87 (3) Serve on any other governmental board or commission;

88 (4) Be an officer of any political party or political organization;

89 (5) Permit the person's name to be used, or make contributions, in support of or in
90 opposition to any candidate or proposition;

91 (6) Participate in any way in any election campaign; except that a member or employee
92 of the commission shall retain the right to register and vote in any election, to express the
93 person's opinion privately on political subjects or candidates, to participate in the activities of
94 a civic, community, social, labor or professional organization and to be a member of a political
95 party.

96 10. Each member of the commission shall receive, as full compensation for the member's
97 services, the sum of one hundred dollars per day for each full day actually spent on work of the
98 commission, and the member's actual and necessary expenses incurred in the performance of the
99 member's official duties.

100 11. The commission shall appoint an executive director who shall serve subject to the
101 supervision of and at the pleasure of the commission, but in no event for more than six years.
102 The executive director shall be responsible for the administrative operations of the commission
103 and perform such other duties as may be delegated or assigned to the director by law or by rule
104 of the commission. The executive director shall employ staff and retain such contract services
105 as the director deems necessary, within the limits authorized by appropriations by the general
106 assembly.

107 12. Beginning on January 1, 1993, all lobbyist registration and expenditure reports filed
108 pursuant to section 105.473, financial interest statements filed pursuant to subdivision (1) of
109 section 105.489, and campaign finance disclosure reports filed other than with election
110 authorities or local election authorities as provided by section 130.026, RSMo, shall be filed with
111 the commission.

112 13. Within sixty days of the initial meeting of the first commission appointed, the
113 commission shall obtain from the clerk of the supreme court or the state courts administrator a
114 list of retired appellate and circuit court judges who did not leave the judiciary as a result of
115 being defeated in an election. The executive director shall determine those judges who indicate
116 their desire to serve as special investigators and to investigate any and all complaints referred to
117 them by the commission. The executive director shall maintain an updated list of those judges
118 qualified and available for appointment to serve as special investigators. Such list shall be

119 updated at least annually. The commission shall refer complaints to such special investigators
120 on that list on a rotating schedule which ensures a random assignment of each special
121 investigator. Each special investigator shall receive only one unrelated investigation at a time
122 and shall not be assigned to a second or subsequent investigation until all other eligible
123 investigators on the list have been assigned to an investigation. In the event that no special
124 investigator is qualified or available to conduct a particular investigation, the commission may
125 appoint a special investigator to conduct such particular investigation.

126 14. The commission shall have the following duties and responsibilities relevant to the
127 impartial and effective enforcement of sections 105.450 to 105.496 and chapter 130, RSMo, as
128 provided in sections 105.955 to 105.963:

129 (1) Receive and review complaints regarding alleged violation of sections 105.450 to
130 105.496 and chapter 130, RSMo, conduct initial reviews and investigations regarding such
131 complaints as provided herein; refer complaints to appropriate prosecuting authorities and
132 appropriate disciplinary authorities along with recommendations for sanctions; and initiate
133 judicial proceedings as allowed by sections 105.955 to 105.963;

134 (2) Review and audit any reports and statements required by the campaign finance
135 disclosure laws contained in chapter 130, RSMo, and financial interest disclosure laws or
136 lobbyist registration and reporting laws as provided by sections 105.470 to 105.492, for
137 timeliness, accuracy and completeness of content as provided in sections 105.955 to 105.963;

138 (3) Develop appropriate systems to file and maintain an index of all such reports and
139 statements to facilitate public access to such information, except as may be limited by
140 confidentiality requirements otherwise provided by law, including cross-checking of information
141 contained in such statements and reports. The commission may enter into contracts with the
142 appropriate filing officers to effectuate such system. Such filing officers shall cooperate as
143 necessary with the commission as reasonable and necessary to effectuate such purposes;

144 (4) Provide information and assistance to lobbyists, elected and appointed officials, and
145 employees of the state and political subdivisions in carrying out the provisions of sections
146 105.450 to 105.496 and chapter 130, RSMo;

147 (5) Make recommendations to the governor and general assembly or any state agency
148 on the need for further legislation with respect to the ethical conduct of public officials and
149 employees and to advise state and local government in the development of local government
150 codes of ethics and methods of disclosing conflicts of interest as the commission may deem
151 appropriate to promote high ethical standards among all elected and appointed officials or
152 employees of the state or any political subdivision thereof and lobbyists;

153 (6) Render advisory opinions as provided by this section;

154 (7) Promulgate rules relating to the provisions of sections 105.955 to 105.963 and
155 chapter 130, RSMo. All rules and regulations issued by the commission shall be prospective
156 only in operation;

157 (8) Request and receive from the officials and entities identified in subdivision (6) of
158 section 105.450 designations of decision-making public servants.

159 15. In connection with such powers provided by sections 105.955 to 105.963 and chapter
160 130, RSMo, the commission may:

161 (1) Subpoena witnesses and compel their attendance and testimony. Subpoenas shall be
162 served and enforced in the same manner provided by section 536.077, RSMo;

163 (2) Administer oaths and affirmations;

164 (3) Take evidence and require by subpoena duces tecum the production of books, papers,
165 and other records relating to any matter being investigated or to the performance of the
166 commission's duties or exercise of its powers. Subpoenas duces tecum shall be served and
167 enforced in the same manner provided by section 536.077, RSMo;

168 (4) Employ such personnel, including legal counsel, and contract for services including
169 legal counsel, within the limits of its appropriation, as it deems necessary provided such legal
170 counsel, either employed or contracted, represents the Missouri ethics commission before any
171 state agency or before the courts at the request of the Missouri ethics commission. Nothing in
172 this section shall limit the authority of the Missouri ethics commission as provided for in
173 subsection 2 of section 105.961; and

174 (5) Obtain information from any department, division or agency of the state or any
175 political subdivision reasonably calculated to lead to the discovery of evidence which will
176 reasonably assist the commission in carrying out the duties prescribed in sections 105.955 to
177 105.963 and chapter 130, RSMo.

178 16. (1) Upon written request for an advisory opinion received by the commission, and
179 if the commission determines that the person requesting the opinion would be directly affected
180 by the application of law to the facts presented by the requesting person, the commission shall
181 issue a written opinion advising the person who made the request, in response to the person's
182 particular request, regarding any issue that the commission can receive a complaint on pursuant
183 to section 105.957. The commission may decline to issue a written opinion by a vote of four
184 members and shall provide to the requesting person the reason for the refusal in writing. The
185 commission shall give an approximate time frame as to when the written opinion shall be issued.
186 Such advisory opinions shall be issued no later than ninety days from the date of receipt by the
187 commission. Such requests and advisory opinions, deleting the name and identity of the
188 requesting person, shall be compiled and published by the commission on at least an annual
189 basis. Advisory opinions issued by the commission shall be maintained and made available for

190 public inspection and copying at the office of the commission during normal business hours.
191 Any advisory opinion or portion of an advisory opinion rendered pursuant to this subsection shall
192 be withdrawn by the commission if, after hearing thereon, the joint committee on administrative
193 rules finds that such advisory opinion is beyond or contrary to the statutory authority of the
194 commission or is inconsistent with the legislative intent of any law enacted by the general
195 assembly, and after the general assembly, by concurrent resolution, votes to adopt the findings
196 and conclusions of the joint committee on administrative rules. Any such concurrent resolution
197 adopted by the general assembly shall be published at length by the commission in its publication
198 of advisory opinions of the commission next following the adoption of such resolution, and a
199 copy of such concurrent resolution shall be maintained by the commission, along with the
200 withdrawn advisory opinion, in its public file of advisory opinions. The commission shall also
201 send a copy of such resolution to the person who originally requested the withdrawn advisory
202 opinion. Any advisory opinion issued by the ethics commission shall act as legal direction to any
203 person requesting such opinion and no person shall be liable for relying on the opinion and it
204 shall act as a defense of justification against prosecution. An advisory opinion of the
205 commission shall not be withdrawn unless:

206 (a) The authorizing statute is declared unconstitutional;
207 (b) The opinion goes beyond the power authorized by statute; or
208 (c) The authorizing statute is changed to invalidate the opinion.
209 (2) Upon request, the attorney general shall give the attorney general's opinion, without
210 fee, to the commission, any elected official of the state or any political subdivision, any member
211 of the general assembly, or any director of any department, division or agency of the state, upon
212 any question of law regarding the effect or application of sections 105.450 to 105.496, or chapter
213 130, RSMo. Such opinion need be in writing only upon request of such official, member or
214 director, and in any event shall be rendered within sixty days [that] **after** such request is
215 delivered to the attorney general.

216 17. The state auditor and the state auditor's duly authorized employees who have taken
217 the oath of confidentiality required by section 29.070, RSMo, may audit the commission and in
218 connection therewith may inspect materials relating to the functions of the commission. Such
219 audit shall include a determination of whether appropriations were spent within the intent of the
220 general assembly, but shall not extend to review of any file or document pertaining to any
221 particular investigation, audit or review by the commission, an investigator or any staff or person
222 employed by the commission or under the supervision of the commission or an investigator. The
223 state auditor and any employee of the state auditor shall not disclose the identity of any person
224 who is or was the subject of an investigation by the commission and whose identity is not public
225 information as provided by law.

18. From time to time but no more frequently than annually the commission may request the officials and entities described in subdivision (6) of section 105.450 to identify for the commission in writing those persons associated with such office or entity which such office or entity has designated as a decision-making public servant. Each office or entity delineated in subdivision (6) of section 105.450 receiving such a request shall identify those so designated within thirty days of the commission's request.

19. Notwithstanding any other provision of law to the contrary, all records of the commission shall be open records, except that investigative reports prepared by commission employees after the initial complaint received by the commission shall be closed records under chapter 610, RSMo, until a decision is rendered as to the complaint under investigation. If the commission decides to dismiss the complaint, such investigative reports shall continue to be closed records under chapter 610, RSMo. All meetings of the commission shall be open meetings, except for meetings in which the commission deliberates a complaint pending before the commission, which shall be closed under chapter 610, RSMo.

105.961. 1. Upon receipt of a complaint as described by section 105.957, the commission shall assign the complaint to a special investigator, who may be a commission employee, who shall investigate and determine the merits of the complaint. Within ten days of such assignment, the special investigator shall review such complaint and disclose, in writing, to the commission any conflict of interest which the special investigator has or might have with respect to the investigation and subject thereof. Within one hundred twenty days of receipt of the complaint from the commission, the special investigator shall submit the special investigator's report to the commission. The commission, after review of such report, shall determine:

- (1) That there is reasonable grounds for belief that a violation has occurred; or
- (2) That there are no reasonable grounds for belief that a violation exists and the complaint should be dismissed; or
- (3) That additional time is necessary to complete the investigation, and the status and progress of the investigation to date. The commission, in its discretion, may allow the investigation to proceed for additional successive periods of one hundred twenty days each, pending reports regarding the status and progress of the investigation at the end of each such period.

2. When the commission concludes, based on the report from the special investigator, or based on an audit conducted pursuant to section 105.959, that there are reasonable grounds to believe that a violation of any criminal law has occurred, and if the commission believes that criminal prosecution would be appropriate upon a vote of four members of the commission, the

22 commission shall refer the report to the Missouri office of prosecution services, prosecutors
23 coordinators training council established in section 56.760, RSMo, which shall submit a panel
24 of five attorneys for recommendation to the court having criminal jurisdiction, for appointment
25 of an attorney to serve as a special prosecutor; except that, the attorney general of Missouri or
26 any assistant attorney general shall not act as such special prosecutor. The court shall then
27 appoint from such panel a special prosecutor pursuant to section 56.110, RSMo, who shall have
28 all the powers provided by section 56.130, RSMo. The court shall allow a reasonable and
29 necessary attorney's fee for the services of the special prosecutor. Such fee shall be assessed as
30 costs if a case is filed, or ordered by the court if no case is filed, and paid together with all other
31 costs in the proceeding by the state, in accordance with rules and regulations promulgated by the
32 state courts administrator, subject to funds appropriated to the office of administration for such
33 purposes. If the commission does not have sufficient funds to pay a special prosecutor, the
34 commission shall refer the case to the prosecutor or prosecutors having criminal jurisdiction.
35 If the prosecutor having criminal jurisdiction is not able to prosecute the case due to a conflict
36 of interest, the court may appoint a special prosecutor, paid from county funds, upon
37 appropriation by the county or the attorney general to investigate and, if appropriate, prosecute
38 the case. The special prosecutor or prosecutor shall commence an action based on the report by
39 the filing of an information or seeking an indictment within sixty days of the date of such
40 prosecutor's appointment, or shall file a written statement with the commission explaining why
41 criminal charges should not be sought. If the special prosecutor or prosecutor fails to take either
42 action required by this subsection, upon request of the commission, a new special prosecutor,
43 who may be the attorney general, shall be appointed. The report may also be referred to the
44 appropriate disciplinary authority over the person who is the subject of the report.

45 3. When the commission concludes, based on the report from the special investigator or
46 based on an audit conducted pursuant to section 105.959, that there are reasonable grounds to
47 believe that a violation of any law has occurred which is not a violation of criminal law or that
48 criminal prosecution is not appropriate, the commission shall conduct a hearing which shall be
49 [a closed meeting and not] **an open [to the public] meeting as defined under chapter 610,**
50 **RSMo.** The hearing shall be conducted pursuant to the procedures provided by sections 536.063
51 to 536.090, RSMo, and shall be considered to be a contested case for purposes of such sections.
52 The commission shall determine **in a closed meeting**, in its discretion, whether or not that there
53 is probable cause that a violation has occurred. If the commission determines, by a vote of at
54 least four members of the commission, that probable cause exists that a violation has occurred,
55 the commission may refer its findings and conclusions to the appropriate disciplinary authority
56 over the person who is the subject of the report, as described in subsection 7 of this section.
57 After the commission determines by a vote of at least four members of the commission that

58 probable cause exists that a violation has occurred, and the commission has referred the findings
59 and conclusions to the appropriate disciplinary authority over the person subject of the report,
60 the subject of the report may appeal the determination of the commission to the administrative
61 hearing commission. Such appeal shall stay the action of the Missouri ethics commission. Such
62 appeal shall be filed not later than the fourteenth day after the subject of the commission's action
63 receives actual notice of the commission's action.

64 4. If the appropriate disciplinary authority receiving a report from the commission
65 pursuant to subsection 3 of this section fails to follow, within sixty days of the receipt of the
66 report, the recommendations contained in the report, or if the commission determines, by a vote
67 of at least four members of the commission that some action other than referral for criminal
68 prosecution or for action by the appropriate disciplinary authority would be appropriate, the
69 commission shall take any one or more of the following actions:

70 (1) Notify the person to cease and desist violation of any provision of law which the
71 report concludes was violated and that the commission may seek judicial enforcement of its
72 decision pursuant to subsection 5 of this section;

73 (2) Notify the person of the requirement to file, amend or correct any report, statement,
74 or other document or information required by sections 105.473, 105.483 to 105.492, or chapter
75 130, RSMo, and that the commission may seek judicial enforcement of its decision pursuant to
76 subsection 5 of this section; and

77 (3) File the report with the executive director to be maintained as a public document; or

78 (4) Issue a letter of concern or letter of reprimand to the person, which would be
79 maintained as a public document; or

80 (5) Issue a letter that no further action shall be taken, which would be maintained as a
81 public document; or

82 (6) Through reconciliation agreements or civil action, the power to seek fees for
83 violations in an amount not greater than one thousand dollars or double the amount involved in
84 the violation.

85 5. Upon vote of at least four members, the commission may initiate formal judicial
86 proceedings seeking to obtain any of the following orders:

87 (1) Cease and desist violation of any provision of sections 105.450 to 105.496, or chapter
88 130, RSMo, or sections 105.955 to 105.963;

89 (2) Pay any civil penalties required by sections 105.450 to 105.496 or chapter 130,
90 RSMo;

91 (3) File any reports, statements, or other documents or information required by sections
92 105.450 to 105.496, or chapter 130, RSMo; or

93 (4) Pay restitution for any unjust enrichment the violator obtained as a result of any
94 violation of any criminal statute as described in subsection 6 of this section.

95

96 The Missouri ethics commission shall give actual notice to the subject of the complaint of the
97 proposed action as set out in this section. The subject of the complaint may appeal the action
98 of the Missouri ethics commission, other than a referral for criminal prosecution, to the
99 administrative hearing commission. Such appeal shall stay the action of the Missouri ethics
100 commission. Such appeal shall be filed no later than fourteen days after the subject of the
101 commission's actions receives actual notice of the commission's actions.

102 6. In the proceeding in circuit court, the commission may seek restitution against any
103 person who has obtained unjust enrichment as a result of violation of any provision of sections
104 105.450 to 105.496, or chapter 130, RSMo, and may recover on behalf of the state or political
105 subdivision with which the alleged violator is associated, damages in the amount of any unjust
106 enrichment obtained and costs and attorney's fees as ordered by the court.

107 7. The appropriate disciplinary authority to whom a report shall be sent pursuant to
108 subsection 2 or 3 of this section shall include, but not be limited to, the following:

109 (1) In the case of a member of the general assembly, the ethics committee of the house
110 of which the subject of the report is a member;

111 (2) In the case of a person holding an elective office or an appointive office of the state,
112 if the alleged violation is an impeachable offense, the report shall be referred to the ethics
113 committee of the house of representatives;

114 (3) In the case of a person holding an elective office of a political subdivision, the report
115 shall be referred to the governing body of the political subdivision;

116 (4) In the case of any officer or employee of the state or of a political subdivision, the
117 report shall be referred to the person who has immediate supervisory authority over the
118 employment by the state or by the political subdivision of the subject of the report;

119 (5) In the case of a judge of a court of law, the report shall be referred to the commission
120 on retirement, removal and discipline, or if the inquiry involves an employee of the judiciary to
121 the applicable presiding judge;

122 (6) In the case of a person holding an appointive office of the state, if the alleged
123 violation is not an impeachable offense, the report shall be referred to the governor;

124 (7) In the case of a statewide elected official, the report shall be referred to the attorney
125 general;

126 (8) In a case involving the attorney general, the report shall be referred to the prosecuting
127 attorney of Cole County.

128 8. The special investigator having a complaint referred to the special investigator by the
129 commission shall have the following powers:

130 (1) To request and shall be given access to information in the possession of any person
131 or agency which the special investigator deems necessary for the discharge of the special
132 investigator's responsibilities;

133 (2) To examine the records and documents of any person or agency, unless such
134 examination would violate state or federal law providing for confidentiality;

135 (3) To administer oaths and affirmations;

136 (4) Upon refusal by any person to comply with a request for information relevant to an
137 investigation, an investigator may issue a subpoena for any person to appear and give testimony,
138 or for a subpoena duces tecum to produce documentary or other evidence which the investigator
139 deems relevant to a matter under the investigator's inquiry. The subpoenas and subpoenas duces
140 tecum may be enforced by applying to a judge of the circuit court of Cole County or any county
141 where the person or entity that has been subpoenaed resides or may be found, for an order to
142 show cause why the subpoena or subpoena duces tecum should not be enforced. The order and
143 a copy of the application therefor shall be served in the same manner as a summons in a civil
144 action, and if, after hearing, the court determines that the subpoena or subpoena duces tecum
145 should be sustained and enforced, the court shall enforce the subpoena or subpoena duces tecum
146 in the same manner as if it had been issued by the court in a civil action; and

147 (5) To request from the commission such investigative, clerical or other staff assistance
148 or advancement of other expenses which are necessary and convenient for the proper completion
149 of an investigation. Within the limits of appropriations to the commission, the commission may
150 provide such assistance, whether by contract to obtain such assistance or from staff employed
151 by the commission, or may advance such expenses.

152 9. (1) Any retired judge may request in writing to have the judge's name removed from
153 the list of special investigators subject to appointment by the commission or may request to
154 disqualify himself or herself from any investigation. Such request shall include the reasons for
155 seeking removal;

156 (2) By vote of four members of the commission, the commission may disqualify a judge
157 from a particular investigation or may permanently remove the name of any retired judge from
158 the list of special investigators subject to appointment by the commission.

159 10. Any person who is the subject of any investigation pursuant to this section shall be
160 entitled to be represented by counsel at any proceeding before the special investigator or the
161 commission.

162 11. The provisions of sections 105.957, 105.959 and 105.961 are in addition to other
163 provisions of law under which any remedy or right of appeal or objection is provided for any

164 person, or any procedure provided for inquiry or investigation concerning any matter. The
165 provisions of this section shall not be construed to limit or affect any other remedy or right of
166 appeal or objection.

167 12. No person shall be required to make or file a complaint to the commission as a
168 prerequisite for exhausting the person's administrative remedies before pursuing any civil cause
169 of action allowed by law.

170 13. If, in the opinion of the commission, the complaining party was motivated by malice
171 or reason contrary to the spirit of any law on which such complaint was based, in filing the
172 complaint without just cause, this finding shall be reported to appropriate law enforcement
173 authorities. Any person who knowingly files a complaint without just cause, or with malice, is
174 guilty of a class A misdemeanor.

175 14. A respondent party who prevails in a formal judicial action brought by the
176 commission shall be awarded those reasonable fees and expenses incurred by that party in the
177 formal judicial action, unless the court finds that the position of the commission was
178 substantially justified or that special circumstances make such an award unjust.

179 15. The special investigator and members and staff of the commission shall maintain
180 confidentiality with respect to all matters concerning a complaint until and if a report is filed
181 with the commission, with the exception of communications with any person which are
182 necessary to the investigation. The report filed with the commission resulting from a complaint
183 acted upon under the provisions of this section shall not contain the name of the complainant or
184 other person providing information to the investigator, if so requested in writing by the
185 complainant or such other person. Any person who violates the confidentiality requirements
186 imposed by this section or subsection 17 of section 105.955 required to be confidential is guilty
187 of a class A misdemeanor and shall be subject to removal from or termination of employment
188 by the commission.

189 16. Any judge of the court of appeals or circuit court who ceases to hold such office by
190 reason of the judge's retirement and who serves as a special investigator pursuant to this section
191 shall receive annual compensation, salary or retirement for such services at the rates of
192 compensation provided for senior judges by subsections 1, 2 and 4 of section 476.682, RSMo.
193 Such retired judges shall by the tenth day of each month following any month in which the judge
194 provided services pursuant to this section certify to the commission and to the state courts
195 administrator the amount of time engaged in such services by hour or fraction thereof, the dates
196 thereof, and the expenses incurred and allowable pursuant to this section. The commission shall
197 then issue a warrant to the state treasurer for the payment of the salary and expenses to the extent,
198 and within limitations, provided for in this section. The state treasurer upon receipt of such

199 warrant shall pay the same out of any appropriations made for this purpose on the last day of the
200 month during which the warrant was received by the state treasurer.

610.010. As used in this chapter, unless the context otherwise indicates, the following
2 terms mean:

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

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

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

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

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, including but not
16 limited to the administrative entity known as "The Curators of the University of Missouri" as
17 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;

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 receives public funding through dues paid by a public**
54 **governmental body or its members;** or any association that directly accepts the appropriation
55 of money from a public governmental body, but only to the extent that a meeting, record, or vote
56 relates to such appropriation; [and]

57 (g) Any bi-state development agency established pursuant to section 70.370, RSMo;

58 (5) "Public meeting", any meeting of a public governmental body subject to sections
59 610.010 to 610.030 at which any public business is discussed, decided, or public policy
60 formulated, whether such meeting is conducted in person or by means of communication
61 equipment, including, but not limited to, conference call, video conference, Internet chat, or
62 Internet message board. The term "public meeting" shall not include an informal gathering of
63 members of a public governmental body for ministerial or social purposes when there is no intent
64 to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority
65 of the members of a public governmental body, by electronic communication or any other means,
66 conducted in lieu of holding a public meeting with the members of the public governmental body
67 gathered at one location in order to conduct public business, **and shall also include any**
68 **gathering of newly elected members of the body who have not formally taken office with**
69 **or without current members of the body discussing public business such that a quorum of**
70 **the body would be present at such meeting;**

71 (6) "Public record", any record, whether written or electronically stored, retained by or
72 of any public governmental body including any report, survey, memorandum, or other document
73 or study prepared for the public governmental body by a consultant or other professional service
74 paid for in whole or in part by public funds, including records created or maintained by private
75 contractors under an agreement with a public governmental body or on behalf of a public
76 governmental body; provided, however, that personally identifiable student records maintained
77 by public educational institutions shall be open for inspection by the parents, guardian or other
78 custodian of students under the age of eighteen years and by the parents, guardian or other
79 custodian and the student if the student is over the age of eighteen years. The term "public
80 record" shall not include any internal memorandum or letter received or prepared by or on behalf
81 of a member of a public governmental body consisting of advice, opinions and recommendations
82 in connection with the deliberative decision-making process of said body, unless such records
83 are retained by the public governmental body or presented at a public meeting. Any document
84 or study prepared for a public governmental body by a consultant or other professional service
85 as described in this subdivision shall be retained by the public governmental body in the same
86 manner as any other public record. **Any lease, sublease, rental agreement, or similar**
87 **instrument entered into by any public governmental body, or any other agreement for the**
88 **rental, construction, or renovation of such facility shall be a public record;**

89 (7) "Public vote", any vote, whether conducted in person, by telephone, or by any other
90 electronic means, cast at any public meeting of any public 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, causes of action or litigation involving a public governmental body
5 and any confidential or privileged communications between a public governmental body or its
6 representatives and its attorneys. However, any minutes, vote or settlement agreement relating
7 to legal actions, causes of action or litigation involving a public governmental body or any agent
8 or entity representing its interests or acting on its behalf or with its authority, including any
9 insurance company acting on behalf of a public government body as its insured, shall be made
10 public upon final disposition of the matter voted upon or upon the signing by the parties of the
11 settlement agreement, unless, prior to final disposition, the settlement agreement is ordered
12 closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the
13 action clearly outweighs the public policy considerations of section 610.011, however, the
14 amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed;
15 provided, however, in matters involving the exercise of the power of eminent domain, the vote
16 shall be announced or become public immediately following the action on the motion to

17 authorize institution of such a legal action. Legal work product shall be considered a closed
18 record. **As used in this subdivision, "cause of action" means evidence that a lawsuit has**
19 **been filed, although not yet served, or correspondence from a party to the body stating that**
20 **litigation shall be filed unless certain demands are met;**

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

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

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

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

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

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

46 (8) Welfare cases of identifiable individuals;

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

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

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

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

55 (13) Individually identifiable personnel records, performance ratings or records
56 pertaining to employees or applicants for employment, except that this exemption shall not apply
57 to the names, positions, salaries and lengths of service of officers and employees of public
58 agencies once they are employed as such, and the names of private sources donating or
59 contributing money to the salary of a chancellor or president at all public colleges and
60 universities in the state of Missouri and the amount of money contributed by the source;

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

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

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

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

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

79 (19) Existing or proposed security systems and structural plans of real property owned
80 or leased by a public governmental body, and information that is voluntarily submitted by a
81 nonpublic entity owning or operating an infrastructure to any public governmental body for use
82 by that body to devise plans for protection of that infrastructure, the public disclosure of which
83 would threaten public safety;

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

86 (b) When seeking to close information pursuant to this exception, the public
87 governmental body shall affirmatively state in writing that disclosure would impair the public

88 governmental body's ability to protect the security or safety of persons or real property, and shall
89 in the same writing state that the public interest in nondisclosure outweighs the public interest
90 in disclosure of the records;

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

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

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

106 (21) Credit card numbers, personal identification numbers, digital certificates, physical
107 and virtual keys, access codes or authorization codes that are used to protect the security of
108 electronic transactions between a public governmental body and a person or entity doing business
109 with a public governmental body. Nothing in this section shall be deemed to close the record
110 of a person or entity using a credit card held in the name of a public governmental body or any
111 record of a transaction made by a person using a credit card or other method of payment for
112 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 **Only members of a public governmental body, their attorney and staff assistants, and any**
17 **other person necessary to provide information needed by the public governmental body**
18 **in regard to the matter being discussed shall be permitted in a closed meeting.** Public
19 governmental bodies holding a closed meeting shall close only an existing portion of the meeting
20 facility necessary to house the members of the public governmental body in the closed session,
21 allowing members of the public to remain to attend any subsequent open session held by the
22 public governmental body following the closed session.

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

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

27 6. In the event any member of a public governmental body makes a motion to close a
28 meeting, or a record, or a vote from the public and any other member believes that such motion,
29 if passed, would cause a meeting, record or vote to be closed from the public in violation of any
30 provision in this chapter, such latter member shall state his or her objection to the motion at or
31 before the time the vote is taken on the motion. The public governmental body shall enter in the
32 minutes of the public governmental body any objection made pursuant to this subsection. Any
33 member making such an objection shall be allowed to fully participate in any meeting, record
34 or vote that is closed from the public over the member's objection. In the event the objecting
35 member also voted in opposition to the motion to close the meeting, record or vote at issue, the
36 objection and vote of the member as entered in the minutes shall be an absolute defense to any
37 claim filed against the objecting member pursuant to section 610.027.

610.023. 1. Each public governmental body is to appoint a custodian who is to be
2 responsible for the maintenance of that body's records. The identity and location of a public
3 governmental body's custodian is to be made available upon request.

4 2. Each public governmental body shall make available for inspection and copying by
5 the public of that body's public records. No person shall remove original public records from the
6 office of a public governmental body or its custodian without written permission of the
7 designated custodian. No public governmental body shall, after August 28, 1998, grant to any
8 person or entity, whether by contract, license or otherwise, the exclusive right to access and
9 disseminate any public record unless the granting of such right is necessary to facilitate
10 coordination with, or uniformity among, industry regulators having similar authority.

11 3. Each request for access to a public record shall be acted upon as soon as possible, but
12 in no event later than the end of the third business day following the date the request is received
13 by the custodian of records of a public governmental body. If records are requested in a certain
14 format, the public body shall provide the records in the requested format, if such format is
15 available. **Programs used to manipulate data collected by public governmental bodies shall**
16 **be such that all of the data contained in the program may be easily accessed and**
17 **manipulated by programs commonly available to the public.** If access to the public record
18 is not granted immediately, the custodian shall give a detailed explanation of the cause for further
19 delay and the place and earliest time and date that the record will be available for inspection.
20 This period for document production may exceed three days for reasonable cause.

21 4. If a request for access is denied, the custodian shall provide, upon request, a written
22 statement of the grounds for such denial. Such statement shall cite the specific provision of law
23 under which access is denied and shall be furnished to the requester no later than the end of the
24 third business day following the date that the request for the statement is received.

 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 summons,
7 petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the
8 provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject
9 matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the
10 public record sought to be inspected and examined, notwithstanding the applicability of an
11 exemption pursuant to section 610.021 or the assertion that the requested record is not a public
12 record 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 knowingly violated sections 610.010 to 610.026,
20 the public governmental body or the member shall be subject to a civil penalty in an amount up
21 to one thousand dollars. If the court finds that there is a knowing violation of sections 610.010
22 to 610.026, the court may order the payment by such body or member of all costs and reasonable

23 attorney fees to any party successfully establishing a violation. The court shall determine the
24 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
25 offense, and whether the public governmental body or member of a public governmental body
26 has violated sections 610.010 to 610.026 previously.

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

36 5. Upon a finding by a preponderance of the evidence that a public governmental body
37 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in
38 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
39 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs
40 the public interest in sustaining the validity of the action taken in the [closed] meeting, record
41 or vote. Suit for enforcement shall be brought within one year from which the violation is
42 ascertainable and in no event shall it be brought later than two years after the violation. This
43 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
44 of indebtedness of a public governmental body if a public hearing, election or public sale has
45 been held regarding the bonds or evidence of indebtedness.

46 6. A public governmental body which is in doubt about the legality of closing a particular
47 meeting, record or vote may bring suit at the expense of that public governmental body in the
48 circuit court of the county of the public governmental body's principal place of business to
49 ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an
50 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] **shall** make
4 information available in usable electronic formats [to the greatest extent feasible]. A public
5 governmental body may not enter into a contract for the creation or maintenance of a public
6 records database if that contract impairs the ability of the public to inspect or copy the public
7 records of that agency, including public records that are on-line or stored in an electronic
8 record-keeping system used by the agency. Such contract may not allow any impediment that

9 as a practical matter makes it more difficult for the public to inspect or copy the records than to
10 inspect or copy the public governmental body's records. For purposes of this section, a usable
11 electronic format shall allow, at a minimum, viewing and printing of records. However, if the
12 public governmental body keeps a record on a system capable of allowing the copying of
13 electronic documents into other electronic documents, the public governmental body shall
14 provide data to the public in such electronic format, if requested. The activities authorized
15 pursuant to this section may not take priority over the primary responsibilities of a public
16 governmental body. For purposes of this section the term "electronic services" means on-line
17 access or access via other electronic means to an electronic file or database. [This subsection
18 shall not apply to contracts initially entered into before August 28, 2004.]

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

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

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

25 3. Each public governmental body may consult with the division of data processing and
26 telecommunications of the office of administration to develop the electronic services offered by
27 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, including a family member of such person within the first degree of
43 consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a
44 person involved in any incident or whose property is involved in an incident, may obtain any
45 records closed pursuant to this section or section 610.150 for purposes of investigation of any
46 civil claim or defense, as provided by this subsection. Any individual, his or her family member
47 within the first degree of consanguinity if such individual is deceased or incompetent, his or her
48 attorney or insurer, involved in an incident or whose property is involved in an incident, upon
49 written request, may obtain a complete unaltered and unedited incident report concerning the
50 incident, and may obtain access to other records closed by a law enforcement agency pursuant
51 to this section. Within thirty days of such request, the agency shall provide the requested
52 material or file a motion pursuant to this subsection with the circuit court having jurisdiction
53 over the law enforcement agency stating that the safety of the victim, witness or other individual

54 cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If,
55 based on such motion, the court finds for the law enforcement agency, the court shall either order
56 the record closed or order such portion of the record that should be closed to be redacted from
57 any record made available pursuant to this subsection.

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

74 6. Any person may apply pursuant to this subsection to the circuit court having
75 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest
76 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance
77 of the evidence that the law enforcement officer or agency has knowingly violated this section,
78 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.
79 If the court finds that there is a knowing violation of this section, the court may order payment
80 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the
81 court finds by a preponderance of the evidence that the law enforcement officer or agency has
82 purposely violated this section, the officer or agency shall be subject to a civil penalty in an
83 amount up to five thousand dollars and the court shall order payment by such officer or agency
84 of all costs and attorney fees, as provided in section 610.027. The court shall determine the
85 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
86 offense, and whether the law enforcement officer or agency has violated this section previously.

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

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