

**IN THE CIRCUIT COURT OF COLE COUNTY  
NINETEENTH JUDICIAL CIRCUIT  
STATE OF MISSOURI**

SHOW-ME INSTITUTE AND  
PATRICK ISHMAEL,

Plaintiffs,

v.

OFFICE OF ADMINISTRATION, STATE OF  
MISSOURI;

Serve: Sarah Steelman  
Commissioner of Administration  
Capitol Building, Room 125  
Jefferson City, MO 65101

Case No.

and

BRANDI CARUTHERS, in her official  
capacity as Custodian of Records for  
the Division of Personnel, Office of  
Administration,

Serve: Brandi Caruthers  
Custodian of Records  
Truman Building, Room 430  
301 W. High Street  
Jefferson City, MO 65101

Defendants.

**PETITION FOR DECLARATORY JUDGMENT**

1. The Plaintiffs bring this action pursuant to Chapter 610 of the Missouri Revised Statutes.

2. The Plaintiffs are authorized to bring this action pursuant to § 610.027.1, RSMo., because both the Show-Me Institute and Patrick Ishmael (collectively, "SMI"), are aggrieved persons within the meaning of § 610.027.1, and Ishmael is a taxpayer to the state of Missouri.
3. Venue for this action is proper in Cole County Circuit Court pursuant to § 610.027.1, RSMo., because the Defendants' principal place of business is in Cole County.
4. This court has jurisdiction to issue injunctions to enforce the provisions of the Sunshine Law pursuant to § 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 610.023.2, RSMo., requires each public governmental body to make its public records available to the public for inspection and copying.
11. Section 610.023.2, RSMo., in relevant part also expressly forbids any public governmental body from “grant[ing] to any person or entity, whether by contract, license or otherwise, the exclusive right to access and disseminate any public record[.]”
12. In other words, if a public governmental body has entered into a contract that obligates the public governmental body to provide certain public information

to a specific private entity, § 610.023.2, RSMo., forbids that public governmental body to deny other private entities an equal opportunity to review and copy that same public information.

13. Section 610.021, RSMo., *authorizes* public governmental bodies to close certain public records, but it does not *require* the closure of these records. See § 610.022.4, RSMo.
14. If a public governmental body has obligated itself by contract to provide one private entity unredacted copies of public records which include information that otherwise *could have* been redacted under § 610.021, RSMo., but then the public governmental body refuses to provide identical copies of those public records to another private entity, the public governmental body has effectively granted to the private party with whom it formed the contract an exclusive right to access and disseminate the unredacted public records.
15. 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.”
16. 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]

17. 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.

18. Section 610.027.4, 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 purposely violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount up to five thousand dollars. If the court finds that there was a purposeful violation of sections 610.010 to 610.026, then the court shall order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing such 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.

19. Section 610.027.6, RSMo., allows a public governmental body which is in doubt about its obligations under the Sunshine Law to obtain clarity and escape liability for a knowing or purposeful violation either by seeking a formal opinion on the matter from the Attorney General's office or from an attorney for the governmental body, or by bringing suit at the governmental body's expense in the circuit court of the county of the public governmental body's principle place of business.

### PARTIES

20. Defendant Missouri Office of Administration ("the Office") is a governmental entity created pursuant to Article IV, § 50 of the Missouri Constitution and § 37.005, RSMo; it is a public governmental body under § 610.010.4, RSMo., and its records are subject to the Sunshine Law.
21. Defendant Brandi Caruthers is the designated Custodian of Records for the Office's Division of Personnel; she is sued solely in her official capacity as the Custodian of Records ("the Custodian") for the Office's Division of Personnel.<sup>1</sup>

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<sup>1</sup> The Plaintiffs will refer to the Office and the Custodian collectively as "the Government."

22. Plaintiff Show-Me Institute ("SMI") is a Missouri non-profit corporation; SMI is an "aggrieved person" because one of SMI's employees requested unredacted copies of certain public records that the Government had already provided to the American Federation of State, County and Municipal Employees Council 72 ("AFSCME"), another private entity, but the Government refused to provide this same information to SMI.
23. Plaintiff Ishmael ("Ishmael") is a Missouri taxpayer and an employee of SMI;<sup>2</sup> Ishmael is also an "aggrieved person" because he requested unredacted copies of certain public records that the Government had already provided to AFSCME, another private entity, but the Government refused to provide this same information to Ishmael.

#### FACTUAL ALLEGATIONS

24. On May 11, 2015, the Office was among several government agencies that signed a "Master Labor Contract" ("the Master Contract") with AFSCME. A copy of the Master Contract is attached as Plaintiff's Exhibit 1.
25. AFSCME is a private entity, not a public governmental body or any other sort of government entity.
26. Under Article 2, Section 4 of the Contract, the Office agreed "once each quarter, and in electric format" to provide to AFSCME "a current list of active bargaining unit employees." **Master Contract, p. 4.**

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<sup>2</sup> The Plaintiffs will refer to themselves collectively as "SMI."

27. Each list of active bargaining unit employees was required to include (among other information) each employee's name, employment status, salary information, work address, home address, and mailing address. **Master Contract, pp. 59-60.**
28. Upon information and belief, the Office provided to AFSCME—without redactions—all of the categories of information specified in the Master Contract.
29. Upon information and belief, the Office provided this information to AFSCME even in regard to employees who had not voluntarily chosen to become AFSCME members and to employees who had chosen to terminate their AFSCME membership.
30. Although the Master Contract was set to expire on December 31, 2017, Article 37, Section 1, of the Master Contract provided that it would automatically be renewed for each of the following three years “unless either party provides written notification of its intent to modify or amend” the Master Contract “by July 1 of the calendar year prior to expiration.” **Master Contract, p. 49.**
31. Upon information and belief, neither the Office nor AFSCME notified the other party of an intent to modify or amend the Master Contract by July 1, 2019.
32. Thus, upon information and belief, the Master Contract has automatically been renewed for calendar year 2020 and will remain in effect until December 31, 2020.



33. Upon information and belief, the Office has continued on a quarterly basis to provide AFSCME the information specified in Appendix D of the Master Contract.

**The Government Denied SMI's Records Request**

34. On June 6, 2019, SMI emailed to the Office a public records request ("the Request") seeking electronic copies of each list of active bargaining unit employees sent to AFSCME in 2016, 2017, and 2018, as required by the Master Contract. A copy of the Request is attached as Plaintiff's Exhibit 2.
35. The Custodian received the Request.
36. The Request specified that SMI wanted the records "in precisely the same format" as they were provided to AFSCME.
37. The Request also stated that if the Office or the Custodian contended that any of the requested documents or any portion of a requested document was exempt from disclosure, the Office or the Custodian should provide any material that was *not* exempt, and also should provide a written statement identifying any specific provision(s) of law that the Custodian believed to justify denying SMI's access to any withheld document or part of a document.
38. On June 7, 2019, Kelly Hopper, an attorney for the Office, sent SMI two emails that collectively contained twelve Microsoft Excel files, each of which had a title including the phrase "AFSCME Eligibles." Copies of each of these documents are attached as Plaintiff's Exhibits 3-14.

39. Each Excel file that the Government's attorney provided included fields for each of the 69 categories of information indicated in Appendix D of the Master Contract as well as an extra field entitled "SENIORITY\_DATE."
40. The versions of the Excel documents provided to SMI were heavily redacted; out of the 70 categories of information in each document, the Government had stripped the data from 63 of the categories and blacked them out.
41. In a letter attached to one of the June 7, 2019 emails the Government's attorney stated that it had redacted information from the records "pursuant to section 610.021(13), RSMo and Office of Administration Policy B-36[.]" A copy of the June 7, 2019 letter from Hopper to Ishmael is attached as Plaintiff's Exhibit 15.
42. Upon information and belief, the lists of active bargaining unit employees that the Government had provided to AFSCME had not been redacted in this manner.
43. Upon information and belief, the lists of active bargaining unit employees that the Government had provided to AFSCME had included all of the information the Government chose to withhold from SMI.
44. On August 8, 2019, SMI's attorney sent to the Custodian via email and the U.S. Postal Service a warning letter ("the Warning Letter") notifying the Custodian that the Government's decision to withhold from SMI public information that the Office had already provided to AFSCME constituted a

potential Sunshine Law Violation. A copy of the Warning Letter is attached as Plaintiff's Exhibit 16.

45. The Warning Letter noted that the Office had given AFSCME unredacted copies of the records SMI requested, and affirmed that SMI was seeking precisely the same documents that the Office had already provided to this other private entity. **Warning Letter, p. 1.**
46. The Warning Letter emphasized that § 610.023.2, RSMo., forbids public government bodies to grant any person or entity an exclusive right to access any public record, stating that the Office would violate this provision of the Sunshine Law if it refused to provide SMI with identical, unredacted copies of what the Office had already provided to AFSCME. **Warning Letter, pp. 1-2.**
47. The Warning Letter described the penalties that § 610.027, RSMo., provides for knowing or intentional violations of the Sunshine Law. **Warning Letter, p. 2.**
48. The Warning Letter asked the Office and the Custodian to reconsider their denial of SMI's request, and warned that SMI might pursue litigation to enforce the Sunshine Law if the Defendants insisted on withholding copies of the unredacted documents the Office had already provided to AFSCME. **Warning Letter, p. 2.**
49. The Warning Letter informed the Office and the Custodian that § 610.027, RSMo., allowed them either to seek a "formal opinion" regarding their

obligation to produce the records SMI had requested, or in the alternative to bring suit in Cole County Circuit Court. **Warning Letter, p. 2.**

50. The Warning Letter noted the possibility that the Office had sought or received such a "formal opinion" as to its obligation to produce to SMI the same information it had already provided to AFSCME and asked the Office to provide a copy of any such "formal opinion." **Warning Letter, pp. 2-3.**
51. On August 8, 2019, the Custodian acknowledged receiving the Warning Letter and stated that it had been forwarded to the Government's "legal team."
52. On August 12, 2019, Hopper sent SMI's attorney a one-page letter ("the Final Denial") reaffirming that the Office would not produce the unredacted records the Office had provided to AFSCME. A copy of this letter is attached as Plaintiff's Exhibit 17.
53. The Final Denial acknowledged that the Office had not redacted the copies of the documents it had provided to AFSCME.
54. The Final Denial confirmed that the Master Contract was the reason the Office had provided unredacted copies of the records to AFSCME, but attempted to justify its withholding of information from SMI by claiming that the Master Contract did not expressly grant AFSCME "the exclusive right to access and disseminate any public record."
55. Upon information and belief, AFSCME is the only private entity that has contracted with the Office to receive the information specified in the Master Contract.

56. The Master Contract does not contain any language that would prohibit AFSCME from disseminating the information it receives from the Office.
57. If AFSCME is the only private entity to which the Office has agreed to provide certain public information and if AFSCME is not legally obligated to keep that public information confidential, then as a matter of law the Office has given AFSCME an exclusive right to access and disseminate the public information the Office has provided, even if AFSCME has thus far chosen not to disseminate that information.
58. The Final Denial neither confirmed nor denied whether the Office had sought a "formal opinion" regarding the Office's obligation to produce public information to SMI that the Office had already provided to AFSCME.
59. Instead, the Final Denial claimed that records responsive to the request for such "formal opinions" "are closed pursuant to section 610.021(14), RSMo."

**COUNT ONE: VIOLATIONS OF THE MISSOURI SUNSHINE LAW**

60. The Office is subject to the provisions of the Missouri Sunshine Law because it is a governmental entity created pursuant to Article IV, § 50 of the Missouri Constitution and § 37.005, RSMo. § 610.010(4), RSMo.
61. The Custodian is subject to the provisions of the Sunshine Law pursuant to § 610.023, RSMo.
62. All the records SMI requested from the Government fall within the definition of "public record" as established by the Missouri Sunshine Law. § 610.010(5), RSMo.

63. In light of the Warning Letter SMI's attorney sent, both the Office and the Custodian were informed as to the Sunshine Law, its application to them, or the penalties it affords for those who violate the law.
64. Despite being aware of their obligation to produce to SMI the same public information that the Office had already provided to AFSCME and in particular the Sunshine Law's specification that a public governmental body may not rely on a contract to justify granting a private entity exclusive access to public information, the Office and the Custodian nonetheless have refused to produce this public information to SMI.
65. Thus, the Office and the Custodian have knowingly violated the Sunshine Law.

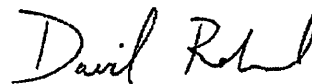
**WHEREFORE** the Plaintiffs ask this Court to enter judgment in their favor and against the Defendants entering:

- 1) a declaratory judgment stating that the Government violated the Sunshine Law by refusing to produce to SMI unredacted copies of the public records responsive to Ishmael's records request that the Office has already produced to AFSCME;
- 2) an order requiring the Government to produce to SMI unredacted copies of the public records responsive to Ishmael's records request that the Office has already produced to AFSCME;
- 3) a declaratory judgment stating that at the time the Government withheld from SMI unredacted copies of these documents it knew that withholding the

records would violate the Sunshine Law and it was also aware of the penalties for violating the Sunshine Law;

- 4) an order enjoining the Government from withholding public information from private entities if it has already provided that same information to another private entity; and
- 5) an order requiring the Government to pay SMI civil penalties as authorized under § 610.027, RSMo., as well as the costs and attorney fees associated with this litigation.

Respectfully submitted,



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*Attorney for Plaintiffs*

**VERIFICATION**

I, Brenda Talent, am the Chief Executive Officer for the Show-Me Institute and I hereby affirm that I have read the foregoing verified petition and declare that, to the best of my knowledge, information, and belief, the allegations therein are true and correct.

By: Brenda Talent  
Brenda Talent

STATE OF MISSOURI           )  
                    *St. Charles*           )  
CITY OF ~~ST. LOUIS~~           )

Sworn to and subscribed to me this 27<sup>th</sup> day of August, 2019.

Kimberly K. Gilbert  
NOTARY PUBLIC

