

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

Patsy Barnes,

Plaintiff,

vs.

The City of Wellston,
Missouri

Defendant.

January 29, 2016

Cause No. 15SL-CC00517

Division 19

ORDER AND JUDGMENT

Defendant’s Motion for Summary Judgment is now before the court. The parties argued the issues and the Motion was called and submitted on Dec.16, 2015. The Defendant argues that all Plaintiff’s claims should be dismissed, because the Sunshine Law explicitly states that Sections 610.010 to 610.200 RSMo, “shall be liberally construed and “it is established law that when a statute directs that its language be liberally construed substantial compliance is all that is required or needed to be in compliance with the statute”. Defendant posits that it substantially complied with the Sunshine Law in its response to Plaintiff’s records request by January 28, 2015 and that as a result no genuine issues of fact exists and therefore, Plaintiff fails to state claim for relief. Having considered the pleadings, the arguments of counsel, reviewed the controlling authorities, and being fully advised in the premises the Court enters its order and judgment.

I. Background

In January 2015 Janice Trigg was Custodian of Records for the City of Wellston, MO and responsible for responding to records request from the public. On January 26, 2015 she received a request from Plaintiff's counsel for a copy the minutes of the Wellston City Council meeting held on January 21, 2015 and for copies of the city's insurance policy pertaining to employment practices and certain specific endorsements contained in it. On January 28, 2015 Janice Trigg responded to Plaintiff's request via a telephone call to Plaintiff's counsel. During that phone call Ms. Trigg stated that "she would get him the minutes of the city council meeting as soon as the minutes were transcribed". When counsel for Plaintiff inquired about the insurance policy request during the same phone call, Ms. Trigg responded "that she did not know anything that". No explanation for the delay or when and where the requested information would be made available was ever provided beyond the January 28, 2015 phone call. Defendant provided the information several months later and after this lawsuit was filed.

II. Whether Section 621.023.3 provides for substantial compliance

Section 621.023.3 R.S.MO states that each request "shall be acted upon as soon as possible, but in no event not later than the end of the third business day" after the custodian receives the request. If the custodian cannot simply turn over the documents within that three day window, then the "custodian shall give a detailed explanation of the cause for delay and the place and earliest time and date that the record will be available for inspection".

The Defendant City of Wellston ("City") did not comply with procedure expressly stated in the statute. While the Custodian of Records did

respond by the third day after receiving the request, she failed to give a “detailed explanation of the cause for delay and the place and earliest time and date that the record would be available for inspection”. At best her response to the request for council meeting transcript and insurance policy information was partial as regards to the transcript and nothing as to the insurance policy. There was no subsequent response to either request for several months.

Defendant City argues that it substantially complied with Section 610.023.3 and further that it is “established law that when a statute directs that its language be liberally construed that substantial compliance is all that is necessary to be in compliance with the statute”. *Brickell v. Kansas City*, 265 S.W.2d 342, 344-345 (MO. 1954) *Brickell* was a personal injury case against the city of Kansas City concerning a notice statute and is distinguished from the present case on the facts and the law. While it is true that the court liberally construed the statute in *Brickell*, the statute at issue in *Brickell* did not expressly provide for liberal construction or substantial compliance.

Defendant City also cites *Pierson v. Treasurer of the State of Missouri*, 126 S.W.3d 386 (Mo. Banc 2004) wherein the statute explicitly provided for liberal construction and substantial compliance. *Pierson* dealt with a now overridden version of the Workers Compensation statute, which provided, “ all provisions of this chapter shall be liberally construed with a view to the public welfare, and a substantial compliance therewith shall be sufficient to give effect to the rules, regulations, requirements...” RSMo 287.800 (2004). The statute expressly provided for substantial compliance by the intended beneficiaries of the law. *Pierson* is clearly distinguishable from the instant case. The Court notes that Section 610.023.3 expressly

provides that it shall be liberally construed, but does not expressly provide for substantial compliance. After reviewing case law in Missouri, the Court finds there are no cases or opinions that expand upon the express language of the Section 610.023.3, and Defendant City's Motion for Summary Judgment is denied as to whether one need only substantially comply to its provisions.

III. Whether Plaintiff failed to state a claim

The "key to summary judgment" is "not simply the absence of a fact question", but rather is the "undisputed right to judgment as a matter of law". *ITT Commercial Financial Corp. v. Mid-America Marine Supply Co.*, 854 S.W.2d 371, 380 (Mo. 1993). The court finds that the defendant correctly states that Sections 610.010 to 610.200 RSMo explicitly states the statute shall be "liberally construed", however clearly fails to acknowledge that its exceptions should be "strictly construed" against the governmental entity from whom the records are being requested, to advance the State's public policy of open meetings and records.

The facts in this case can be viewed in two ways. Defendant City "acted upon" the request within the three business days requirement of the statute, and actually responded to Plaintiff. However, the City's response did not include the place, earliest time and date that the record would be available as required by statute. The response from the records custodian was "I'll get it to you as soon as it is transcribed". "If the evidence presented to support or oppose the motion is subject to conflicting interpretations, reasonable people might differ as to its significance, summary judgment is improper". *Contract Freighters, Inc. v. Fisher*, 13 S.W.3d 720, 722 (Mo. App. S.D. 2000) The Court finds that Defendant

City has not established that it is entitled to summary judgment as a matter of law as genuine issues of fact exist. Plaintiff has stated a claim for relief.

V. Order

Accordingly, it is ORDERED that the Defendant City of Wellston's Motion for Summary judgment is hereby DENIED.

So Ordered