IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

ST. LOUIS POST-DISPATCH, ET AL., Plaintiffs, v. ST. LOUIS METROPOLITAN POLICE DEPARTMENT, ET AL., Defendants.	Case No. 2422-CC00778

RESPONSE MEMORANDUM OPPOSING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

RESPONSE TO DEFENDANTS' STATEMENT OF UNCONTROVERTED FACTS

1. On January 19, 2024, Plaintiff Jacob Barker submitted a Sunshine Law request to Defendant Barbara Manuel-Crossman, the Board's Custodian of Records. ***Manuel-Crossman Affidavit*, ¶ 1–2.**

RESPONSE:

Admitted.

2. Plaintiff Barker requested incident reports and investigatory reports related to A.C., a man who fell from a building on Washington Avenue. ***Manuel-Crossman Affidavit*, ¶ 3.**

RESPONSE:

Admitted that Plaintiff Barker requested incident reports and investigative reports related to a May 30, 2020 fatal fall from a building in the 1500 block of Washington Avenue. Denied that Barker's request made reference to the initials "A.C.," or that the request otherwise referenced Antoine Compton, the individual named as the victim in the relevant documents. *See* Pl. Ex. 1.

3. On January 22, 2024, Defendant Manuel-Crossman provided Plaintiff Barker with a two-page version of "St. Louis Metropolitan Police Incident Report CN 20-022974" (hereinafter "Incident Report"). ***Manuel-Crossman Affidavit*, ¶ 4.**

RESPONSE:

Admitted.

4. A true and accurate copy of the two-page Incident Report provided by Defendant is attached as ***Exhibit A ("Ex. A")***. ***Manuel-Crossman Affidavit*, ¶ 4.**

RESPONSE:

Admitted. The Plaintiffs note that the document the Defendants have submitted as "Exhibit A" appears to be identical to the document the Plaintiffs have already submitted as "Exhibit 2." *See* Pl. Ex. 2.

5. **Exhibit A** includes information of the date, time, the location, name of the victim, and an "Incident Summary" outlining the immediate facts and circumstances of the incident. ***Ex. A; Manuel-Crossman Affidavit*, ¶ 5.**

RESPONSE:

Admitted that the referenced document contains the date, time, location, name of the victim, and a section labeled "Incident Summary." Denied that the "Incident Summary" contains all relevant facts and circumstances related to the incident at issue because at least one officer prepared a written narrative that, upon information and belief, contains additional immediate facts and circumstances related to the incident and the Police Department's investigation of the incident.

6. On March 27, 2024, Defendant Manuel-Crossman provided Plaintiff Barker with additional documents. ***Manuel-Crossman Affidavit*, ¶ 6**.

RESPONSE:

Admitted.

7. Defendant Manuel-Crossman provided Plaintiff Barker with a five-page version of the Incident Report that included various redactions. ***Manuel-Crossman Affidavit*, ¶ 7.**

RESPONSE:

Admitted.

8. A true and accurate copy of the five-page Incident Report provided by Defendant is attached as ***Exhibit B ("Ex. B"). Manuel-Crossman Affidavit*, ¶ 7.**

RESPONSE:

Admitted. The Plaintiffs note that the document the Defendants have submitted as "Exhibit B" appears to be nearly identical to the document the Plaintiffs have already submitted as "Exhibit 4," other than the fact that the Defendants' version of this document is in black and white and appears to be a scanned copy of a printed version of the original document, whereas the Plaintiffs' version of this document is in color and is a PDF copy of the original electronic version of this document. *See* Pl. Ex. 4.

9. ***Exhibit B*** includes information of the date, time, the location, name of the victim, and an "Incident Summary" outlining the immediate facts and circumstances of the incident. ***Ex. B*; *Manuel-Crossman Affidavit*, ¶ 8.**

RESPONSE:

Admitted that the referenced document contains the date, time, location, name of the victim, and a section labeled "Incident Summary." Denied that the "Incident Summary" contains all relevant facts and circumstances related to the incident at issue because at least one officer prepared a written narrative that, upon information and belief, contains additional immediate facts and circumstances related to the incident and the Police Department's investigation of the incident.

10. Alongside Ex. B, Defendant Manuel-Crossman provided Plaintiff Barker a one-page "Redaction Log." ***Manuel-Crossman Affidavit*, ¶ 9.**

RESPONSE:

Admitted.

11. A true and accurate copy of the Redaction Log is attached as ***Exhibit C***. ***Manuel-Crossman Affidavit*, ¶ 9.**

RESPONSE:

Admitted. The Plaintiffs note that the document the Defendants have submitted as "Exhibit C" appears to be identical to the document the Plaintiffs have already submitted as "Exhibit 6," other than the fact that the Defendants' version of this document is in black and white and appears to be a scanned copy of a printed version of the original document, whereas the Plaintiffs' version of this document is in color and is a PDF copy of the original electronic version of this document. *See* Pl. Ex. 6.

12. ***Exhibit C ("Ex. C")*** identifies §§ 610.100.1(4); 610.100.2(1) 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 legal bases that the Board relied on in redacting information in the incident report. ***Ex. C; Manuel-Crossman Affidavit*, ¶ 10**.

RESPONSE:

Admitted that the referenced document makes reference to §§ 610.100.1(4), 610.100.2(1), and *State ex rel. Goodman v. St. Louis Bd. of Police Comm'rs*, 181 S.W.3d 156 (Mo. App. E.D. 2005). Denied that the reference to these statutes and this case satisfy the Defendants' obligation to cite a statute that authorizes them to withhold or redact police officer narratives

reflecting the officer's observations and investigation in responding to a reported incident.

13. There were no other reports, including no other investigative reports related to A.C., a man who fell from a building on Washington Avenue. ***Manuel-Crossman Affidavit,*** **¶ 11.**

RESPONSE:

Denied. The Defendants have already admitted the existence of a two-page document labeled "St. Louis Metropolitan Police Supplemental Report," dated June 1, 2020, which identifies the officer who submitted it and her supervisor/commander, each of which names are different from those in similar fields in the two- and five-page versions of the Incident Report. *See* Pl. SUMF, ¶¶ 33-35; Def. Resp. to SUMF, ¶¶ 33-35 (stating that the Plaintiff's statements were "Uncontroverted"); Pl. Ex. 5. This Supplemental Report indicates that it relates to "CN 20-022974," which is the same case number that appears on both versions of the Incident Report. *Compare* Pl. Exs. 2 and 4 *with* Pl. Ex. 5; Barker Aff., ¶¶ 24-26. It also lists the same date, time, and location as is listed in the two- and five-page versions of the Incident Report. *Compare* Pl. Exs. 2 and 4 *with* Pl. Ex. 5. The Defendants also redacted the substance of this "Supplemental Report." *See* Pl. Ex. 5. Furthermore, whether this document or any other document retained by the Defendants constitutes an "investigative report" is a question of law that this Court has been called upon to resolve and, thus, a

statement that there were no "investigative reports" is a legal conclusion that cannot be pleaded as a material fact and cannot support the entry of summary judgment. *Jordan v. Peet*, 409 S.W.3d 553, 560 (Mo. App. W.D. 2013).

14. The disclosure of all reports, including the incident reports identified as Exhibits A and B, has been and continues to be conducted with the legal advice of SLMPD's in-house counsel. ***Manuel-Crossman Affidavit,*** **¶ 12.**

RESPONSE:

The Plaintiffs lack any personal knowledge as to whether the Defendants' in-house counsel advised them in regard to the requirements of the Sunshine Law in regard to the Plaintiffs' requests. As such the Plaintiffs cannot controvert this allegation. That said, the allegation in this statement cannot be considered to be a material fact because the Missouri Supreme Court has held that the fact an attorney has provided advice regarding a public governmental body's responses to a Sunshine Law request "does not negate [the government's] knowledge of its obligations under the Sunshine Law." *Strake v. Robinwood West Community Improvement Dist.*, 473 S.W.3d 642, 646 (Mo. banc 2015).

ARGUMENT

This case raises the question of whether the Sunshine Law allows law enforcement agencies to withhold from the public information about (1) which officers responded to a reported incident and (2) what those officers observed in the course of

their initial response to that reported incident. Although the Sunshine Law expressly states that an "incident report" is always an open public record and that an "investigative report" is an open public record after the relevant investigation becomes inactive, the Defendants are asking the Court to hold that a law enforcement agency can permanently shield certain officers and their written comments about potential crime scenes from public scrutiny as long as the agency decides to attach the officers' narratives to a document labeled "incident report," even though the agency contends that the narrative itself is statutorily excluded from the Sunshine Law's definition of "incident report."

The Defendants' memorandum supporting their cross-motion for summary judgment correctly stated the legal standard for a trial court weighing motions for summary judgment. It also correctly stated the standard for interpreting statutory provisions. But because the Defendants completely ignored § 610.011, RSMo.,[1] they failed to properly apply the latter standard when it comes to interpreting § 610.100. Applying the provisions of § 610.100 in accordance with the liberal interpretation mandated by § 610.011, this Court must grant summary judgment in favor of the Plaintiffs because police officer narratives describing their actions and observations when responding to an incident report are either "incident reports" or "investigative reports" and, thus, under the facts of this case are open public records that the Defendants were obliged to produce to the Plaintiffs.

[1] All statutory citations are to the current version of the Revised Statutes of Missouri, unless otherwise indicated.

I. The Defendants failed to properly controvert any of the Plaintiffs' Statements of Uncontroverted Material Facts.

Rule 74.04(c)(1) requires a party moving for summary judgment to submit statements of material facts as to which the movant claims there is no genuine dispute, and to support these statements with citations to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue for trial. Even taking into account that in the context of summary judgment motions courts review the record in the light most favorable to the non-moving party, "facts contained in affidavits or otherwise in support of a party's motion are accepted as true unless contradicted by the non-moving party's response to the summary judgment motion." *Green v. Fotoohighiam*, 606 S.W.3d 113, 116 (Mo. banc 2020) (citing *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 452-53 (Mo. banc 2011)) (emphasis added). "[T]he non-movant must support denials with specific references to discovery, exhibits, or affidavits demonstrating a genuine factual issue for trial[;] [f]acts not properly supported under Rule 74.04(c)(2) or (c)(4) are deemed admitted." Id. (citing *Cent. Trust & Inv. Co. v. Signalpoint Asset Mgmt., LLC*, 422 S.W.3d 312, 320 (Mo. banc 2014)).

The Plaintiff complied with Rule 74.04(c)(1), submitting forty-two statements of uncontroverted material facts and supporting each of those statements with citations to the pleadings, discovery, exhibits, and affidavits. A response to a statement of uncontroverted material fact that does not comply with Rule 74.04(c)(2) with respect to a numbered paragraph is an admission of the truth of that numbered paragraph. Rule 74.04(c)(2). Although the Defendants attempted to deny a number

of the Plaintiff's statements of uncontroverted material fact, many of these denials either did not meet the substance of the specific factual allegations or otherwise were not supported by references to discovery, exhibits, or affidavits as required by Rule 74.04(c)(2). The Defendants admitted that paragraphs 1-14, 19-22, 28-37, 39, and 42 are uncontroverted. *See* Def. Resp. to SUMF, ¶¶ 1-14, 19-22, 28-37, 39, 42. The Plaintiffs will address below the Defendants' efforts to dispute the remaining paragraphs of the Plaintiffs' Statement of Uncontroverted Material Facts.

SUMF ¶ 15

SUMF ¶ 15 asserts that on the day after January 23, 2024, Mr. Barker sent Ms. Manuel-Crossman a message in which he invoked his right under § 610.023.4 for "a written statement of the grounds for denial of the investigative records of a closed investigation," citing to Mr. Barker's affidavit. The Defendants disputed this statement on the basis that it constituted a "legal conclusion" that could not support summary judgment and added its own claim that "there are no investigative records responsive to Plaintiff Barker's Sunshine Law request." Def. Resp. to SUMF, ¶ 15. SUMF ¶ 15 merely asserts that Mr. Barker was demanding "a written statement of the grounds for denial of the investigative records of a closed investigation"—these were, in fact, the words he used in the message he sent to Ms. Manuel-Crossman. The Court should also note that he sent this message because (as shown by SUMF ¶ 14) he had specifically asked Ms. Manuel-Crossman whether there were any investigative reports related to Incident Report CN 20-022974 and she *had not answered his question*. The Defendants have offered in response their own legal

conclusion that they did not have any investigative records—a position the Defendants *did not* take at the time, *see* SUMF ¶ 14 and Def. Resp. to SUMF ¶ 14, and this is one of the ultimate questions this Court must resolve—but such a statement does not in any way contradict the words that Mr. Barker used in his message sent on January 23, 2024. Consequently, the Defendants have not properly presented a contradictory account of the fact the Plaintiffs asserted in SUMF ¶ 15.

SUMF ¶ 16

SUMF ¶ 16 asserts that on January 25, 2024, Ms. Manuel-Crossman sent a message in which she acknowledged the Police Department's obligation to provide "a written statement of the grounds" for denying a citizen's records request; this statement was supported by citation to Mr. Barker's affidavit. The Defendants purported that this statement was controverted on the basis that a statement must contain "specific references to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue as to such facts, noting that "no email message is provided in the affidavit referenced… by the Plaintiffs." Def. Resp. to SUMF, ¶ 16. The Defendant's response to Statement ¶ 16 did not contend that the statement was false, it did not dispute that the relevant paragraph of Mr. Barker's affidavit accurately quoted a message sent by Defendant Manuel-Crossman on the specified date, it did not offer any contradictory version of the facts alleged, and it did not cite any "pleadings, discovery, exhibits or affidavits" that would have called into question the truthfulness of the statement. Consequently, the Defendants have failed

to support their denial in the manner required by Rule 74.04(c)(2); as a matter of law, this fact is admitted.

SUMF ¶ 17

SUMF ¶ 17 asserts that the message Ms. Manuel-Crossman sent on January 25, 2024 did not deny that the Department retained "investigative records" responsive to Barker's request. The Defendants purported that this statement was controverted on the basis that a statement must contain "specific references to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue as to such facts, noting that "no email message is provided in the affidavit referenced… by the Plaintiffs." Def. Resp. to SUMF, ¶ 17. They also asserted that "there are no investigative records responsive to Plaintiff Barker's Sunshine Law request." *Id*. As was the case with their response to SUMF ¶ 15, this statement is merely a legal conclusion as to one of the ultimate questions this Court must resolve and the statement does not in any way address the substance of (much less contradict the assertion made in) SUMF ¶ 17. Consequently, the Defendants have not properly presented a contradictory account of the fact asserted in SUMF ¶ 17; as a matter of law, this fact is admitted.

SUMF ¶ 18

SUMF ¶ 18 asserts that Ms. Manuel-Crossman's January 25, 2024 message included the statement that the Defendants' "basis for denial has been provided to [the Plaintiffs]." This statement was supported by citation to Mr. Barker's affidavit. The Defendants purported that this statement was controverted on the basis that a

statement must contain "specific references to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue as to such facts, noting that "no email message is provided in the affidavit referenced… by the Plaintiffs." Def. Resp. to SUMF, ¶ 18. The Defendant's response to Statement ¶ 18 did not contend that the statement was false, it did not dispute that the relevant paragraph of Mr. Barker's affidavit accurately quoted a message sent by Defendant Manuel-Crossman on the specified date, it did not offer any contradictory version of the facts alleged, and it did not cite any "pleadings, discovery, exhibits or affidavits" that would have called into question the truthfulness of the statement. Consequently, the Defendants have failed to support their denial in the manner required by Rule 74.04(c)(2); as a matter of law, this fact is admitted.

SUMF ¶ 23

SUMF ¶ 23 states that the email Attorney Roland sent to Ms. Manuel-Crossman on March 19, 2024, asserted that "officer statements or narratives that might have been submitted in relation to the incident report" were public records and that the Defendants were required either to produce the records to Mr. Barker or to "identify the specific provision of law that the SLMPD is relying upon to justify the redaction/withholding of that information." The Defendants disputed this statement on the basis that it constituted a "legal conclusion" that could not support summary judgment. Def. Resp. to SUMF, ¶ 23. SUMF ¶ 23 merely establishes what Attorney Roland communicated to Ms. Manuel-Crossman in that email. It will be up to the Court to determine whether the *fact* of this communication is sufficient to establish

that the Defendants' decision to withhold via redaction the police officer narratives constituted a knowing or purposeful violation of the Sunshine Law, but the fact of the communication is not, by itself, a legal conclusion. Thus, the fact asserted in SUMF ¶ 23 is relevant and the Defendants have not properly controverted it; as a matter of law, the fact is admitted for the purpose of the Plaintiffs' motion for summary judgment.

SUMF ¶ 24

SUMF ¶ 24 states that the email Attorney Roland sent to Ms. Manuel-Crossman on March 19, 2024, pointed out that the relevant investigation appeared to be "inactive," under which circumstances the investigative records related to the event would be open public records under the Sunshine Law. The Defendants disputed this statement on the basis that it constituted a "legal conclusion" that could not support summary judgment. Def. Resp. to SUMF, ¶ 24. SUMF ¶ 24 merely establishes what Attorney Roland communicated to Ms. Manuel-Crossman in that email. It will be up to the Court to determine whether the *fact* of this communication is sufficient to establish that the Defendants' decision to withhold via redaction the police officer narratives constituted a knowing or purposeful violation of the Sunshine Law, but the fact of the communication is not, by itself, a legal conclusion. The Defendants also asserted that "there are no investigative records responsive to Plaintiff Barker's Sunshine Law request." *Id.* As was the case with their response to SUMF ¶¶ 15 and 17, this statement is merely a legal conclusion as to one of the ultimate questions this Court must resolve and the statement does not in any way

address the substance of (much less contradict the assertion made in) SUMF ¶ 24. Thus, the fact the Plaintiffs asserted in SUMF ¶ 24 is relevant and the Defendants have not properly controverted it; as a matter of law, the fact is admitted for the purpose of the Plaintiffs' motion for summary judgment.

SUMF ¶ 25

SUMF ¶ 25 states that the email Attorney Roland sent to Ms. Manuel-Crossman on March 19, 2024, noted that "[f]ailure either to produce these records or to provide a written statement identifying the statutory basis for withholding them is a violation of the Sunshine Law." The Defendants disputed SUMF ¶ 25 on the basis that it constituted a "legal conclusion" that could not support summary judgment. Def. Resp. to SUMF, ¶ 25. SUMF ¶ 25 merely establishes what Attorney Roland communicated to Ms. Manuel-Crossman in that email. It will be up to the Court to determine whether the *fact* of this communication is sufficient to establish that the Defendants' decision to withhold via redaction the police officer narratives constituted a knowing or purposeful violation of the Sunshine Law, but the fact of the communication is not, by itself, a legal conclusion. Thus, the fact asserted in SUMF ¶ 25 is relevant and the Defendants have not properly controverted it; as a matter of law, the fact is admitted for the purpose of the Plaintiffs' motion for summary judgment.

SUMF ¶ 26

SUMF ¶ 26 states that the email Attorney Roland sent to Ms. Manuel-Crossman on March 19, 2024, explained the consequences § 610.027 provides for knowingly or purposely violating the Sunshine Law. The Defendants disputed SUMF ¶ 26 on the basis that it constituted a "legal conclusion" that could not support summary judgment. Def. Resp. to SUMF, ¶ 26. SUMF ¶ 26 merely establishes what Attorney Roland communicated to Ms. Manuel-Crossman in that email. It will be up to the Court to determine whether the *fact* of this communication is sufficient to establish that the Defendants' decision to withhold via redaction the police officer narratives constituted a knowing or purposeful violation of the Sunshine Law, but the fact of the communication is not, by itself, a legal conclusion. Thus, the fact asserted in SUMF ¶ 26 is relevant and the Defendants have not properly controverted it; as a matter of law, the fact is admitted for the purpose of the Plaintiffs' motion for summary judgment.

<u>SUMF ¶ 27</u>

SUMF ¶ 27 states that when nearly a week had passed following the email Attorney Roland sent to Ms. Manuel-Crossman on March 19, 2024, Roland sent another email which included "a formal demand pursuant to § 610.023.4 for 'a written statement of the grounds' upon which" the Defendants were denying Mr. Barker's request. The Defendants disputed SUMF ¶ 27 on the basis that it constituted a "legal conclusion" that could not support summary judgment. Def. Resp. to SUMF, ¶ 27. SUMF ¶ 27 merely establishes what Attorney Roland communicated to Ms. Manuel-Crossman in that email. It will be up to the Court to determine whether the *fact* of

this communication is sufficient to establish that the Defendants' decision to withhold via redaction the police officer narratives constituted a knowing or purposeful violation of the Sunshine Law, but the fact of the communication is not, by itself, a legal conclusion. Thus, the fact asserted in SUMF ¶ 27 is relevant and the Defendants have not properly controverted it; as a matter of law, the fact is admitted for the purpose of the Plaintiffs' motion for summary judgment.

SUMF ¶ 38

SUMF ¶ 38 states that the Redaction Log the Defendants provided Mr. Barker "identifies only two statutes: § 610.100.1(4) and § 610.100.2(1). The Defendants assert that this statement is controverted because the Redaction Log "also identifies *State ex rel. Goodman v. St. Louis Bd. of Police Comm'rs*, 181 S.W.3d 156 (Mo. App. E.D. 2005)." 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. *State ex rel. Goodman* is a court opinion, not a statute. Section 610.023.4 requires public governmental bodies to provide a written statement that "shall cite *the specific provision of law* under which access is denied." The Plaintiffs contend that, as this phrase involves an exception to the Sunshine Law's general requirement of transparency, it must be strictly construed to require public governmental bodies to cite a specific *statute* that would justify denying access to information in an otherwise open public record. *See Chasnoff v. Mokwa*, 466 S.W.3d 571, 579 (Mo. App. E.D. 2015) (government entities may only withhold official records where a statute authorizes their closure). It will be up to the Court to decide

whether citation to a court opinion satisfies the statute's requirements, but SUMF ¶ 38 is indeed a relevant, factually accurate statement. Because the Defendants have not properly controverted the statement, as a matter of law the fact is established for the purpose of the Plaintiffs' motion for summary judgment.

II. The General Assembly has commanded courts to liberally construe the terms "record," "incident report," and "investigative report" in favor of the State's express public policy in favor of government transparency.

As noted in the Plaintiffs' initial memorandum—and completely ignored by the Defendants in their memorandum—the plain text of the Sunshine Law states:

> "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy." § 610.011.1.

So, insofar as the appellate courts require trial courts to determine and give effect to the legislative intent of the Sunshine Law, they compel this Court to "liberally construe" the terms of § 610.010 and § 610.100 in favor of the State's expressed public policy in favor of government transparency and to "strictly construe" any exceptions to that policy. *Malin v. Cole Cnty. Prosecuting Atty.*, 565 S.W.3d 748, 750 (Mo. App. W.D. 2019).

The definition of "public record" includes "any record, whether written or electronically stored, retained by or of any public governmental body[.]" The Missouri Supreme Court has held that, particularly in light of § 610.011, when courts apply the Sunshine Law they must interpret the word "record" expansively. *See Hemeyer v. KRCG-TV*, 6 S.W.3d 880, 882 (Mo. banc 1999); *see also Weeks v. St. Louis County*, 696

S.W.3d 333, 338-39 (Mo. banc 2024). As the Plaintiffs explained in their initial memorandum, this case involves a specific type of record—a written police officer narrative that describes their actions and observations as they responded to an incident. There appear to be at least *two* of these records at issue, and possibly more. The first is the narrative that was redacted on pages 2-5 of the five-page version of the Incident Report. *See* Pl. Ex. 4, pp. 2-5. The Defendants cannot dispute that this is a *separate, distinct* record retained by the Defendants because it was not initially attached to the two-page version of the Incident Report. *Compare* Pl. Ex. 2, p. 2, *with* Pl. Ex. 4, pp. 2-5. Because the Defendants kept this police officer narrative separate from the Incident Report at the time the Plaintiffs submitted their request, the Defendants cannot in good faith claim that they always treated this police officer narrative as *part of* the Incident Report, even if they belatedly decided to attach it to that report.

The second record is the narrative redacted from the separate Supplemental Report that the Defendants provided in response to the Plaintiffs' records request.[2] Although the Defendants have attempted to justify redacting this narrative by labeling it "Incident Report Only," it is not part of the primary Incident Report that

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[2] It is not clear to the Plaintiffs whether the narrative from the Supplemental Report is the same narrative that was later attached to the five-page version of the Incident Report. As noted, the officers referenced in the main Incident Report are different form the officers referenced in the Supplemental report. *Compare* Pl. Ex. 2, pp. 1-2 (mentioning Officers Vogt, Ogunjobi, Wooten, and Vuichard), *with* Pl. Ex. 5, p.1 (mentioning Officers Eatherton and Laughlin). The Plaintiffs assume the narrative redacted from the Supplemental Report is different from the narrative redacted from the five-page version of the Incident Report.

the Defendants initially produced to the Plaintiffs. It is an entirely separate document, as is evidenced by the fact that it was approved by a commander/supervisor (Douglas Eatherton) and an officer (Amanda M. Laughlin) who are not mentioned anywhere in the two- or five-page versions of the Incident Report.

The primary question this Court must resolve is whether either or both of these two records fall within the definition of "incident report" or "investigative report," as established in § 610.100. If either of these documents falls into *either* category it is an open public record that the Defendants are obliged to produce to the Plaintiffs and their decision to withhold the record by redaction violated the Sunshine Law.

In their initial memorandum in support of their motion for summary judgment the Plaintiffs thoroughly explored the definitions of and distinctions between "incident reports" and "investigative reports." *See* Pl. Memo. in Support of Plaintiff's MSJ, pp. 7-12. The Defendants made little effort to dispute the Plaintiffs' arguments, other that to suggest that the information conveyed in a police officer narrative was not sufficiently "immediate" to bring it within the phrase "immediate facts and circumstances surrounding the initial report of a crime or incident." *See* Def. Memo. Opp. Pl. MSJ, p. 16-17. But the Defendants' argument was designed to *minimize* the amount of transparency required by the Sunshine Law, utterly ignoring this Court's express statutory obligation to construe the requirements of the Sunshine Law liberally in favor of transparency. § 610.011.1. As this state's appellate courts have emphasized, "[t]he clear purpose of the Sunshine Law is to open official conduct to

the scrutiny of the electorate." *Chasnoff* at 580. This does—and must—include scrutiny of the manner in which police officers respond to and investigate incidents that have been reported to them, which is why the legislature provided that "incident reports" are always open public records and "investigative reports" are open public records after the relevant investigation becomes inactive. This level of transparency equips citizens to evaluate the manner in which law enforcement officers are doing their job. If, despite the legislature's express intent that citizens should be able to review "facts and circumstances surrounding the initial report of a crime or incident," law enforcement agencies are permitted to withhold the written narratives officers have prepared explaining their initial actions and observations in responding to a reported crime or incident, citizens are left to guess at what was seen, said, and done in regard to the reported crime or incident.

III. The issue in *State ex rel. Goodman* was limited and did not address the question in this case.

The Defendants hang almost their entire argument on *State ex rel. Goodman v. St. Louis Bd. of Police Comm'rs*, 181 S.W.3d 156 (Mo. App. E.D. 2005). Their reliance is misplaced. In that case the Court of Appeals made clear that "[t]he issue in this case is whether statutory provisions in the Sunshine Law protect the disclosure of… license plate numbers, addresses, telephone numbers, and month and date of birth (but not year) of the parties named in the incident reports." *Id.* at 159. The *State ex rel. Goodman* court determined that these discrete bits of information could be redacted because they were not part of a statutorily-defined "incident

report," regardless of whether they were contained in a document that a law enforcement agency labeled an "incident report." *Id.* at 160.

There are two reasons *State ex rel. Goodman* does not apply in this case. First, as noted in the Plaintiffs' initial memorandum, a police officer narrative does in fact contain "immediate facts and circumstances surrounding the initial report of a crime or incident"—the responding officers' first impressions of the scene and those persons present. This means such a narrative falls squarely within the statutory definition of "incident report." But if the Court determines that an officer narrative is *not* within that definition, then it is "a record, other than an arrest or incident report, prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties," which is the statutory definition for an "investigative report." § 610.100.1(5).

Above all the Plaintiffs want to impress upon the Court the extraordinary implications of the Defendants' position. The legislature shaped the definition of "investigative report" to ensure that once an investigation was inactive the public would have access to any record "other than an arrest or incident report" developed by law enforcement personnel "in response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties." The Defendants' position, however, is that even though they contend that a police officer narrative describing the officer's actions and observations following an incident report is *not* within the definition of an "incident report," a law enforcement agency

can permanently prevent the public from accessing that narrative by placing it in a document *labeled* incident report. That is exactly what the Defendants have done in this case. Plaintiffs' Exhibit 2 demonstrates that the Incident Report did not initially include the police officer narrative—at that time the narrative was a separate document that, by definition, would have been an "investigative report." But having incorporated the narrative into the five-page version of the Incident Report, the Defendants claim that it is *neither* an "incident report" nor an "investigative report."

Even more bizarrely, although Plaintiffs' Exhibit 5 is not part of the Incident Report, the Defendants contend that the officer narrative redacted from that document is also somehow something other than an "investigative report" as defined by the Sunshine Law. This is not only contrary to the clear intention of the legislature, it also an invitation to the precise sort of obfuscation and mischief the Sunshine Law was designed to prevent. The Court should conclude that the Sunshine Law requires the Defendants to produce the redacted police officer narratives to the Plaintiffs either because they fall within the statutory definition of "incident report" or, in the alternative, because they fall within the statutory definition of "investigative report."

CONCLUSION

For the foregoing reasons, the Plaintiffs ask the Court to enter summary judgment in their favor and grant them the relief they have requested.

Respectfully submitted,

/s/ *David Roland*_____________

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CERTIFICATE OF SERVICE

I hereby certify that an electronic copy of the foregoing was served upon all counsel of record by operation of the Court's electronic filing system on November 14, 2025.

/s/ *David E. Roland*