SUNSHINE LAW: (1) A citizen's advisory committee established by a city to make recommendations concerning city policy, such as a city's municipal land use plan, is a public governmental body and, therefore, must keep a journal or minutes of its meetings, keep a record of its votes, and make its meetings and records open to the public, unless a provision of law specifically allows for a meeting or record to be closed. (2) If a member of the committee or a city staffer generates a communication concerning the subject of the committee's work to a consultant, and if there is a record of that communication, that record is a "public record" within the meaning of the Sunshine Law. (3) If the original of such a record is given to a consultant and a copy is not kept, it remains a public record, with the consultant holding the record as the public governmental body's agent; the body's custodian of records is responsible for retrieving the record in response to a request for public access to it.

OPINION NO. 143-2003

November 6, 2003

Honorable John Loudon
State Senator, District 7
State Capitol, Room 332
Jefferson City, MO 65101

Dear Senator Loudon:

You have requested an opinion on issues pertaining to Chapter 610, RSMo 2000,[1] commonly referred to as the Sunshine Law. Specifically, you ask:

> 1) Is a Citizen Advisory Committee obligated to maintain records of its public meeting minutes, deliberations and votes on policy recommendations (eg. Recommendations for a municipal Comprehensive Land Plan)?
>
> 2) If, alternately, policy recommendations are privately made by, for example, the Committee Chair and/or city staff, and then communicated to a private (land planning) consultant, are those

[1]All references are to RSMo 2000 unless otherwise specified.

> communications public records (as opposed to private correspondence)?
>
> 3) If such communications are forwarded to a consultant in any form (such as a marked-up plan draft), and the City states they did not retain a copy of the same, can the City refuse to retrieve a copy to provide upon request for any interested party?
>
> 4) If a citizen then appeals to the consultant to provide such communications directly, is it acceptable that the City instruct the consultant that they are not authorized to spend time and/or money meeting such a request? (Ie. Does it violate the spirit and intent of the Sunshine Law?)

The Sunshine Law expresses the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies are open to the public. *See* Section 610.011. It requires each "public governmental body" to comply with various specific rules to achieve that policy, including keeping a journal or minutes of its meetings and records of its votes. *See, e.g.,* Section 610.020.6.

To answer your first question--whether a citizen's advisory committee is required to keep records of its meetings, deliberations, and votes--we must determine whether such a committee is a "public governmental body," and thus subject to the Sunshine Law's requirements. Based on the material submitted with your opinion request, we assume that you are referring to an advisory committee established by a city to make recommendations concerning city policy, particularly a city's municipal land use plan.

Section 610.010(4) defines the term "public governmental body" as:

> [A]ny legislative, administrative or governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district, judicial entities when operating in an administrative capacity, or by executive order, including:
>
> . . . .

> (c) Any department or division of the state, of any political subdivision of the state, of any county or of any municipal government, school district or special purpose district including but not limited to sewer districts, water districts, and other subdistricts of any political subdivision;
>
> . . . .
>
> (e) Any committee appointed by or at the direction of any of the entities and which is authorized to report to any of the above-named entities, any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds . . . .

In interpreting statutes, we look first to the plain and ordinary meaning of the words enacted by the General Assembly. *Cox v. Dir. of Revenue*, 98 S.W.3d 548, 550 (Mo. banc 2003). In addition, when interpreting the Sunshine Law, we are required to construe its provisions broadly to favor our state's public policy of openness. Section 610.011.1. Here, the terms of Section 610.010(4) are easily broad enough to encompass an advisory committee established to make recommendations concerning land use policy.

Accordingly, a citizen's advisory committee appointed by a city to make recommendations about the city's land use plan is a "public governmental body" within the meaning of the Sunshine Law. As a result, such a citizen's advisory committee is required to keep a journal or minutes of its meetings, as well as a record of its votes. Section 610.020.6. Such a committee must also make its meetings and records open to the public, unless a provision of law specifically allows for a meeting or record to be closed. Section 610.011.

The requirement to make public records open is also important in answering your second question, in which you refer to policy recommendations "privately made" to a land use consultant by the chair of the advisory committee or by city staff. You ask whether such communications are public records.

Section 610.010(6) defines the term "public record" in pertinent part as:

> [A]ny record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds; . . .

As noted above, a citizen's advisory committee of the type envisioned in your opinion request is a public governmental body. Based on your second question , we assume that you are referring to a situation in which a private consultant has been retained to work with or alongside the committee. We further assume you are referring to a situation in which a member of such a committee or a city staff person working with the committee communicates with the consultant about policy recommendations within the scope of the committee's land use planning work.

Under Section 610.010(6), if a member of the committee or a city staffer generates a communication concerning the subject of the committee's work to a consultant, and if there is a record of that communication, that record is a "record . . . of a public governmental body" and thus is a "public record." The fact that a communication may have been developed or transmitted by an individual, instead of by the committee as a whole, does not place it outside the scope of the definition of "public record." *Accord* Missouri Attorney General's Opinion Letter No. 192, Skaggs, 1994 (telephone records of individual member of house of representative are public records). Public governmental bodies such as committees are made up of individuals and must operate through the actions of individuals. If the term public record were construed to include only records made by a multi-member body as a whole and thus to exclude records generated by individual members of a body, there would be ample opportunity for records of important policy actions and deliberations to be hidden from public view. That would be at odds with the General Assembly's mandate that the Sunshine Law be construed to favor openness. *See* Section 610.011.1.

Your third question addresses a situation in which a member of the citizen's advisory committee or a city staffer communicates a policy recommendation to the consultant--we presume in some recorded form, such as a marked-up draft of a land use plan--but the committee and city do not keep a copy of that record. Specifically, you ask whether the city (and presumably the committee) can refuse to retrieve a copy of the record from the consultant if a request is made for that record.

As discussed above, the record of such a communication is a "record . . . of a public governmental body" and, therefore, is a "public record." Placing the original of the record in the hands of a private consultant does not change the fact that it is a "record . . . of a public governmental body" and thus does not place it beyond the public's reach. Interpreting the statute to allow a public governmental body to put records beyond the public's view by giving originals away to agents and not keeping copies would be inconsistent with the requirement to construe the Sunshine Law to favor openness. *See* Section 610.011.1.

Thus, a record of the type you describe remains a public record, with the consultant holding the record as the public governmental body's agent. Pursuant to Section 610.023, the body's custodian of records remains responsible for maintenance of the record and for retrieving the record if necessary to provide public access to it.[2]

This interpretation does not contradict the provisions of Section 610.010(6) concerning consultants. As indicated above, Section 610.010(6) defines the term "public record" as "*including* any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds." (Emphasis added.) As the use of the word "including" indicates, this language is not exclusive. Therefore, it does not specify the only circumstances in which a record held by a consultant might be a public record. As the discussion above demonstrates, a consultant may also hold a public record as an agent for a public governmental body or otherwise come into possession of a public record.

Because of our answer to your third question, it is unnecessary to answer whether a the city can instruct the consultant not to search for such a communication if contacted by someone wanting to review it. Under our interpretation, an individual wanting to obtain a copy of the record would not need to seek it from the consultant, but instead could submit a request to the public governmental body's custodian of records. *See* Section 610.023. In responding to such a request, the custodian could charge the actual cost of search and duplication. Section 610.026(1).

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[2]Even if a public record came into the possession of a private person who is not an agent of the public governmental body, Missouri law gives the custodian of records tools to retrieve the record for the purpose of providing public access to it. *See* Section 109.080 ("If any private person shall have or obtain possession of any books, records or papers, appertaining to any public office, he shall deliver them to the officer entitled to the same.").

CONCLUSION

(1) A citizen's advisory committee established by a city to make recommendations concerning city policy, such as a city's municipal land use plan, is a public governmental body and, therefore, must keep a journal or minutes of its meetings, keep a record of its votes, and make its meetings and records open to the public, unless a provision of law specifically allows for a meeting or record to be closed.

(2) If a member of the committee or a city staffer generates a communication concerning the subject of the committee's work to a consultant, and if there is a record of that communication, that record is a "public record" within the meaning of the Sunshine Law.

(3) If the original of such a record is given to a consultant and a copy is not kept, it remains a public record, with the consultant holding the record as the public governmental body's agent; the body's custodian of records is responsible for retrieving the record in response to a request for public access to it.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General