

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19TH JUDICIAL CIRCUIT**

HHS TECHNOLOGY GROUP
HOLDINGS, LLC,

Plaintiff,

v.

DEPARTMENT OF SOCIAL
SERVICES, *et al.*,

Defendants.

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Case. No.: 23AC-CC01434

JUDGMENT

This matter came before the Court for trial on May 13, 2024. The parties submitted stipulated facts and exhibits, which the Court has considered in rendering this Judgment. The Court has also considered the other evidence submitted by the parties, including designations from the deposition of Sharie Hahn.¹ Being fully advised in the premises, the Court enters this Judgment in favor of Plaintiff.

FINDINGS OF FACT

I. The Parties

1. Plaintiff HHS Technology Group Holdings, LLC (“HHS”) is a Delaware limited liability company.
2. HHS was and is represented by Chuck Hatfield of the law firm Stinson LLP in *EngagePoint, Inc. v. State*, Case No. 16AC-CC00335 (Cole County) (hereinafter “*EngagePoint*”).
3. Defendant Missouri Department of Social Services (the “Department”) is a state agency created pursuant to Article IV, § 37 of the Missouri Constitution and § 660.010, RSMo.

¹ Defendants asserted various objections to Plaintiff’s designations from Ms. Hahn’s deposition. The Court has considered, and hereby overrules, those objections. This is a court-tried case and the Court considers Ms. Hahn’s testimony for what it is worth.

4. Defendant Chelsea Blair is the Department's custodian of records.
5. Sharie Hahn is the Department's General Counsel.

II. The Parties Litigate in *EngagePoint*

6. EngagePoint, Inc. filed *EngagePoint* against the State of Missouri on August 11, 2016. The suit alleged the State breached a contract with EngagePoint, Inc.
7. In 2017, HHS was joined as a plaintiff in *EngagePoint*.
8. On August 25, 2021, this Court entered an order in *EngagePoint* closing discovery, with the exception of expert disclosures.
9. The *EngagePoint* trial began July 11, 2022.
10. The jury reached a verdict in *EngagePoint* on August 11, 2022.
11. This Court entered judgment in *EngagePoint* on September 21, 2022.
12. This Court denied post-trial motions filed by the the State in *EngagePoint* on January 17, 2023.
13. The State filed a notice of appeal in *EngagePoint* on January 27, 2023. The appeal remains pending.

III. HHS Submits a Sunshine Request to the Department

14. On April 29, 2022, Mr. Hatfield submitted a Sunshine Law request (the "Request") to the Department's then-Custodian of Records, Heather Dolce. **Exhibit JS-1.**
15. Mr. Hatfield sent the Request at the direction and on behalf of HHS.
16. The Request asked the Department to provide "[a]ll documents from January 1, 2013 through the present that show how much federal match funding was requested and received by the State of Missouri from the federal Centers for Medicare and Medicaid Services to fund costs or expenses related to the Missouri Eligibility and Enrollment System," as well as "how the federal

match funding in request number one was spent, allocated [...] and/or returned to the federal Centers for Medicare and Medicaid Services.” *Id.*

17. HHS also requested documents and communications for the same timeframe about “any decision by the State of Missouri to withdraw any public solicitation for work or services directly related to the Missouri Eligibility and Enrollment System.” *Id.*

18. In short, the Request sought records related to how the Department requested and allocated public monies and related communications about the competitive bidding process.

19. HHS’s letter requested that if the Department denied the Request, the Custodian of Records identify the grounds on which the Department claimed the records were closed. *Id.*

20. On May 4, 2022, Ms. Hahn sent a letter to Mr. Hatfield, noting the Department received the Request. **Exhibit JS-2.**

21. Ms. Hahn’s letter estimated the earliest date records might be available as July 27, 2022. Her letter further advised the records being sought appeared to relate to ongoing litigation, but stated the Department would continue to process the Request as an open records request for the time being. *Id.*

22. The Department did not provide documents and did not provide follow-up correspondence to Mr. Hatfield concerning the Request by July 27, 2022.

23. On September 1, 2022, still having not received a response, Mr. Hatfield emailed Ms. Hahn to request an update on the Request. Mr. Hatfield copied an Assistant Attorney General representing the State in *EngagePoint* on the email. **Exhibit JS-3.**

24. Ms. Hahn received the September 1, 2022 email and was aware of it around the time it was sent.

25. No one responded to Mr. Hatfield’s September 1, 2022 email.

26. On October 4, 2022, Mr. Hatfield sent another email to Ms. Hahn requesting an update on the Request. This email likewise copied the Assistant Attorney General representing the State in *EngagePoint*. *Id.*

27. Ms. Hahn received the October 4, 2022 email and was aware of it around the time it was sent. **Hahn Depo. at 108-09.**

28. No one responded to Mr. Hatfield's October 4, 2022 email until the Department sent a letter denying the Request on February 27, 2023. *Id.*

29. As of October 2022, the Department had not fully processed the Request.

30. On or about October 19, 2022, Ms. Hahn determined the Department would treat the requested records as closed, though she had not finished processing the Request.

31. As of late November 2022, the Department still had not asked the Office of Administration to conduct an email search to locate records responsive to the Request. No such searches were run until after the Department denied the Request in February 2023. **Hahn Depo. at 121-22.**

IV. The Department Denies the Request Before Completing Its Search for and Review of Records Responsive to the Request

32. The Department sent no further correspondence to Mr. Hatfield until February 27, 2023 when it sent a letter denying the Request.

33. The February 27, 2023 letter stated all records sought by the Request were closed pursuant to § 610.021(1), RSMo, because the documents related to litigation in *EngagePoint*. **Exhibit JS-7 at 2.** The letter did not say the records were closed based on principles articulated in Attorney General Opinion 200-94. *Id.*

34. When Ms. Hahn sent the denial letter on February 27, 2023, the Office of Administration still had not searched for emails responsive to the Request and had not provided them to Ms. Hahn.

35. When Ms. Hahn sent the denial letter on February 27, 2023, the Department had not finished collecting documents that were responsive to the Request. As such, Ms. Hahn did not review all records before denying the Request.

36. The Department did not collect and identify all documents responsive to the Request until sometime after February 27, 2023.

V. The Documents

37. The Department has identified 570 documents responsive to the Request that it claims are closed records.

38. The parties have stipulated that 11 of the 570 documents constitute privileged communications with counsel that may be closed under § 610.010. HHS does not seek those 11 documents in this litigation.

39. None of the remaining 559 records at issue is a legal file, memorandum, or work product generated by the Department's counsel.

40. The remaining 559 documents include Medicaid advanced planning documents and amendments, budget books, spend plans, CMS Form 64s, and records related to withdrawn public procurements.

41. Ms. Hahn conceded these types of documents would exist regardless of whether the *EngagePoint* litigation had ever been filed. **Hahn Depo. at 58-59, 157, 160-61, 163-64.**

42. Medicaid advanced planning documents and amendments are, generally, documents requesting approval from the Centers for Medicare and Medicaid Services for certain types of reimbursement.

43. Budget books are documents that set out the Department's budget per fiscal year. Budget books are used by the Office of Administration, the Governor's Office, and the General Assembly in preparing the State budget.

44. Spend plans are an outline of how the Department will execute certain budget lines from the budget books or certain funding lines in appropriations.

45. CMS 64s are filings with the Centers for Medicare and Medicaid Services that identify what the Department expended as to different grants.

46. The Department does not maintain any policies providing that Medicaid advanced planning documents and amendments, budget books, spend plans, or CMS Form 64s are categorically closed records.

47. The Department provided the 559 at-issue records to the Court for *in camera* inspection as part of this litigation.² The Court has reviewed the nature of these at-issue documents and finds that they are not about—and are not inherently or directly related to—the *EngagePoint* litigation. Rather, the at-issue documents are things the Department would have created, and did create, in the ordinary course of business.

48. The Court further finds that Ms. Hahn and the Department did not close the 559 at-issue records based on their contents. Rather, they closed the records based on the identity of the requester (HHS) and their belief that HHS desired these documents for use in the *EngagePoint* litigation.

VI. Defendants' Knowledge and Intent

49. Defendants know and understand the Department's obligations under the Sunshine Law.

² The "box" file provided to the Court included 68 documents in an email production which included redactions. The Court assumes that the redactions relate to the agreed upon privileged documents.

50. Ms. Hahn has been the Department's General Counsel since August 2020.

51. From April 2019 to July 2020, Ms. Hahn served as Special Counsel for Administration at the Department.

52. As Special Counsel for Administration, one of Ms. Hahn's main job duties was processing sunshine requests.

53. Ms. Hahn has processed several hundred sunshine requests and provides training and advice to other Department employees on the Sunshine Law. **Hahn Depo. at 19, 44.**

54. Ms. Hahn was the only Department employee who was responsible for receiving and reviewing documents collected from Department personnel in response to the Request and ultimately determined that the records sought by the Request were closed records. **Hahn Depo. at 16-17, 77, 101-03, 116, 125-26, 133-34; Ex. JS-8 at 7.**

55. Between April 2022 and February 2023, administrative employees in the Department's Division of Legal Services tracked the status of unfulfilled sunshine requests sent to the Department, including HHS's request. **See Exhibit JS-6.** This tracking was consistent with the Department's job manual and policy for processing open records requests. **See Exhibit JS-4; Exhibit JS-5.** Ms. Hahn was in contact with these employees on a daily basis. **Hahn Depo at 116-19.** As of late 2022, she was aware HHS's Request had not been fully processed and had been outstanding for more than half a year. **Hahn Depo. at 111, 116-19, 121-26.**

56. Ms. Hahn knew and understood the Sunshine Law imposed an obligation on the Department to process sunshine requests as soon as possible. **Hahn Depo. at 133-35.**

57. Ms. Hahn served as the Department's primary point of contact with the Attorney General's Office in connection with *EngagePoint*. **Hahn Depo. at 72.**

58. Ms. Hahn and the Department selected the July 27, 2022 date identified in the May 4, 2022 letter based on the belief the *EngagePoint* trial would be over by then. **Ex. JS-8 at 8.** The Department further claims the date was selected because that is when Ms. Hahn would be able to meet with attorneys from the Attorney General's Office handling the *EngagePoint* trial about the Request. *Id.*

59. Ms. Hahn conceded, however, that the Department (not the Attorney General's Office) is responsible for fulfilling the Department's obligations under the Sunshine Law. **Hahn Depo. at 134.**

60. Ms. Hahn spoke with some of the attorneys from the Attorney General's Office handling the *EngagePoint* case sometime in October 2022 about the Request but refused to disclose how long the conversation lasted. **Ex. JS-8 at 9.** This was not a request for a formal opinion of the Attorney General as contemplated by § 610.027.6, RSMo. It was a discussion with litigation counsel. The Department has provided no explanation justifying the roughly six-month delay (April to October 2022) in having that conversation.

61. Nor has the Department offered a plausible excuse for waiting until February 27, 2023 to deny the Request, despite determining the documents would be closed sometime in October 2022.

62. The Department claims this additional four-month delay stemmed from the need for the Department to evaluate whether there were any grounds other than § 610.021(1), RSMo, that justified closure. **Ex. JS-8 at 9-10.** Ms. Hahn's February 27, 2023 letter cited no other grounds for closure. **Ex. JS-7.**

63. A few months later, on May 9, 2023, however, the Department filed an Answer to HHS's First Amended Petition claiming the records were also closed pursuant to principles articulated in Attorney General Opinion 200-94.

64. Ms. Hahn acknowledged she was aware of the decision in *Wyrick v. Henry*, 592 S.W.3d 47 (Mo. App. 2019), **Hahn Depo. at 168**, though she refused to say whether she was aware of it when she denied the Request in February 2023, erroneously claiming that information was protected by attorney-client privilege or work product. Based on her evasive answer, and her significant experience with the Sunshine Law, the Court infers Ms. Hahn was aware of the *Wyrick* decision when she denied the Request.

65. The Court finds that, at a minimum, the Department was aware of the *Wyrick* decision after HHS filed its original Petition March 16, 2023, as the Petition cited and discussed *Wyrick*.

66. Ms. Hahn knew the Department had the right to file a declaratory judgment action pursuant to § 610.027.6, RSMo if it was in doubt concerning the application of the Sunshine Law to the requested records but did not cause the Department to do so. **Hahn Depo. at 135-38.**

67. Ms. Hahn knew the Department had the right to seek a formal opinion from the Attorney General pursuant to § 610.027.4, RSMo, if it was in doubt concerning the application of the Sunshine Law to the requested records but did not cause the Department to seek such opinion. *Id.*

CONCLUSIONS OF LAW

I. Applicable Legal Standard

1. This is a case for review of the Department's refusal to provide documents to HHS in response to its Sunshine Law request. This Court will find a knowing and purposeful violation of the Sunshine Law, "[u]pon a finding by a preponderance of the evidence that a governmental

body or member of a public governmental body” knowingly or purposely violated the law. § 610.027, RSMo. Upon such finding, the Court must void the offending action and can order a civil penalty as well as costs and reasonable attorney’s fees. *See id.*

2. “It is the public policy of this state that . . . records [and] actions . . . of public governmental bodies be open to the public unless otherwise provided by law.” § 610.011.1, RSMo. The Sunshine Law is to be “liberally construed” and its “exceptions strictly construed to promote this public policy.” *Id.* The Department is a public governmental body under § 610.010(4), and its records are “public records” under § 610.010(6), RSMo.

3. Public records are open and available to any member of the public unless subject to an exception. § 610.011.2, RSMo.

4. Requests for access to public records must be acted on “as soon as possible” but no later than “the third business day following the date the request is received.” § 610.023.3, RSMo. While a public governmental body may take longer than three business days to produce public records, it may do so only for “reasonable cause.” *Id.*

5. “[W]hen a governmental body claims that an exception to the general rule of openness applies, the burden of persuasion in a suit seeking disclosure of public records shifts to the governmental body.” *Gross v. Parson*, 624 S.W.3d 877, 891 (Mo. banc 2021) (quotations omitted). The Department must therefore prove the records at issue are closed.

6. Section 610.027 penalizes knowing or purposeful violations of the Sunshine Law. A knowing violation occurs when the public entity has “actual knowledge that [its] conduct violated a statutory provision.” *White v. City of Ladue*, 422 S.W.3d 439, 452 (Mo. App. 2013); *see also Gross*, 624 S.W.3d at 892. A purposeful violation occurs when the public entity “purposefully violated sections 610.010 to 610.026” with “a conscious design, intent, or plan to violate the law

... with awareness of the probable consequences.” *Spradlin v. City of Fulton*, 982 S.W.2d 255, 262 (Mo. banc 1998) (internal quotations omitted). Knowledge and purpose may be inferred from the public governmental body’s conduct and from the circumstances. *Hynes v. Mo. Dep’t of Corr.*, 2024 WL 1724100, *9 (Mo. App. Apr. 23, 2024).

7. Plaintiff HHS is an “aggrieved person” entitled to bring this action because it requested certain open records, which were withheld by Defendant.

II. The Department Did Not Timely Process HHS’s Sunshine Request

8. The Department violated the Sunshine Law when it failed to act on HHS’s sunshine request “as soon as possible” as required under Section 610.023.3, RSMo.

9. The evidence establishes the Department did not expeditiously process the Request and did not have “reasonable cause” to delay its resolution of the Request for approximately ten months (April 2022 to February 2023).

10. In late 2022, Mr. Hatfield sent several emails requesting an update on the Request. Though admittedly aware of the correspondence, no one from the Department transmitted an update, or any other response until it denied the Request in February 2023.

11. The ten-month delay in resolving the Request cannot be justified by the Department’s need to collect and review responsive documents. The Department did not search for and collect all responsive records until *after* it denied the Request. Further, as the Court found above, the Department did not deem the records closed based on their contents – instead basing its decision on HHS’s identity. As such, it could have denied the Request at any time.

12. The Department indisputably did not act on HHS’s request as soon as possible.

13. Ms. Hahn is the sole Department employee who processed and evaluated the Request. **Hahn Depo. at 102.** As such, she was the only person who could explain the Department’s actions. Her deposition testimony was evasive. She refused to answer questions

about what she knew and what she did based on erroneous assertions of privilege and work product. The Court does not find her testimony credible. Ms. Hahn and the Department have provided no credible justification for the ten-month delay.

14. Ms. Hahn was fully aware the Department could have filed a declaratory judgment action or sought a formal AG opinion if it was uncertain about how to apply the Sunshine Law. Had the Department availed itself of these options, perhaps the ten-month delay would have been justified. Instead, as discussed below, Ms. Hahn simply delayed the Department's response to apparently secure a more favorable litigation position in the underlying *EngagePoint* case.

15. The Court concludes that simply citing the "press of business," as the Department has done in trying to justify its delay in denying the Request from October 2022 to February 2023, is insufficient to establish that the Department had a reasonable cause for the delay.

16. This unjustified delay is an independent violation of the Sunshine Law.

III. The At-Issue Records Are Open Records and the Litigation Exception Does Not Apply to Permit Closure

17. The Department is a public governmental body and the records it maintains are public records subject to disclosure unless a specific exception applies under Section 610.021.

18. The only exception the Department cited in its denial letter was the "litigation exception." *See* § 610.021(1), RSMo.

19. Section 610.021(1), permits closure of records that relate to "[l]egal actions, causes of action, or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys."

20. Under the Sunshine Law, disclosure is the default and exceptions must be "strictly construed." § 610.011, RSMo. Thus, where an exception applies to records that "relate to" a

particular subject, strict construction requires that the exception be limited to records that “relate *directly*” to the specified subject. *Spradlin*, 982 S.W.2d at 258-59 (emphasis added).

21. Accordingly, Section 610.021(1) permits closure only of records that relate directly to litigation or causes of action involving a governmental body. The focus is “on the inherent nature of the record itself”—there must be “a ‘clear nexus’ between the record sought and actual or threatened litigation.” *Wyrick*, 592 S.W.3d at 56.

22. “A record that is not by its inherent nature ‘related to’ litigation does not become so merely because it may be discoverable or admissible in litigation.” *Id.* “Public records do not have a ‘clear nexus’ to litigation merely because they could be relevant (that is, discoverable or admissible) in litigation.” *Id.*

23. The withheld documents include: Medicaid advanced planning records and amendments, Medicaid claiming and expenditure records, and communications related to withdrawn requests for proposals. The Medicaid claiming and expenditure records include budget books, spend plans, and CMS-64 forms. Ms. Hahn admitted these documents would have existed regardless of whether the parties were litigating the *EngagePoint* case. **Hahn Depo. at 58-59; 157, 160-61, 163-64.**

24. The Court has reviewed the types of disputed records *in camera* and has confirmed they are documents generated in the ordinary course of business and do not relate directly to the *EngagePoint* case.

25. Moreover, the documents concern the spending of public monies and conducting of competitive bidding. These are matters in which the public has an interest. These are prime examples of open records the Sunshine Law was intended to allow the public to access.

26. Though the parties were litigating when HHS sent the Request, the records sought are not the types of records covered by the litigation exception because the documents reflect how public money was spent, do not mention or refer to the *EngagePoint* litigation, and would have been created and maintained by the Department regardless of that lawsuit.

27. The Department contends § 610.010(1) applies because the documents might have been relevant and discoverable in *EngagePoint*. This is simply not the correct analysis. Indeed, the Court of Appeals has expressly and unequivocally rejected this argument.

28. “[P]ublic records do not have a ‘clear nexus’ to litigation merely because they could be relevant (that is, discoverable or admissible) in litigation.” *Wyrick*, 592 S.W.3d at 56.

29. The Department argues *Wyrick* is distinguishable because it concerned potential, rather than actual, litigation. That is a distinction without a difference. Section 610.010(1) does not distinguish between potential and actual litigation. *Wyrick* expressly stated its analysis applies to both potential and actual litigation. *Id.* That litigation has actually been filed does not change the fact that the analysis under § 610.010(1) must focus on the inherent nature of the documents and nothing about these documents has any connection to litigation.

30. The Department’s position would impermissibly provide “a basis for closing virtually any record,” contrary to the mandate to strictly construe Sunshine Law exceptions. *Tuft v. City of St. Louis*, 936 S.W.2d 113, 118 (Mo. App. 1996).

31. At trial, the Department was unable to explain how its interpretation of § 610.010(1) would not permit it to close the records to anyone who might request them. If documents potentially relevant to lawsuits the State is or might become involved in could be closed to anyone, the Sunshine Law would be meaningless as nearly any record could be closed on the theory that it might be relevant to *some* lawsuit the State is or might become entangled in.

32. Thus, the Department's position must be that it can close the records only as to HHS. This is further confirmed by the Department's reliance on AG Opinion 200-94, discussed below. But whether § 610.010(1) applies is "a determination that is not influenced by the identity of the person making" the request. *Wyrick*, 592 S.W.3d at 57.

33. To close a record under the litigation exception, it is the nature of the record itself that controls whether it is closed. "A record's inherent nature is a constant, divorced from the identity of the person requesting the record[.]" *Id.* at 56.

34. The nature of a document and its status as a document inherently connected to litigation does not depend on the identity of the requestor. The status of a document as an open or closed record cannot change based upon who the requesting party happens to be.

35. The evidence establishes that the Department determined how it would respond to the Request based on the fact that HHS, through litigation counsel, made the Request.

36. This conclusion is further supported by the fact that the Department's responses, at every juncture, tracked with near precision to the course of the *EngagePoint* litigation. The Department timed its responses to align directly with the underlying legal proceeding, relying on the requestor's identity, anticipating that if the Department produced the records, HHS would use the records in the underlying litigation. The Department did not formally deny the Request until it had perfected its appeal in *EngagePoint*. Its discovery responses in this case repeatedly refer to events in *EngagePoint*, and it asked the Court to take judicial notice of numerous filings in *EngagePoint*.

37. The records at issue are not "related to" *EngagePoint* and, as a result, do not fall within § 610.021(1).

38. Alternatively, the Department contends it was permitted to close the records under principles articulated in Attorney General Opinion 200-94. Generally, the Department argues that when a party is actively involved in litigation with a State agency, that party cannot use the Sunshine Law to obtain documents potentially relevant to the lawsuit and must instead obtain such documents solely through discovery.

39. Attorney General Opinions are not binding on the courts and this Court does not find AG Opinion 200-94 relevant or persuasive. The Opinion specifically dealt with the ability of criminal defendants to obtain police investigative reports, which are governed by a separate provision of the Sunshine Law.

40. More fundamentally, there is no exception in the Sunshine Law that precludes civil litigants from using sunshine requests once they have filed suit. This Court is obligated to strictly construe the Sunshine Law exceptions that actually exist and there is simply no prohibition on using sunshine requests once litigation has been filed.

41. The Court also notes that HHS did not send the Request until after discovery in *EngagePoint* had closed. Further, the Department did not act on (*i.e.*, deny) the Request until after trial court proceedings in *EngagePoint* had concluded. As such, there is not even a factual basis for the Department's assertion that the civil discovery rules superseded the requirements of the Sunshine Law.

42. The records at issue are open records, no Sunshine Law exception applies, and the Department should have provided the documents to HHS years ago.

IV. The Department's Denial Letter Failed to State All Bases on Which the Department Relied to Deny the Request

43. “If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial.” § 610.023.4, RSMo. Mr. Hatfield’s letter specifically included such a request.

44. The Department’s February 27, 2023 denial letter only cited the litigation exception under § 610.021(1) as its basis for withholding the requested records.

45. But the Department’s affirmative defenses in this case assert the records were “properly closed because those records were sought for purposes of advancing Plaintiff’s litigation position in [*EngagePoint*] and could not be obtained from the Department by Plaintiff through the discovery process in that case at that time.” **May 9, 2023, Ans. at 10.**

46. In interrogatory responses, the Department clarified that this affirmative defense is based upon AG Opinion 200-94, and is distinct from its claim that closure was proper under § 610.010(1). **Ex. JS-8 at 4-5.**

47. As explained above, AG Opinion 200-94 is irrelevant and does not provide a basis for closing these records.

48. But the Department’s attempt to invoke this (non-existent) basis for closure demonstrates the Department failed to identify all bases the Department claimed for closing the records, as § 610.023.4 requires. Remarkably, the Department claims to have spent four months after October 2022 determining whether any other bases for closure existed, sent a letter on February 27, 2023 citing no other bases for closure, and then offered an alternative basis for closure just a few months later in its Answer. This is an independent violation of the Sunshine Law.

49. The Department contends that whether its letter identified all grounds for closure is not properly before the Court because HHS’s Amended Petition does not allege such a violation. This argument ignores that HHS had no reason to make such allegation. It was not until the

Department answered, and then clarified its Answer in its interrogatory responses, that it became clear the Department failed to identify all grounds for closure.

50. Further, the Department knowingly injected this issue into the case by asserting an affirmative defense that AG Opinion 200-94 permitted it to close the records. The Department continues to press that argument. The Department cannot affirmatively ask the Court to rule in its favor by invoking a basis for closure not cited in its denial letter and simultaneously ask the Court to ignore the Department's failure to comply with the simple commands of the Sunshine Law.

V. The Department Denied the Request in an Effort to Gain a Litigation Advantage

51. The Court concludes that the Department improperly slow-walked its response to the Request in an attempt to gain an advantage in the *EngagePoint* litigation.

52. The parties began litigating *EngagePoint* in August of 2016. HHS was joined as a plaintiff in *EngagePoint* in 2017.

53. On August 25, 2021, this Court closed discovery in *EngagePoint*. The Department's Answer and interrogatory responses in this case repeatedly attempt to justify its conduct by arguing HHS was trying to obtain documents for use in litigation it could not have obtained in discovery. **May 9, 2023, Ans. at 10; Ex. JS-8 at 5-6.**

54. Of course, Mr. Hatfield's letter said nothing about why HHS wanted the records. This is simply an inference the Department drew, and it is plain the Department sought to withhold these records so HHS would not be able to use them in the *EngagePoint* trial—a case in which HHS sought extensive damages and was eventually awarded in excess of \$20 million.

55. The evidence demonstrates the Department impermissibly disregarded its obligations under Chapter 610 in an effort to gain a litigation advantage.

VI. The Department Knowingly and Purposely Violated the Sunshine Law

56. Ms. Hahn has processed several hundred sunshine requests. **Hahn Depo. at 19.** The evidence makes clear that she has extensive experience processing and responding to requests for public records. She has worked for the State of Missouri for 14 years, serving almost seven years with the Department. **Hahn Depo. at 7-10.** Before that, Ms. Hahn worked for the Attorney General's Office in the Medicaid Fraud Control Unit. **Hahn Depo. at 10.**

57. Ms. Hahn clearly and undoubtedly understands the Department's obligation to comply with the requirements of Chapter 610. She repeatedly admitted as much in her deposition. **Hahn Depo. at 20, 35-36, 133-35.**

58. As found above, Ms. Hahn's explanations and justifications were not credible. Throughout her deposition, Ms. Hahn refused to answer basic questions about the process the Department undertook to review and process the Request. **Hahn Depo. at 28-33, 35-36, 65, 72-73, 84-85, 99-101, 116-117, 125-128, 130, 135, 138, 148-50, 154-155, 157-159, 166-168, 170.** Instead, Ms. Hahn repeatedly invoked privilege and work product, even though the questions at issue called for neither. ***Id.* at 130-131.**

59. Based on Ms. Hahn's refusal to answer such questions, the Court infers that her answers would have been unhelpful to the Department's position.

60. Regardless, the answers Ms. Hahn *did* provide clearly demonstrate that she understood the Department's obligations under the Sunshine Law and knowingly and intentionally flouted them.

61. Despite her demonstrated familiarity with the Sunshine Law, Ms. Hahn and the Department relied on an impermissibly broad interpretation of Section 610.021(1) in a manner that is contrary to clearly established law.

62. The Department’s position is directly contrary to courts’ warnings about the abuses that would result if the Department’s interpretation of Section 610.021(1) were the law: “Taken to extremes, virtually any controversial matter could be the subject of potential litigation and thus cited as a basis for closing virtually any record. Such an open ended application of the litigation exception would indeed be inconsistent with the requirement that exceptions to the Act be strictly construed.” *Tuft*, 936 S.W.2d at 118.

63. The Court concludes that Ms. Hahn was readily aware of the principles articulated in *Tuft* when she improperly denied the Request. *Tuft* had been the law for decades when the Department received the Request.

64. For the reasons set forth above, this Court also concludes Ms. Hahn was aware of *Wyrick* when she denied the Request. Further, the Department unquestionably became aware of *Wyrick* after HHS filed its Petition in March 2023. Yet, more than one year later, the Department still has not provided the requested records and still relies on an interpretation of § 610.010(1) that the Court of Appeals squarely rejected in *Wyrick*.

65. In short, Ms. Hahn—and, by extension, the Department—knowingly refused to provide indisputably open records to HHS in direct violation of binding precedent. The Department then sought to come up with other bases for closure (AG Opinion 200-94) only a few months later when HHS filed suit.

66. For the reasons discussed above, it is also clear the Department intentionally violated the Sunshine Law to impermissibly gain an advantage in the *EngagePoint* litigation, evidencing a conscious plan to engage in wrongful conduct. Such conduct marks a purposeful violation of the Sunshine Law. *See Hynes*, 2024 WL 1724100, at *9. (“[F]orestell[ing] disclosure

of the requested records to make it more difficult for [a requester] to pursue a potential claim” is a purposeful violation of the open records law.).

67. Ms. Hahn was the primary point of contact for the Department in the *EngagePoint* case. **Hahn Depo. at 72.** She was aware that Mr. Hatfield was the attorney for HHS in the *EngagePoint* case. She stated so in the Department’s May 4, 2022 letter and confirmed as much in her deposition. **Ex. JS-2 at 2; Hahn Depo. at 70.**

68. As such, Ms. Hahn would have been readily aware that HHS would not be able to request the sought-after records through the discovery process (as the Department’s affirmative defenses and interrogatory responses in this case assert). **May 9, 2023, Ans. at 10; Ex. JS-8 at 5-6.** Since the Department has never claimed to have been in doubt about application of the Sunshine Law to these records (and it never brought a declaratory judgment action or sought a formal AG opinion), this Court can only infer that Ms. Hahn impermissibly sat on the Request to gain a litigation advantage.

69. In addition to refusing to produce undoubtedly open records, the Department also knowingly and intentionally violated the Sunshine Law by delaying its response some ten months.

70. There is simply no reasonable basis for the delay. The Department did not finish processing the Request before it issued its denial letter. Ms. Hahn admitted no email search was run until sometime after the February 2023 denial. **Hahn Depo. at 122.** The Department failed to establish that it acted upon the Request “as soon as possible” because it did not even fully act upon the Request prior to denying it after ten months.

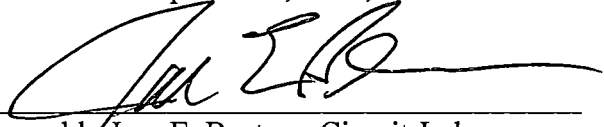
71. In sum, the Court concludes the Department knowingly and purposefully violated the Sunshine Law in multiple ways. HHS is therefore entitled to recover civil penalties and its reasonable costs and attorneys’ fees pursuant to § 610.027.3-4, RSMo.

IT IS THEREFORE DECLARED, ORDERED, ADJUDGED, and DECREED:

1. Defendants violated the Sunshine Law in multiple ways and these violations were knowing and purposeful.
2. Defendants are hereby ordered to produce to Plaintiff HHS, within 14 days of this Judgment, the 559 records at issue.
3. Plaintiff HHS is entitled to recover civil penalties and its reasonable costs and attorneys' fees from Defendant Department of Social Services. This matter is set for appearance on October 18, 2024 at 9:00 am to set a further hearing at which time this Court will determine the amount of such penalties, costs, and fees.

Date

9/23/24


The Honorable Jon. E. Beetem, Circuit Judge