

SUNSHINE LAW

opens doors for citizens

Open records law provides access to public information

BY TYLER KILLEN
For the Index

Missourians who are curious about their government have the right to inquire about it. The Missouri Sunshine Law allows citizens and taxpayers to request records from any governmental body without having to specify a reason for the request.

The law, established in 1977, focuses on openness in government. Although media outlets often use the law, it was made for average citizens. Jean Maneke, an attorney for the Missouri Press Association, said she has been working with the Sunshine Law for 18 years.

"It's for the public," Maneke said. "It's the public's right."

Any Missouri citizen can request information from a governmental body, but many citizens do not know what a governmental body is, Maneke said.

"Missouri's Sunshine Law applies to any 'public governmental body,' which is defined by the state law as any entity created by statute or by local ordinance," Maneke said.

Governmental bodies that must adhere to the Sunshine Law include school boards, water districts, fire and ambulance districts, city councils and nursing home boards. There are more than 50 governmental bodies in Adair and Macon counties.

State Auditor Susan Montee said one of the most common reasons citizens request documents from governmental bodies is to ensure there is not any questionable activity within them. Some citizens fear the entity might be covering up important information.

"There is a general tendency for these governmental entities to keep information that they don't want everybody to know about private," Montee said. "Usually the things they don't want anybody to know about are the things the citizens need to know about."

The Missouri State Auditor's Office is one agency that monitors the Sunshine Law and ensures compliance from governmental bodies. Montee has audited several entities in Missouri, including one in 1999 that surveyed 195 entities from all across the state.

"We found in the local entities about 47 percent were able to comply," Montee said. "When you've got half and half basically not complying, then you've got a problem."

According to Missouri Statute 610.011, "It is the public policy of this state that meetings, re-

ords, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law."

According to the Sunshine Law, governmental bodies must supply the record the citizen requests, whether they think the public needs to know about it or not.

The law also states what can and cannot be provided upon the request of a citizen. The common term used to describe what the public requests from governmental bodies is a document, but a document can take many forms, said Tom Durkin, Missouri Sunshine Law public education director.

"That [document] must be presented to the person who is making the inquiry if you have that available, including Excel spreadsheets, digital tape, still pictures, written communication and e-mail," Durkin said.

Durkin said the content of the document is more important than its form.

"It is not the instrument of conveyance that matters, it's what's being conveyed," he said. "So, if what's being conveyed could be construed as public business, then it doesn't matter how it's being conveyed."

According to the Sunshine Law, some documents are not considered public business. These include juvenile records, HIV records, genetic information, adoption records, tax returns, mental health treatment records and qualifications to carry a concealed weapon.

The Sunshine Law requires a governmental entity to respond to the person making the request within three business days. If the request cannot be fulfilled that quickly, the entity still must contact the person within those three days to give an update and time frame for when the request will be fulfilled.

Durkin said there has been an increase in the number of requests from citizens during the past few years.

"In the past month we've had about 50 inquiries," Durkin said. "If you extrapolate that over a year, we're looking at over 500 or 600."

The Sunshine Law has become a focal point for the Attorney General's office during the past few years. The government has used the Sunshine Law to build and sustain trust with the public.

"I think it speaks to our basis of freedom," Durkin said. "If we are this government of a people, and by a people, and for a people, then openness must prevail. It must be the way of the land."



Brian O'Shaughnessy/Index
County Clerk Sandy Collop goes through books that contain records and laws in Adair County dating back to 1875. These records have to do with roads, schools and commission minutes.

Sunshine Law execution varies by state, principle of openness remains consistent

BY KAYLA BROONER
AND PAUL VOGL
For the Index

All states have the same core law that government records are open to the general public. Each state has its own way of providing access to these records, and those specifications fall under the Sunshine Law.

David Cuillier, chairman of the Freedom of Information Committee for the Society of Professional Journalists, said there is not a federal Sunshine Law and that each state decides how to administer its records.

"It does create inconsistencies nationwide," Cuillier said. "But given that all states have some kind of protection for openness, I think they have all gone in the right direction."

According to Missouri's Sunshine Law, government entities must respond to record requests within three days, and failure to comply could lead to a fine of \$1,000 to \$5,000, depending upon whether the entity intentionally violated the Sunshine Law. It is more of a standard in Missouri to educate the non-compliers rather than to prosecute those entities, according to Tom Durkin, representative for the Attorney General.

Charles Davis, executive director of the National Freedom of Information Act Coalition, said Missouri's Sunshine Law is fairly lenient.

"It's pretty typical and rarely enforced, but that's a struggle nationwide," Davis said. "The only harsh penalty is for a citizen to file a lawsuit, and frankly, that is stunningly rare."

Beth Bennett, Illinois Sunshine Law chair, said that in Illinois, all

records are open to the public unless otherwise specified. Government entities have seven working days to respond, but can ask for a seven-day extension if needed. Bennett said there are no penalties for noncompliance. Citizens can sue government entities for open documents, but this process is used more by journalists than by citizens.

"Illinois really has a very bureaucratic act," Bennett said. "It's full of all kinds of loopholes and exceptions. Right now, the state of Illinois is undergoing a big reform push, and we currently have a rewrite of the Illinois Freedom of Information Act pending in the General Assembly, and it was introduced by the Attorney General and the press association is working with their office to pass it."

Many citizens have grown to distrust the government because of the actions of Gov. Rod Blagojevich, according to a March 17 press release issued by Illinois Attorney General Lisa Madigan.

"Among the complaints against the former governor and his administration was that they routinely and blatantly disregarded the Sunshine Laws and failed to provide the public and the media with access to information," Madigan said in the press release.

Madigan also said the Attorney General's office received many calls from government officials to help clarify the open records laws.

Cuillier said states need strong penalties for noncompliance with the Sunshine Law.

"We need laws with punishment and teeth for noncompliance because otherwise a lot of officials will blow

off citizens, and that's just wrong," Cuillier said.

Missouri's neighbor to the north has established stiffer penalties for government officials in violation of providing proper access to records.

In Iowa, a monetary fine of \$100 to \$500 exists for noncompliance. Each member of the government entity involved in the violation is fined, according to the Iowa Attorney General's Web site.

"There is a two-strikes-and-out policy for both open meetings and records laws," said Kathleen Richardson, executive secretary of the Iowa Freedom of Information Council. "... If a government official is found to have violated the law twice, then upon the second time that they are found to have violated the law, they can be removed from office."

Richardson said this law was enacted two years ago to help make the Iowa law stronger. Before the two-strike policy was passed, an official could only be removed from office on the third violation for which monetary damages were assessed against the official in office, according to the Iowa Attorney General's Web site.

Davis said having a federal Sunshine Law would help make the law consistent among all states but that a federal law is not likely to be enacted any time soon.

"To be able to pull out the best parts of each state's Sunshine Law and make a federal law would be great," Davis said. "But an actual national Sunshine Law would never happen because states would make 10th Amendment arguments. It would just never get off the ground."

Read the **Index** online

www.trumanindex.com