

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI

ST. LOUIS POST DISPATCH, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2422-CC00778
	)	
ST. LOUIS BOARD OF POLICE	)	
COMMISSIONERS, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANT’S REPLY IN SUPPORT OF DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT**

Defendants, the St. Louis Board of Police Commissioners and Barbara Manuel-Crossman (collectively, “Defendants”), by and through undersigned counsel, hereby submit their *Reply in Support of Defendants’ Motion for Summary Judgment*:

**ARGUMENT**

**I. Defendants properly controverted Plaintiffs’ Statements of Uncontroverted Facts.**

Missouri Supreme Court Rule 74.04(c)(1) states that a Statement of Uncontroverted facts must be supported “with specific references to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue as to such facts.”

Here, Plaintiffs’ Statement of Uncontroverted Material Facts (“SUMF”) 15–18 referenced an email chain between Plaintiff Barker and Defendant Manuel-Crossman citing only Plaintiff Barker’s affidavit as its support. The referenced email

chain was not provided to Defendants.<sup>1</sup> Defendants believe this email chain itself, not mere statements in an affidavit, is required to support summary judgment. Specifically, the email chain itself, not a statement in an affidavit, is the best evidence of the email chain because “the operative terms or content” of those emails “are at issue” in the SUMFs. *Hale & Hale Ltd. v. Arnold and Jeanie Pettit Declaration Trust*, 298 S.W.3d 104, 108 (Mo. App. W.D. 2009). “Only evidence that is admissible at trial can be used to sustain or avoid summary judgment.” *United Petroleum Serv., Inc. v. Piatchek*, 218 S.W.3d 477, 481 (Mo. App. E.D. 2007) (citing *Muegler v. Berndsen*, 964 S.W.2d 459, 463 (Mo. App. E.D. 1998)). Moreover, Defendants controverted SUMF 15 and 17 with an affidavit from Barbara Manuel-Crossman. *Def. Resp. to SUMF*, ¶¶ 15, 17. Rule 74.04(c)(2) permits responses to have specific references to affidavits. Plaintiffs cannot seek to preclude Defendants from using affidavits to contravene Plaintiffs SUMFs, while simultaneously using affidavits to support their own SUMFs. Therefore, Defendants properly controverted Plaintiffs’ SUMFs 15–18.

Similarly, Defendants properly controverted Plaintiff’s SUMFs 23–27. While Plaintiffs claim that SUMFs 23–27 “merely establish[] what Attorney Roland communicated to Ms. Manuel-Crossman in that email[,]” *Pls Reply*, p. 13–17, Defendants maintain that the contents of those emails were legal conclusions. Whether the emails exist is a factual allegation, but the contents of the emails contain objectionable legal conclusions. Legal conclusions cannot be pled as ultimate facts in

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<sup>1</sup> Defendants note that Plaintiffs’ counsel subsequently contacted Defendants’ counsel while preparing the Plaintiffs’ reply, providing the email chain.

Missouri and “cannot support the entry of summary judgment.” *Jordan v. Peet*, 409 S.W.3d 553, 560 (Mo. App. W.D. 2013). The legal opinions of Plaintiffs’ counsel are not factual allegations, and placing those opinions in an email does not transform obvious legal conclusions into uncontroverted material facts. Therefore, Defendants properly controverted Plaintiffs’ SUMFs 23–27.

Finally, Defendants properly controverted SUMF 38. In their reply, Plaintiffs claim that “SUMF ¶ 38 is accurate—it seeks to establish that the Redaction Log did not identify any *statute* that authorized the redaction of the information the Defendants had withheld from the Plaintiffs.” *Pls. Reply*, p. 17. This subsequent explanation of SUMF 38 is factually inaccurate and misleading. The Redaction Log identifies §§ 610.100.1(4) and (5) and *State ex rel. Goodman v. St. Louis Bd. of Police Comm’rs*, 181 S.W.3d 156 (Mo. App. E.D. 2005) as the bases for redaction. SUMF 38, however, claims that “[t]he Redaction Log only identifies two statutes[.]” This SUMF is factually inaccurate and misleading because the Redaction Log also identifies *Goodman*, and *Goodman* interprets one of the statutes identified in the Redaction Log: § 610.100.1(4). As Defendants previously stated, a citation to *Goodman*, taken together with the citation to the statute *Goodman* interprets, provides helpful context for the *statutory* grounds that Defendants cited in their Redaction Log. *Def. Resp.*, p. 20–21. Plaintiffs’ reply to Defendants’ response to SUMF is predicated on Plaintiffs’ counsel’s differing legal opinion on *Goodman*. A differing legal opinion does not constitute a failure by Defendants to properly controvert Plaintiffs’ SUMFs. Therefore, Defendants properly controverted Plaintiffs’ SUMF 38.

**II. Plaintiffs misconstrue §§ 610.100.1(4), 610.100.1(5), and *State ex rel. Goodman*.**

Plaintiffs misconstrue the central issue in this case: “whether statutory provisions in the Sunshine Law protect the disclosure of the information redacted by the Police Department[.]” *State ex rel. Goodman v. St. Louis Bd. of Police Com’rs*, 181 S.W.3d 156, 159 (Mo. App. E.D. 2005). Contrary to Plaintiffs’ assertions, Defendants have consistently maintained that the records at issue are incident reports. What Defendants also argue, however, is that Defendants may redact portions of those incident reports consistent with the Sunshine Law.

*Goodman* expressly held that *only* “information specifically delineated in section 610.100.1(4) is considered an open record pursuant to section 610.100.2.” 181 S.W.3d at 160. But nothing in *Goodman* suggests that redacting portions of incident reports magically transform those redacted portions into “investigative reports” or any other record under the Sunshine Law. Redacting part of a record does not fundamentally alter the nature of a document. A redacted incident report is still an incident report, and Plaintiffs have not produced any authority to suggest otherwise.

Contrary to Plaintiffs’ assertion that Defendants “made little effort to dispute” the Plaintiffs’ analysis of § 610.100.1(4) and (5), Defendants dedicated an entire section of analysis to this distinction. *Def. Resp.*, 18–19. The plain language of § 610.100.1(5) clearly states that an investigative report is “a record, *other than an arrest or incident report*[.]” Incident reports cannot be investigative reports as a matter of law. Likewise, redacted portions of incident reports do not become “investigative reports”; redacted incident reports are still incident reports. Plaintiffs’

argument to the contrary is nothing more than avoidance of appellate precedent that hurts Plaintiffs' case.

Plaintiffs' attempt to distinguish different incident reports in order to bring them within the definition of investigative report is misplaced. Plaintiffs admit in their response to the Defendants' Statement of Uncontroverted Facts ("SUF") that the records contain "the same case number[.]" "the same date, time, and location[.]" *Pls. Resp. to SUF*, ¶ 13. All records at issue are incident reports, subject to redactions, pursuant to § 610.100.1(4). All records have been turned over to Plaintiffs, subject to lawful redactions. Yet, Plaintiffs again claim in their reply that there is some other record floating out there in the ether that Defendants refuse to turn over. *Pls. Reply* at 19 ("[t]here appear to be at least two of these records at issue, and possibly more."). Plaintiffs offer no evidence to support their conspiratorial fervor that there are other records that Defendants have yet to turn over. If Plaintiffs are not satisfied with a sworn affidavit from the Custodian of Records that no more records exist, then there is nothing more Defendants can do to satisfy Plaintiffs. This Court should reject Plaintiffs' misconstruction of the Sunshine Law and evidence by innuendo.

Finally, Plaintiffs are incorrect that police officer narratives are the only redactions made by Defendants at issue. In the five-page incident report, *Ex. A*, the first two pages of redactions are witness information, specifically names, Social Security numbers, dates of birth, addresses, and phone numbers. These redactions are squarely within the confines of *Goodman* that "the license plate numbers, addresses, telephone numbers, and month and date of birth (but not year) of the

parties to the accident are not part of the exhaustive definition of an incident report.” *Goodman*, 181 S.W.3d at 160. Despite this, Plaintiffs asks this Court to order the Defendants to provide “unredacted copies of the Supplemental Report and the five-page version of the Incident Report.” *Petition*, p. 22, ¶ 12. Releasing a fully unredacted incident report would put private and sensitive information about witnesses into the public forum. Protecting this information is authorized by *Goodman*, 181 S.W.3d at 160, and founded in sound public policy. See §§ 509.520.1(1) and (5) (requiring parties to redact sensitive witness information from court filings); also Missouri Supreme Court Operating Rule 2.02(c)(1) and (3). Eroding witness protections will make witnesses reluctant to come forward with information about incidents, crimes, or other matters. Consequently, even if this Court finds that the police officer narratives should be unredacted—which it should not—Defendants respectfully request this Court uphold the redactions of witnesses’ private information.

Therefore, Defendants are entitled to summary judgment because Missouri law allows Defendants to redact incident reports. Defendants respectfully ask this Court to deny Plaintiffs’ motion for summary judgment and grant Defendants’ motion for summary judgment.

**III. Defendants did not commit a knowing or purposeful Sunshine Law violation because Defendants’ redactions were based on a good faith interpretation of the law.**

As noted in Defendants’ initial memorandum, a “knowing” violation of the Sunshine Law “requires proof that the public entity knew that its failure to produce

the report violated the Sunshine Law.” *Laut v. City of Arnold*, 491 S.W.3d 191, 193 (Mo. banc 2016) (citing § 610.027.3). A “purposeful” violation of the Sunshine law is “a ‘conscious design, intent, or plan’ to violate the law and [the public entity] d[id] so ‘with awareness of the probable consequences.’” *Id.* (quoting *Spradlin v. City of Fulton*, 982 S.W.2d 255, 262 (Mo. banc 1998)). “[B]eing wrong is not the same as knowing one is violating the law or acting purposely to violate the law.” *Id.* at 201 (citing *Spradlin*, 982 S.W.2d at 263; *R.L. Polk & Co. v. Missouri Dep’t of Revenue*, 309 S.W.3d 881, 886-87 (Mo. App. W.D. 2010)).

In their reply memorandum, Plaintiffs completely ignore the knowing or purposeful analysis. Yet, Plaintiffs ask this Court to “grant them all the relief they have requested[.]” *Pls Reply* at 23. And in their Petition, Plaintiffs ask this Court to declare a knowing and purposeful violation of the Sunshine Law and award Plaintiffs attorney’s fees and costs of litigation. *Petition*, p. 22, ¶¶ 10, 11, 13. An award of civil penalties, costs of litigation, and attorney’s fees under the Sunshine Law requires a showing of a knowing or purposeful violation by a preponderance of the evidence. §§ 610.027.3; 610.027.4. Additionally, “the determination of whether a public governmental body knowingly or purposely violated the Sunshine Law is informed by this Court’s recognition that portions of the Sunshine Law that allow for imposition of a civil penalty and an award of attorney fees and costs are penal in nature and must be strictly construed.” *Strake v. Robinwood W. Cmty. Improvement Dist.*, 473 S.W.3d 642, 645 n.5 (Mo. banc 2015) (citing *Spradlin*, 982 S.W.2d at 262).

Plaintiff's entire argument that Defendants committed a knowing and purposeful violation is predicated upon their assertions that Defendants were "amply informed" of Plaintiff's counsel interpretation of § 610.100.1(4) and *Goodman*. Defendant Manuel-Crossman, however, was also amply informed of SLMPD legal counsel's interpretation of § 610.100.1(4) and *Goodman*. *SUF*, ¶ 14; *Manuel-Crossman Affidavit*, ¶ 12. The differing legal opinion of Plaintiffs' counsel possesses no authority and creates no obligation for Defendants to reinterpret their redaction process, especially a redaction process vetted by Defendants' own legal counsel. *Id.* While Plaintiffs and Defendants have different interpretations of the Sunshine Law, there is no evidence that Defendants knowingly or purposefully flaunted their statutory obligations.

Plaintiffs attempt to remedy their lack of evidence by relying on *Strake*, 473 S.W.3d at 645. But this case is fundamentally different from *Strake*. In *Strake*, counsel informed the public governmental body that it had to disclose a settlement agreement under § 610.021. *Id.* Counsel then advised the public governmental body to ignore its obligation under the Sunshine Law to avoid exposing the district to "damages for breach of contract' due to the agreement's confidentiality clause." *Id.* Unlike the public governmental body in *Strake*, Defendants were never advised by counsel to ignore the Sunshine Law. Defendants believed they had authority under § 610.100.1(4) and *Goodman* to redact portions of the incident reports. Consequently, even if Defendants' belief was wrong—which it was not—being wrong does not in and

of itself make any violation knowing or purposeful. *Laut*, 491 S.W.3d at 201; *Spradlin*, 982 S.W.2d at 263; *R.L. Polk*, 309 S.W.3d at 886-87.

Because Plaintiffs completely ignored the knowing or purposeful analysis and because there is no evidence of a knowing or purposeful violation, this Court should deny Plaintiffs' motion for summary judgment and grant Defendants' motion for summary judgment.

### CONCLUSION

Defendants respectfully request that this Court enter an order sustaining Defendants' motion for summary judgment, entering summary judgment in their favor, denying Plaintiffs' motion for summary judgment, denying Plaintiffs all the relief they requested, and for such other relief as this Court deems just and proper.

Respectfully Submitted,

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**Certificate of Service**

I certify that I filed this document and any attachments using the Court's electronic filing system on December 1, 2025. Counsel of record for all other parties will receive electronic service.

*/s/ Sean M. McDowell*  
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