

**IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY
STATE OF MISSOURI**

STATE OF MISSOURI ex rel. ERIC S. SCHMITT, in his official capacity as Missouri Attorney General,)	
)	
Petitioner,)	
)	Case No.
v.)	
)	Division No.
)	
ROCKWOOD R-VI SCHOOL DISTRICT,)	
)	
Serve at: 111 East North Street)	
Eureka, MO 63025)	
)	
Defendant.)	

PETITION

1. Parents have a First Amendment right to protest the actions of elected school board members free from threat and intimidation.
2. Rockwood School District has violated Missouri’s Sunshine Law to avoid disclosing its effort to report parents to the FBI’s National Threat Operations Center (“NTOC”) for engaging in protected speech.
3. Rockwood School District is attempting to intimidate and bully parents into silence by threatening to have them reported to the FBI.
4. Rather than disclose documents exposing its effort to silence parents the district hides behind fee demands, insisting on payment before releasing records that are in the public interest.
5. Rockwood Public Schools must be held accountable under the Sunshine Law so that it may be held accountable by parents.

6. The Attorney General brings this action on behalf of the state of Missouri to enforce the Sunshine Law and to ensure that parents have access to Rockwood School District's records as required by law.

Rockwood School District and Reporting Parents to the FBI

7. On September 29, 2021, the National School Boards Association ("NSBA") made public its letter to the US Department of Justice demanding federal law enforcement agents take action against parents for engaging in what the NSBA described as "domestic terrorism and hate crimes." NSBA letter, *Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators*, September 29, 2021, p. 2, attached as Exhibit A.

8. The DOJ responded five days later with a directive to the FBI and all US Attorneys to begin working with local law enforcement to develop strategies to "identify" and "prosecute" "threats" from parents. Memorandum from Attorney General Merrick Garland, October 4, 2021, attached as Exhibit B.

9. Accompanying the Garland memo was an official DOJ press release announcing that "threats of violence against school board members" could be reported to the FBI through the bureau's National Threat Operations Center (NTOC) online portal or "national tip line." Department of Justice, Office of Public Affairs, Press release Number 21-960, available at <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>

10. On information and belief, following the release of the Garland memo and DOJ press release, Rockwood Public Schools posted a link on its website to the FBI's threat reporting center in order to intimidate and silence parents.

11. On November 19, 2021, the Missouri Attorney General’s Office sent three open records requests to Rockwood seeking records relating to the district’s policy of reporting parents to the FBI. Sunshine Law Requests to Rockwood School District attached as Exhibits C, D and E.

12. Rather than provide the requested records the district responded by demanding advance payment of fees before granting access to the records.

13. Demanding advance payment of fees as a precondition of releasing records is not permitted under the Sunshine Law except in narrow circumstances not applicable here.

14. Rockwood School District is impermissibly using its fee demand as a pretext for withholding important records that are in the public interest.

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

16. 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.

17. In the face of the Sunshine Law’s mandate of open and transparent government, Rockwood School District has improperly hindered public access to open records.

18. Rockwood School District violated § 610.026, RSMo, by demanding advance payment of fees before granting access to open records.

Parties

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

20. 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.

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

22. Defendant Rockwood R-VI 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

23. 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.

24. This Court has personal jurisdiction over Rockwood School District because the District's principal place of business is in St. Louis County, Missouri.

25. Venue is proper in this Court under § 610.027.1, RSMo., because the District's principal place of business is in St. Louis 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.

26. 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.

27. “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.

28. 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)

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

30. Public governmental bodies are not authorized under the Sunshine Law to institute blanket fee policies that serve to frustrate the public’s access to open records.

31. Public governmental bodies, including school districts, are not permitted to line their local coffers with fees collected under the Sunshine Law. They are required to remit any collected fees to the director of the Department of Revenue for deposit in the state general revenue fund.

32. The District is aware of its obligations under the Sunshine Law and has adopted Board Policy 1450 – Release of Information – to effectuate the District’s compliance with § 610.010 *et seq.* Policy 1450, adopted August 3, 2004 attached as Exhibit F.

II. The District hindered public access to records by demanding advance payment of fees to produce records, improperly assessing fees for making copies, failing to provide access to requested records and improperly retaining Sunshine fees.

33. The Attorney General’s Office November 19, 2021, Sunshine requests sought disclosure of three types of records:

- a. Emails between board members and the FBI or DOJ;
- b. Emails relating to parents that had been, or were being considered to be, reported to the FBI;

c. Emails related to how the decision was made to post a link to the FBI tip line on the district's website.

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

35. The first request sought all email communication, for a seven-week period, between eight specific district officials and anyone communicating from FBI, DOJ, DESE or MSBA email domains. Exhibit C

36. The second request sought only electronic communications between district personnel in which a parent had either been reported to the FBI, or was considered for reporting to the FBI. Exhibit D

37. The third request sought only electronic communications between board members and administration discussing the district's decision to post a link to the FBI's threat reporting line on its website. Exhibit E.

38. None of the requests sought anything other than electronic records.

39. 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.

40. The District responded to the AGO with three letters addressing each of the AGO's requests. Letter from Rockwood School District Custodian of Records to AGO, November 19, 2021, attached as Exhibits G, H and I.

41. Each of the three letters were substantively identical in that each asserted that fulfilling the AGO's request would require "considerable time and expense," because the district would have to "review and compile large amounts of communication." *Id.*

42. Each of the letters stated that the district would have responsive records gathered on or before December 14, 2021, but would not produce any records until the AGO either paid the district a deposit, or narrowed its search request. *Id.*

43. The AGO responded to the district by letter expressing its concern with the volume of records the district purported to have relating to reporting parents to the FBI, and again asking the district to waive fees because the records sought were clearly in the public interest. Letter from General Counsel to Rockwood School District Custodian of Records, December 01, 2021, attached as Exhibit J.

44. District's legal counsel responded to the Attorney General's renewed request by letter. Letter from attorney Lisa O. Stump to General Counsel, December 03, 2021, attached as Exhibit K.

45. Through its attorney, the district made clear it was knowingly and intentionally violating the Sunshine Law, and expressed its intent to continue doing so. *Id.*

46. The district stated that because "almost every request" it receives purports to be in the public interest, it has adopted a "uniform and consistent" policy of not waiving fees. *Id.*

47. The district also stated that it was requesting a "cost deposit" in order to "prepare copies" of requested records even though all records requested were electronic in nature and do not require copying. *Id.*

48. The district further stated that even though it would have responsive records available on or before December 14, 2021, it would only "proceed with assembling the documents" responsive to the AGO's request "once it receives payment of the fees" it demanded in its prior correspondence. *Id.*

49. Finally, the district stated its intent to keep any fees paid by the AGO in order to “recoup the cost” of producing the requested documents. *Id.*

50. Following receipt of the December 03, 2021, letter from District’s counsel, the AGO sent a fourth and final Sunshine request to the District seeking a copy of the District’s Sunshine Log, or other document used to track sunshine requests, responses and fee payments. Letter to Rockwood School District Custodian of Records, December 07, 2021, attached as Exhibit L.

51. The District timely responded on December 09, 2021, and produced the requested records. Roster of Requests 2021-2022, Exhibit M.

COUNT I

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

52. Petitioner herein restates and incorporates by reference all preceding paragraphs.

53. 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).

54. 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.”

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

56. In its November 29, 2021 letter the District demanded advance payment of all fees prior to providing access to requested records.

57. The District reiterated its demand for advance payment of fees in its December 03, 2021, letter from counsel.

58. The District knew the records requested by the Attorney General’s Office were not subject to copying fees because only electronic records were requested.

59. 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.

60. 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.

61. 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.

62. 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 § 610.026 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.

COUNT II

Violation of § 610.026, RSMo, by Improperly Assessing Copying Fees

63. Petitioner herein restates and incorporates by reference all preceding paragraphs.

64. 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).

65. Section 610.026.1 allows public bodies to charge fees for the “actual cost of research time” and to request advance payment of *copying* fees.

66. The copying fees allowed under § 610.026.1 are for paper copies only, not for electronic duplication.

67. Section 610.023.3 requires that public bodies provide records in the requested format if that format is available.

68. In this case the AGO requested only electronic records that do not require copying.

69. Nevertheless the district asserted in its initial response, and then confirmed in its December 03, 2021, letter that the fees it requested from the AGO were for “preparing copies” of the requested records.

70. On information and belief, Rockwood School District stores district emails and text messages in electronic format, not paper, and does not need to charge for making paper duplications.

71. Fees associated with duplicating computer files are accounted for in § 610.026.1(2).

72. The fees permitted in subparagraph (2) are limited to the actual cost of staff time to reproduce the records on a specific format such as magnetic tape or disk, and for the cost of the specified medium.

73. On information and belief, Rockwood School District is able to produce and share electronic files on line and does not need to produce computer records using magnetic tape or disk.

74. Or, in the alternative, the District could simply provide a work station at a district facility to make responsive records “available for inspection” as required by § 610.023.2 without the need for making copies or charging fees.

75. On information and belief, Rockwood School District’s real motivation for charging duplicating fees is not to facilitate records production or recoup the actual cost of computer tapes and disks, but to create a financial barrier that will frustrate citizens’ ability to access records to which they are entitled.

76. The District purposely violated § 610.026.1 by demanding fees for making copies of records that are both stored, and able to be shared, electronically.

77. The District intended to improperly charge copying 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 payment for improper copying fees would further its ability to do so.

WHEREFORE Plaintiff requests that this Court enter a judgment in favor of Plaintiff: (a) declaring that Defendant violated § 610.026 by impermissibly demanding payment of copying fees for electronic records; (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 III

Violation of § 610.013, RSMo, by Failing to Provide Access to Records

78. Petitioner herein restates and incorporates by reference all preceding paragraphs.

79. Section 610.023 requires government bodies to either produce requested records within three days, or provide a detailed explanation for any delay and provide the earliest date records will be available.

80. In each of its initial responses the District informed the AGO that records would be available on or before December 14, 2021.

81. The district further indicated it would adjust its fee demand, either up or down, once it had completed its records search and identified a precise number of responsive records and knew the exact amount of time required to compile responsive records. Exhibits G, H and I

82. In its subsequent letter from counsel the district noted specifically it had,
“[N]ever stopped work on your requests and continues to devote staff time to them. The District explained that the earliest date the records would be available would be December 14, 2021 . . . [i]f some or all of the records are in fact available prior to December 14, as indicated, the District *will provide them to you earlier.*”
Exhibit J (emphasis added).

83. Despite these assurances from both the District and its counsel, December 14, 2021 came and went without the District producing any documents, making documents it had retrieved available for inspection, or requesting an additional extension of time.

84. Moreover, the Sunshine Log the district produced on December 09, 2021, in response to this office’s request does not reflect a single minute being spent by the District to fulfill this office’s three initial document requests. *See* Exhibit L.

85. To date, the District has still not produced a responsive document, adjusted its fee demand (improper though it is), made documents available for inspection, or notified the AGO of a need for additional time.

86. On information and belief, the District never searched for or gathered responsive documents, nor did it ever intend to do so.

87. The District purposely violated § 610.013 by failing to produce any responsive documents within its own articulated time frame, or ever.

88. The District intended to improperly withhold responsive documents in violation of the Sunshine Law in order to limit the Office's access to public records, and it knew that failing to turn over responsive documents would achieve that end.

WHEREFORE Plaintiff requests that this Court enter a judgment in favor of Plaintiff: (a) declaring that Defendant violated § 610.013 by impermissibly failing to produce responsive records; (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 IV

Violation of § 610.026.3, RSMo, by Improperly Retaining Sunshine Fees

89. Petitioner herein restates and incorporates by reference all preceding paragraphs.

90. Section 610.026.3 of the Sunshine Law states that “each public governmental body of the state shall remit all moneys received by or for it from fees charged pursuant to this section to the director of revenue for deposit to the general revenue fund of the state.”

91. The District's Sunshine Log shows that the district collected \$4,235.68 in sunshine fees between 06/27/2021 and 12/08/2021. Exhibit L.

92. On information and belief, the district retained in its own budget all the moneys it received to fulfill sunshine law requests rather than remitting them to the director of revenue for deposit in the state's general revenue fund.

93. The District was aware of its obligation under § 610.026.3 to remit sunshine fees to the director of revenue for deposit to the general revenue fund of the state.

94. The District purposely violated § 610.026.3 by failing to remit sunshine fees to the director of revenue.

95. The District intended to improperly retain sunshine funds in violation of the Sunshine Law by failing to remit moneys received to the director of revenue.

WHEREFORE Plaintiff requests that this Court enter a judgment in favor of Plaintiff: (a) declaring that Defendant violated § 610.026.3 by impermissibly failing to remit sunshine funds to the director of revenue; (b) ordering appropriate injunctive relief by requiring the Defendant to immediately repay all sunshine funds to the director of revenue, with interest; (c) order \$1000 in civil penalties based on any knowing violation of the Sunshine Law under § 610.026.3; (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.

Dated: March 16, 2022

Respectfully submitted,

ERIC S. SCHMITT
Attorney General of Missouri

/s/ James S. Atkins

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