

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19th JUDICIAL CIRCUIT**

MISSOURI ALLIANCE)
FOR FREEDOM, Inc.)
)
Plaintiff,)
)
v.)
)
MISSOURI AUDITOR)
NICOLE GALLOWAY)
)
Defendant.)

Case No. 17AC-CC00365

**DEFENDANT MISSOURI AUDITOR NICOLE GALLOWAY'S
MOTION TO DISMISS**

Defendant Missouri Auditor moves this Court under Rule 55.27 to dismiss all counts in Plaintiff's Petition on the ground that Plaintiff's claim presents no justiciable controversy and that there are no genuine issues of material fact requiring a determination.

In support, Defendant attaches to this motion a statement of uncontroverted material facts, and files simultaneously a memorandum of law in support of this motion.

WHEREFORE, Defendant prays this Court dismiss Plaintiff's Petition and all claims thereunder.

Defendant's Statement of Uncontroverted Material Facts

1. The Missouri State Auditor's Office (SAO) is a "public governmental body" subject to the provisions of Chapter 610 RSMo (the Sunshine Law). Petition, ¶11.
2. Plaintiff sent to Defendant three pieces of correspondence requesting records under the Missouri Sunshine Law (Chapter 610 RSMo.). Exhibits 1, 5, and 7; Petition ¶¶2, 16, 37, and 43.
3. Defendant responded to each letter referred to in paragraph two above within three business days of receipt by Defendant, with each letter proposing a time frame for review and progress updates. Exhibits 2, 6, 8; Petition ¶¶20, 40, 46. Each progress and update letter was delivered as promised. Exhibits 2, 3, 4, 6, 8, 9, 16, 17, 18, 19.
4. Defendant followed its standard procedure in processing these records requests which was to first determine if there were records that could be produced within three business days (and to produce such records, if any), to send correspondence to the requestor within three business days with a time estimate for any needed review if ascertainable, otherwise to state that the process has started and provide a time period for updates. Transcript, pp. 12-13.
5. The documents produced in response to Plaintiff's requests that accompanied the three-day response letters (documents which could be produced within three business days of the request) were the subpoena requested in the May 2 request (with attached letters), and the audit requested in the May 8 request. Exhibits 2, 6, 8. Petition ¶¶20, 40; Transcript, pp. 13-14.

6. The remaining documents requested included all correspondence to and from office attorneys, including the general counsel (Exhibits 1, 5, 7; Transcript, pp. 9-10); all correspondence to and from the State Auditor (Exhibit 7); and all audit-related files for specified audits (Exhibits 1, 5).
7. Due to the nature and breadth of the requests, which include communications with office attorneys, auditor communications, personnel records and other records potentially restricted by law, Defendant had to read and review each and every document to determine what could lawfully be released. Transcript, pp. 9-10.
8. Other than the subpoena requested in Exhibit 1, none of Plaintiff's records requests identified any particular document or discrete category of documents. Exhibits 1, 5, 7.
9. As of September 29, 2017, Defendant had reviewed approximately 26,000 pages of records and produced to Plaintiff approximately 14,000 pages of records, and had identified approximately 28,000 pages of additional records to be reviewed for responsiveness. Transcript, p. 9
10. As of September 29, 2017, Defendant's Senior Counsel Barbara Wood, whose duties include the management of Sunshine Law requests, spent approximately 300 hours of her time collecting, reviewing, and producing records for the MAF requests, and estimated a required 300 hours of additional time to finish the review and production. Neither of these time estimates included time spent by other staff assisting Ms. Wood. Transcript, pp. 10-12, 37-38.
11. Each written communication from Defendant to Plaintiff that denied access to documents believed to be requested by Plaintiff set forth that, other than the

documents either being produced or under search and review, were denied by virtue of confidentiality provisions under one or more of five sections of Missouri law, each set forth specifically. Exhibits 2, 4, 6.

12. In Defendant's August 1, 2017, letter to Plaintiff, Defendant estimated that all additional documents would be delivered to Defendant by December 1, 2017. Exhibit 4.
13. Prior to November 16, 2017, Defendant received no communication from Plaintiff with respect to any aspect of Plaintiff's Sunshine Law requests. Even though Defendant's multiple instances of correspondence to Plaintiff included updates on the progress of review and estimated timelines for production, Plaintiff did not respond in any way. Transcript, pp. 16, 19, 22-23, 28, 30-31.
14. By letter dated November 14, 2017, just weeks before the December 1, 2017 date of completion for Plaintiff's three Sunshine Law requests, Plaintiff sent to Defendant 13 new requests for public records, and asked that Defendant "process this [the November 14, 2017] request first, ahead of any prior MAF request." Exhibit 20, pg. 2.

Respectfully submitted,

/s/ Joel E. Anderson
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and related attachments were delivered via the Court's electronic filing system on November 29, 2017 to:

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//s// Joel E. Anderson
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