ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

May 18, 2021

OPINION LETTER NO. 64-2021

Mr. Brett Siefert
Lincoln County Health Department Administrator
5 Health Department Drive
Troy, Missouri 63379
(636) 528-6117

Re: Opinion Request

Dear Mr. Siefert:

You ask whether the Sunshine Law requires the Lincoln County Health Department to disclose, upon request, the names and contact information of persons or entities making a complaint or who were the subject of a complaint alleging a violation of a health department order during the COVID-19 pandemic.

The plain language of the Sunshine Law only allows the closure of these records if they were made through a municipal hotline established for the reporting of abuse and wrongdoing.

1. Requirements of the Sunshine Law

Section 610.010(6), RSMo, defines the term "public record" as "any record, whether written or electronically stored, retained by or of any public governmental body[.]" The apparent intent of defining this term as including both written and electronically stored materials is to cover as many types of records as possible. This intent is seen in other provisions of the Sunshine Law, such as § 610.010(5), RSMo, which defines "pubic meeting" as including not only meetings where members are physically present in the same room, but also meetings conducting through other means such as video chat,

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

postings on a message board, or conference call. See also § 610.029, RSMo (expressing preference for public records to be stored and made available in an electronic format).

Section 610.011.1, RSMo, provides that the "public policy of this state" is "records ... of public governmental bodies be open to the public unless otherwise provided by law." Section 610.011.2, RSMo, provides: "Except as otherwise provided by law, ... 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[.]"

Further, the requirements of "[s]ections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy." § 610.011.1, RSMo. But this requirement of strict construction of exceptions does not require absurd readings that ignore evident statutory intent. Rather, "[l]egislative intent is the pole star of statutory interpretation and construction. Once determined, the result is ordained and a liberal versus strict construction is a secondary, if not irrelevant, consideration." *State ex rel. KCP & L Greater Missouri Operations Co. v. Cook*, 353 S.W.3d 14, 41 (Mo. App. W.D. 2001). "Strict construction does not require courts to ignore legislative intent, however, and our construction must also embrace common sense and evident statutory purpose." *State v. Slavens*, 375 S.W.3d 915, 920 (Mo. App. S.D. 2012), *quoting State v. Laplante*, 148 S.W.3d 347, 349 (Mo. App. S.D. 2004); *see also Philyow v. State*, 554 S.W.3d 567, 571, note 2 (Mo. App. E.D. 2018) (rule of lenity, requiring strict construction in criminal statutes, "is invoked 'only after employing other measures to determine legislative intent, which, of course, is the ultimate objective of statutory interpretation'"), *quoting Turner v. State*, 245 S.W.3d 826, 828 (Mo. banc 2008).

Section 610.021, RSMo, provides that:

> Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following: ... (16) Records relating to municipal hotlines established for the reporting of abuse and wrongdoing[.]

§ 610.021(16), RSMo. Although we have not found any case that references this exception to the disclosure of records, the evident legislative purpose of

this exception appears to be to encourage the reporting of abuse and facilitating the investigation of those reports. For example, employees would be much less likely to report wrongdoing by an employer if they knew that their names and addresses would be given to the employer, exposing them to possible retaliation.

The term "hotline" is not defined in the Sunshine Law. *See* Chapter 610, RSMo. Nor is it defined in any other statute. *See* RSMo. Where the term is used elsewhere in Missouri statutes, it references telephone communications, as distinct from electronic and other forms of communication. *See, e.g.,* § 29.221.1, RSMo (auditor provides means to take reports of improper activities, including "telephone hotline, electronic mail, and internet"); § 167.275.1, RSMo (high-school dropout reports made "either by using the telephone hotline number or on forms developed by the department"). "When a term is not defined by statute, this Court will give the term its plain and ordinary meaning as derived from the dictionary." *Hegger v. Valley Farm Dairy Company*, 596 S.W.3d 128, 131-32 (Mo. 2020), *quoting Mo. Pub. Serv. Comm'n v. Union Elec. Co.*, 552 S.W.3d 532, 541 (Mo. banc 2018), *internal quotation marks omitted.*

The dictionary definition of "hotline" is "a direct telephone line in constant operational readiness so as to facilitate immediate communication;" or "a usually toll-free telephone service available to the public for some specific purpose." Https://www.merriam-webster.com/dictionary/hotline, last accessed on April 6, 2021; *see also* https://dictionary.cambridge.org/us/dictionary/english/hotline; last accessed on April 6, 2021 (definition of "hotline" is "a special direct phone connection for emergencies" or "a special telephone number for emergencies or for a particular service."). Thus, the term "hotline" appears to specifically relate to communication by telephone, as opposed to other types of communication.

2. The plain terms of the Sunshine Law do not protect reports of wrongdoing unless those reports were made through a municipal hotline

The facts you presented are that the public governmental body, the Lincoln County Health Department, has received complaints from individuals alleging a violation of a health department order during the COVID-19 pandemic. You do not specify whether these complaints were received through a municipal hotline, website, email, or other method. We believe the plain language of the Sunshine Law only allows the closure of

these records if they were made through a municipal hotline established for the reporting of abuse and wrongdoing.

It is clear that if the identical information had been received through a telephone call on a phone number established by a municipality to receive these reports of wrongdoing, then these reports relating to the hotline call could be closed by the public governmental body retaining the records. § 610.021(16), RSMo (public governmental body authorized to close "[r]ecords relating to municipal hotlines established for the reporting of abuse and wrongdoing"). Further, it appears that the legislative intent in enacting the protection of hotline call reports is also applicable to reports received through other means of communication. And, elsewhere in the Sunshine Law, there is a clear intent on the part of the Legislature to include various electronic forms of communication within its scope; *see* § 610.010(5), RSMo; § 610.010(6); and a clear legislative preference for public governmental bodies to create electronic records. § 610.029, RSMo. These considerations seem to show that the legislature intended to include electronic forms of communication in its protection of those making reports of wrongdoing.

However, where the plain language of a statute is clear, courts are reluctant to expand the language to include similar items not apparently contemplated by the statute, even when including those items seems in harmony with the legislative intent of the statute. For example, in *Li Lin v. Ellis*, 594 S.W.3d 238, 242-43 (Mo. 2020), the Court noted that several federal circuits had found it reasonable to believe that Congress had intended to grant a cause of action for a certain behavior that was not expressly covered by the plain terms of the statute. "Hence, there was no textual basis in section 12203(a) for the cause of action—only the federal circuits' supposition of Congressional intent." *Li Lin v. Ellis*, 594 S.W.3d at 244. The Supreme Court of Missouri held: "This Court does not have the authority to read into a statute a legislative intent that is contrary to its plain and ordinary meaning. The legislature may wish to change the statute. But this Court, under the guise of discerning legislative intent, cannot rewrite the statute[.]" *Li Lin v. Ellis*, 594 S.W.3d at 244, *internal quotes and editing marks omitted.*

Here, the plain text of the exception only includes records relating to hotlines established for the reporting of wrongdoing. As set forth above, the dictionary definition of a hotline is specifically a telephone number, and does not include other electronic forms of communication, even a dedicated website link or dedicated email address. It would seem to be consistent with the legislative intent of the Sunshine Law to expand this protection to methods of

reporting other than a municipal hotline. However, exceptions to the Sunshine Law are to be strictly construed, and the plain language does not provide protection for reports made through other methods, so there is no room to re-write § 610.021(16), RSMo, to allow for the protection of the identities of those who report wrongdoing or are the subject of a complaint if those reports are made through a means other than a municipality's hotline. *See Li Lin v. Ellis*, 594 S.W.3d at 244.

3. Section 610.100.3, RSMo, does not allows the closure of the information

You suggest that a provision of the Sunshine Law relating to criminal investigations could apply to close the records in question. Specifically, § 610.100.3, RSMo, provides:

> Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a record or document *of a law enforcement officer or agency*, other than an arrest report, which would otherwise be open, contains information that is reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer, or other person; or jeopardize a criminal investigation, including records which would disclose the identity of a source wishing to remain confidential or a suspect not in custody; or which would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions, that portion of the record shall be closed and shall be redacted from any record made available pursuant to this chapter.

Emphasis added. By its plain terms, this exception to disclosure only applies to records retained by a law enforcement officer or a law enforcement agency. A health department is not a law enforcement agency. Therefore, this provision does not apply to records retained by the Lincoln County Health Department, and does not operate to close the records in question.

4. Conclusion

In conclusion, we believe that the Lincoln County Health Department only has authority to close records relating to an allegation of a violation of a

health department order during the COVID-19 pandemic if those complaints were made through a municipal hotline. If the complaints were made through other means, the plain language of the Sunshine Law does not allow the public governmental body retaining the records to close them.

Sincerely,

Linda Lemke
Assistant Attorney General