



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

AMERICAN CIVIL LIBERTIES UNION)
of MISSOURI FOUNDATION, et al.,)
)
Plaintiffs,)
v.)
)
COUNTY OF ST. LOUIS)
)
Defendant,)
and)
)
FEDERAL BUREAU OF INVESTIGATION,)
)
Intervenor.)



Division No. 9
Date: September 3, 2014

FINDINGS OF FACT AND CONCLUSIONS OF LAW

DECLARATION

ORDER AND JUDGMENT

This matter is before the Court on plaintiffs’ petition brought pursuant to the Missouri Sunshine Law, Chapter 610 of the Missouri Revised Statutes, to require public disclosure of certain FBI documents (E.M. records) maintained by the County of Saint Louis (St. Louis County). The plaintiffs, American Civil Liberties Union of Missouri Foundation, Inc. and M.A. (collectively referred to as the ACLU), were represented by Attorneys A.R., G.D. and G.W.; the defendant County of St. Louis was represented by County Counselor P.R. and Deputy County Counselor R.G.; and the intervenor Federal Bureau of Investigation (FBI) was represented by Assistant

Procedural History

In its petition and other pleadings for a preliminary injunction and a permanent injunction, the ACLU is seeking to obtain a copy of FBI records regarding embezzlement of county funds by E.M. that are in St. Louis County's possession and alleges that St. Louis County's failure to turn the records over to the ACLU is a violation of Missouri's Sunshine Law. The ACLU wants this Court to, among other things, "[e]nter an injunction requiring Defendant to provide Plaintiffs copies of the public records they requested[.]"¹

In its answer to ACLU's petition, St. Louis County stated "that it believes that the need for transparency in County government outweighs any FBI need to keep the requested records confidential[,]" but that it declined to give a copy of the E.M. records to the ACLU because St. Louis County has a good faith belief that the records are exempted from disclosure under § 610.021 (14) RSMo of the Missouri Sunshine Law.

The FBI, in memorandum filed,² stated, inter alia, that the E.M. records should not be disclosed to the ALCU because these records would reveal information that should be protected from disclosure under § 610.021 (14) of the Missouri Sunshine Law and 5 U.S.C. § 552(b)(7)(C) of the Freedom Of Information Act (FOIA).³ Additionally, the FBI stated in its

¹ Plaintiffs' motion for a temporary restraining order pursuant to Rule 92.02(a) was denied without prejudice on July 18, 2014.

² FBI memorandum was filed pursuant to Missouri Supreme Court Rule 52.12(C).

³ The FBI also stated that the E.M. records should not be disclosed because: the FBI-generated records should be returned to the FBI; and the law enforcement investigative techniques or sources are protected by a law enforcement investigative privilege. However, this court order does not prevent the FBI from retrieving its records and the evidence submitted does not sufficiently provide a formal claim of the law enforcement investigative privilege. Additionally, in its memorandum filed pursuant to Missouri Supreme Court Rule 52.12(C), it does not appear that the FBI is claiming an exemption under 5 U.S.C. § 552(b)(7)(E), usually referred to as Exemption 7E, which is the FOIA section that protects from disclosure techniques and procedures for law enforcement investigations.

motion to intervene that “[d]isclosure of the written and electronic FBI-generated material under the Missouri Sunshine Law creates various issues of unwarranted invasions of privacy, as well as disclosure of federal property not in the control of a state and/or local entity.”

Prior to the trial of this matter, the ACLU timely filed a request for opinion and findings of fact, pursuant to Missouri Supreme Court Rule 73.01(c), specifically requesting that this Court “issue an opinion containing a statement of the grounds for its decision and findings of fact on whether Defendant is a ‘public governmental body;’ the records at issue are ‘public’ under Missouri law; and what, if any, statutory exemptions apply to the public record, and the factual basis for any such exemptions.”

The parties, through their respective counsel, agreed to consolidate ACLU’s motion for preliminary injunction with a trial on the merits of the facts of this matter. The parties also submitted pretrial legal briefs and memoranda. A bench trial was held on August 8, 2014, with evidence adduced and the matter was submitted to the Court.

Trial

During the trial of this matter, ACLU submitted two evidentiary exhibits to the Court. The attorneys for St. Louis County and the FBI did not object to these exhibits and they were received by the Court as evidence. ACLU’s first exhibit, *ACLU Exhibit 1*, is a copy of a letter sent by M.A. to St. Louis County that requested a copy of the report prepared by the FBI regarding embezzlement of county funds by E.M. ACLU’s second exhibit, *ACLU Exhibit 2*, is a copy of a letter sent by County Counselor P.R. to M.A. as a reply to M.A.’s letter. Relevant parts of ACLU’s exhibits are attached and incorporated

by reference into this order and judgment.

Also at trial the parties stipulated to exhibits submitted by St. Louis County and the FBI, and these exhibits were received by the Court as evidence. ⁴ In its exhibit, St. Louis County submitted St. Louis County Ordinance No. 24,637 (2011), which relevant parts are attached as *St. Louis County Exhibit A* and incorporated by reference into this order and judgment.

The FBI's exhibit is a declaration by FBI Task Force Officer J.C. This exhibit is also attached as *FBI Exhibit B* and incorporated by reference into this order and judgment.

During the trial, the parties did not present any witnesses for sworn testimony and did not present the E.M. records for this Court's judicial review or in camera inspection. After the parties' exhibits were received into evidence, this matter was submitted to the Court for its ruling.

The Court, being advised in the premises, enters its findings of fact and conclusions of law as follows:

Findings of Fact

On July 2, 2014, M.A., an ACLU program associate, mailed a letter to the custodian of records of St. Louis County that requested under the Missouri Sunshine Law "stored" or "retained" documents that were provided by or prepared by the FBI in connection with its investigation of E.M. In a July 7, 2014 reply letter, St. Louis County Counselor P.R. declined to disclose the E.M. records to M.A. until such time the FBI

⁴ ACLU did not object to the admission into evidence St. Louis County's and FBI's exhibits, effectively waiving any objection or request for relief under § 610.023 RSMo.

authorizes the disclosure. Also, P.R. stated that the ACLU may make requests for those records directly to the FBI under the FOIA.

J.C., a task force officer to the St. Louis, Missouri field office of the FBI, stated in a sworn declaration that the E.M. records are spreadsheets that summarize bank records of E.M.'s spending of funds from St. Louis County that were prepared with the law enforcement purpose to determine whether there were other persons involved in the crime and whether E.M. purchased any assets which could be forfeited under federal law and returned to St. Louis County. These records also contain the names of innocent third parties who unknowingly received stolen funds from E.M. J.C. further stated that "[a]nyone reviewing these spreadsheets would be able to determine what types of financial transactions and spending patterns are of special interest to the FBI during criminal investigations."

Conclusions of Law

In considering whether St. Louis County should disclose the E.M. records to the ACLU, it must be determined: (1) whether St. Louis County is a public governmental body; (2) whether the E.M. records are "public records" under the Missouri Sunshine Law; and (3) whether there is a statutory exemption that allows St. Louis County to not disclose the E.M. records to the ACLU. ⁵ See *News-Press & Gazette Co. v. Cathcart*, 974 S.W.2d 576 (Mo. App. W.D. 1998).

⁵ These are the three issues requested in ACLU's Rule 73.01(c) request for findings of fact and conclusions of law.

Public Governmental Body

From the evidence and legal memoranda filed in this matter, it is undisputed that St. Louis County is a public governmental body. The Missouri Sunshine Law defines “public governmental body” as including “any legislative, administrative or governmental entity created by the constitution or statutes of this state[.]” § 610.010 (4) R.S.Mo. St. Louis County was created by statute and is recognized as an “existing county” by the Missouri constitution as a legal subdivision of the state. Mo. Constitution article VI, § 1 (1945). Therefore, as a matter of law, St. Louis County is a public governmental body as defined under Missouri Sunshine Law.

Public Records Under the Sunshine Law

The E. M. records maintained by St. Louis County are “public records” under the Missouri Sunshine Law. The evidence submitted in this matter adequately showed that St. Louis County, a public governmental body, retained, used, and continues to be in possession of the E. M. records that it used for its investigation of E. M. , and thus these records are “public records” under Missouri law.

The Missouri Sunshine Law specifically defines “public record” as “*any record, whether written or electronically stored, retained by or of any public governmental body[.]*” § 610.010 (6) RSMo. The word “retained” is not defined under this law and must be given its ordinary meaning, which is “to hold or continue to hold in possession or use; continue to have, use, recognize, or accept: maintain in one’s keeping” *Hemeyer v. KRCG-TV*, 6 S.W.3d 880, 881 (Mo. Banc 1999), citing Webster’s Third New International Dictionary, 1938 (1976).

Under this ordinary meaning of “retained,” it is obviously clear that St. Louis County, a public governmental body, retained, used, and continues to be in possession of the E. M. records such that these records are deemed, as a matter of law, public records under the Missouri Sunshine Law.

The § 610.021 (14) RSMo. Statutory Exemption

§610.021 (14) RSMo. of the Missouri Sunshine Law is a statutory exemption that authorizes St. Louis County to close and therefore not disclose parts of the E. M. records to the ACLU, *only to the extent of protecting the identities of third parties against unwarranted invasion of personal privacy.*

The Missouri Sunshine Law exempts from disclosure records that are protected by law. § 610.021 (14) RSMo. of that law states that, “[e]xcept to the extent disclosure is otherwise required by law, a public governmental body is authorized to close . . . records . . . *to the extent they relate to . . .* (14) [r]ecords which are protected from disclosure by law.” 5 U.S.C. § 552(b)(7)(C) of the FOIA is the “law” that protects the E. M. records from disclosure only to the extent of protecting the identities of third parties against unwarranted invasion of personal privacy.

5 U.S.C. § 552(b)(7)(C) protects from disclosure “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy . . .” Under this section, individuals have an obvious privacy interest in not having their personal information disclosed. *Citizens for Responsibility and Ethics in*

Washington v. U.S. Department of Justice, 746 F.3d 1082, 1091 (D.C. Cir. 2014). Also, names and identifying information of third parties are presumptively exempt from disclosure. *Id.*, at 1096, citing *Schrecker v. United States Department of Justice*, 349 F.3d 657, 666 (D.C. Cir. 2003). However, when considering exemptions under this section, courts must balance the privacy interest against the public interest in disclosing *what the government is up to*. *Id.*, at 1091.

The evidence submitted in this case reveals that the E.M. records contain the names of a number of third party individuals that should be exempted from disclosure under 5 U.S.C. § 552(b)(7)(C). Task Force Officer J.C.’s declaration stated that the records contain “names of a number of third party individuals who received stolen funds from St. Louis County through E.M. apparently without knowledge that the funds were stolen.” In balancing the interests, the Court finds that the privacy interests of these third party individuals outweigh the public interest in disclosure, and that the information regarding the third parties in the E.M. records are exempted from disclosure under 5 U.S.C. § 552(b)(7)(C) of the FOIA. Any records disclosed to the ACLU must therefore be redacted to exclude the names and identifying information of the third parties mentioned in Officer J.C.’s Declaration. See § 610.024.1 RSMo. 6

Declaration

Order and Judgment

⁶ This statute states that “[i]f a public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public governmental body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

ACCORDINGLY, because of the foregoing reasons, the FBI's objection to the ACLU's petition is sustained in part to the extent of disclosure of E.M. records that contain exempted materials of names and identifying information of third party individuals, and further, the ACLU's petition for injunction is sustained in part to the extent the E.M. records only disclose nonexempt material. Pursuant to § 610.024.1 RSMo., St. Louis County is hereby ordered to redact names and identifying information of third party individuals from the E.M. records and make the nonexempt material in those records available to the ACLU for examination and copying.

Furthermore, the Court declares that St. Louis County acted in good faith and did not purposely, or in the alternative, knowingly, violate the Missouri Sunshine Law. Unless otherwise noted, FBI's objection and ACLU's petition are denied in all other respects.

SO ORDERED:

This ___ day of September, 2014

Judge DAVID LEE VINCENT III
St. Louis County Circuit Court
Division 9

ACLU, et al., v. County of St. Louis, et al., 

cc: Attorneys of Record