

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

RESIDENTS FOR HAZELWOOD, INC.,)	
)	
Plaintiff,)	Cause No: _____
)	
v.)	
)	Division: _____
ROBERTSON FIRE PROTECTION)	
DISTRICT,)	
)	
MAYNARD HOWELL, and)	
)	
MICHAEL CONLEY,)	
)	
Serve all at:)	
)	
Robertson Fire Protection District)	
12641 Missouri Bottom Rd.)	
Hazelwood, MO 63042)	
)	
Defendants.)	

PETITION

Introduction

Plaintiff Residents for Hazelwood, Inc., has requested the defendants (Robertson Fire Protection District, its custodian of records, and its secretary) many times to make available or produce the district’s public records pursuant to Missouri’s freedom of information statutes. The defendants have failed or refused many of these requests, preventing the plaintiff from investigating, assessing, and disclosing the district’s expenditure of public funds and their use of district resources. The plaintiff now seeks this Court’s help in enforcing Chapter 610 RSMo. (the “Sunshine Law”) and Sections 321.170 and 321.200 RSMo. (inspection of fire district records).

The Parties

1. Plaintiff Residents for Hazelwood, Inc. (“Residents”) is a Missouri nonprofit corporation in good standing located in St. Louis County, Missouri. Residents conduct business under the fictitious name of Citizens to Save Hazelwood & Fire Services. Jennifer Guyton is the president of Residents. She lives in Hazelwood, St. Louis County, Missouri, within an area that was annexed by the city and is (and was, prior to annexation) served by the Robertson Fire Protection District. Plaintiff Residents has acted through Ms. Guyton at all times alleged in this petition.

2. Defendant Robertson Fire Protection District is a political subdivision of the State of Missouri, created pursuant to Chapter 321 of the Revised Statutes of Missouri to provide fire protection and emergency services to its St. Louis County constituents. Effective in 1995, the City of Hazelwood annexed a portion of unincorporated St. Louis County served by defendant Robertson. Per court order and contract entered into between the city and Robertson, the defendant district provides, and has historically provided, fire protection and emergency services to the annexed area.

3. Defendant Maynard Howell is the district’s fire chief and its records custodian. He is obligated by the Sunshine Law to maintain the district’s public records and to make available or produce on request those records for public inspection.

4. Defendant Michael Conley lives in the district and is one of three duly-elected members of its board of directors. As secretary of the board, he is required by Sections 321.170 and 321.200 RSMo. to produce on request the district’s records for public inspection.

Jurisdiction and Venue

5. This court has jurisdiction of this action pursuant to Section 610.027.1 RSMo. (Sunshine Law) and Sections 527.010 *et seq.*, RSMo. (Declaratory Judgment Act).

6. Venue is proper pursuant to Section 508.010 because all parties principally reside in St. Louis County and the acts complained of have occurred in St. Louis County.

Facts

7. Plaintiff Residents has requested that the district produce certain public records for its inspection, but defendants have failed to respond in compliance with the law. For example, on November 16, 2021 Residents asked defendant Howell, in writing, to produce, from 2013 to date: (i) the district's policies addressing the purchase and sale of district equipment, (ii) any resolutions, ordinances, or minutes authorizing any such purchase or sale, (iii) any contracts, bills of sale, receipts, public notices, or other records reflecting any such purchase or sale, and (iv) any correspondence relating to such purchase or sale. A second request asked the district to produce Robertson's employee handbook and employee code of conduct policies in effect from 2015 to 2021.

A. Defendant Howell responded on November 19th, in writing, that the requests were "going to take some time to gather" and "could go into January 2022".

B. While Residents initially replied that the delay was "reasonable", plaintiff subsequently requested, in writing on November 28, an immediate meeting with the district secretary, defendant Conley, and plaintiff further requested a specific date by which the requested records would be available under the Sunshine Law.

C. Defendant Conley did not respond, but defendant Howell responded on November 30 that the district was working on Residents' requests and would have responsive

board minutes, and the employee handbook and code of conduct documents, available for review at the district's headquarters on December 2, 2021. At that meeting:

(i) Defendant Howell stated that he did not have the policy for the purchase or sale of district equipment and that the practice of the district was to sell surplus equipment to district employees through an "internal bidding" process, without public notice or bidding. Residents, in a writing the next day, again asked Howell to produce any written policy. To date no policy has been produced.

(ii) Defendant Howell did not produce any specific response to Residents' request for ordinances, resolutions, or motions authorizing the purchase or sale of equipment. Rather he produced district board meeting minutes, with attachments, in stacks for each of the requested years. When asked about the documents germane to the purchase or sale of equipment, defendant Howell stated that they were "somewhere in there". Residents reviewed the stacked documents, and on information and belief, defendant Howell failed to produce all the minutes and attachments for each meeting for each of the years requested, and he also failed to produce at least some existing documents pertaining to the purchase and sale of equipment.

(iii) With regard to the requested contracts, bills of sale, receipts, public notices, or other records reflecting any purchase or sale of district equipment, defendant Howell stated that the district did not have any such records—that either the requested documents did not exist or that such documents were not kept by the district. Residents, in writing the following day, suggested that the records should exist and asked that they be produced. To date, no such record has been produced.

(iv) The district did not produce any requested correspondence related to such purchases and sales.

(v) Defendant Howell also failed to produce the requested employee handbook or code of conduct documents. Instead he orally informed Residents that they weren't available because the district was revising the documents. Then, after further discussion, defendant Howell said that the assistant chief had the current documents in electronic format on his computer and would forward them to Residents by email.

(vi) Defendant Howell charged Residents \$126.75 for the labor in fulfilling their requests, even though the requests were not fulfilled.

8. Residents followed up with a subsequent request to defendant Howell on December 6, asking that the district produce copies of all board meeting minutes, without attachments, from 2013 to date. On December 8 plaintiff received an email from the district's attorney stating that the district would respond "as soon as possible", but "[g]iven the magnitude of your request, we anticipate a response within 30 days". Residents responded, asking the attorney to specify the requests to which he was referring, but to date the attorney has not responded. The requested records still have not been produced.

9. On December 12, 2021, plaintiff requested that the district also make available the board of directors' meeting minutes from 2008 and 2009. Defendant Howell failed to respond within three business days and failed to provide a date certain for the production of the records. Instead on December 17, 2021 defendant Howell informed Residents that a response would be provided at some unknown future time:

As you are aware the Board of Directors is allowing myself and the Staff to look into hiring a part time secretary. The Staff is working on the qualifications for this individual. We are hoping to have a secretary on board by the end of January 2022. Once this person is hired, they will be working on the sunshine requests that we have received. Hope you have a happy holiday season.

10. At the December 21, 2021 district board of directors meeting, Residents again raised the plaintiff's request for the current employee handbook and code of conduct documents. Assistant Chief Brown acknowledged the district's previous agreement to provide these, but then denied that they would be provided, despite their readily-available digital format, until "the legal team" could review and release them for disclosure.

11. This failure to produce requested records is emblematic of the district's responses, or lack thereof, to other requests made by Residents. Routinely, the district's initial responses do not include the requested records, and they do not provide either a detailed reason as to why the response cannot comply with the Sunshine Law's three-day deadline or a target date for production. And when documents are produced, they are often incomplete, haphazard, and not responsive to Residents' specific requests. The district will claim this is due to Residents' many requests and the lack of adequate staffing to respond to those requests, but the Sunshine Law does not recognize either fact as an excuse for non-compliance, and the district employs an administrative assistant—at a 2020 salary of \$82,000 per year—who presumably should be able to make the requested documents available.

12. This failure to comply is particularly concerning given the district's practice of internal disposition of surplus equipment and the amounts the district pays to vendors for district services (including internet, telephone, cable, and gasoline):

A. In June, 2016 the district purchased three new vehicles for the then chief, assistant chief, and medical officer. Declaring the old service vehicles surplus, the board then moved—without public notice and without a public bidding process—to sell the surplus vehicles to the very same chief, assistant chief, and medical officer. At the time, the assistant chief was defendant Howell. The vehicles were sold for \$10,000.00, \$6,000.00 and \$4,000.00, respectively,

but plaintiff is not aware of the mileage, condition, or market value of the vehicles at the time of the surplus sale, because the district has failed to produce the germane records.

B. In 2018 the district declared an ambulance as surplus. On information and belief, the ambulance in question was a “state-of-the-art” emergency response vehicle when purchased in 2008. The district’s purchase price is unknown, but such ambulances routinely exceed \$200,000.00. In 2018 defendant Howell purchased the ambulance, which had no known problems and which had a recorded mileage of 44,402, far less than that of the usual surplus ambulance. Residents do not know Howell’s purchase price, but the district’s financial statements disclose a sale of fixed assets in the amount of \$9,601.00. Presumably, this is the maximum amount paid by Howell. The ambulance appears to have been shipped to Mexico shortly after defendant Howell’s purchase. At the district’s public meeting on December 14, 2021, Howell admitted purchasing the vehicle three years earlier but stated that he did not remember what he paid for it. Production of the requested records presumably would reflect the purchase price and lead to information concerning the condition of the vehicle and its fair market value at the time of its sale to Howell.

C. On information and belief, the district sold a “plymo-vent system” in 2013 for \$1,500.00 to the father of defendant Howell’s son-in-law. The system vents vehicle exhaust fumes from the inside of a building to the outside, so that the vehicle’s engine can be safely operated while performing indoor repairs or maintenance. The cost of a new customized system can average between \$80,000.00 to \$100,000.00. Plaintiff does not know what the district paid for the system, or the age or condition of the system at the time of its surplus sale, because the documents produced by the district did not reflect this information.

D. The district’s practice of “internal disposition” of surplus property appears to have also resulted in the sale of other equipment to district insiders, including automobiles,

computers, iPads, and commercial grade generators, but the plaintiff has not been able to identify the cost of the original equipment, to whom the equipment was sold, the condition of the equipment at the time of sale, or whether the sales were made at fair market value, due to the failure or refusal of the district to produce the requested records.

13. In addition to the district's disposition of surplus equipment, a comparison with other fire departments in St. Louis County suggests that the district's costs for internet, cable, telephone, and gasoline far exceed the comparable costs of other jurisdictions. Because of the district's failure or refusal to produce requested documentation, plaintiff has been unable to assess the reasonableness of the district's costs for, and has been unable to identify the end-users of, these services and products.

Count I—Sunshine Law

14. Section 6210.023 of Missouri's Sunshine Law requires that the custodian of a public governmental body respond to request for records within three business days of the request by either producing the requested records or providing a detailed explanation of the reasonable cause for any delay beyond the three-day deadline, along with a specific date for disclosure. If some or all the requested records are alleged to constitute closed records under the law, or if part of the requested records are redacted because the information is alleged to be closed under the law, the custodian is obligated to provide a written statement of the reason therefore, citing the specific provision of law that justifies the request's denial or redaction.

15. Plaintiff's noted Sunshine Law requests—meeting minutes, board resolutions, contracts, receipts, related correspondence, and district employee policies—are readily-available public records, and defendant Howell has never contended otherwise. But he has: (a) failed to respond to requests or to produce requested records within the law's three-day deadline, (b) failed

to provide a detailed explanation for the delays in making the records accessible, (c) failed to provide a specific date and time for production of the records, (d) when actually responding to Residents' requests, failed to provide complete responses, and (e) failed to provide any explanation whatsoever for any lawful failure to produce requested records.

16. Moreover: (a) Residents' requests have provided defendant Howell with citations to the laws that require his responsive performance, (b) defendant Howell has been in the district's service for many years and is undoubtedly familiar with the requirements of the Sunshine Law, and (c) defendant Howell is aided by the services of the district's attorney in guiding the district's responses to Residents' request. These facts suggest that defendant Howell and the district have knowingly violated the Sunshine Law, subjecting them to the payment of civil penalties up to \$1,000.00 per violation and plaintiffs' attorney fees and costs pursuant to Section 610.027.3 RSMo.

17. In addition, in light of the possibility of misfeasance or malfeasance by the district over the use of public funds and assets, the actions of defendant Howell and the district in failing and refusing to produce Residents' requested information may well be purposeful, subjecting them to the payment of civil penalties up to \$5,000.00 per violation and plaintiffs' attorney fees and costs pursuant to Section 610.027.4 RSMo.

WHEREFORE, plaintiff prays that upon proof of its requests and the district's failure to respond thereto, the Court: (a) determine and declare that defendants Howell and the district have violated Missouri's Sunshine Law, (b) enjoin defendants to comply with the Sunshine Law and immediately produce the records requested by plaintiff Residents, (c) if the court finds by a preponderance of the evidence that the violations have been made intentionally or purposefully,

impose civil penalties and award attorney’s fees as allowed by Section 610.027 RSMo., and (d) grant such further relief as is just and proper.

Count II—Declaratory Judgment

18. Section 321.170 RSMo. mandates that the district secretary “shall keep in a well-bound book a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and a record of corporate acts, which shall be open to inspection of all owners of property in the district, as well as to all other interested parties.” Section 321.200 RSMo, further requires that “[a]ll . . . records of the [district] shall be available for public inspection at the main firehouse . . . by appointment with the secretary of the board within one week after a written request is made”.

19. Moreover, Section 109.180 RSMo., requires that all public records “shall at all times be open for a personal inspection by any citizen . . . , and those in charge of the records shall not refuse the privilege”

20. On November 28, 2021 Residents asked for a meeting with defendant Conley to review the requested district records, but Conley has not responded. No such meeting has taken place, and the requested records have not been made available for plaintiff’s inspection.

21. Defendant Conley is required by law to maintain and produce the requested records for plaintiff’s inspection, but defendant Conley has failed and refused to permit such inspection, in direct violation of Sections 321.200, 321.170, and 109.180 RSMo.

22. Defendant’s past and ongoing failure and refusal to produce the requested records presents a ripe justiciable controversy, and plaintiff Residents has no adequate remedy at law for enforcing defendant Conley’s compliance with the noted statutes.

23. Plaintiff has brought this lawsuit to advance the public interest in the tradition of a private attorney general because of (a) defendant Conley’s failure and refusal to follow the law, (b) the district’s questionable use of public funds and assets, and (c) the need for public transparency and accountability, even if the district’s financial practices are legitimate. Without this Court’s intervention, defendant Conley’s obstruction will continue, causing irreparable injury to the plaintiff and constituents of the district.

WHEREFORE, plaintiff prays that upon proof of its requests and the defendant’s failure to respond, the Court: (a) declare that defendant Conley has violated Sections 321.170, 321.200, and 109.180 RSMo., (b) enjoin defendant Conley to comply with the statutes by making the requested information available for plaintiffs’ inspection by a date certain, (c) due to the special circumstances of the need for public transparency and accountability, grant plaintiff its costs, including its attorney fees, pursuant to Section 527.100 RSMo., and (d) grant such further relief as is just and proper.

Respectfully submitted,

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