

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI**

JOHN SOLOMON,

Plaintiff,

v.

ST. LOUIS CIRCUIT ATTORNEY

Defendant.

Case No. 2022-CC00080

Division 19

FIRST AMENDED PETITION

1. The Plaintiff brings this action pursuant to Chapter 610 of the Missouri Revised Statutes.
2. The Plaintiff is authorized to bring this action pursuant to Section 610.027.1, RSMo., because he is an aggrieved person within the meaning of Section 610.027.1.
3. Venue for this action is proper in St. Louis City Circuit Court pursuant to Section 610.027.1, RSMo., because the Defendants' principal place of business is in St. Louis City.
4. This Court has jurisdiction to issue injunctions to enforce the provisions of the Sunshine Law pursuant to Section 610.030, RSMo.

THE SUNSHINE LAW

5. Chapter 610, RSMo., contains statutes requiring — with a few specified limitations — that the meetings, records, and votes of all public bodies must

be open to the public; this set of statutes is commonly referred to as the “Sunshine Law.”

6. Section 610.010(4), RSMo., in relevant part, defines “public governmental body” as “any legislative, administrative, or governmental entity created by the constitution or statutes of this state[.]”
7. Section 610.010(6), RSMo., defines “public record” as “any record, whether written or electronically stored, retained by or of any public governmental body[.]”
8. Section 610.011, RSMo., declares:
 1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. ***Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.*** [emphasis added]
 2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.
9. Put more simply, transparency is the rule for public entities in Missouri. Courts are not at liberty to infer exceptions to this rule; the only permissible exceptions are those established by statute and courts are instructed to construe those exceptions strictly in order to preserve the rule of transparency.
10. Section 610.023.1, RSMo., requires each public governmental body to appoint a custodian who is to be responsible for the maintenance of that body’s records,

and, upon request, to make available the identity and location of that custodian.

11. Section 610.023.2, RSMo., requires each public governmental body to make its public records available to the public for inspection and copying.
12. Section 610.023.3, RSMo., requires a custodian of records to respond to a request “in no event later than the third business day following the date the request is received[.]”
13. Section 610.024.1, RSMo., provides that if a record is exempt from disclosure, “the public governmental body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.”
14. Section 610.027.1, RSMo., states that “[a]ny aggrieved person, taxpayer to, or citizen of, this state . . . may seek judicial enforcement of the requirements of sections 610.010 to 610.026.”
15. Section 610.027.2, RSMo., states that once a party bringing suit under the Sunshine Law has demonstrated to the court “that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record, or vote, ***the burden of persuasion will be on the body and its members to demonstrate compliance***” with the Sunshine Law.
[emphasis added]
16. Section 610.027.3, RSMo., states:

Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has

knowingly violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount of up to one thousand dollars. If the court finds that there is a knowing violation of sections 610.010 to 610.026, the court may order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

PARTIES

16. Plaintiff John Solomon is an award-winning investigative journalist; currently a contributor on *Fox News*, Mr. Solomon has also served as executive vice president of digital video at *The Hill*, reported for *The Associated Press* for nearly 20 years, and was editor-in-chief of *The Washington Times*. As one of our country's most respected investigative journalists, he is credited with exposing U.S. and FBI intelligence failures before the September 11, 2001 attacks on our country,¹ federal scientists' misuse of foster children and

¹ John Solomon, *State FBI Memo Warned of Arabs Training at Flight Schools*, Ariz. Daily Sun (May 3, 2002), https://azdailysun.com/state-fbi-memo-warned-of-arabs-training-at-flight-schools/article_d9be3b2e-6897-57bb-94d2-9592304d7cc5.html.

veterans in drug experiments,² and numerous cases of political corruption;³ Mr. Solomon is an “aggrieved person” because in an effort to gather information relevant to a news story he was investigating, he requested open public records which the Defendants have refused to provide.

17. Defendant St. Louis Circuit Attorney’s Office is a governmental entity created by Section 56.430, RSMo.

FACTUAL ALLEGATIONS

18. The Circuit Attorney’s Office has a website, circuitattorney.org.
19. The Circuit Attorney’s website does not include any information regarding how citizens may request public records from the Circuit Attorney’s Office.

² John Solomon, *Government Tested AIDS Drugs on Foster Kids*, NBCNews.com (May 4, 2005), <http://www.nbcnews.com/id/7736157/ns/health-aids/t/government-tested-aids-drugs-foster-kids/#.XOVwWIhKiUk>; *Medical Experiments on Veterans*, C-SPAN (June 17, 2008), <https://www.c-span.org/video/?205567-6/medical-experiments-veterans>.

³ John Solomon & Laurel Adams, *Audit Says Legal Aid Boss Charged Taxpayers for Club, Car*, The Center for Public Integrity (Oct. 21, 2010), <https://publicintegrity.org/accountability/audit-says-legal-aid-boss-charged-taxpayers-for-club-car/>; John Solomon & Alison Spann, *FBI Uncovered Russian Bribery Plot Before Obama Administration Approved Controversial Nuclear Deal with Moscow*, The Hill (Oct. 17, 2017), <https://thehill.com/policy/national-security/355749-fbi-uncovered-russian-bribery-plot-before-obama-administration>; John Solomon, *New Details of Investigation of a Hotel Maid’s Charge that She was Sexually Assaulted by IMF Chief*, The Center for Public Integrity (May 21, 2011), <https://publicintegrity.org/accountability/new-details-of-investigation-of-a-hotel-maids-charge-that-she-was-sexually-assaulted-by-imf-chief/>; John Solomon & Aaron Mehta, *Stimulating Hypocrisy: Scores of Recovery Act Opponents Sought Money out of Public View*, The Center for Public Integrity (Oct. 19, 2010), <https://publicintegrity.org/federal-politics/stimulating-hypocrisy-scores-of-recovery-act-opponents-sought-money-out-of-public-view/>.

20. The Circuit Attorney's website does not identify any person as the Custodian of Records for the Circuit Attorney's Office.
21. The only email address listed on the Circuit Attorney's website is caocommunications@stlouiscao.org.
22. When he was preparing his public records request, Mr. Solomon called the Circuit Attorney's office to confirm the proper email address to which a public records request should be sent; he was told that requests should be sent to caocommunications@stlouiscao.org.
23. On July 5, 2019, Mr. Solomon sent an email to caocommunications@stlouiscao.org; this message will be referred to as "the July 5 Request." **Exhibit 1.**
24. In his email, Mr. Solomon expressed, "This is an open records request under the Missouri Sunshine Law. I am seeking all records of contacts between Circuit Attorney Kimberly Gardner and her staff with the following individuals and entities from Jan. 6, 2017 through July 3, 2019: Scott Faughn; Al Watkins; Jeffrey E. Smith; JES Holdings LLC; Jeff Smith; The Missouri Workforce Housing Association; George Soros; Michael Vachon; Soros Fund Management; The Safety and Justice PAC; Open Society Foundation; Scott Simpson; Katrina Sneed; Phil Sneed; State Rep. Stacy Newman; State Rep. Jay Barnes." *Id.*
25. The scope of the inquiry included, but was not limited to, calendar entries, phone messages, texts, emails, encrypted app chats, letters, and long-distance phone call toll records. *Id.*

26. Upon information and belief, employees of the Circuit Attorney's Office received the July 5 Request.
27. Upon information and belief, employees of the Circuit Attorney's Office understood that the July 5 Request was asking for access to public records.
28. Upon information and belief, as of July 5, 2019, the Circuit Attorney's Office had designated one person to act as its Custodian of Records.
29. Upon information and belief, the person the Circuit Attorney's Office had designated to act as its Custodian of Records received the July 5 Request.
30. Four weeks passed and no one from the Circuit Attorney's Office responded to the July 5 Request.
31. On August 1, 2019, Mr. Solomon sent another email to the Circuit Attorney's Office, using caocommunications@stlouiscao.org.
32. Shortly thereafter, the Circuit Attorney's Office contacted Mr. Solomon via telephone.
33. The Circuit Attorney's Office referred Mr. Solomon to Assistant Circuit Attorney Jim Michaels.
34. Upon information and belief, the Circuit Attorney's Office had designated Mr. Michaels to act as its Custodian of Records.
35. In the alternative, the Custodian of Records for the Circuit Attorney's Office had designated Mr. Michaels to respond to Mr. Solomon's request on behalf of the Custodian of Records.

36. The fact that the Circuit Attorney's Office contacted Mr. Solomon indicated that the Custodian of Records for the Circuit Attorney's Office had received the July 5 Request.
37. The fact that the Circuit Attorney's Office directed Mr. Solomon to contact Mr. Michaels in regard to the July 5 Request indicated to Mr. Solomon that the Custodian of Records had received the July 5 Request.
38. Mr. Michaels understood that the July 5 Request was seeking access to public records.
39. Mr. Michaels communicated with Mr. Solomon over the phone for a few weeks in August 2019.
40. Over the course of their phone calls:
 1. Mr. Michaels claimed that the Office was behind on responding to records requests;
 2. Mr. Michaels claimed that the Office did not initially see Mr. Solomon's records request due to a problem with the email server;
 3. Mr. Michaels claimed that the Office had difficulty locating responsive records because local police seized their email server;
 4. When Mr. Solomon asked if the Office retained a copy of the email server, Mr. Michaels stated that it did, but he could not explain why the Office did not search its copy of the email server for responsive records; and

5. Mr. Solomon consented to receiving the responsive records on a rolling basis.

41. Following that initial set of conversations, Mr. Michaels did not respond to Mr. Solomon's phone calls for several weeks.
42. On September 29, 2019, Attorney Dave Roland contacted the Circuit Attorney's Office by telephone; he did not identify himself to the representative of the Circuit Attorney's Office and did not in any way indicate a connection to Mr. Solomon.
43. In that phone call, Roland asked who was the Custodian of Records for the Circuit Attorney's Office and how to contact them.
44. The representative of the Circuit Attorney's Office told Roland that to submit a request for public records he should address the request generically to the Office rather than to any particular person.
45. Roland insisted that there must be one person designated as Custodian of Records and he asked the representative of the Circuit Attorney's Office to provide that name and how to contact that person.
46. The representative of the Circuit Attorney's Office then told Roland that public records requests should be directed to Jim Michaels.
47. On October 1, 2019, Mr. Solomon emailed Mr. Michaels, "I am still seeking all records responsive to my request but I had offered to identify those most important to my current reporting in case you would consider a rolling production. As I described on the phone, the records I would like to see

produced first are any email, phone, text or others [sic] contacts between Ms. Gardner and her team and Scott Faughn, Al Watkins, Jeffrey E. Smith, JES Holdings LLC, the Missouri Workforce Housing Association and/or Rep. Stacy Newman.” **Exhibit 2.**

48. Mr. Solomon copied attorney Kimberly Hermann of Southeastern Legal Foundation on the October 1 email exchange. *Id.*

49. That same day, Ms. Hermann sent a follow-up email seeking a phone conversation with Mr. Michaels regarding Mr. Solomon’s records request.

Exhibit 3.

50. After Mr. Michaels failed to respond to Ms. Hermann’s email, Ms. Hermann sent another email on October 4, 2019, asking to set up a phone call. **Exhibit 4.**

51. By October 23, 2019, Mr. Michaels still had not responded in any way to Ms. Hermann’s communications; consequently, on that date Ms. Hermann sent a letter via email and U.S. mail, in which she advised Mr. Michaels that Mr. Solomon was contemplating legal action for the Circuit Attorney’s failure to properly respond to his request in accordance with the Missouri Sunshine Law.

Exhibit 5.

The Government Denied Mr. Solomon Access to Requested Records

52. On October 23, 2019, shortly after Ms. Hermann sent her letter, Mr. Michaels finally responded, denying Mr. Solomon access to the requested records.

Exhibit 6.

53. Mr. Michaels wrote that Mr. Solomon's requests were related to a single case, *State v. Greitens*, specifically pointing to two cause numbers within that case. *Id.*
54. Based on those cause numbers, Mr. Michaels claimed that all requested records were closed records pursuant to Section 610.105, RSMo., because the case was dismissed nolle prosequi. *Id.*
55. Mr. Michaels argued, "Moreover, Any [sic] communication between the Circuit Attorney and her attorneys and legal team working for her on legal matters is both privileged and subject to work product regardless of whether the case or investigation is open or closed." *Id.*
56. Mr. Michaels concluded by stating that, outside of the two *Greitens* cause numbers, there were no records related to Mr. Solomon's request. *Id.*
57. On December 4, 2019, Ms. Hermann sent another letter to Mr. Michaels regarding his response and denial of Mr. Solomon's request. Exhibit 7.
58. In the letter, Ms. Hermann summarized the extent of communication between the parties. *Id.*
59. Ms. Hermann described the manner in which the Circuit Attorney's Office failed to reply within the statutory timeframe and unilaterally limited the scope of Mr. Solomon's request. *Id.*
60. Ms. Hermann wrote that Mr. Solomon was contemplating legal action and reminded the Circuit Attorney's Office that courts may impose significant

penalties for knowing or purposeful violations of the Missouri Sunshine Law.
Id.

61. Mr. Michaels did not respond to the letter.
62. As of the date of the Petition, the Circuit Attorney's Office has failed either to produce the requested records or to demonstrate that the requested records are lawfully exempt from production.

VIOLATIONS OF THE MISSOURI SUNSHINE LAW

63. The Circuit Attorney's Office is a governmental entity created pursuant to Section 56.430, RSMo.
64. The Circuit Attorney's Office is subject to the provisions of the Sunshine Law pursuant to Section 610.023, RSMo.
65. Upon information and belief, between July 5, 2019, and October 23, 2019, Jim Michaels was acting either as the Circuit Attorney's Office designated Custodian of Records or he had been instructed by the Circuit Attorney's Office to act on behalf of the designated Custodian of Records.
66. In the alternative, if the Circuit Attorney's Office had not designated Jim Michaels as its Custodian of Records, the Circuit Attorney's Office violated § 610.023.1 by failing to make available the identity and location of its designated Custodian of Records.

67. All the records Mr. Solomon requested on July 5, 2019, fall within the definition of “public record” as established by the Missouri Sunshine Law. Section 610.010(5), RSMo.
68. The Circuit Attorney’s Office received Mr. Solomon’s request on or around July 5, 2019.
69. The Custodian of Records for the Circuit Attorney’s Office received Mr. Solomon’s request on or around July 5, 2019.
70. The Circuit Attorney’s Office violated § 610.023.3 by failing to respond to Mr. Solomon’s July 5 Request within three business days following the date it was received by the Custodian of Records.
71. Upon information and belief, the Circuit Attorney’s Office retains records that are responsive to the July 5 Request.
72. Specifically, upon information and belief, the Circuit Attorney’s Office retains records showing that between January 6, 2017, and July 3, 2019, Kimberly Gardner and/or members of her staff engaged in non-privileged communications with one or more of the following: (1) Scott Faughn; (2) Al Watkins; (3) Jeffrey E. Smith; (4) JES Holdings, LLC; (5) Jeff Smith; (6) The Missouri Workforce Housing Association; (7) George Soros; (8) Michael Vachon; (9) Soros Fund Management; (10) The Safety and Justice PAC; (11) Open Society Foundation; (12) Scott Simpson; (13) Katrina Sneed; (14) Phil Sneed; (15) State Representative Stacy Newman; and/or (16) State Representative Jay Barnes.

73. None of the provisions of Chapter 610 permit the Circuit Attorney's Office to withhold the records referenced in paragraph 72.
74. The Circuit Attorney's Office violated § 610.023.3 by failing to "give a detailed explanation of the cause for further delay and the place and earliest time and date that the record[s] will be available for inspection," even though the Circuit Attorney's Office did not immediately grant Mr. Solomon access to the public records he requested.
75. The Office's decision to withhold from Mr. Solomon open public records responsive to the July 5 Request is a purposeful or, in the alternate, knowing violation of § 610.023.3.
76. In light of the October 23, 2019 and December 4, 2019 letters Ms. Hermann sent, the Circuit Attorney's Office and Mr. Michaels were informed as to the requirements of the Sunshine Law, its application to the Circuit Attorney's Office, and the penalties it authorizes for those who violate the law.
77. Despite being aware of its obligation to produce responsive records to Mr. Solomon in a timely manner and without unilaterally limiting the scope of Mr. Solomon's request, the Circuit Attorney's Office and Mr. Michaels nonetheless refused to produce these open public records to Mr. Solomon.
78. Thus, the St. Louis Circuit Attorney's Office and Mr. Michaels have knowingly and/or purposefully violated the Sunshine Law.

WHEREFORE the Plaintiff asks this Court to enter judgment in his favor and against the Circuit Attorney, and:

- 1) Declare that the records identified in the July 5 Request are open public records under the Sunshine Law and are not subject to any exception that would require, or permit, the Circuit Attorney to close them or any portion thereof;
- 2) Declare that the Circuit Attorney violated § 610.023.1 by failing to properly identify the identity and contact information for the Circuit Attorney's Custodian of Records when requested;
- 3) Declare that the Circuit Attorney violated § 610.023.3 by failing to act upon the July 5 Request by the end of the third business day following the date it was received by the Circuit Attorney's Custodian of Records;
- 4) Declare that the Circuit Attorney violated § 610.023.3 by failing to give a detailed explanation of the cause for further delay and the earliest time and date that the requested records would be available for inspection once it had been determined that the Circuit Attorney would not immediately grant Mr. Solomon access to the public records he had requested;
- 5) Declare that the Circuit Attorney violated § 610.023.3 by unlawfully withholding from Solomon open public records responsive to Solomon's July 5 Request;
- 6) Declare that each of the four distinct, separate violations above were purposeful, or in the alternative, knowing violations of the Sunshine Law;

- 7) Enter an injunction requiring Defendants to search for and produce to the Plaintiff copies of all records retained by the Circuit Attorney's Office that are responsive to the July 5 Request;
- 8) Order the Defendants to pay the Plaintiff an appropriate civil penalty as authorized by Section 610.027, RSMo.;
- 9) Award Plaintiff's attorney fees and costs of litigation as authorized by Section 610.027, RSMo.; and
- 10) Grant to Plaintiff such other and further relief as is just and proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2020, I filed a true and correct copy of the above document via the Court's e-filing system for service upon:

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Attorney for Defendant



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