



## ATTORNEY GENERAL OF MISSOURI

ERIC SCHMITT

December 30, 2020

BY EMAIL

Tim Noonan  
Chairman, Missouri Veterans Commission  
205 Jefferson Street  
12th Floor Jefferson Building  
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Dear Chairman Noonan:

Our veterans have earned our eternal gratitude for their tremendous sacrifices to our country. It is vital that state government honor them by providing them the highest quality services available.

I have been deeply saddened by the recent COVID-19 outbreaks in Missouri's veterans homes and the subsequent analysis suggesting that veterans have not received our state's best care. According to an independent public report last month, as of mid-November 2020, more than 100 veterans had died related to COVID-19 among Missouri's seven veterans homes. The report identified multiple root causes, including failure to analyze data and failure to appreciate the outbreak; lapse of broader reporting and communication; absence of a comprehensive outbreak and contingency plan; and lack of effective PPE policies and containment protocols and corresponding difficulties in staff training.

I became aware yesterday that you are withholding a second, 415-page report regarding the outbreak under the attorney work product and attorney-client communication exceptions in § 610.021(1). Neither exception is supported by the publicly available documents that my office has reviewed.

The contractual documents indicate that this report was prepared independently of the Missouri Veterans Commission, rather than in an attorney-client relationship. According to the emergency request for quote (ERFQ), "The State of Missouri desires to establish a contract for Independent External Investigation for COVID Exposure and Reporting . . . ." Emergency Request for Quote, Oct. 7, 2020, § 1.1.2. The ERFQ clearly states that both reports are subject to the Sunshine Law. *Id.* at § 2.2.3. The winning contractor's response to the ERFQ referred to an independent, external review. Response to Emergency RFQ, Oct. 2020, p. 3. When OA awarded

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the contract, it titled the contract, “Independent External Investigation: COVID Exposure.” Notice of Award, Oct. 12, 2020.

These contractual documents were consistent with correspondence that OA’s Division of Purchasing had with you prior to awarding the contract. In an October 3, 2020 email, you requested an emergency procurement “for services necessary to conduct an independent external investigation of the Missouri Veterans Commission.” Email from Tim Noonan to Karen Boeger, Oct. 3, 2020. You also stated that the Commission “intends to hire an external party (the ‘Contractor’) to conduct an independent investigation regarding the root cause of the outbreak of COVID as well as the breakdown in communication.” *Id.*

None of the public documents we reviewed referred to an attorney-client relationship. Similarly, none of the public documents we reviewed indicated that the report was being prepared in anticipation of litigation or as attorney work product. Although the bid evaluation acknowledged that “this investigation may yield outcomes that require disclosure and could open ourselves to liability,” the stated purpose for the contract was “to assess performance and to identify necessary follow-up actions to improve management of the Missouri Veterans Commission’s COVID-19 response.” Memorandum from OA’s Division of Purchasing Director, Oct. 12, 2020.

Without any evidence in the contractual documents that the 415-page report was prepared in an attorney-client relationship or as attorney work product, my office has seen no evidence that § 610.021(1) would allow the record to be closed. This was the sole exception relied upon by the Missouri Veterans Commission to close the report.

My office is charged with enforcing the Sunshine Law, and I write you in that capacity. “The overarching purpose of the Sunshine Law is one of open government and transparency.” *Laut v. City of Arnold*, 417 S.W.3d 315, 318 (Mo. App. E.D. 2013). “[P]ublic records must be presumed open to public inspection unless they contain information which clearly fits within one of the exemptions set out in § 610.021.” *State ex rel. Mo. Local Gov’t Ret. Sys. v. Bill*, 935 S.W.2d 659, 664 (Mo. App. W.D. 1996). Most of the provisions in the Sunshine Law concerning closed records are permissive in nature. *See* § 610.021; *see also Cox v. City of Chillicothe*, 575 S.W.3d 253, 258 (Mo. App. W.D. 2019) (holding that “Section 610.021 is a permissive statute that allows, but does not require, a governmental body to close certain meetings, records, and votes.”).

You have been quoted as saying that if the attorney general directs you to release the report, you would be happy to release it. Based on the publicly available documents that we have reviewed that undercut the applicability of § 610.021(1), you should release the report.

You also have been quoted as welcoming litigation to determine if the report is not legal work product. If your failure to release the report results in litigation, my office will consider your failure to be due to a lack of cooperation with this office. Under § 105.716.2, “Funds in the state legal expense fund shall not be used to pay claims and judgments against those persons and entities who do not cooperate as required by this subsection.”

For these reasons, you should immediately release the 415-page report. We trust that this transparency will result in better and safer outcomes for our veterans.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Eric S. Schmitt". The signature is fluid and cursive, with the first name "Eric" and last name "Schmitt" being the most legible parts.

Eric S. Schmitt  
Attorney General of Missouri