

# Bills could alter Sunshine Law

Sara Miller for the Index

Several state senators and representatives proposed bills this year that could affect how governmental bodies use the Sunshine Law, Missouri's open meetings and records law.

The bills proposed in the 2005 state legislative session to amend the Sunshine Law include House Bill No. 391, House Bill No. 643 and Senate Bill No. 463.

Rep. Shannon Cooper, R-Clinton, proposed House Bill No. 391. Naomi Vetter, Cooper's legislative assistant, said this bill would allow a governmental body to refuse requests for documents under the Sunshine Law if the request was considered vexatious. The bill defines vexatious as frivolous, repetitive, unreasonable or harassing.

Cooper proposed the bill at the request of one of his constituents, she said.

"A couple of county commissioners were having a problem with people harassing them on purpose," Vetter said.

She said the Sunshine Law states people can request copies of documents as many times as they wish. Some people were requesting documents repeatedly, deliberately trying to cause trouble, she said.

She said the public and media

did not respond well to the bill because they viewed it as an infringement on Sunshine Law rights. She said, however, she does not think people understood the bill, which did not pass in this legislative session.

Vetter said she does not know whether Cooper will reintroduce the bill in the next session, perhaps with alterations.

Adair County Clerk Jim Lymer said he's never had a problem with vexatious requests.

"I've never felt that we were trying to be taken advantage of in any way," Lymer said.

When the county commission recently enacted a new ordinance, he said he anticipated many requests for copies of the document. He said he decided not to charge everyone for the copies but instead made several copies available at the front desk to prevent any problems.

"We don't have anything to hide," Lymer said. "If we know [a document] is going to be an issue or it's going to demand a lot of attention, then we're going to have that available for [the public]."

The next bill, House Bill No. 643, sponsored by Rep. Terry Young, D-49, proposed a change to the standard for determining if a public governmental body violated the Sunshine Law, Young said. This bill proposed to change the standard from "knowingly" to "negligently," she said.

"Knowingly" is almost saying someone purposely violated the law, and that standard of proof is very high and pretty hard to prove," Young said. "Negligently" would affect people who unintentionally break the law but have made little-to-no effort to understand it either."

The bill did not make it through the legislature, but Young said she's going to reintroduce the bill in the next legislative session.

"You have to have standards in place for penalties, or the law is no good," Young said. "The word 'knowingly' makes it too hard to prove that the Sunshine Law has been violated, she said.

"I'm a newspaper reporter, so freedom of information is very important to me," Young said. "As a reporter, I have a lot of respect for it, and as a citizen, I have a lot of respect for it."

The Sunshine Law is critical to giving citizens access to the government information they deserve, she said.

Sen. Chuck Gross, R-St. Charles, sponsored the third bill, Senate Bill No. 463, which attempted to re-define quasi-public governmental bodies in reference to nonprofit organizations, according to the Missouri Senate Web site.

"The act provides that the Sunshine Law shall only apply to certain nonprofit organizations to the extent that a vote, record or meeting pertains to a contract with a public governmental body or to an activity carried out under an agreement with a public governmental body," according to the bill summary provided by the Missouri Senate Web site, Senate Bill No. 463 never exited its legislative committee.

James Przybylski, professor of political science, said the death sentence of many bills typically occurs in committees.

He said he thinks the bills proposed to amend the Sunshine Law this year did not succeed because the legislature did not consider amending the Sunshine Law a high priority.

"Usually governors and legislators have an agenda of things they want to get done," Przybylski said. "Something like this may be something that's not central to their agenda."

Looking at the bills proposed during the 2005 legislative session, he said the general trend seems to be for the Sunshine Law to become narrower and make it more difficult for the public to ac-

cess government information.

He said, however, the legislature not passing these bills sends the message that the idea of open government is still popular.

The Sunshine Law originally was developed to promote public awareness of government action, he said.

"The idea was to keep the government as open as possible to prevent corruption and special deals being worked out between special interest groups and legislators," Przybylski said.

Often laws such as the Sunshine Law need to be amended to make them work better, he said.

Gene Schneider, first district commissioner for Adair County, said amendments are being made constantly to the Sunshine Law because of changes with legislative term limits, he said.

"The legislature is a whole new ballgame down there, both Senate and House," Schneider said. "There are new people coming in, and there's an urgency to getting things passed."

Constantly amending laws such as the Sunshine Law has the potential to put a strain on county governments because elected officials must be aware of those changes, Schneider said.

"If we do something and then find out afterwards we didn't do it correctly, then it might come back to bite us," he said.

County officials receive a copy of state statutes as well as bulletins and information from the Missouri Association of Counties and Missouri Association of County Clerks, Schneider said, which inform officials of any new laws that might affect them.

The county commissioners also attend a state training session once a year to learn about changes, he said.

Schneider said the county isn't obligated to notify Adair County citizens of each change to the Sunshine Law.

"We wouldn't try to hide anything," Schneider said. "But generally the people who have an interest in identifying misuse of the Sunshine Law are going to have their own copy of the statute. They're going to be plenty aware of it without us having to tell them."

Przybylski said it's important for the public to be aware of what is going on in the legislature and complain when the government does something wrong.

"Especially college kids, for example, it's important they have the intelligence and the ability, not just political science majors but all majors, to keep their eyes open," Przybylski said. "Sunshine laws can help you do that."

## HOUSE BILL CHANGES

### Changes proposed by the bills to the Sunshine Law

#### House Bill No. 391:

Any request for documents which is frivolous, repetitive or unreasonable and made for the primary purpose of harassing a public governmental body or any member of a public governmental body.

#### House Bill No. 643:

Upon a finding of preponderance of the evidence that a public governmental body or a member of a public governmental body has knowingly violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount up to one thousand dollars...

Source: Reported by Sara Miller Design by Karen Schwartztrauber/Index

# Law intends to enlighten about policies

Rachel Gehrer for the Index

The Missouri Sunshine Law enables citizens and journalists to shed light on information officials might try to keep hidden.

However, Karon Speckman, associate professor of communication, said she knows of instances where both county and campus officials haven't been as forthcoming with information as they should be.

Speckman said some people are secretive about bad information to maintain or create a good public image.

"We shouldn't be hushing things up," Speckman said. "We're not doing society a favor by keeping things quiet."

The Sunshine Law indicates meetings, including those carried out on the telephone or through e-mail, should be at reasonable times in accessible facilities that have enough space to hold all the people who wish to come, including those with disabilities.

In addition, it requires public records to be open for the public to review, and copies of documents should be available at a reasonable cost.

Speckman said the Missouri Sunshine Law, as well as those of other states, facilitates access to a variety of government information so all citizens can stay informed of government activity.

"What I think the value of it is, not just for journalist, is having trans-

parency in government," Speckman said. "It's so Josephine Blow, for example, will know what's going on in the city council meeting."

Speckman said it is likely the average person can't go to the meetings himself or herself, so it is a journalist's job to go and relay that information back to citizens.

"It's not a journalist's perk," Speckman said. "It's a citizen's perk and a citizen's right."

Wisconsin was the first state to pass a law that opened state government records to the public. The law was passed in 1848, not long after Wisconsin became a state.

The first state to pass an open meetings law was Florida in 1967, but it wasn't until 1976 that Congress passed the Government in the Sunshine Law.

The Missouri attorney general's office publishes a book containing information about the Sunshine Law, including a summary of the law, frequently asked questions, new amendments, law interpretations and sample forms for both public governmental bodies and public records requests.

New amendments in the 2004 publication include the clarification that the law covers meetings and votes carried out over the phone, by video conference or on the Internet.

Also, the new amendments strengthen the meeting notice requirements and stipulate records are to be provided in the requested format when available.

Another important amendment

"It's not a journalist's perk and a citizen's right."

Karon Speckman Associate professor of communication



Roger Meissen/Index Meetings such as this one are open to the public under the Sunshine Law.

opens e-mails that are exchanged among a majority of the members of a public body if the public body has four or more members.

However, if the public body has only three members, e-mails have to be exchanged among all three members in order to be open to the public.

The law interpretations section of the book has two parts: attorney general opinions and court decisions.

The attorney general's office receives about 20 calls per week concerning questions or violations of the Missouri Sunshine Law, he said.

"It's really rare that people are just hell-bent on keeping things secret," Missouri Assistant Attorney General Brett Berri said. "I think about 99.9 percent of the time the complaints and violations are just misunderstandings."

The law requires that notice must be given at least 24 hours in advance for public meetings.

The notice must consist of the meeting's date, time, location and whether or not the meeting is open. If the meeting is open, the tentative agenda also must be given.

Certain agendas allow for a meeting or portion of a meeting to be closed.

These include legal actions, the managing of real estate or a particular employee, welfare cases of a particular person, software codes, personnel records that identify a particular person, security system records or discussion of records that are protected by the law.

KITVO News Director Tim McGonigal said he hasn't exper-

ience any Sunshine Law violations in Kirksville.

He said there have been a few misunderstandings, but they quickly were cleared up.

"People won't block you from the information, but they can be intimidating," McGonigal said. "I would hate to think that someone is withholding information, and if they are doing that intentionally, it's going to come back and burn them."

McGonigal said he thinks people in the government are aware of the law and would not lie about information being closed that shouldn't be.

More information on the Missouri Sunshine Law can be found on the Missouri General's Office Web site at www.ago.mo.gov/sunshinelaw/sunshinelaw.htm.

Opening the information lock box

Meeting minutes

Academic Records

Financial Budget

Sunshine Law

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# Kirksville encounters few compliance issues with law

## Students, community members request local records, information

Aaron Eidson for the Index

More sun shines on Truman and the city of Kirksville.

Missouri's Sunshine Law has a great effect on many governmental bodies and other organizations across the state including in Kirksville and on Truman's campus.

The effect of the law varies, however. Warren Wells, general counselor for Truman, said he receives many requests from students, citizens and the media.

He said one of the common misconceptions on campus is who the custodian of records is, which is through whom all requests for information should be made.

Wells said the official custodian of records for the University is President Barbara Dixon.

However, Wells said he attempts to handle any requests that come to him personally.

"When you come to me and want to know about a real estate transaction because this would be the logical place to go, and you ask me to give you that in-

formation, I am going to give it to you," Wells said. "But it's not because you are asking in compliance with the law, it's because I know if you do, you are entitled to it, and I don't see a reason to put you through the hoops and make you do it a certain way in order to get the information."

Wells pointed out there are two sides to the confusion. Those who request information under the Sunshine Law often don't ask the right person or for the right information.

In turn that person isn't sure what one is entitled to by the law, so he or she is hesitant to take action.

Wells said he remembers a specific incident when someone asked for documents not covered by the law.

"Recently someone asked for information relating to meetings of staff members, and we had to explain that staff meeting is not subject to [the] Sunshine Law," Wells said. "The notes that the staff members keep in those meetings are internal working documents and are not subject to open records, and the public does not have a right to see them or a right to attend the meetings."

Wells said he thinks a lot of the confusion among the faculty

began last semester. "A number of student reporters went to different offices and asked for information, most of which was public information, and they had a right to get it," Wells said. "But they weren't happy with the rate of response of a lot of offices."

The Student Union Building was one of the offices targeted by the reporters, and Sujit Chemburkar, director of the Student Union, said he did not care for the results.

"I think it created some real tension across the board in testing the response time of the open records," Chemburkar said. "So we talked about how to handle that situation in the future."

After he educated himself and his staff on the Sunshine Law, he said he began planning for the future to make sure tension would not arise again.

"I thought it would be neat to

"I don't recall any time someone has requested something and we haven't let them have it."

Mari Macomber City Manager

co-sponsor something with the media center on what the Sunshine Law is, and so it's more of a programmatic learning process than by mistake," Chemburkar said. "Administrators and people could come and learn about the Sunshine Law, and to me that's more along the lines of our liberal arts education."

Wells said he shares Chemburkar's willingness to provide the community with an education of the Sunshine Law.

"I think that's a good idea, and that incident last year probably illustrates that," Wells said. "It wouldn't hurt to discuss that with people that are in the various offices around campus so that they have a little better idea of what's expected of them."

The city of Kirksville and the Kirksville Police Department do not have dozens of divisions and a staff of hundreds like Truman does.

To request information from the city of Kirksville, citizens can go to the custodian of records, who is located at City Hall, City Manager Mari Macomber said.

"The city clerk is the custodian

of records for the city, and if she is unavailable, then the deputy city clerk would be next in line, but most of the time, it just gets sent to me," Macomber said.

City Hall doesn't receive as many requests as people might think, Macomber said, but they do have visits almost weekly.

"We have one citizen who requests the same info over and over again, and we give it to him, we charge him, and he pays for it," Macomber said. "He'll come in again and ask for the same thing, maybe something a little different, but pages and pages of stuff."

Macomber said she hasn't had too many problems with confusion on the Sunshine Law in City Hall.

"I don't recall anytime someone has requested something, and we haven't let them have it," Macomber said. "If we are not sure, we will ask an attorney, but most of the time people don't ask for things that are not public record."

If there was one place city administrators ran into any confusion, it would be in remembering to charge people for the copies they make for them, Macomber said.

The Kirksville Police Department is another public governmental body that receives requests for information.

Records clerk Mindy Long handles those requests.

Long said the biggest area of confusion she encounters is that every case is different, so before any records are released, she must get clearance to do so.

"There are specifics on whether you can release records on anybody as far as their arrest records and so forth," Long said. "If I don't know for sure then I tell them, 'I have three days to respond, and I will e-mail Attorney General Jay Nixon's office, and they have a couple attorneys that will respond back.'"

Long said she occasionally runs into some trouble with people after they request records or information from her.

"Some people will come in and say they want everything on their soon-to-be ex-husband that's ever happened, and the Sunshine Law states that we can charge per copy," Long said. "So if you are talking about someone who has had several incidents with the Police Department, every one of those events we charge for if they want it printed, plus we can charge for my time in looking the events up, and when you are talking 90 or a 100 dollars, some people just decide they don't want them anymore, making it important to be specific."

## Top 10 things you should know about the sunshine law.

1. When in doubt, a meeting or record of a public body should be opened to the public.
2. The Sunshine Law applies to all records, regardless of what form they are kept in, and to all meetings, regardless of the manner in which they are held.
3. The Sunshine Law allows a public body to close meetings and records to the public in some limited circumstances.
4. A public body generally must give at least 24 hours public notice before a meeting.
5. Each public body must have a written Sunshine Law policy and a custodian of records whose name is available to the public upon request.
6. The Sunshine Law requires a custodian of records to respond to a records request as soon as possible but no later than three business days after the custodian receives it.
7. The Sunshine Law generally does not state what records the body must keep or for how long.
8. The Sunshine Law requires a public body to grant access to open records if already has but it does not require a public body to create new records in response to a request for information.
9. The Sunshine Law limits how much a public body can charge for copying and research costs.
10. There are special laws and rules that govern access to law enforcement and judicial records.

Source: www.ago.state.mo.us/sunshinelaw Design by Karen Schwartztrauber/Index

# Colleges opt for FERPA

Krystal Miller for the Index

Under the Sunshine Law, records prepared by public governmental bodies are open to all citizens. When universities handle the criminal activities of students on campus, however, these crimes often go unreported. Universities defend their decision based on the Family Educational Rights and Privacy Act, saying records of these crimes are closed because they are educational.

FERPA is a federal law that protects students' educational records. Under this law, no educational record can be released for public use.

The Sunshine Law allows citizens access to records maintained by higher education, but FERPA's record restrictions don't allow school administrators to release certain student conduct records.

FERPA defines an educational record as one that "contains information directly related to a student" and is "maintained by an educational agency or institution or by a person acting for such agency or institution."

Mike Hiestand, attorney and legal consultant for the Student Press Law Center, said the term educational record is open to interpretation. He said he disagrees with the definition some schools use.

"I think FERPA's original intent for the definition of educational meant things like transcripts," Hiestand said. "However, many school officials define it so far afield from the original intent of the word."

Hiestand said many schools use the definition of educational records to include things that would be considered criminal if committed by other citizens not attending college.

"What's really my main concern is that campus courts are hearing more and more serious crimes," Hiestand said. "That's not educational. If these crimes were committed by anyone else off campus, it would be considered a crime in which law enforcement does take over. It's not the job of the school to play that role."

Hiestand said FERPA does not cover law enforcement records, and those records must be open to the public. He said many schools say that if the crime is handled by campus courts, it is considered educational, and the information cannot be released.

FERPA is set up to punish schools that violate the law. Hiestand said this is where the major problem involving the definition of educational record comes in.

"FERPA doesn't prohibit schools from releasing that information, it punishes them," Hiestand said. "At SPLC we think that it's the school's obligation to let students know what's going on with regards to crime, regardless of the punishment."

One court case in 1999 involved a battle between school newspaper journalists and the then-Southwest Missouri State. The student newspaper, The Southwest Standard, sued the school after they were denied access to the outcomes of campus disciplinary proceedings. The Missouri Circuit Court Judge declared the school had an obligation to release the information if it had anything to do with crimes of violence or non-forcible sexual offenses.

Hiestand said that proves that in Missouri all disciplinary records regarding such crimes must be released.

Sarah Madden, Missouri Assistant Attorney General, said knowing what records can and cannot be released is an ongoing battle between school officials and those seeking crime information.

"It's really a tricky matter," Madden said. "FERPA restricts access to educational records which, in some cases, does not seem to be in keeping with the Sunshine Law."

Madden said, however, the Sunshine Law states records and meetings that are protected from other laws, such as FERPA, can be closed to the public. She said this is why the definition of an educational record is so delicate because FERPA does protect them from being open to students.

Residence Life Director An-

drea O'Brien plays a role in the disciplinary proceedings on campus. O'Brien helps student advisers with handling on-campus crime. She said she and other staff members teach SAs about confidentiality between them and those who live in the hall.

"When it comes to things such as rape, [SAs] need to tell only those that need to be informed, such as hall directors," O'Brien said. "If another student were to ask the SA about it, they cannot tell them due to confidentiality."

O'Brien said school administrators only report crimes such as sexual assault to Department of Public Safety when they have all the information.

"If we have very specific information [about the assault], we may report it to DPS," O'Brien said. "If the information is not as specific, and we're not exactly sure who is involved or what happened, then student affairs handles it until we know for sure what happened."

If University administrators do not report the information to Public Safety or another law enforcement agency, the disciplinary record is considered educational and cannot be open to the public, according to FERPA.

Tom Johnson, director of the Department of Public Safety, said they release law enforcement records.

"If it's something like your grades or something that violates the student code of conduct, it becomes a part of your educational record and can't be released," Johnson said. "If it involves a crime, then it's not educational, and it's put into law enforcement records which can be released."

Truman's Student Conduct Code considers disruptive conduct, cheating, theft, sexual misconduct, and drug and alcohol violations to be crimes. Johnson said if law enforcement does not intervene, the records of crimes are forwarded to David Hoffman, assistant dean of student affairs.

Hoffman said there are specific records he can and cannot release.

# Sunshine Law School reports

Source: Student Press Law Center, Design by: Karen Schwartztrauber/Index

He said FERPA allows him to release records regarding crimes of violence and nonforcible sexual offenses.

When a student commits a crime, a judicial conduct hearing determines if the student violated the Student Conduct Code, and if so, a sanction is recommended.

The board consists of Hoffman and other administration appointed by the dean of student affairs.

Hoffman said that although the Sunshine Law says meetings of higher education must be public, these meetings do not have to be open to students because academic information is discussed.

"The Sunshine Law does not state that they have to be open," Hoffman said. "We look at conduct hearings from an educational point of view. We're basically not a court of law where script is open. They're based on punishment. We basically want to see students learn from their mistakes."

Carlyon Carlson, vice chairman of the Freedom of Infor-

mation Subcommittee on Campus Crime of the Society of Professional Journalists, said she understands why many schools close judicial hearings.

"Judicial hearings are not covered by FERPA, but it's unclear what happens if a school discloses someone's academic standing," Carlson said. "Because of that, most schools close their hearings, and we've had little luck getting them to open them."

Warren Wells, general counsel, said school administrators could not disclose records of the hearings because FERPA protects them. He said the records from the hearings become part of a student's academic record, which would mean it is protected by FERPA.

"It becomes a private record in the same sense that your transcript is private," Wells said. "The philosophy is that the primary purpose of the judicial code actions is not to punish people, it's supposed to be part of the educational process."

# Do you know what the Sunshine Law is?

I have absolutely no idea of what the Sunshine Law is.



Jared Pruessner Junior

I've heard about it, but I don't know what it is.



Kimberly Smith Senior

Yes, I think it's a good thing. I think it's important for the press and the public to know what's going on in the government.



Sean Carlson Senior

I feel like I don't know enough about it to form an opinion.



Tyler Patterson Senior

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