

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

SUNSHINE AND GOVERNMENT
ACCOUNTABILITY PROJECT and ALAN B.
HOFFMAN,

Plaintiffs,

v.

THE CITY OF ST. LOUIS, a Municipal
Corporation,

LYDA KREWSON, Mayor of the City of St.
Louis,

LEWIS REED, President of the Board of
Aldermen of the City of St. Louis,

DARLENE GREEN, Comptroller of the City of
St. Louis,

PAUL PAYNE, Budget Director of the City of
St. Louis,

In their official capacities and acting as the ST.
LOUIS AIRPORT ADVISORY GROUP,

MICHAEL GARVIN, Deputy City Counselor
for the City of St. Louis,

and

DEIRDRE WEAVER, in her capacity as
Custodian of Records for the ST. LOUIS
AIRPORT ADVISORY GROUP and the CITY
OF ST. LOUIS

and

John Does 1 through 20

Serve: Hold for service

Defendants.

Case No.

Division.

**PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF AGAINST
DEFENDANTS FOR VIOLATING THE MISSOURI SUNSHINE ACT, CHAPTER 610
OF THE MISSOURI REVISED STATUTES**

Come now Plaintiffs, and for their causes of action state as follows.

PARTIES

1. Plaintiff Alan Hoffman is proceeding on behalf of the SUNSHINE AND GOVERNMENT ACCOUNTABILITY PROJECT.

2. The SUNSHINE AND GOVERNMENT ACCOUNTABILITY PROJECT is an unincorporated association based in St. Louis County, Missouri dedicated to government transparency and holding governments accountable to the people of Missouri.

3. Plaintiff is a Missouri resident aggrieved by Defendants' violations of the Missouri Sunshine Act, §§ 610.010, *et seq.*, RSMo, (the "Sunshine Act") as hereinafter more fully set forth.

4. Defendant, the City of St. Louis, Missouri is a municipal corporation and political subdivision of the State of Missouri organized and existing under its Charter and the Constitution and laws of the State of Missouri (the "City"). The City is a public governmental body as defined by § 610.010 of the Sunshine Act.

5. Defendant, Lyda Krewson is the duly elected and acting Mayor of the City.

6. Defendant, Lewis Reed is the duly elected and acting President of the Board of Aldermen of the City.

7. Defendant, Darlene Green is the duly elected and acting Comptroller of the City.

8. Defendant, Paul Payne is the duly authorized and acting City Budget Director of the City of St. Louis.

9. Defendants Krewson, Reed, Green and Payne have been designated the voting members of the Airport Advisory Working Group (the "Working Group") pursuant to a certain

Consultant Agreement dated June 13, 2018 (“the Consultant Agreement”), by and between the City of St. Louis, Moelis & Company, LLC (“Moelis”), McKenna & Associates, LLC (“McKenna”), and Grow Missouri, Inc. (“Grow”). A copy of the Consultant Agreement is attached hereto as Exhibit A and, insofar as it is relevant, is incorporated herein by reference.

10. Defendant, Michael Garvin, is the duly authorized and acting Deputy City Counselor of the City of St. Louis, and has purported to act as counsel for the Working Group.

11. Defendant, Deirdre Weaver is has been designated as the Custodian of Records for the Working Group.

12. All references herein to the “Working Group” include the named Defendants, together with Moelis, McKenna, Grow, and all other consultants and vendors engaged by them pursuant to the Consultant Agreement.

13. John Does 1-10, under information and belief, are elected representatives and other persons who defied and/or acted in concert to violate the Sunshine Act in connection with the matters herein complained of.

JURISDICTION AND VENUE

14. Plaintiffs bring this action pursuant to § 610.027 of the Sunshine Act and the Court thereby has jurisdiction over the subject matter of this action. Plaintiffs have standing to seek judicial enforcement of the Sunshine Act in that they are taxpayers to and citizens of this State aggrieved by Defendants’ acts and omissions as set forth hereinafter.

15. This Court may order declaratory and injunctive relief pursuant to §§ 526.030, 527.010, and 610.030, RSMo.

16. Venue is proper in this Court pursuant to § 610.027 of the Sunshine Act, in that the City has its principal place of business within this judicial Circuit.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

17. Since on or about July 2, 2018 the Working Group, purporting to act on behalf of the City, has held approximately 47 meetings to, *inter alia*, prepare and issue a Request for Qualifications (“RFQ”) and a subsequent Request for Proposals (“RFP”) for the purpose of considering proposals to manage and operate St. Louis Lambert International Airport, owned and operated by the City (the “Airport”). A list of the dates of such meetings is attached hereto as Exhibit B. All or substantial portions of said meetings have been closed to the public in violation of the Sunshine Act.

18. During the course of the closed meetings as aforesaid, the Working Group has generated, received, transmitted, considered, voted and acted upon documents and records which have been improperly treated as closed records and wrongfully withheld from the public in violation of the Sunshine Act, notwithstanding requests for disclosure of such documents and records by Plaintiffs.

19. On October 4, 2019 the Working Group issued an RFQ inviting interested parties to submit their qualifications to bid for the opportunity to operate a privatized Airport. The Working Group has received eighteen (18) submissions in response to the RFQ, but has failed and refused to make the submissions and related documents and records available to the public.

20. At the regularly scheduled Working Group meeting on October 31, 2019, Plaintiffs objected on the record to the wrongful closing of Working Group meetings and withholding documents generated, received, transmitted, considered, voted and acted upon by the Working Group. Notwithstanding said objection, Defendants wrongfully closed the meeting, excluded Plaintiffs and the public therefrom, and conducted the meeting in closed session, in violation of the Sunshine Act. A copy of the October 31, 2019 Minutes of the Airport Advisory Working Group

Meeting reflecting the foregoing is attached hereto as Exhibit C and, insofar as relevant, is incorporated herein by reference.

21. On November 6, 2019 Plaintiffs served a written Sunshine Act request on Defendant Weaver, as Custodian of Records the Working Group, calling for the following:

- i. All questions and/or requests for information regarding the RFQ or any other matter relating to the Airport P3 and/or emailed to the Lead Financial Advisor Representatives and/or Mr. Michael Garvin between October 2, 2019 and today.
- ii. All RFQ submissions, including all attachments, emailed and/or delivered to either the Lead Financial Advisor Representatives and/or Mr. Michael Garvin of the City of St. Louis between October 2, 2019 and today.
- iii. All communications from, to by or among the RFQ Respondents and/or potential RFQ Respondents seeking guidance from the St. Louis City Counselor's Office regarding any potential conflicts of interest.

A copy of said request is attached hereto as Exhibit D, and is incorporated herein by reference.

22. At the regularly scheduled Working Group meeting on November 7, 2019, Plaintiffs objected on the record to the wrongful closing of Working Group meetings and records, and further stated: *"Let the record show that this objection applies to all such meetings, past and future. Closing these meetings and withholding relevant public records are purposeful violations of Chapter 610, which provides remedies for such violations, as counsel has surely advised you."* (Emphasis added). A copy of the November 7, 2019 Working Group Meeting Minutes is attached hereto Exhibit E and, insofar as it is relevant, is incorporated by reference herein.

23. Although the Minutes of the November 7, 2019 Working Group meeting do not include the foregoing quotation, it appears of record in the video recording of the meeting, which may be accessed at <https://youtu.be/hHmzFshm4a4>, and insofar as it is relevant, is incorporated herein by reference.

24. Notwithstanding said objection, Defendants wrongfully closed the meeting, excluded Plaintiffs and the public therefrom, and conducted the meeting in closed session, in violation of the Sunshine Act.

25. At the regularly scheduled Working Group meeting on November 21, 2019, Defendant Green, by and through her delegate and agent, LaTaunia Kenner, objected on the record to the wrongful closing of Working Group meetings and records. A copy of the November 21, 2019 Working Group Meeting Minutes reflecting said objection is attached hereto Exhibit F and, insofar as it is relevant, is incorporated by reference herein.

26. Notwithstanding said objection, Defendants wrongfully closed the meeting, excluded Plaintiffs and the public therefrom, and conducted the meeting in closed session, in violation of the Sunshine Act.

27. Defendants have manifested by word and deed that they will continue to wrongfully close Working Group documents, records and meetings in violation of the Sunshine Act unless restrained and enjoined from this illegal conduct by the Court.

28. The Sunshine Act, §610.011 RSMo, states: “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 [of the Sunshine Act] shall be liberally construed and their exceptions strictly construed to promote the public policy.”

29. Resolution Number 220, duly approved and enacted by the Board of Aldermen of the City on February 9, 2018 with respect to the proposed privatization of airport management and operations, states in relevant part as follows: “*At all times and in all matters the consultants will adhere to the spirit and letter of the state statutes governing public meeting, open records and transparency in government.*” (Emphasis added).

COUNT I

Violation of the Sunshine Act, §§ 610.022(5), 610.021 (2) and (12)—The City’s Improper Closure of Open Public Records

30. The allegations of paragraphs 1 through 29 are incorporated by reference as though set forth here in full.

31. On November 6, 2019 Plaintiffs served a written Sunshine Act request on Defendant Weaver, as Custodian of Records for the Working Group, calling for the following: “All questions and/or requests for information regarding the RFQ or any other matter relating to the Airport P3 and/or emailed to the Lead Financial Advisor Representatives and/or Mr. Michael Garvin between October 2, 2019 and today.” See Sunshine request No. 1, attached Exhibit D.

32. The City’s failure to produce and/or the closing of the actual emails or letters requested in Plaintiff’s November 6, 2019 Sunshine request No. 1 violates the Sunshine Act’s command to produce open records pursuant to §§ 610.023, 610.022(5), and neither exception 610.021(2) nor (12) cited by the City, justifies closure.

33. Defendants knowingly and purposefully violated the Sunshine Act, and will continue doing so unless restrained and enjoined by the Court.

COUNT II

Violation of the Sunshine Act, §§ 610.022(5), 610.021 (2) and (12)—The City’s Improper Closure of Open Public Records

34. The allegations of paragraphs 1 through 33 are incorporated by reference as if set forth here in full.

35. On November 6, 2019 Plaintiffs served a written Sunshine Act request on Defendant Weaver, as Custodian of Records for the Working Group, calling for the following “All RFQ submissions, including all attachments, emailed and/or delivered to either the Lead Financial Advisor Representatives and/or Mr. Michael Garvin of the City of St. Louis between October 2, 2019 and today.” See Sunshine request No 2, Exhibit D.

36. The City’s failure to produce and/or the closing of the actual emails or letters requested in Plaintiff’s November 6, 2019 Sunshine request No. 1 violates the Sunshine Act’s command to produce open records pursuant to §§ 610.023 and 610.022(5), and neither exception 610.021(2) and (12), cited by the City justifies closure.

37. Defendants knowingly and purposefully violated the Sunshine Act and will continue doing so unless restrained and enjoined by the Court.

COUNT III

Violation of the Sunshine Act, §§ 610.022(5), 610.021 (2) and (12)—The City’s Improper Closure of Open Public Records

38. The allegations of paragraphs 1 through 37 are incorporated by reference as if set forth here in full.

39. On November 6, 2019 Plaintiffs served a written Sunshine Act request on Defendant Weaver, as Custodian of Records for the Working Group, calling for the following “All communications from, to by or among the RFQ Respondents and/or potential RFQ Respondents seeking guidance from the St. Louis City Counselor’s Office regarding any potential conflicts of

interest. A copy of said request is attached hereto as Exhibit D, and is incorporated herein by reference.

40. The City's failure to produce and/or the closing of the communication requested in Plaintiff's November 6, 2019 Sunshine request No. 3 violates the Sunshine Act's command to produce open records pursuant to §§610.023 and 610.022(5), and neither exception 610.021(2) nor (12), cited by the City, justifies closure.

41. Defendants knowingly and purposefully violated the Sunshine Act and will continue doing so unless restrained and enjoined by the Court.

COUNT IV

Violation of the Sunshine Act, §§ 610.023(3)—The City's Lack of "Reasonable Cause" to Delay Document Production Beyond Three Days

42. The allegations of paragraphs 1 through 41 are incorporated by reference as if set forth here in full.

43. On November 6, 2019 Plaintiffs served a written Sunshine Act request on Defendant Weaver, as Custodian of Records for the Working Group as aforesaid.

44. On November 12, 2019, Defendant Weaver, as Custodian, responded via email promising that within ten business days City will notify plaintiff "whether any remaining records responsive to your request have been located." A copy of said response is attached hereto as Exhibit G.

45. Plaintiffs were not notified as promised within ten business days.

46. The November 12, 2019 email also told Plaintiffs that after being "notified whether any remaining records responsive to your request have been located," then, "a review of any such documents will be conducted to determine whether they contain any otherwise legally protected

information. Based on the above, the earliest time and date additional records, if any, will be available from my office is close of business on December 3, 2019.” See Exhibit G.

47. On December 3, 2019, Defendant Weaver as Custodian wrote Plaintiffs and said, in part, “Please be advised that research using limited resources is ongoing. Once the process of locating and identifying any documents responsive to your request is complete, a review of any such documents will be conducted to determine whether they contain any otherwise legally protected information. Based on the above, the earliest time and date additional records, if any, will be available from my office is close of business on December 12, 2019.” A copy of the December 3, 2019 City email is attached hereto as Exhibit H.

48. Section 610.023 (3) reads, in part, “This period for document production may exceed three days for reasonable cause.”

49. The City’s written responses to Plaintiff’s November 6, 2019 Sunshine requests did not have include any “reasonable cause” for document production delay beyond the three day period, particularly since Plaintiff’s Sunshine request was narrowly tailored to documents, recently provided by third parties, that could and should have easily been produced within three days.

50. Defendants knowingly and purposefully violated the Sunshine Act and will continue doing so unless restrained and enjoined by the Court.

COUNT V

Violation of the Sunshine Act, § 610.023(3)—The City’s Failure to Offer Earliest Time and Date for Production and/or Failure to Produce on December 3, 2019

51. The allegations of paragraphs 1 through 50 are incorporated by reference as if set forth here in full.

52. On November 6, 2019 Plaintiffs served a written Sunshine Act request on Defendant Weaver, as Custodian of Records for the Working Group as aforesaid.

53. On November 12, 2019, Defendant Weaver as Custodian responded via email promising that within ten business days City will notify plaintiff “whether any remaining records responsive to your request have been located.” A copy is attached hereto as Exhibit F.

54. Plaintiff was not notified within ten business days as promised.

55. The November 12, 2019 email also told Plaintiff that after being “notified whether any remaining records responsive to your request have been located,” then, “..a review of any such documents will be conducted to determine whether they contain any otherwise legally protected information. Based on the above, the earliest time and date additional records, if any, will be available from my office is close of business on December 3, 2019.” See Exhibit F.

56. On December 3, 2019, Defendant Weaver as Custodian wrote Plaintiff, “Please be advised that research using limited resources is ongoing. Once the process of locating and identifying any documents responsive to your request is complete, a review of any such documents will be conducted to determine whether they contain any otherwise legally protected information. Based on the above, the earliest time and date additional records, if any, will be available from my office is close of business on December 12, 2019.” A copy of the December 3, 2019 City email is attached hereto as Exhibit G.

57. Section 610.023 (3), reads in part, “If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection.”

58. Defendant Weaver as Custodian not only failed to provide a notification within ten business days as to whether responsive documents have been “located”, but also violated § 610.023(3) by failing to either offer an earliest time and date the records will be available, or failed

to produce or even explain if anything records could or would be produced on the date she offered, December 3, 2019.

59. Defendants knowingly and purposefully violated the Sunshine Act and will continue doing so unless restrained and enjoined by the Court.

COUNT VI

Violation of the Sunshine Act, § 610.023(3)—The City’s Failure to Provide a Detailed Explanation on November 12th or January 3rd of the Cause for Further Delay

60. The allegations of paragraphs 1 through 59 are incorporated by reference as if set forth here in full.

61. On November 6, 2019 Plaintiffs served a written Sunshine Act request on Defendant Weaver, as Custodian of Records for the Working Group as aforesaid.

62. On November 12, 2019, Defendant Weaver as Custodian responded via email promising that within ten business days City will notify plaintiff “whether any remaining records responsive to your request have been located.” A copy of said email is attached hereto as Exhibit F.

63. Plaintiff was not notified within ten business days as promised.

64. The November 12, 2019 email also told Plaintiff that after being “notified whether any remaining records responsive to your request have been located,” then, “a review of any such documents will be conducted to determine whether they contain any otherwise legally protected information. Based on the above, the earliest time and date additional records, if any, will be available from my office is close of business on December 3, 2019.” See Exhibit F.

65. On December 3, 2019, Defendant Weaver as Custodian wrote Plaintiff, “Please be advised that research using limited resources is ongoing. Once the process of locating and

identifying any documents responsive to your request is complete, a review of any such documents will be conducted to determine whether they contain any otherwise legally protected information. Based on the above, the earliest time and date additional records, if any, will be available from my office is close of business on December 12, 2019.” A copy of the December 3, 2019 email is attached hereto as Exhibit G.

66. The November 12, 2019 response also stated, in part, “Any records responsive to your request which relate to the potential leasing of real estate and public knowledge of the details might adversely affect the consideration received by the City if a lease is executed; and which relate to sealed proposals and related documents are closed pursuant to §§ 610.021 (2) and (12), Revised Code of the State of Missouri.”

67. The City’s written responses to Plaintiff’s November 6, 2019 violate § 610.023 (3), in that when access to the records was not “granted immediately,” Defendant did not provide a “detailed explanation of the cause for further delay” in either the November 12, 2019 email or the December 3, 2019 email.

68. Telling a Sunshine requestor that a government has “limited resources” to fulfill simple Sunshine requests in a timely manner, particularly for highly organized and compartmentalized records, is neither a reasonable or detailed explanation.

69. Defendants knowingly and purposefully violated the Sunshine Act and will continue doing so unless restrained and enjoined by the Court.

WHEREFORE, Plaintiffs pray this Court to:

- A. Enter its order finding, adjudging and decreeing that Defendants’ acts and omissions as aforesaid were and are wrongful and in violation of the Sunshine Act.

- B. Issue a temporary restraining order and preliminary injunction ordering Defendants to produce all documents and records wrongfully closed and withheld from the public, including but not limited to all minutes and records of meetings wrongfully closed, and all other documents wrongfully closed and withheld in violation of the Sunshine Act.
- C. Enter its order permanently restraining and enjoining Defendants from wrongfully and illegally withholding documents and records generated, received, transmitted, considered, voted and/or acted upon by the Working Group.
- D. Assess civil penalties and award Plaintiffs their costs and reasonable attorney's fees incurred in prosecuting this action pursuant to §610.027.3, RSMo, by reason of Defendants' knowing and purposeful violations of the Sunshine Act.
- E. Grant such other and further relief as the Court finds just and proper in the circumstances.

COUNT VII

Violation of the Sunshine Act, §§ 610.020 (1) 610.021 and 610.022(1)—Improperly Closed City Meetings

70. The allegations of paragraphs 1 through 69 are incorporated by reference as if set forth here in full.

71. Defendants are improperly closing meetings in violation of §§ 610.020(1), 610.021 and 610.022(1).

72. Defendants are illegally closing public meetings concerning public business, and are improperly purporting to justify the closure of the meetings under §§ 610.021(2) and 610.021 (12), in that the closed meetings neither concerned "sealed bids" nor "Leasing, purchase or sale of

real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor.”

73. Defendants have knowingly and purposefully violated the Sunshine Act and will continue doing so unless restrained and enjoined by the Court.

74. Plaintiffs are entitled to relief pursuant to § 610.027.5, RSMo, in that by reason of the importance of the issues concerning the proposed privatization of the Airport, which is a vital regional asset and infrastructure component affecting not only the City, but the entire metropolitan St. Louis region, the public interest in the enforcement of the policy of the Sunshine Act outweighs the public interest in sustaining the validity of the action taken in the wrongfully closed meetings, records, votes and other actions by the City.

COUNT VIII

Violation of the Sunshine Act, § 610.022(3)—City Improperly Discussing Open Business in Closed Meetings

75. The allegations of paragraphs 1 through 74 are incorporated by reference as if set forth here in full.

76. Defendants are improperly closing meetings in violation of §§ 610.020 (1) 610.021 and 610.022(1).

77. Under information and belief, Defendants are discussing business in closed meetings that does not directly relate the specific reasons announced to justify the closed meeting, See § 610.022 (3).

78. Defendants have knowingly and purposefully violated the Sunshine Act and will continue doing so unless restrained and enjoined by the Court.

79. Plaintiffs are entitled to relief pursuant to § 610.027.5, RSMo, in that by reason of the importance of the issues concerning the proposed privatization of the Airport, which is a vital

regional asset and infrastructure component affecting not only the City, but the entire metropolitan St. Louis region, the public interest in the enforcement of the policy of the Sunshine Act outweighs the public interest in sustaining the validity of the action taken in the wrongfully closed meetings, records, votes and other actions by the City.

WHEREFORE, Plaintiffs pray this Court to:

- F. Enter its order finding, adjudging and decreeing that all actions taken by Defendants in improperly closed meetings or in violation of the Sunshine Act are null, void and of no effect.
- G. Enter its order permanently restraining and enjoining Defendants from wrongfully and illegally closing Working Group meetings.
- H. Enter an order compelling the City of St. Louis to release the minutes and all transcripts of all meetings that were improperly closed.
- I. Enter an order compelling the City of St. Louis to release the minutes and the transcripts of the portions of closed meeting where discussions were not related to the reasons the City provided for closure.
- J. Assess civil penalties and award Plaintiffs their costs and reasonable attorney's fees incurred in prosecuting this action pursuant to § 610.027.3, RSMo, by reason of Defendants' knowing and purposeful violations of the Sunshine Act.
- K. Grant such other and further relief as the Court finds just and proper in the circumstances

Dated: December 6, 2019

Respectfully submitted,

PEDROLI LAW, LLC

A handwritten signature in black ink, appearing to read 'Mark J. Pedrol', with a large, stylized loop at the end.

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