

SECOND REGULAR SESSION

HOUSE BILL NO. 2344

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WILSON.

6105H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 610.026 and 610.100, RSMo, and to enact in lieu thereof two new sections relating to public records.

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

Section A. Sections 610.026 and 610.100, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 610.026 and 610.100, to read as follows:

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, except those records restricted under section 32.091,
4 shall not exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with
5 the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff
6 of the public governmental body. Research time required for fulfilling records requests **includes**
7 **time spent reviewing records to determine whether records are closed or are authorized**
8 **to be closed, and** may be charged at the actual cost of research time. Based on the scope of the
9 request, the public governmental body shall produce the copies using employees of the body that
10 result in the lowest amount of charges for search, research, and duplication time. Prior to
11 producing copies of the requested records, the person requesting the records may request the
12 public governmental body to provide an estimate of the cost to the person requesting the records.
13 Documents may be furnished without charge or at a reduced charge when the public
14 governmental body determines that waiver or reduction of the fee is in the public interest
15 because:

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.

16 **(a)** It is likely to contribute significantly to public understanding of the operations or
17 activities of the public governmental body and is not primarily in the commercial interest of the
18 requester; **or**

19 **(b) The applicable fees are minimal and should be waived for administrative**
20 **efficiency.**

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

32 2. Payment of such copying, **search, research, and duplication** fees may be requested
33 prior to the making of copies **or production of records.**

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

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

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

 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 **(6) "Mobile video recorder", any system or device that captures visual signals that**
25 **is capable of being installed in a vehicle or being worn or carried by personnel of a law**
26 **enforcement agency and that includes, at minimum, a camera and recording capabilities;**

27 **(7) "Mobile video recording", any data captured by a mobile video recorder,**
28 **including audio, video, and any metadata;**

29 **(8) "Nonpublic location", a place where one would have a reasonable expectation**
30 **of privacy including, but not limited to, a dwelling, school, or medical facility.**

31 2. Each law enforcement agency of this state, of any county, and of any municipality
32 shall maintain records of all incidents reported to the agency, investigations and arrests made by
33 such law enforcement agency. All incident reports and arrest reports shall be open records.

34 **(1)** Notwithstanding any other provision of law other than the provisions of subsections
35 4, 5 and 6 of this section or section 320.083, **mobile video recordings and** investigative reports
36 of all law enforcement agencies are closed records until the investigation becomes inactive.

37 **(2)** If any person is arrested and not charged with an offense against the law within thirty
38 days of the person's arrest, the arrest report shall thereafter be a closed record except that the
39 disposition portion of the record may be accessed and except as provided in section 610.120.

40 **(3)** Except as provided in subsections 3 and 5 of this section, a mobile video
41 recording that is recorded in a nonpublic location is authorized to be closed, except that

42 **any person who is depicted in the recording or whose voice is in the recording, a legal**
43 **guardian or parent of such person if he or she is a minor, a family member of such person**
44 **within the first degree of consanguinity if he or she is deceased or incompetent, an attorney**
45 **for such person, or insurer of such person may obtain a complete, unaltered, and unedited**
46 **copy of a recording under this section upon written request.**

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

56 4. Any person, including a **legal guardian or a parent of such person if he or she is**
57 **a minor**, family member of such person within the first degree of consanguinity if such person
58 is deceased or incompetent, attorney for a person, or insurer of a person involved in any incident
59 or whose property is involved in an incident, may obtain any records closed pursuant to this
60 section or section 610.150 for purposes of investigation of any civil claim or defense, as provided
61 by this subsection. Any individual, **legal guardian or parent of such person if he or she is a**
62 **minor**, his or her family member within the first degree of consanguinity if such individual is
63 deceased or incompetent, his or her attorney or insurer, involved in an incident or whose property
64 is involved in an incident, upon written request, may obtain a complete unaltered and unedited
65 incident report concerning the incident, and may obtain access to other records closed by a law
66 enforcement agency pursuant to this section. Within thirty days of such request, the agency shall
67 provide the requested material or file a motion pursuant to this subsection with the circuit court
68 having jurisdiction over the law enforcement agency stating that the safety of the victim, witness
69 or other individual cannot be reasonably ensured, or that a criminal investigation is likely to be
70 jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court
71 shall either order the record closed or order such portion of the record that should be closed to
72 be redacted from any record made available pursuant to this subsection.

73 5. Any person may bring an action pursuant to this section in the circuit court having
74 jurisdiction to authorize disclosure of **a mobile video recording or** the information contained
75 in an investigative report of any law enforcement agency, which would otherwise be closed
76 pursuant to this section. The court may order that all or part of **a mobile video recording or** the
77 information contained in an investigative report be released to the person bringing the action.

(1) In making the determination as to whether information contained in an investigative report shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the law enforcement agency or any of its officers, or to any person identified in the investigative report in regard to the need for law enforcement agencies to effectively investigate and prosecute criminal activity.

(2) In making the determination as to whether a mobile video recording shall be disclosed, the court shall consider:

(a) Whether the benefit to the person bringing the action or the benefit to the public outweighs any harm to the public, to the law enforcement agency or any of its officers, or to any person identified in the mobile video recording with respect to the need for law enforcement agencies to effectively investigate and prosecute criminal activity;

(b) Whether the mobile video recording contains information that is reasonably likely to disclose private matters in which the public has no legitimate concern;

(c) Whether the mobile video recording is reasonably likely to bring shame or humiliation to a person of ordinary sensibilities; and

(d) Whether the mobile recording was taken in a place where a person recorded or depicted has a reasonable expectation of privacy.

(3) The mobile video recording or investigative report in question may be examined by the court in camera.

(4) If the disclosure is authorized in whole or in part, the court may make any order that justice requires, including one or more of the following:

(a) That the mobile video recording or investigative report may be disclosed only on specified terms and conditions, including a designation of the time or place;

(b) That the mobile video recording or investigative report may be disclosed to the person making the request in a different manner or form as requested;

(c) That the scope of the request be limited to certain matters;

(d) That the disclosure occur with no one present except persons designated by the court;

(e) That the mobile video recording or investigative report be redacted to exclude for example, personally identifiable features or other sensitive information;

(f) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(5) The court may find that the party seeking disclosure of the mobile video recording or investigative report shall bear the reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the decision of the law enforcement agency not to open the **mobile video recording or** investigative report was substantially unjustified under all relevant

114 circumstances, and in that event, the court may assess such reasonable and necessary costs and
115 attorneys' fees to the law enforcement agency.

116 6. Any person may apply pursuant to this subsection to the circuit court having
117 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest
118 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance
119 of the evidence that the law enforcement officer or agency has knowingly violated this section,
120 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.
121 If the court finds that there is a knowing violation of this section, the court may order payment
122 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the
123 court finds by a preponderance of the evidence that the law enforcement officer or agency has
124 purposely violated this section, the officer or agency shall be subject to a civil penalty in an
125 amount up to five thousand dollars and the court shall order payment by such officer or agency
126 of all costs and attorney fees, as provided in section 610.027. The court shall determine the
127 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
128 offense, and whether the law enforcement officer or agency has violated this section previously.

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

131 **8. Any person who requests and receives a mobile video recording that was**
132 **recorded in a nonpublic location under this section is prohibited from displaying or**
133 **disclosing the mobile video recording, including any description or account of any or all**
134 **of the mobile video recording, without first providing direct third party notice to each**
135 **person not affiliated with a law enforcement agency whose image or sound is contained in**
136 **the recording. Upon receiving such notice, each person appearing in a mobile video**
137 **recording shall be given ten days to file and serve an action seeking an order from a court**
138 **of competent jurisdiction to enjoin all or some of the intended display, disclosure,**
139 **description, or account of the recording. Any person who fails to comply with the**
140 **provisions of this section shall be subject to damages in a civil action proceeding.**

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