

6. Rather than responding directly to the Office via official correspondence, the District chose to post on its website a three-paragraph statement purporting to address the AGO's concerns, but in fact failing to do so. District Response to Concern attached as Exhibit D.

Available at http://www.moberly.k12.mo.us/forms/co/District_Response_To_Concern_9-20-21.pdf

7. In its statement the District announced its intention to engage in an "open dialogue" with the Attorney General to "help him better understand the operations of a public school system." *Id.*

8. Taking the District at its word that it was interested in helping the AGO understand how the District operates the Office sent the District a Sunshine Request seeking documents directly related to helping the AGO understand how the District formulated policy KKB.

9. To date, as explained below, the District has not produced a single record in response to the AGO's request, let alone any records that would "help [the attorney general] understand the operations of [Moberly] public school system."

10. Rather than produce the requested public records, the District has chosen to hide behind unlawful fee demands designed to frustrate the AGO's ability to access records.

11. The District, aware of its obligations to disclose documents under Missouri's open records law, nevertheless demanded nearly \$3000 before it would disclose public records.

12. The improper fees demanded by the District created a barrier to the public's access to open records and violated both the spirit and letter of the Sunshine Law.

13. The Missouri Sunshine Law provides the public with critical tools to ensure government remains transparent, honest and efficient.

14. The Sunshine Law declares it is the State of Missouri's public policy that "meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public[.]" § 610.011, RSMo.

15. In the face of the Sunshine Law's mandate of open and transparent government, Moberly Public School District has repeatedly and improperly hindered public access to open records.

16. The District violated § 610.026, RSMo, by demanding advance payment of fees before granting access to open records.

17. The District violated § 610.026, RSMo, by demanding payment for staff time to review and redact open records.

18. The District violated § 610.029, RSMo, by entering into a contract with a technology service provider that impairs the public's access to public records.

19. The District violated § 610.026, RSMo, by demanding payment of contractor fee rates to retrieve public records, rather than fees equal to the average hourly rate of pay for District clerical staff.

20. The Attorney General brings this action on behalf of the State of Missouri to enforce the Sunshine Law and to ensure the public is granted access to open records possessed by Moberly Public School District.

Parties

21. Eric S. Schmitt is the duly elected Attorney General of Missouri.

22. Under Missouri law, "[t]he attorney general shall institute, in the name and on behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims

against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state's interests are involved.” § 27.060, RSMo.

23. In addition, pursuant to § 610.027.1, RSMo., the Attorney General has authority to seek judicial enforcement of the Missouri Sunshine Law.

24. Defendant Moberly Public School District is a public governmental body under § 610.010, RSMo., and its meetings, actions, and records are subject to the provisions of Missouri's Sunshine Law.

Jurisdiction and Venue

25. This Court has subject-matter jurisdiction over this action pursuant to §§ 610.027 and 610.030, RSMo.; Missouri Supreme Court Rule 92; and Missouri Constitution Article V, § 14.

26. This Court has personal jurisdiction over Moberly Public School District because the District's principal place of business is in Randolph County, Missouri.

27. Venue is proper in this Court under § 610.027.1, RSMo., because the District's principal place of business is in Randolph County, Missouri.

Allegations Common to All Counts

I. The Sunshine Law requires public governmental bodies to provide the public with access to public records unless otherwise provided by law.

28. The Missouri Sunshine Law establishes the State's public policy in favor of, and its commitment to, open and transparent government. The Sunshine Law is codified in §§ 610.010 to 610.200, RSMo.

29. “It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public[.]” § 610.011.1, RSMo.

30. Pursuant to that clear public policy, “all public records of public government bodies *shall* be open to the public for inspection and copying[.]” § 610.011, RSMo. (emphasis added)

31. Public governmental bodies are only permitted to charge fees for public records consistent with § 610.026, RSMo.

32. Public governmental bodies are not permitted to enter into electronic record keeping contracts that “impair the ability of the public to inspect or copy the public records[.]” § 610.029, RSMo.

33. The District is aware of its obligations under the Sunshine Law and has adopted Board Policy BDDL: RELEASE OF INFORMATION to effectuate the District’s compliance with § 610.010 *et seq.* Policy BDDL, adopted November 09, 2004 attached as Exhibit E.

II. The District repeatedly hindered public access to public records by demanding advance payment of fees to produce records, demanding fees not allowed under the Sunshine Law, entering into a contract for information technology services that impeded the public’s access to records, and failing to apply the proper wage rate calculation for administrative fees.

34. On September 27, 2021, the Attorney General’s Office (“AGO” or “Office”) requested three sets of public records from the District under the Sunshine Law concerning the District’s policies and practices related to making audio recordings of individualized education plan (“IEP”) and Section 504 meetings. Letter, signed Sept. 27, 2021 attached as Exhibit F.

35. The requests were narrowly tailored as to topic, medium, timeframe and personnel.

36. The first request sought all communications to and from a specified list of thirteen District employees for an eight-day period from 09/16/2021 through 09/24/2021.

37. The second request sought only email communications from those same thirteen District employees for a fifteen-month period, from 06/01/2020 through 09/24/2021. It was limited to a specific topic (i.e. the District's IEP/504 meeting recording policy), and requested only emails to and from seven specific email domains.

38. Similarly, the third request sought only email communications from the same thirteen employees, for the same fifteen-month period, for a specific topic (i.e. legislation and policies related to the District's IEP/504 meeting recording policy), to and from the same seven email domains.

39. Of all the requests made, only the first one sought records that might be stored in non-electronic form, namely letters and faxes. Even still, the request was limited to a one-week period.

40. The AGO requested that the district waive all fees as the records requested were "in the public interest [and] likely to contribute to a better understanding of the operations or activities of [the District]."

41. The District responded to the AGO on September 30, 2021. Letter, signed Sept. 30, 2021 attached as Exhibit G.

42. In its response letter the District demanded a payment of \$2,945.60 by October 15, 2021, in order to make the requested records available eight weeks later on December 15, 2021. The District provided the following cost breakdown of fees:

- a. "10 hours of *professional staff time* at an hourly rate of \$60.00/hour resulting in a cost of \$600 to research the records." (emphasis added)
- b. "80 hours of clerical time to *copy* the records at an hourly rate of \$19.32 resulting in a cost of \$1,545.60." (emphasis added)

c. “The cost of an estimated 8,000 copies at ten (10) cents per page will total \$800.”

43. The total cost quoted by the District to produce requested documents amounted to approximately thirty seven cents (\$0.37) per record.

44. In its letter the District expressly stated no fee would be charged to the AGO for reviewing and redacting the requested records.

45. At no time did the District’s letter address the AGO’s request to waive fees in the public interest.

46. This Office responded to the District by letter on October 12, 2021. Letter, signed Oct. 12, 2021 attached as Exhibit H.

47. In its letter the AGO notified the District of numerous potential Sunshine Law violations in its September 30 response, and informed the District that noncompliance with the Sunshine Law may subject it to enforcement litigation and financial penalties. The Office requested the District cure the violations and produce the requested records in a manner consistent with the law.

48. In addition to notifying the District of likely Sunshine Violations, the Office clarified for the District that nearly all the records requested were electronic and did not require any copying.

49. The AGO again reiterated that its request was in the public interest and asked that the District either waive fees under § 610.026.1(1) or explain how the AGO’s request was not in the public interest.

50. The District responded again to the AGO in a letter dated October 15, 2021 (“second letter” or “second response”). Letter, signed Oct. 15, 2021 attached as Exhibit I.

51. In its second letter the District expressed its disagreement with “many of the legal assertions” identified in the AGO’s response letter, though it provided no further explanation as to which specific assertions it disagreed with.

52. The District again ignored the AGO’s request to waive fees in the public interest, and it failed to provide an explanation as to why the request was not in the public interest. Instead, it simply outlined a revised fee schedule and again demanded advance payment by the AGO in order to access the records.

53. The District acknowledged that the AGO’s request pertained primarily to electronic records, and it adjusted its fee schedule accordingly by removing the \$800 charge for making ten-cent-per-page copies.

54. However, it did not remove the \$1,545.60 charge it had previously characterized as staff time required to “copy” 8000 pages.

55. Instead, the District asserted it did not possess the proper technology to electronically redact documents, so it was required to print the requested files to hard copy, review and redact them, then scan them back into electronic form. It then quoted the exact same \$1,545.60 fee for undertaking the review and redaction process that it had previously quoted for making copies. Though it now characterized the charges as “research expense.”

56. Moreover, the District again assessed a fee of \$600 for research time. In its first letter the District characterized the fee as “professional staff time” for researching records, but in its second letter it more specifically identified the fee as “contracted technology provider research time.”

57. The total fee demanded in the District's second letter was \$1,945.60 which the District purported to be the sum of the \$600 technology research fee and the \$1,545.60 staff research fee.

58. Although the District demanded advance payment of \$1945.60 in order to grant access to the records, that amount appears to be in error. The District seems to have calculated the sum of \$600 and \$1,545.60 to be \$1,945.50 when, in fact, it is \$2,145.60.

59. In addition to adjusting its fees, the District also adjusted the number of responsive records it identified from an estimated 8,000 down to an actual batch of 4,557 records delivered to the District by its technology contractor.

60. Taking into account the correct fee calculation of \$2,145.60, and the actual number of identified records, 4,557, the fees demanded by the District to fulfill the AGO's open records request in its second letter was forty seven-cents (\$0.47) per page, up from the thirty seven-cents (\$0.37) demanded originally. That is an *increase* of ten-cents-per-record levied by the District *after* it conceded the requested records were electronic and did not require copying.

61. Finally, citing to both the recent Missouri Supreme Court Case *Gross v. Parson*, 624 S.W.3d 877 (Mo banc 2021) and § 610.026 RSMo, the District demanded advance payment "for the entire cost of production" prior to fulfilling the Office's request.

COUNT I

Violation of § 610.026 by Demanding Fees to Review and Redact Documents

62. Petitioner herein restates and incorporates by reference the allegations contained in Paragraphs 1 – 62 of this Petition.

63. Under § 610.024 public bodies are required to separate "exempt and nonexempt material and make the nonexempt material available" to the public.

64. In its September 30, 2021, letter the District stated that the records requested by the Office would likely contain both exempt and nonexempt material.

65. The District stated some records may contain information properly closed under § 610.021, and that information would need to be redacted from otherwise open records.

66. The District stated it would not charge a fee to the Office for the review and redaction of the requested records.

67. True to its word, and consistent with § 610.024, the District did not request any fee in its September 30, 2021, letter for reviewing or redacting documents.

68. It did, however, include a \$1,545.60 fee for “80 hours of clerical time to *copy the records* at an hourly rate of \$19.32[.]” (emphasis added)

69. In its October 12, 2021, response letter the AGO notified the District that the Office’s request pertained to predominately electronic records and that fees for copies, and duplication time, were improper.

70. The District responded to the AGO in its October 15, 2021, letter by agreeing that copy fees for electronic records were improper and removing its demand for \$800 (\$0.10 per page for an estimated 8000 records) in copy fees.

71. The District then stated that, whereas the requested records were stored electronically, it did not possess adequate technology to electronically redact them.

72. It then outlined its proposed manual redaction process described above (i.e. print records to hard copy, review and redact manually, rescan into electronic form).

73. On information and belief, the District has access to, and routinely uses computers.

74. On information and belief, the District has access to, and routinely uses both Microsoft Word and Adobe Acrobat.

75. On information and belief, electronic email records can be redacted electronically using either Microsoft Word or Adobe Acrobat. In addition, there are free programs that allow for information in documents to be redacted that the District reasonably could have, but chose not to, pursue.

76. After outlining its manual review and redaction process, the District again reiterated to the Office that “no cost for the process of printing and redacting of records, as described above, has been included.”

77. Nevertheless, in its revised fee schedule the District merely substituted its original \$1,545.60 “copying” fee with an identical \$1,545.60 fee for “research expense” time.

78. On information and belief, the District’s newly characterized “research expense” fee is nothing more than a fee for having staff review and redact documents using the analog method it described.

79. Fees for “staff time” to review and redact documents are not permitted under the Sunshine Law. *Gross v. Parson*, 624 S.W.3d 877, (Mo. banc 2021) (“This obligation to separate exempt and non-exempt materials exists regardless of any particular request for public records.”)

80. The District violated § 610.026, RSMo, by charging fees for the review and redaction of records.

81. The District knew of its obligations under the Sunshine Law because Policy BDDL contains no provision permitting such charges.

82. The District further knew of its obligations under the Sunshine law because it affirmatively stated in each of its response letters that it would not charge the Office for review and redaction.

83. The District intended to violate the Sunshine Law when it re-characterized an otherwise permissible fee for copying paper records as staff time for reviewing and redacting electronic records.

84. The District intended to take actions to charge impermissible fees for reviewing and redacting documents to limit or delay the Office's access to public records, and it knew that charging the Office fees for research and redacting would further the District's ability to do so.

WHEREFORE Plaintiff requests that this Court enter a judgment in favor of Plaintiff: (a) declaring that Defendant violated § 601.026 by charging fees for staff time to review and redact documents; (b) ordering appropriate injunctive relief by requiring the Defendant to immediately disclose all records requested by the Office; (c) order \$1000 in civil penalties based on any knowing violation of the Sunshine Law under § 610.027.3; (d) ordering \$5,000 in civil penalties based on any purposeful violation of the Sunshine Law under § 610.027.4; and (e) for such further relief as the Court deems just and appropriate.

COUNT II

Violation of Section 610.026.1(1), RSMo, for Failing to Research Records Using Employees That Result in the Lowest Amount of Charges for Research Time

85. Petitioner herein restates and incorporates by reference the allegations contained in Paragraphs 1 – 85 of this Petition.

86. Section 610.026.1(1), RSMo, states in relevant part:

Research time required for fulfilling records requests may be charged at the actual cost of research time. Based on the scope of the request, the public governmental body shall produce the [records] using employees

of the body that result in the lowest amount of charges for search, [and] research . . . time.

87. In both its September 30 and October 15, 2021, letters the District assessed a fee of \$60 per hour for retrieving electronic records from its database for a total charge of \$600.

88. In its first letter the District characterized that fee as “professional staff time” to “research the records.”

89. In its October 12, 2021, response letter this Office notified the District of its obligation under § 610.026.1(1) to produce records “using employees of the body that result in the *lowest amount of charges* for search, research, and duplication time.” (emphasis added)

90. The Office further pointed out that at the \$60 per hour rate quoted by the District, the “employee of the body” being utilized to gather records would be making an annual salary of nearly \$125,000.00, which, on information and belief, would be one of the District’s highest paid employees.

91. The District responded in its October 15, 2021, letter by informing this office that the \$60 per hour charge was actually the contract hourly rate the District pays to its third party technology services provider, Quality Network Solution (“QNS”), pursuant to its technology services contract.

92. The District then characterized the \$600 fee as “contracted technology provider research time” and demanded the Office remit payment before the District would “make those records available.”

93. Third-party contract charges for records research are not authorized to be charged to a person requesting public records under the Sunshine Law if those charges exceed the rate at which an employee of the public governmental body would be paid to accomplish the same task.

94. The District violated § 610.026.1(2) by charging the Office the full third-party contract rate that QNS charges the District.

95. The District violated § 610.026.1(1) by failing to calculate its records search charges using the pay rate of District staff that would result in the lowest possible charge for researching and retrieving records.

96. The District knew of its obligations under the Sunshine Law, including its obligation to charge the lowest amount possible to conduct a records search, because the AGO informed the District of § 610.026.1(1) in its October 12, 2021, letter.

97. The District intended to charge fees not authorized by statute in order to limit or delay the Office's access to public records, and it knew that charging \$60 per hour for an email search would further the District's ability to do so.

WHEREFORE Plaintiff requests that this Court enter a judgment in favor of Plaintiff: (a) declaring that Defendant violated § 601.026.1(1) by failing to use employees to search for records that would result in the lowest amount of charges for the search; (b) ordering appropriate injunctive relief by requiring Defendant to fulfill the Office's request without the imposition of fees; (c) order \$1000 in civil penalties based on any knowing violation of the Sunshine Law under § 610.027.3; (d) ordering \$5000 in civil penalties based on any purposeful violation of the Sunshine Law under § 610.027.4; and (e) for such further relief as the Court deems just and appropriate.

COUNT III

Violation of Section 610.029.1, RSMo, for Entering Into a Contract with a Technology Provider to Impair Access to Public Records

98. Petitioner herein restates and incorporates by reference the allegations contained in Paragraphs 1 – 98 of this Petition.

99. Section 610.029.1, RSMo, states in relevant part:

A public governmental body shall not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are online or stored in an electronic record-keeping system used by the agency. Such contract shall not allow any impediment that as a practical matter makes it more difficult for the public to inspect or copy the records than to inspect or copy the public governmental body's records.

100. In both its September 30 and October 15, 2021, letters the District assessed a fee of \$60 per hour for retrieving electronic records from its database, for a total charge of \$600.

101. Whereas in its first letter the District characterized the \$600 fee as "staff time" for "researching records," in its second letter it clarified that the fee was actually the hourly contract rate the District pays its third party technology services provider, QNS, under its existing contract.

102. The District stated that it did not "employ in-house technology staff" and that its contractor, QNS, is responsible for maintaining and searching the District's email server.

103. The District also stated that the process of searching for the records requested by the AGO, namely emails, was not a function "included in the 'normal' scope of work" in its contract with QNS, and that the contract rate for out-of-scope work is \$60 per hour.

104. On information and belief, the District is aware that email communications by and between District employees are public records subject to Sunshine Law disclosure.

105. On information and belief, during the normal course of business the District routinely receives Sunshine Law requests for emails.

106. The District is aware that charging a rate of \$60 per hour for a records search will not result in the lowest amount of charges possible for conducting a search because in both of its letters to the Office it quoted its “lowest paid clerical staff wage” as being \$19.32 per hour.

107. \$60 per hours is more than three times higher than the District’s clerical staff wage of \$19.32.

108. On information and belief, the District is aware that charging a 300% premium for the cost of researching records creates a practical impediment that makes it more difficult for the public to gain access to public records.

109. On information and belief, the District knew that excluding email searches from the normal scope of work in its contract with QNS would result in the District charging the public \$60 per hour for email searches every time it received a Sunshine request for email records.

110. The District violated § 610.029, RSMo, by entering into a contract for the maintenance of public records that excluded searches for records kept in the normal course of business as part of the contract’s normal scope of work thereby “impair[ing] the ability of the public to inspect or copy the public records of [the District]”

111. The District knew § 610.029, RSMo, prohibited it from entering into a contract for public records management services that would impair the public’s ability to access records.

112. The District purposely violated § 610.029 by entering into a contract for technology services that excluded email searches from its normal scope of work, making it more difficult for the public to access records by charging fees more than three-times higher than those allowed under § 610.026.1(1).

113. The District intended to enter into a contract for the creation or maintenance of public records that impaired the public's access to records, and it knew that charging out of scope contractor fees for a routine email search would further impede the public's ability to access public records.

WHEREFORE Plaintiff requests that this Court enter a judgment in favor of Plaintiff: (a) declaring that Defendant violated § 601.026.1(1) by impermissibly charging third party contractor fees; (b) declaring that Defendant violated § 610.029.1 by entering into a contract that impairs the ability of the Plaintiff to access public records; (c) ordering appropriate injunctive relief by voiding the District's contract with QNS to the extent it violates § 610.029.1; (d) ordering appropriate injunctive relief by requiring the Defendant to immediately disclose all records requested by the Office (e) order \$1000 in civil penalties based on any knowing violation of the Sunshine Law under § 610.027.3; (f) ordering \$5,000 in civil penalties based on any purposeful violation of the Sunshine Law under § 610.027.4; and (g) for such further relief as the Court deems just and appropriate.

COUNT IV

Violation of § 610.026, RSMo, by Demanding Advance Payment of Fees

114. Petitioner herein restates and incorporates by reference the allegations contained in Paragraphs 1 – 114 of this Petition.

115. Fees for copying public records and research time are set forth in § 610.026.1(1), and fees for providing access to various media are set forth in § 610.026.1(2).

116. Section 610.026.2 provides for the advance payment of *copying* fees and states, “payment of such copying fees may be requested prior to the making of copies.”

117. The Sunshine Law makes no provision for the advance payment of any fees other than the copying fees expressly allowed under § 610.026.2.

118. In its September 30, 2021 letter the District demanded advance payment of all fees prior to providing the Office access to requested records.

119. The District's demand for fees included not only \$800 for copies, but \$2,145.60 in other fees.

120. The Office notified the District in its October 12, 2021, letter that the requested records were electronic in nature and did not require any copying.

121. The Office further notified the District of its obligation under § 610.023.3 to provide records in a specific format, in this case electronically, if "such format is available."

122. In its Second Response letter the District conceded that the requested records were available in electronic format, and it agreed to rescind the \$800 charge for copies.

123. Nevertheless, the District persisted in its demand for advance payment of the remaining \$2,145.60 in fees as a precondition of making the records available.

124. The District violated § 610.026 by demanding advance payment of fees for items or services other than copies as a precondition to making public records available to the Office.

125. The District knew of its obligations under the Sunshine Law, including that requests for advance payment of fees is limited to the cost of paper copies, because the Office informed it of § 610.026.2 in its October 12, 2021, letter.

126. The District purposely violated § 610.026.2 by demanding advance payment of fees for items or services other than copies as a precondition to making public records available to the Office.

127. The District intended to demand advance payment of fees in violation of the Sunshine Law in order to limit or delay the Office's access to public records, and it knew that demanding advance payment of all fees would further the District's ability to do so

WHEREFORE Plaintiff requests that this Court enter a judgment in favor of Plaintiff: (a) declaring that Defendant violated § 601.026 by impermissibly demanding advance payment of fees for items or services other than copies; (b) ordering appropriate injunctive relief by requiring the Defendant to immediately disclose all records requested by the Office; (c) order \$1000 in civil penalties based on any knowing violation of the Sunshine Law under § 610.027.3; (d) ordering \$5,000 in civil penalties based on any purposeful violation of the Sunshine Law under § 610.027.4; and (e) for such further relief as the Court deems just and appropriate.

Respectfully submitted,

ERIC S. SCHMITT
Missouri Attorney General

/s/ James S. Atkins

James S. Atkins, #61214

General Counsel

Justin D. Smith, #63253

Jason Lewis, #66725

Missouri Attorney General's Office

PO Box 899

Jefferson City, MO 65102

Tel: (573) 751-7890

Fax: (573) 751-0774

E-mail: Jay.Atkins@ago.mo.gov

Counsel for Plaintiff