

Table of Appendices

Page

Appendix A – Appellate Court Opinion in Case WD86900	A2
Appendix B – Order of Dismissal in Case 23BA-CV02815	A16
Appendix C – Denial of Application for Transfer in SC101057	A18
Appendix D – Order Denying Application for Extraordinary Writ in SC101079	A20
Appendix E – Order Denying Rehearing of Decision in WD86900	A22
Appendix F – Constitutional Provisions	A24
Appendix G – Revised Statutes of Missouri § 512.02	A25
Appendix H – Petition in Case 23BA-CV02815	A27
Appendix I – Appellant's Brief in WD86900	A41
Appendix J – Motion for Rehearing in WD86900	A72

Appendix A

Entered and filed March 4, 2025 in WD86900

IN THE MISSOURI COURT OF APPEALS

WESTERN DISTRICT

SYLVIA PRIDE,)
Appellant,) WD86900
v.)
) OPINION FILED:
BOONE COUNTY) March 4, 2025
PROSECUTOR'S OFFICE,)
ROGER JOHNSON, and)
TRACY SKAGGS,)
Respondents.)

**Appeal from the
Circuit Court of Boone County, Missouri
The Honorable Mason R. Gebhardt, Judge**

**Before Division Three: W. Douglas Thomson,
Presiding Judge, and Karen King Mitchell and Thomas
N. Chapman, Judges**

Sylvia Pride, who appears pro se, appeals from a judgment dismissing, for failure to state a claim, her petition alleging violations of Missouri's Sunshine Law¹ by the Boone County Prosecutor and the Custodian of Records for the Prosecutor's Office (collectively, the Prosecutor's Office). Pride raises three points on appeal. In her first two points, she argues the motion court erred in dismissing her petition because Count I sufficiently alleged facts showing that the Prosecutor's Office violated the Sunshine Law by failing to provide Pride with a copy of a public record she requested and, instead, provided her with a forged document. For her third point, Pride asserts the court erred in dismissing her petition because Count II sufficiently alleged facts showing that the Prosecutor's Office violated the Sunshine Law by knowingly and purposefully failing to respond to Pride's request within three business days. Finding no error, we affirm.

Background

The Sunshine Law violations alleged here pertain to records requests seeking the Sunshine Law

¹ "Although containing no 'title' provision, [§] 610.010 *et seq.* is commonly called the Sunshine Law." *Pride v. Boone Cnty. Sheriff's Dep't*, 667 S.W.3d 210, 211 n.1 (Mo. App. W.D. 2023). All statutory references are to the Revised Statutes of Missouri (Supp. 2022).

compliance policy² in effect for the Prosecutor’s Office on specific dates. The legal file does not include any of the relevant records requests or responses thereto. Thus, we have only Pride’s descriptions of those documents as reflected in her petition.

According to the well-pleaded facts in her petition, Pride submitted a records request to Custodian on May 3, 2023; Custodian received the request and promptly responded to it. On May 5, 2023, Pride submitted a second records request to Custodian, seeking “a copy of the written policy regarding ‘the release of information on any meeting, record or vote’ as referred to in RSMo 610.028.2 as it was on May 3, 2023.” The same day, Custodian acknowledged receipt of the second request and indicated that it was under review. On May 11, 2023, Custodian responded to Pride by email stating, “Attached as requested, please find a copy of the Boone County Prosecutor’s Office [policy] referred to [in] 610.028.2, RSMo.” On May 12, 2023, Pride replied to Custodian via email and made yet another records request, stating,

2 Section 610.028.2 of the Sunshine Law states, “Each public governmental body shall provide a reasonable written policy in compliance with sections 610.010 to 610.030, open to public inspection, regarding the release of information on any meeting, record or vote.”

Thank you for sending me a copy of your policy regarding records requests as it was on May 3, 2023. The written policy you provided is dated May 2022, but it does not include the day of the month. Because I am a party in case [No.] 22BA-CV01700 which involves a records request that was in dispute during May of 2022, I would like to know the exact date in May 2022 when that policy was created. (I need to know if that policy was in effect on May 14, 2022). If that policy was not in effect on May 14, 2022, please send me a copy of the policy as it was on May 14, 2022.

Pride and Custodian then spoke by telephone on May 24, 2023. Custodian informed Pride that there had not been a policy in effect prior to the one already provided to Pride, but Pride alleged Custodian “made no attempt to inform [Pride] that [the policy] was not created in May of 2022 or that [the policy] was not in effect on May 3, 2023.”

Additionally, Pride alleged that the document attached to Custodian’s email of May 11 was forged in that it purported to have been signed in May 2022 by an

individual who did not work for the Prosecutor’s Office at that time. Pride further alleged that Prosecutor and Custodian conspired to forge the document that was provided to Pride for purposes of making her believe it was the policy in effect on May 3, 2023.

Pride’s petition included two counts, each alleging a knowing and purposeful violation of the Sunshine Law —one for failure to respond to her May 5 request for records (Count I) and the other for failure to respond to her May 12 records request (Count II).³ For each count, Pride sought civil penalties and an order compelling the Prosecutor’s Office to comply with the Sunshine Law.

Prosecutor and Custodian moved for dismissal of Pride’s petition for failure to state a claim, arguing that she did not allege any facts showing that an existing public record was withheld. After hearing arguments on the motion to dismiss, the court granted the motion and dismissed Pride’s petition without prejudice. Rather than file an amended petition, Pride opted to stand on her initial petition.

Final, Appealable Judgment

We first address whether the motion court’s judgment dismissing Pride’s petition is properly before

³ Pride’s first records request, dated May 3, 2023, and Custodian’s response thereto are not at issue in this case.

us as the judgment was without prejudice. “Generally, a dismissal without prejudice is not a final, appealable judgment.” *Pride v. Boone Cnty. Sheriff’s Dep’t*, 667 S.W.3d 210, 211 (Mo. App. W.D. 2023) (quoting *Lee v. Mo. Dep’t of Transp.*, 618 S.W.3d 258, 262 (Mo. App. W.D. 2021)). “However, when the court dismisses the petition without prejudice for failure to state a claim[] and the plaintiff elects to stand on her petition rather than pleading additional facts, the judgment of dismissal constitutes an appealable adjudication on the merits.” *Id.* Here, Pride elected to stand on her petition rather than amending it. Thus, the judgment is appealable.

Standard of Review

All three points on appeal challenge the propriety of the motion court’s dismissal of Pride’s claims for failure to state a claim on which relief can be granted. “We review the grant of a motion to dismiss de novo and will affirm the dismissal on any meritorious ground stated in the motion.” *Grosshart v. Kansas City Power & Light Co.*, 623 S.W.3d 160, 166 (Mo. App. W.D. 2021) (quoting *Hill v. Freeman*, 608 S.W.3d 650, 654 (Mo. App. W.D. 2020)).

“When considering whether a petition fails to state a claim upon which relief can be granted, [we] must accept all properly pleaded facts as true, giving the pleadings their broadest intendment, and construe all allegations favorable to the pleader.” *Id.* (quoting *Hill*, 608 S.W.3d at 654). We “do[] not weigh the factual allegations to determine whether they are credible or persuasive.” *Id.* (quoting *Hill*, 608 S.W.3d at 654). “Instead, [we] review[] the petition to determine if the facts alleged meet the elements of a recognized cause of action. . . .” *Id.* (quoting *Hill*, 608 S.W.3d at 654). “In order to withstand the motion [to dismiss], the petition must invoke substantive principles of law entitling the plaintiff to relief and . . . ultimate facts informing the defendant of that which plaintiff will attempt to establish at trial.” *Id.* (quoting *Hill*, 608 S.W.3d at 654). “Mere conclusions of the pleader not supported by factual allegations are disregarded in determining whether a petition states a claim on which relief can be granted.” *Schlafly v. Cori*, 647 S.W.3d 570, 573 (Mo. banc 2022) (quoting *Com. Bank of St. Louis Cnty. v. James*, 658 S.W.2d 17, 22 (Mo. banc 1983)).

Analysis

Pride raises three points on appeal. In her first two points, she argues the motion court erred in dismissing Count I of her petition because she sufficiently alleged facts showing that the Prosecutor's Office violated the Sunshine Law by failing to provide her with a copy of a public record she requested and, instead, provided her with a forged document. For her third point, Pride asserts the court erred in dismissing Count II of her petition because she sufficiently alleged facts showing that the Prosecutor's Office violated the Sunshine Law by knowingly and purposefully failing to respond to her request within three business days. We address Pride's three points together because they all fail for the same reason.⁴

The Sunshine Law requires "each public governmental body [to] provide access to and, upon request, furnish copies of [its] public records," subject to exceptions and

4 The Prosecutor's Office urges us to dismiss Pride's appeal because her brief fails to comply with the points-relied-on requirements of Rule 84.04 of the Missouri Supreme Court (2024). Although Pride's points relied on do not follow the format prescribed by Rule 84.04, "we prefer to resolve appeals on their merits, especially when we are able to discern the gist of the appellant's allegations of error." *Cass Cnty. v. City of Lee's Summit*, 638 S.W.3d 560, 566 n.8 (Mo. App. W.D. 2021) (quoting *Messina v. Shelter Ins. Co.*, 585 S.W.3d 839, 842 n.1 (Mo. App. W.D. 2019)). Here, because we are able to understand Pride's allegations of error, we will address them on the merits.

requirements not relevant here. § 610.026.1. “Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the [public governmental body’s] custodian of records.”⁵ § 610.023.3.

Any aggrieved person may seek judicial enforcement of the Sunshine Law. § 610.027.1. If a court determines that a public governmental body or a member of the body knowingly violated the Sunshine Law, § 610.027.3 authorizes a civil penalty up to one thousand dollars, plus costs and attorney’s fees. If the court finds the violation was purposeful, § 610.027.4 permits a civil penalty of up to five thousand dollars, plus costs and attorney’s fees.⁶

5 Section 610.023.3 further provides,

If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.

6 To knowingly violate the Sunshine Law, a public governmental body must have “had ‘actual knowledge that the conduct violated a statutory provision.’” *White v. City of Ladue*, 422 S.W.3d 439, 452 (Mo. App. E.D. 2013) (quoting *Wright v. City of Salisbury, Mo.*, No. 2:07CV00056, 2010 WL 2947709, at *5 (E.D. Mo. July 22, 2010)). “To purposely violate the Sunshine Law, a ‘public governmental body must exhibit a conscious design, intent, or plan to violate the law and do so with awareness of the probable consequences.’” *Id.* at 451 (quoting *Spradlin v. City of Fulton*, 982 S.W.2d 255, 262 (Mo. banc 1998)).

Where the basis for a Sunshine Law claim is a public governmental body's failure to respond to a records request, the petition must allege "that (1) a request for access to a public record was made; (2) such request was received by the custodian of records; and (3) the custodian of records did not respond to the request within three business days of receiving the request."

Anderson v. Vill. of Jacksonville, 103 S.W.3d 190, 194-95 (Mo. App. W.D. 2003); *Pride*, 667 S.W.3d at 212 (same).

Pride's petition alleges that she submitted three records requests (only two of which are at issue here) to Custodian and Custodian received those requests. The Prosecutor's Office does not dispute those allegations. Thus, the question is whether Pride's petition adequately alleged that the Prosecutor's Office knowingly or purposefully violated the Sunshine Law by failing to respond to her requests dated May 5 and May 12.

Pride alleged that, on May 5, 2023, she requested "a copy of the written policy regarding 'the release of information on any meeting, record or vote' as referred to in RSMo 610.028.2 as it was on May 3, 2023." That same day, Custodian acknowledged receipt of the request and indicated that it was under review. On May 11,

2023, Custodian responded to Pride stating, “Attached as requested, please find a copy of the Boone County Prosecutor’s Office [policy] referred to [in] 610.028.2, RSMo.” Then, on May 12, 2023, Pride replied to Custodian via email thanking Custodian for providing a copy of the “policy regarding records requests as it was on May 3, 2023” and requesting “a copy of the policy as it was on May 14, 2022,” if that version differed from the one already provided. On May 24, 2023, Custodian informed Pride that there had not been a policy in effect prior to the one already provided to her.⁷

“The Sunshine Law only requires that governmental agencies provide access to records then in existence, and in the agencies’ possession or under their control.” *Sansone v. Governor of Missouri*, 648 S.W.3d 13, 22 (Mo. App. W.D. 2022). “Where requesters have asked government agencies to create customized compilations or summaries of their records, [Missouri courts] have held that the Sunshine Law was inapplicable, since it only requires agencies to disclose *existing* records—not to create new ones.” *Id.* (emphasis

⁷ It appears that the point of Pride’s May 5 Sunshine Law request was to show that the policy provided did not exist on May 14, 2022. But, instead of asking for the policy in effect on that date, she requested the current policy by citing the date “May 3, 2023” in her May 5 request.

in original). “The plain language of the Sunshine Law does not require a public governmental body to create a new record upon request, but only to provide access to existing records held or maintained by the public governmental body.” *Id.* (quoting *Jones v. Jackson Cnty. Cir. Ct.*, 162 S.W.3d 53, 60 (Mo. App. W.D. 2005); *see also Am. Family Mut. Ins. Co. v. Mo. Dep’t of Ins.*, 169 S.W.3d 905, 915 (Mo. App. W.D. 2005) (agency could properly refuse records request where “the data requested . . . was not contained in an existing record held by” the agency).

Pride’s well-pleaded facts show that the Prosecutor’s Office timely disclosed its Sunshine Law compliance policy as it existed at the time of her requests and that policy was the only existing document responsive to her requests. That is all the Sunshine Law required here. Pride may have wanted a version in effect on a specific date, but she did not allege that such document existed and was withheld from her. And the Sunshine Law does not require custodians to create new documents. Pride also alleged that Prosecutor and Custodian conspired to forge the document provided to her, but the enforcement provisions of the Sunshine Law do not extend to claims that documents provided in

response to a records request were forged. The Sunshine Law is simply not the appropriate basis on which to bring a claim of forgery in this context.⁸

Finally, we find no merit in Pride's assertion that the Prosecutor's Office violated the Sunshine Law by failing to respond to her May 12 request within three business days.⁹ The May 12 request sought "a copy of the policy as it was on May 14, 2022," *if* that version differed from the one already provided.¹⁰ Thus, her request of May 12, 2023, was triggered only if there were a policy in effect on May 14, 2022, that differed from the version she already possessed. By not providing a written response to the May 12 request, it appears the Prosecutor's Office was communicating to Pride that the document she requested on May 12 was the same

8 Once a Sunshine Law enforcement action is initiated, § 610.027.1 prohibits the custodian of the public record at issue from transferring custody, altering, destroying, or otherwise disposing of the record. The Sunshine Law does not otherwise govern the creation or modification of public records.

9 Pride's allegation of a late response pertains only to her request of May 12.

10 This case presents a unique scenario involving a follow-up request that, by its terms, sought a record only if it differed from the document previously provided. Typically, where there are no documents responsive to a public records request, the Sunshine Law requires the governmental body to inform the requester accordingly. Due, however, to the unique nature of the May 12 request and the way it was phrased, the lack of a written response from the Prosecutor's Office was an affirmative representation that no such document existed.

document provided to her in response to her May 5 request.¹¹

Points I, II, and III are denied.¹²

Conclusion

For the foregoing reasons, Pride's petition failed to state a claim under the Sunshine Law. The motion court's dismissal of her petition is affirmed.

s/Karen K Mitchell

Karen King Mitchell, Judge

W. Douglas Thomson, Presiding Judge,
and Thomas N. Chapman, Judge, concur.

- 11 It would then follow that if the document previously provided was not in effect on May 14, 2022, and the Prosecutor's Office did not have a policy in effect on that date (or no longer retained that document), then they would have had to respond to Pride's May 12 request with that information because the contingency in the request would have been triggered.
- 12 Although not required to state a cause of action for violation of the Sunshine Law, allegations that the violation was knowing or purposeful are necessary to state a claim for civil penalties under the Sunshine Law. Here, Pride seeks civil penalties against the Prosecutor's Office, but she fails to allege any conduct amounting to a knowing or purposeful violation of the Sunshine Law.

Appendix B
Entered and filed Febuary 1, 2024 in 23BA-
CV02815

**IN THE CIRCUIT COURT OF BOONE COUNTY,
MISSOURI**

SYLVIA PRIDE,)
)
Plaintiff,)
v.) Case No.: 23BA-CV02815
)
BOONE COUNTY)
PROSECUTOR'S)
OFFICE, et. Al,)
)
Defendant.)

JUDGMENT AND ORDER OF DISMISSAL

NOW ON THIS 7th day of November 2023, this cause came on for hearing on Defendant's Motion to Dismiss for Failure to State a Claim. Plaintiff, Sylvia Pride, appeared in person, pro se. Defendants appeared by counsel, Assistant Boone County Counselor Jason C. Glahn. Parties announced ready. Cause heard on

Defendants' Motion to Dismiss for failure to state a claim. The matter was taken under advisement.

On this 19th day of December 2023, the Court being fully advised, GRANTS Defendants' Motion to Dismiss for failure to state a claim upon which relief can be granted and hereby dismisses the action without prejudice.

Costs to Plaintiff

SO ORDERED.

COURT SEAL OF
BOONE COUNTY

s/Mason Gebhardt
HONORABLE MASON GEBHARDT
Circuit Court of Boone County, Missouri

Dated: 2/1/2024

Appendix C

Entered and filed May 27, 2025 in SC101057

In the Supreme Court of Missouri

SC101057

WD86900

May Session, 2025

Sylvia Pride,

Appellant,

vs. (TRANSFER)

Boone County Prosecutor's Office, Roger Johnson, and
Tracy Skaggs,

Respondents.

Now at this day, on consideration of the
Appellant's application to transfer the above-entitled
cause from the Missouri Court of Appeals, Western
District, it is ordered that the said application be, and
the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Betsy Ledgerwood, Clerk of the Supreme Court
of the State of Missouri, certify that the foregoing is a
full, true and complete transcript of the judgment of said

Supreme Court, entered of record at the May Session, 2025, and on the 27th day of May, 2025, in the above-entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson, this 27th day of May, 2025.

SEAL OF THE SUPREME
COURT OF MISSOURI

s/Betsy Ledgerwood, Clerk
s/Adrianna Decker, Deputy Clerk

Supreme Court of Missouri

vs.

MANDATE

JUDGMENT

Appendix D

Entered and filed May 27, 2025 in SC101079

In the Supreme Court of Missouri

May Session, 2025

State ex rel. Sylvia Pride,

Relator,

No. SC101079 MANDAMUS

Boone County Circuit Court No. 23BA-CV02815

Western District Court of Appeals No. WD86900

The Western District Court of Appeals,

Respondent.

Now at this day, on consideration of the petition for a writ of mandamus herein to the said respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, BETSY LEDGERWOOD, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session

thereof, 2025, and on the 27th day of May, 2025, in the aboveentitled cause.

WITNESS my hand and the Seal of the Supreme Court of Missouri, at my office in the City of Jefferson, this 27th day of May, 2025.

SEAL OF THE SUPREME
COURT OF MISSOURI

s/Betsy Ledgerwood, Clerk
s/Kelsey Hill, Deputy Clerk

Supreme Court of Missouri

vs.

MANDATE

JUDGMENT

Appendix E

Entered and filed April 1, 2025 in WD86900

Missouri Court of Appeals

WESTERN DISTRICT

1300 OAK STREET

KIMBERLY K. BOEDING CLERK

KANSAS CITY, MO 64106-2970

PHONE 816-889-3600

FAX 816-889-3668

E-MAIL wdcoa@courts.mo.gov

April 1, 2025

IMPORTANT NOTICE

To All Attorneys/Parties of Record

SYLVIA L PRIDE, APPELLANT,

vs. WD86900

**BOONE COUNTY PROSECUTOR'S OFFICE, ET AL.,
RESPONDENTS.**

Please be advised that Appellant's motion for rehearing is **OVERRULED**, application for transfer to Supreme Court pursuant to Rule 83.02 is **DENIED**, and motion to Modify/Change Opinion is **DENIED**.

S/Kimberly K. Boeding

Kimberly K. Boeding

Clerk

ecc: All Attorneys of Record Notified Through E-filing

System

cc: Pro Se Appellant

Appendix F – Constitutional Provisions

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix G – Revised Statutes of Missouri §

512.020

Who may appeal. — Any party to a suit aggrieved by any judgment of any trial court in any civil cause from which an appeal is not prohibited by the constitution, nor clearly limited in special statutory proceedings, may take his or her appeal to a court having appellate jurisdiction from any:

- (1) Order granting a new trial;
- (2) Order refusing to revoke, modify, or change an interlocutory order appointing a receiver or receivers, or dissolving an injunction;
- (3) Order granting or denying class action certification provided that:
 - (a) The court of appeals, in its discretion, permits such an appeal; and
 - (b) An appeal of such an order shall not stay proceedings in the court unless the judge or the court of appeals so orders;
- (4) Interlocutory judgments in actions of partition which determine the rights of the parties; or
- (5) Final judgment in the case or from any special order after final judgment in the cause; but a failure to appeal from any action or decision of the court before

final judgment shall not prejudice the right of the party
so failing to have the action of the trial court reviewed
on an appeal taken from the final judgment in the case.

Appendix H
Filed July 17, 2023 in 23BA-CV02815
IN THE CIRCUIT COURT
OF BOONE COUNTY, MISSOURI

SYLVIA PRIDE)
Plaintiff,)
vs.)
) Case No. 23BA-CV02815
)
BOONE COUNTY PROSECUTOR'S OFFICE,)
Serve on Prosecutor Roger Johnson at:)
705 E. Walnut St.,)
Columbia, MO 65201)
Or at:)
12080 N. Hecht Rd.,)
Hallsville, MO 65255)
)
ROGER JOHNSON,)
Serve at:)
705 E. Walnut St.,)
Columbia, MO 65201)
Or at:)
12080 N. Hecht Rd.,)

Hallsville, MO 65255)
)
TRACY SKAGGS,)
)
Serve at:)
)
705 E. Walnut St.,)
)
Columbia, MO 65201)
)
Or at:)
)
806 W. Green Meadows Rd.,)
)
Columbia, MO 65203)
)
Defendants.)

PETITION

COMES NOW Plaintiff Sylvia Pride, and for her cause of action presents the following:

1. Plaintiff is a citizen of the State of Missouri, and Plaintiff is a Missouri taxpayer.
2. Defendant Boone County Prosecutor's Office (BCPO) is a public governmental body as defined in RSMo §610.010.

3. Defendant BCPO and its members and employees are subject to the requirements of the Missouri Sunshine Law.
4. Defendant Roger Johnson is the elected prosecutor of Boone County, Missouri.
5. On August 3, 2022 Defendant Roger Johnson assumed the office of Boone County Prosecutor.
6. On August 3, 2022 and at all times thereafter Defendant Roger Johnson was the department head and leader of Defendant BCPO.
7. On August 3, 2022 and at all times thereafter Defendant Roger Johnson was aware of the requirements of the Missouri Sunshine Law.
8. Defendant Roger Johnson is a public governmental body as defined in RSMo §610.010.
9. On January 1, 2022 and at all times thereafter Defendant Tracy Skaggs was a member of Defendant BCPO.
10. On January 1, 2022 and at all times thereafter Defendant Tracy Skaggs was employed by Defendant BCPO.
11. On January 1, 2022 and at all times thereafter Defendant Tracy Skaggs was the Office Administrator for Boone County Prosecutor's Office.

12. On January 1, 2022 and at all times thereafter Defendant Tracy Skaggs was the Custodian of Records for Boone County Prosecutor's Office.
13. On January 1, 2022 and at all times thereafter Defendant Tracy Skaggs was aware of the requirements of the Missouri Sunshine Law.
14. On May 3, 2023 Plaintiff submitted a request for records to Defendants Boone County Prosecutor's Office, Defendant Roger Johnson, and Defendant Tracy Skaggs.
15. Defendant Tracy Skaggs received Plaintiff's request for records described in paragraph 14.
16. Defendant Tracy Skaggs responded to the request for records described in paragraph 14.
17. On May 5, 2023 Plaintiff submitted a second request for records to Defendants Boone County Prosecutor's Office, Defendant Roger Johnson, and Defendant Tracy Skaggs via email.
18. The email stated in part:

"I am requesting a copy of the written policy regarding "the release of information on any meeting, record or vote" as referred to in RSMo 610.028.2 as it was on May 3, 2023."
19. RSMo §610.028.2 requires that “[e]ach public governmental body shall provide a reasonable written

policy in compliance with sections 610.010 to 610.030, open to public inspection, regarding the release of information on any meeting, record or vote and any member or employee of the public governmental body who complies with the written policy is not guilty of a violation of the provisions of sections 610.010 to 610.030 or subject to civil liability for any act arising out of his adherence to the written policy of the agency.”

20. The request described in paragraph 18 was received by Defendant Tracy Skaggs on May 5, 2023.

21. On May 5, 2023 Defendant Tracy Skaggs responded to the request on behalf of Defendants BCPO and Roger Johnson. The response stated:

“Dear Ms. Pride:

This will acknowledge receipt of your Sunshine Law request dated May 5, 2023, received by the Boone County Prosecuting Attorney’s Office on May 5, 2023.

We are in the process of reviewing your request and will get back to you.

Sincerely,

Tracy Skaggs

Records Custodian”

22. Plaintiff had a right to receive a copy of Defendant BCPO's Sunshine Law Compliance Policy as it was on May 3, 2023.

23. Defendants Roger Johnson and Tracy Skaggs were aware that RSMo §610.028.2 provides that Sunshine Law Compliance Policies are for use in civil litigation to determine liability of members and employees for violations of the Missouri Sunshine Law.

24. Defendants Roger Johnson and Tracy Skaggs were aware that Plaintiff was a party to Boone County case number 22BA-CV01700-01.

25. Defendants Roger Johnson and Tracy Skaggs were aware that Defendants BCPO and Tracy Skaggs were parties to Boone County case number 22BA-CV01700-01 which seeks to hold Defendants BCPO and Tracy Skaggs liable for violating the Missouri Sunshine Law.

26. Upon information and belief, Defendants Roger Johnson, and Tracy Skaggs did not intend to comply with Plaintiff's request by providing Plaintiff with a copy of a Sunshine Law Compliance Policy that had been in effect on May 3, 2023.

27. Upon information and belief, Defendants Roger Johnson and Tracy Skaggs conspired to create a new

Sunshine Law Compliance Policy which would be provided to Plaintiff as if it had been in effect on May 3, 2023.

28. Upon information and belief, after receipt of the request described in paragraph 18, Defendants created a new Sunshine Law Compliance Policy. (Hereinafter this new Sunshine Law Compliance Policy will be referred to as The Forged Document.)

29. The Forged Document was signed by Defendant Roger Johnson and dated “May 2022”.

30. The Forged Document was not created or signed by Defendant Roger Johnson in May of 2022.

31. Defendant Roger Johnson did not hold the position of Boone County Prosecutor in May of 2022.

32. Defendant Roger Johnson was not employed by Defendant BCPO in May of 2022.

33. Upon information and belief, Defendants Roger Johnson and Tracy Skaggs took the actions described in paragraphs 21 – 29 for the purpose of causing Plaintiff to believe that The Forged Document, which would be provided to Plaintiff, was the genuine Sunshine Law Compliance Policy that existed and was in effect on May 3, 2023.

34. Upon information and belief, after creating The Forged Document, Defendants printed the The Forged Document in paper form and re-scanned it into digital format to provide it to Plaintiff.

35. Upon information and belief, Defendants took the actions described in paragraph 34 to remove digital forensic evidence which could be used to determine the creation date of The Forged Document.

36. On May 11, 2023 Defendant Tracy Skaggs emailed Plaintiff. The email stated:

“Attached as requested, please find a copy of the Boone County Prosecutor’s Office referred to 610.028.2, RSMo.”

37. Defendant Tracy Skaggs attached the Forged Document to the email described in paragraph 36.

38. Defendant Tracy Skaggs did not notify Plaintiff that The Forged Document was not the Sunshine Law Compliance Policy that was in effect on May 3, 2023 as requested by Plaintiff.

39. On May 12, 2023 Plaintiff responded to the email described in paragraph 36. Plaintiff’s email stated:

“Thank you for sending me a copy of your written policy regarding records requests as it was on May 3, 2023. The written policy that you provided is

dated May 2022, but it does not include the day of the month. Because I am a party in case 22BA-CV01700 which involves a records request that was in dispute during May of 2022, I would like to know the exact date in May 2022 when that policy was created. (I need to know if that policy was in effect on May 14, 2022.) If that policy was not in effect on May 14, 2022, please send me a copy of the policy as it was on May 14, 2022.”

40. Defendant Tracy Skaggs received the email described in paragraph 39.

41. Defendant Tracy Skaggs was aware that The Forged Document was not Defendant BCPO’s written policy regarding records requests as it was on May 3, 2023.

42. Defendant Tracy Skaggs was aware that The Forged Document did not exist on May 14, 2022.

43. Defendant Tracy Skaggs was aware that she was required to respond to Plaintiff’s request for a copy of BCPO’s Sunshine Law Compliance Policy as it was on May 14, 2022 within 3 days.

44. Defendant Tracy Skaggs did not respond to Plaintiff’s request for records described in paragraph 39.

45. Upon information and belief, Defendant Tracy Skaggs was aware Defendant Roger Johnson had committed felony forgery as described in RSMo §570.090.1(1) by “[making a] writing so that it [purported] to have been made . . . at another time . . . than was in fact the case” for the purpose of depriving Plaintiff of her right to receive a copy of BCPO’s Sunshine Law Compliance Policy as it was on May 3, 2023 and/or know whether such a policy existed on May 3, 2023.

46. Upon information and belief, Defendant Tracy Skaggs was aware that she had conspired with Defendant Roger Johnson to commit the crime of forgery as described in paragraph 45.

47. Upon information and belief, Defendant Tracy Skaggs was aware that she had committed felony forgery as described in RSMo §570.090.1(4) by using The Forged Document as if it were genuine, possessing The Forged Document for the purpose of using it as genuine, and transferring The Forged Document to Plaintiff with the knowledge or belief that it would be used as genuine, and that she had done so for the purpose of depriving Plaintiff of her right to receive a copy of BCPO’s Sunshine Law Compliance Policy as it was on May 3,

2023 and/or know whether such a policy existed on May 3, 2023.

48. Defendant Tracy Skaggs' failure to respond to Plaintiff's email request for records described in paragraph 39 was for the purpose of preventing Plaintiff from obtaining further evidence of the crimes committed by Defendants Roger Johnson and Tracy Skaggs and to avoid making further statements and admissions that could be used as evidence of the crimes committed by Defendants Roger Johnson and Tracy Skaggs.

49. On May 24, 2023 Plaintiff spoke to Defendant Tracy Skaggs via telephone. Plaintiff stated that The Forged Document showed that it had been in effect since May of the previous year, and Plaintiff informed Defendant Tracy Skaggs that Plaintiff was attempting to determine what day of May 2022 the document had been created and specifically whether the document had been created before May 14, 2022. Plaintiff asked Defendant Tracy Skaggs if she remembered whether there had been a different policy in effect prior to the creation of The Forged Document. Defendant Tracy Skaggs stated that there had not been a policy in effect prior to The Forged Document, but made no attempt to inform Plaintiff that The Forged Document was not

created in May of 2022 or that The Forged Document was not in effect on May 3, 2023.

50. At the time of the call described in paragraph 49 Defendant Tracy Skaggs intended for Plaintiff to believe that The Forged Document was genuine and had been created in May of 2022.

51. At the time of the call described in paragraph 49 Defendant Roger Johnson intended for Plaintiff to believe that The Forged Document was genuine and had been created in May of 2022.

COUNT 1

Violation of Missouri Sunshine Law by Defendants Tracy Skaggs, Roger Johnson, and Boone County Prosecutor's Office

52. Plaintiff incorporates by reference the facts alleged in paragraphs 1-51.

53. The failure to properly respond to Plaintiff's request for records on May 5, 2023 was a knowing and purposeful violation of the Missouri Sunshine Law. Wherefore, Plaintiff respectfully requests that the Court enter a judgment in Plaintiff's favor and against Defendants Boone County Prosecutor's Office, Roger

Johnson, and Tracy Skaggs in the amount of five thousand dollars, costs, attorney's fees, and such further and other relief as the Court deems just and proper. Further, Plaintiff requests that the Court enforce the Missouri Sunshine Law by ordering Defendants Boone County Prosecutor's Office, Roger Johnson, and Tracy Skaggs to comply with Plaintiff's request as described in paragraph 18.

COUNT 2

Violation of Missouri Sunshine Law by Defendants Tracy Skaggs, Roger Johnson, and Boone County Prosecutor's Office

54. Plaintiff incorporates by reference the facts alleged in paragraphs 1-51.
55. The failure to respond to Plaintiff's request for records on May 12, 2023 was a knowing and purposeful violation of the Missouri Sunshine Law.
Wherefore, Plaintiff respectfully requests that the Court enter a judgment in Plaintiff's favor and against Defendants Boone County Prosecutor's Office, Roger Johnson, and Tracy Skaggs in the amount of five thousand dollars, costs, attorney's fees, and such further

and other relief as the Court deems just and proper. Further, Plaintiff requests that the Court enforce the Missouri Sunshine Law by ordering Defendants Boone County Prosecutor's Office, Roger Johnson, and Tracy Skaggs to comply with Plaintiff's request as described in paragraph 39.

/s/ Sylvia Pride

Sylvia Pride, Plaintiff
P.O. Box 248,
Sturgeon, MO 65284
573-687-2014
spride@emailsplash.com

I, Sylvia Pride, hereby certify that this document complies with the redaction requirements set forth in Rules 19.10, 55.025, and 84.015.

Appendix I
Filed September 13, 2024 in WD86900
IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT
NO. WD86900

Filed 4:19 pm, September 13, 2024
Missouri Court of Appeals Western District

SYLVIA PRIDE
Appellant,
vs.
BOONE COUNTY PROSECUTOR'S OFFICE,
ROGER JOHNSON, and TRACY SKAGGS
Respondents.

Appeal from the Circuit Court of Boone County,
Missouri
Case No. 23BA-CV02815

Appellant's Brief

Table of Contents

Cover	page 1
Table of Contents	page 2
List of Cited Authority	page 3
Jurisdictional Statement	page 4
Statement of Facts	pages 5-7
Points Relied On	pages 8-10
Argument – Point 1	pages 11-15
Argument – Point 2	pages 16-19
Argument – Point 3	pages 20-23
Relief Sought	page 23
Certification	page 24

List of Cited Authority

§ 610.011	page 22
§ 610.023	pages 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21
§ 610.027	page 4
§ 610.028	page 13
Anderson v. Village of Jacksonville, 103 S.W.3d 190 (Mo. Ct. App. 2003)	pages 9, 10, 16, 17, 18, 20, 21, 22
Breeden v. Hueser, 273 S.W.3d 1 (Mo. Ct. App. 2008)	pages 12, 17, 20

Gross v. Parson, 624 S.W.3d 877 (Mo. 2021) _____

page 17

Lynch v. Lynch, 260 S.W.3d 834 (Mo. 2008) _____

pages 11, 16, 20

Pennington v. Dobbs, 235 S.W.3d 77 (Mo. Ct. App. 2007)

pages 8, 9, 10, 11, 12, 16, 17, 20, 21

Perkins v. Caldwell, 363 S.W.3d 149 (Mo. Ct. App. 2012)

pages 17, 21

Showalter v. Westoak Realty and Inv, 741 S.W.2d 681
(Mo. Ct. App. 1988) _____ page 3

State ex Rel. State Highway Com'n v. Tate, 576 S.W.2d
529 (Mo. 1979) _____ page 7

Wilson v. McNeal, 575 S.W.2d 802 (Mo. Ct. App. 1979)

page 19

Jurisdictional Statement

This is an appeal from the dismissal of a lawsuit filed in the circuit court of Boone County, Missouri. The lawsuit is an open records action brought pursuant to RSMo §610.027. The circuit court dismissed the petition for failure to state a claim upon which relief could be granted. The questions involved in this appeal are as follows:

1. If an individual requests a specific record from a public governmental body, and the public governmental body possesses the requested record, is the public governmental body required to provide the record to the requester? Are the requirements of the Sunshine Law satisfied if the public governmental body forges a document and provides it to the requester instead of the record that was requested?

2. If an individual requests a specific record from a public governmental body, but no such record exists, is the public governmental body obligated to notify the requester that no such record exists? Are the requirements of the Sunshine Law satisfied if the public governmental body forges a document and provides it to the requester instead of the record requested or does not respond at all?

Statement of Facts¹³

1. This appeal is from the dismissal of a lawsuit filed in the circuit court of Boone County Missouri. The lawsuit was filed on July 17, 2023. The plaintiff is Appellant Sylvia Pride. The defendants are Boone

¹³ Because facts in a petition are deemed as true for purposes of a motion to dismiss, the allegations in the petition will be stated as facts.

County Prosecutor's Office (BCPO), Roger Wayne Johnson, and Tracy Skaggs. (LF p.3). Johnson is the Boone County Prosecutor. (LF p.7 para.4). Skaggs is the Office Administrator and Records Custodian of BCPO. (LF p.7 para.11-12).

2. The petition alleges the following facts: On May 5, 2023 Appellant requested BCPO's Sunshine Law Compliance Policy "as it was on May 3, 2023". (LF p.8, para.17-19). The petition alleges that Johnson and Skaggs were aware that "Sunshine Law Compliance Policies are for use in civil litigation to determine liability of members and employees for violations of the Missouri Sunshine Law." (LF p.9 para.23). Johnson and Skaggs were also aware that BCPO and Skaggs were defendants in Case 22BA-CV01700-01 which alleges that they committed violations of the Missouri Sunshine Law in May of 2022. (LF p.9, para.25). Skaggs was also aware that she had previously responded to a request for records on May 3, 2023. (LF p.7 para.14, p.8 para.15-16). Instead of providing Appellant with the requested record, Johnson and Skaggs conspired to create a records policy which would appear as if it had been in effect since May of 2022, and provided it to Appellant as if it was the policy she had requested. (LF p.9 para.26-

27). After receiving Appellant's email request for the Sunshine Law Compliance Policy, Johnson and Skaggs created a policy which purported to have been signed by Johnson in May of 2022. (LF p.9, 28 -30). Skaggs then provided the document to Appellant by email along with a note stating that it was the document that Appellant had requested. (LF p.10, para.36-37). Appellant then responded to the email. In her email Appellant noted that the policy she had received was dated May of 2022, but did not include the exact day of the month.

Appellant noted that she was a party in Case 22BA-CV01700-01 which alleged that a Sunshine Law violation had occurred on May 14 of 2022, and requested that if the policy she had received was not in effect on May 14, 2022 that she be provided with the policy that was in effect on May 14, 2022. (LF p.10 para.39). Skaggs received the request, and she was aware that the policy provided to Appellant was not the policy that had been in effect on May 14 of 2022, but she did not respond to this request in any way. (LF p.11 para.40-44). The petition alleges that Skaggs's failure to respond to this request within 3 days was knowing and purposeful, and that her knowledge of the forgery was the purpose behind her failure to respond within 3 days. (LF p.11

para.45-47, LF p.11 para.47-48). On May 24, 2023 Appellant contacted Skaggs by telephone and spoke to her regarding Appellant's request for the policy that had been in effect on May 14, of 2022. Skaggs claimed that no policy had been in effect prior to the policy she had provided but did not inform Appellant that the policy provided was not actually created in May of 2022. (LF p.12, para.49). The petition alleges that Skaggs intended to deceive Appellant at the time of the call. (LF p.12, para.50). The petition alleges two counts for violation the Sunshine Law. Count 1 alleges that respondents knowingly and purposefully violated the the Missouri Sunshine Law by failing to properly respond to Appellant's request for records on May 5, 2023. Count 1 requests that respondents be ordered to comply with the May 5, 2023 request, and also requests that respondents be fined for purposefully violating the Sunshine Law. (LF p.13 para.52-53). Count 2 alleges that respondents knowingly and purposefully violated the Missouri Sunshine Law by failing to respond to Appellant's request for records on May 12, 2023. Count 2 requests that respondents be ordered to comply with the May 12, 2023, request for records, and also requests that

respondents be fined for purposefully violating the Sunshine Law. (LF p.13 para.54-55).

3. Respondents filed a motion to dismiss (LF p.15-17), and suggestions in support of the motion to dismiss. (LF p.18-21). The motion to dismiss argued that the petition failed to state a claim upon which relief could be granted. Appellant filed suggestions in opposition to the motion to dismiss arguing that the petition was sufficient (LF pp.22-25), and respondents filed a reply. (LF p.26-28).

4. On November 7, 2023 a hearing was held on the motion to dismiss, and the Court took the matter under advisement. (LF p.4). The record on appeal is a transcript of this hearing.

5. On December 19, 2023 the Court granted respondents' motion to dismiss and dismissed the petition without prejudice. (LF p.4, LF p.29).

6. Appellant filed a notice of appeal on January 26, 2023. (LF p.4, LF p.30).

7. On February 1, 2024 the Circuit Court entered an order expressly denominating the Court's December 19, 2023 order as a judgment. (LF p.33).¹⁴

¹⁴ This occurred after the Court of Appeals brought attention to the fact that the December 19, 2023 order did not comply with the requirements of Rule 74.01. This Court has jurisdiction to hear the appeal. *State ex Rel. State Highway Com'n v. Tate*, 576

Points Relied On

1. The Circuit Court erred in dismissing Count 1 of Appellant's petition for failure to state a claim upon which relief could be granted, because Count 1 of the petition sufficiently alleges facts showing that respondents violated the Sunshine Law, in that the Missouri Sunshine Law requires a public governmental body to respond to a request for records within 3 days of receiving the request by providing the record or an explanation for the delay, and Count 1 of the petition alleges that Appellant requested a specific public record and respondents did not provide Appellant with the record that she requested, and instead forged a document to appear as if it was the record requested by Appellant and provided it to Appellant for the purpose of depriving Appellant of her right to receive a copy of the actual record which she had requested

Pennington v. Dobbs, 235 S.W.3d 77 (Mo. Ct. App. 2007)

RSMo § 610.023.3

S.W.2d 529 (Mo. 1979).

2. The Circuit Court erred in dismissing Count 1 of Appellants petition for failure to state a claim upon which relief could be granted, because Count 1 of the petition sufficiently alleges facts showing that respondents violated the Sunshine Law, in that the Missouri Sunshine Law requires a public governmental body to respond to a request for records within 3 days, and Count 1 of the petition alleges in the alternative that respondents provided a forged document in response to Appellant's request for a public record, and provision of a forged document is not sufficient to comply with the legal requirement to respond to a request for records within 3 days of receiving the request for a public record.

Pennington v. Dobbs, 235 S.W.3d 77 (Mo. Ct. App. 2007)

Anderson v. Village of Jacksonville, 103 S.W.3d 190 (Mo. Ct. App. 2003)

RSMo § 610.023.3

3. The Circuit Court erred in dismissing Count 2 of Appellant's petition for failure to state a claim upon which relief could be granted, because Count 2 of the petition sufficiently alleged facts showing that respondents violated the Sunshine Law, in that RSMo § 610.023.3 requires a custodian to respond to a request for public records within 3 business days of receiving the request, and Count 2 of the petition alleges that Appellant requested a public record, the request was received by the custodian, the custodian did not respond within 3 business days, and the failure to respond was knowing and purposeful.

Pennington v. Dobbs, 235 S.W.3d 77 (Mo. Ct. App. 2007)

Anderson v. Village of Jacksonville, 103 S.W.3d 190 (Mo. Ct. App. 2003)

RSMo § 610.023.3

Argument

1. The Circuit Court erred in dismissing Count 1 of Appellant's petition for failure to state a claim upon which relief could be granted, because Count 1 of the petition sufficiently alleges facts showing that respondents violated the Sunshine Law, in that the Missouri Sunshine Law requires a public governmental body to respond to a request for records within 3 days of receiving the request by providing the record or an explanation for the delay, and Count 1 of the petition alleges that Appellant requested a specific public record and respondents did not provide Appellant with the record that she requested, and instead forged a document to appear as if it was the record requested by Appellant and provided it to Appellant for the purpose of depriving Appellant of her right to receive a copy of the actual record which she had requested.

Pennington v. Dobbs, 235 S.W.3d 77 (Mo. Ct. App. 2007)
RSMo § 610.023.3

Standard of Review

“The standard of review for a trial court's grant of a motion to dismiss is *de novo*. When this Court reviews

the dismissal of a petition for failure to state a claim, the facts contained in the petition are treated as true and they are construed liberally in favor of the plaintiffs. If the petition sets forth any set of facts that, if proven, would entitle the plaintiffs to relief, then the petition states a claim.” *Lynch v. Lynch*, 260 S.W.3d 834, 836 (Mo. 2008) (Internal citations omitted.) “This court must affirm the trial court’s ruling if the motion to dismiss could have been sustained on any of the meritorious grounds raised in the motion, regardless of whether the trial court relied on that particular ground. It will not, however, affirm the grant of a motion to dismiss on grounds not stated in the motion.” *Breeden v. Hueser*, 273 S.W.3d 1, 6 (Mo. Ct. App. 2008) (Internal citations omitted.)

Preservation of Error

Respondents argued that Appellants petition fails to state a claim in their motion to dismiss and suggestions in support. (LF pp.15-21). Appellant preserved her argument that the petition states a claim upon which relief can be granted in her suggestions in opposition to the motion to dismiss. (LF pp.22-25).

The elements of a claim for failure to respond to a request for public record are (1) a request for a public record, (2) that the request was received by the custodian, and (3) that custodian did not properly respond within 3 days. *Pennington v. Dobbs*, 235 S.W.3d 77, 79 (Mo. Ct. App. 2007). If the requester is not granted immediate access to the requested record, the custodian must provide the requester with “a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection.” RSMo § 610.023.3.

Count 1 of the petition pleads that Appellant requested a record, (LF p.8 para.17-18), and that the request was received by Respondent Skaggs (LF p.8 para.20) who is the custodian of records for BCPO (LF p.7 para.12). The petition alleges that the request was for a copy of BCPO’s Sunshine Law Compliance Policy “as it was on May 3, 2023”. The petition pleads that Respondents did not provide Appellant with the record that she requested, and instead conspired to create a record and misdate it so that it would appear to be the record that Appellant had requested, and then provided it to Appellant as if it was the record she had requested. (LF p.8 para.17 – p.10 para.38).

In their motion to dismiss, Respondents argued that their provision of a document was sufficient to comply with the requirements of the Sunshine Law. (LF p.16 para.4). However, provision of a document forged to appear as if it was the document requested by Appellant did not satisfy the requirements of the Sunshine Law. Plaintiff's request was for BCPO's Sunshine Law Compliance Policy "as referred to in RSMo § 610.028.2 as it was on May 3, 2023". (LF p.8 para.18). RSMo § 610.028.2 provides that any employee or member who complies with a public governmental body's Sunshine Law Compliance Policy is indemnified for any violation of the Sunshine Law that is caused by adherence to the policy. Because it is impossible to comply with a policy that does not exist, and it is also not possible for a non-existent policy to cause a violation of the law, it is obvious that a policy must exist on the date of the violation in order to effect the liability of the violator. Therefore, the date on such a policy is important and material. Further, it is obvious that respondents were aware of the materiality of the date included in the request due to the fact that they misdated the document in an effort to make it appear as if they were providing Appellant with the document she had requested.

If forgery of a document is sufficient to comply with the requirements of the Sunshine law, any public governmental body could simply avoid providing records by doing so. Upon receipt of a request for body-worn camera footage, a custodian could conspire with other members of a police department to reenact a scene and create a different, or new record, and then provide that to the requester as if it was the record that was requested. Similarly, upon request for minutes of a city council meeting, the custodian could conspire to create a document that purports to be the minutes of the meeting that was the subject of the request and provide that as if it were genuine. Interpreting the Sunshine Law to allow for such deceitful responses would lead to absurd results, and would render the Sunshine Law's requirements completely useless.

The law requires the custodian to provide the public record that is requested, not a different record.

Respondents violated the law by conspiring to provide Appellant with a *different* record than the record requested by Appellant.

In their motion to dismiss, respondents also suggested that a custodian is not required to verify the authenticity of a document they provide to a requester.

(LF p.16 para.4-5, LF p.20). The petition pleads that respondents were *involved* in forging the record *after* receiving Appellant's request and were fully aware that the record was not the record which Appellant requested. Respondents' hypothetical suggestion that a custodian may not be liable for *inadvertently* providing a forged document in response to a request is completely irrelevant to a situation where a public governmental body knowingly forges a record in response to a request to avoid providing the genuine record. The fact that defendants forged a document and provided the forged document instead of the document requested by Appellant only shows that the violation was both knowing and purposeful.

Contrary to respondents' assertions that Appellant's petition fails to plead that a record was not provided to Appellant (LF p.16 para.6), the petition *does* plead that respondents acted to avoid providing the "genuine Sunshine Law Compliance Policy that existed and was in effect on May 3, 2023" to Appellant (LF p.10 para.33), and instead engaged in a scheme to forge a "new" policy and provide it to Plaintiff instead. (LF p.9 para.27). The petition pleads that Respondents did so "for the purpose of depriving [Appellant] of her right to

receive a copy of BCPO’s Sunshine Compliance Policy as it was on May 3, 2023”. (LF p.11 para.45). The petition is not rendered insufficient by the fact it pleads *in the alternative* that no document existed and respondents violated the law by failing to properly respond by notifying Appellant of the fact that no such policy existed on May 3, 2023.¹⁵ ¹⁶

Because Count 1 of Appellant’s petition sufficiently alleges a violation of the Sunshine Law by pleading that (1) *Appellant requested a record*, (2) *the request was received by the custodian*, and (3) respondents conspired to forge a document and provide it to Appellant instead of the document that Appellant requested, and *did not provide Appellant with the document she requested*, or provide an explanation for

- 15 “A pleader may make two or more statements of a cause of action alternatively or hypothetically in one count, and if any one of the statements of the claim is sufficient, the pleading is not made insufficient by reason of the insufficiency of one or more of the alternative statements. Rule 55.10,” SHOWALTER v. WESTOAK REALTY AND INV, 741 S.W.2d 681, 683 (Mo. Ct. App. 1988) As discussed in Point 2 on appeal, the alternative averment that Respondents forged and provided the document to avoid admitting that no policy existed on May 3, 2023 is also sufficient to support a claim for violation of the Sunshine Law.
- 16 While the petition does include the fact that Respondent Skaggs made a statement on a later date that no policy existed prior to the policy that was provided to Appellant (LF p.12 para.49), the petition does not allege that the statement was true and the petition alleges that Respondent Skaggs intended to deceive Appellant at the time that those statements were made. (LF p.12 para.50).

the delay within 3 business days, the court of appeals should reverse the dismissal of Count 1 of Appellant's petition and remand the cause for further proceedings.

2. The Circuit Court erred in dismissing Count 1 of Appellants petition for failure to state a claim upon which relief could be granted, because Count 1 of the petition sufficiently alleges facts showing that respondents violated the Sunshine Law, *in that* the Missouri Sunshine Law requires a public governmental body to respond to a request for records within 3 days, and Count 1 of the petition alleges in the alternative that respondents provided a forged document in response to Appellant's request for a public record, and provision of a forged document is not sufficient to comply with the legal requirement to respond to a request for records within 3 days of receiving the request for a public record.

Pennington v. Dobbs, 235 S.W.3d 77 (Mo. Ct. App. 2007)
Anderson v. Village of Jacksonville, 103 S.W.3d 190 (Mo. Ct. App. 2003)
RSMo § 610.023.3

Standard of Review

“The standard of review for a trial court's grant of a motion to dismiss is *de novo*. When this Court reviews the dismissal of a petition for failure to state a claim, the facts contained in the petition are treated as true and they are construed liberally in favor of the plaintiffs. If the petition sets forth any set of facts that, if proven, would entitle the plaintiffs to relief, then the petition states a claim.” *Lynch v. Lynch*, 260 S.W.3d 834, 836 (Mo. 2008) (Internal citations omitted.) “This court must affirm the trial court's ruling if the motion to dismiss could have been sustained on any of the meritorious grounds raised in the motion, regardless of whether the trial court relied on that particular ground. It will not, however, affirm the grant of a motion to dismiss on grounds not stated in the motion.” *Breeden v. Hueser*, 273 S.W.3d 1, 6 (Mo. Ct. App. 2008) (Internal citations omitted.)

Preservation of Error

Respondents argued that Appellants petition fails to state a claim in their motion to dismiss and suggestions in support. (LF pp.15-21). Appellant preserved her argument that the petition states a claim upon which

relief can be granted in her suggestions in opposition to the motion to dismiss. (LF pp.22-25).

In addition to the petition's allegation that Respondents responded by forging a record to avoid providing the genuine record to Appellant, the petition pleads in the alternative that the forgery was created and provided to avoid properly responding to Appellant's request by notifying Appellant that no record existed to satisfy her request. (LF p.11 para.45).

RSMo § 610.023.3 requires a custodian to "act" within 3 business days of receiving a request for records. Missouri courts have consistently interpreted this to mean that a custodian must respond to the request within 3 days. *Pennington v. Dobbs*, 235 S.W.3d 77, 79 (Mo. Ct. App. 2007); *Anderson v. Village of Jacksonville*, 103 S.W.3d 190, 194 (Mo. Ct. App. 2003); *Perkins v. Caldwell*, 363 S.W.3d 149, 154 (Mo. Ct. App. 2012). Although the law does not lay out a strict blueprint for exactly what a response must consist of, it does have specific requirements in certain circumstances. If the record is available, or will be provided at a later date, the custodian must either provide the record, or the response must include an explanation for the delay and

the earliest time and place that the record will be made available. *Gross v. Parson*, 624 S.W.3d 877, 888 (Mo. 2021). RSMo § 610.023.3 requires a custodian to “act” by responding to the request regardless of whether a record will be provided to the requester. This is even more obvious since RSMo § 610.023.4 states that if a request is denied, a requester has a right to request and receive a written statement citing the specific provisions of law the custodian relies on to deny the request.

The position of respondents seems to be that *any* response serves to satisfy the response requirement of RSMo § 610.023.3, and respondents take the position that a custodian need not inform a requester if there is no record responsive to the request and may instead respond with a forged document to deceive the requester into believing that the requested record existed and has been provided. (LF pp.15-16). However, when the law requires a response from the custodian it necessarily implies that the response must be honest. If a custodian cannot find a record or does not believe it to exist, then the custodian must provide an honest response stating so. “[T]he custodian of records has legal custody of the records and is best able to respond to the requester as to the *existence* and location of records for which access is

sought" *Anderson v. Village of Jacksonville*, 103 S.W.3d 190, 199 (Mo. Ct. App. 2003) (emphasis added). While RSMo § 610.023.3 does not provide specific requirements for what a response must include when a record is not available for release, it is fair to presume that the response must at a minimum be an honest response.

While it seems that no prior Missouri case has addressed the precise question of whether a public governmental body may create a forgery and provide it to a requester to avoid providing an honest response to the requester, the reason for this lack of precedent is patently obvious. The idea that such actions could fulfill the 3 day response requirement of RSMo § 610.023.3 is absurd. The suggestion that a deceitful response is sufficient to comply with the requirements of the Sunshine Law would frustrate the intent of the legislature in crafting Chapter 610.¹⁷ It would do nothing to promote transparency and would instead enable corruption and foster distrust for the government. Most importantly, such an interpretation would render the Sunshine Law completely useless as a

¹⁷ "It is not disputed that the intent of the legislature should control; nor is it arguable that the legislature in passing Chapter 610 intended to let the sunshine in on public meetings, records and votes." *Wilson v. McNeal*, 575 S.W.2d 802, 810 (Mo. Ct. App. 1979).

tool for transparency. Interpreting RSMo § 610.023.3 to allow for deceitful and misleading responses to requests for records would lead to absurd and unreasonable results contrary to the intent of statute. “Statutes cannot be interpreted in ways that yield unreasonable or absurd results. Hence, [appellate courts] will not interpret a statute … so as to reach an absurd result contrary to its clear purpose.” *Henry v. State*, 666 S.W.3d 177, 185 (Mo. Ct. App. 2023) (Internal citations omitted.)

When the law requires a response within 3 days, it necessarily contemplates that the response must be an honest response. Forging a document to avoid providing an honest answer is not a proper response. Therefore, if Respondents did not have a Sunshine Law Compliance Policy which existed on May 3, 2023, they were required to notify Appellant of that fact in their response. By forging a document to appear as if it had been created prior to the date specified in Appellant’s request, and providing the forged document to hide the fact that the requested policy did not exist, Respondents failed to properly respond to Appellant’s request and their actions violated the law.

Because Count 1 of Appellant’s petition sufficiently alleges a violation of the Sunshine Law by

alternatively pleading that (1) Appellant requested a record, (2) the request was received by the custodian, and (3) respondents conspired to avoid properly responding to Appellants request within 3 business days, the Court of Appeals should reverse the dismissal of Count 1 of Appellant's petition and remand the cause for further proceedings.

3. The Circuit Court erred in dismissing Count 2 of Appellant's petition for failure to state a claim upon which relief could be granted, because Count 2 of the petition sufficiently alleged facts showing that respondents violated the Sunshine Law, in that RSMo 610.023.3 requires a custodian to respond to a request for public records within 3 business days of receiving the request, and Count 2 of the petition alleges that Appellant requested a public record, the request was received by the custodian, the custodian did not respond within 3 business day, and the failure to respond was knowing and purposeful.

Pennington v. Dobbs, 235 S.W.3d 77 (Mo. Ct. App. 2007)

Anderson v. Village of Jacksonville, 103 S.W.3d 190 (Mo.

Ct. App. 2003)

RSMo 610.023.3

Standard of Review

“The standard of review for a trial court's grant of a motion to dismiss is *de novo*. When this Court reviews the dismissal of a petition for failure to state a claim, the facts contained in the petition are treated as true and they are construed liberally in favor of the plaintiffs. If the petition sets forth any set of facts that, if proven, would entitle the plaintiffs to relief, then the petition states a claim.” *Lynch v. Lynch*, 260 S.W.3d 834, 836 (Mo. 2008) (Internal citations omitted.) “This court must affirm the trial court's ruling if the motion to dismiss could have been sustained on any of the meritorious grounds raised in the motion, regardless of whether the trial court relied on that particular ground. It will not, however, affirm the grant of a motion to dismiss on grounds not stated in the motion.” *Breeden v. Hueser*, 273 S.W.3d 1, 6 (Mo. Ct. App. 2008) (Internal citations omitted.)

Preservation of Error

Respondents argued that Appellant's petition fails to state a claim in their motion to dismiss and suggestions in support. (LF pp.15-21). Appellant preserved her argument that the petition states a claim upon which relief can be granted because it alleges that Respondents did not properly respond within 3 business days in her suggestions in opposition to the motion to dismiss. (LF pp.22-25).

Count 2 of Appellant's petition alleges that Appellant sent a request on May 12, 2023 requesting BCPO's Sunshine Law Compliance Policy "as it was on May 14, 2022" if the policy previously provided was not in existence on that date. (LF p.13 para.54-55, LF p.10 para.39, LF p.11 para.39). The petition also pleads that Respondent Skaggs was fully aware that the previously provided policy was not in existence on May 14, 2022 (LF p.11 para.42), and that Respondent Skaggs was aware that she was required to respond to this request for records within 3 days (LF p.11 para.43), but did not respond (LF p.11 para.44), and her failure to do so was purposeful. (LF p.12 para.48).

RSMo § 610.023.3 requires a custodian to "act" upon a request for records within 3 business days of

receiving the request. The meaning of “act” in RSMo § 610.023.3 is to respond to the request. *Pennington v. Dobbs*, 235 S.W.3d 77, 79 (Mo. Ct. App. 2007); *Anderson v. Village of Jacksonville*, 103 S.W.3d 190, 194 (Mo. Ct. App. 2003); *Perkins v. Caldwell*, 363 S.W.3d 149, 154 (Mo. Ct. App. 2012). Failure of a custodian to respond to a request for records within 3 days of receiving a request for records is a violation of the Sunshine Law. *Pennington v. Dobbs*, 235 S.W.3d 77, 79 (Mo. Ct. App. 2007). While it may be true that a custodian is not a spokesperson for a public governmental body and is not obligated to answer random questions directed to the custodian, a custodian is obligated to respond to a request for a public record. Appellant’s May 12, 2023 email requested the Sunshine Law Compliance Policy as it was on May 14, 2022 if the previously provided record was not the policy that existed on May 14, 2022. (LF p.11 para.39). In a situation where a custodian is unaware of such facts and/or unable to discover such facts, a response stating this may be sufficient, but Skaggs was fully aware that the policy she had provided did not exist on May 14, 2022 (LF p.11 para.42), and therefore the petition sufficiently pleads that Skaggs knew and was aware that the May 12, 2023 request constituted a

request for BCPO's Sunshine Law Compliance Policy "as it was on May 14, 2022." (LF p.11 para.39). This request is analogous to a request where an individual requests minutes of a city council meeting "if minutes of the meeting exist". The inclusion of the word "if" in such a request does not render the request insufficient, particularly so when the custodian is aware that such a record does or does not exist. The Sunshine Law's express declaration¹⁸ that its provisions be liberally construed in favor of open records requires a reasonable attempt by the custodian to understand the request by considering the request in context of the entire communication. *Anderson v. Village of Jacksonville*, 103 S.W.3d 190, 196 (Mo. Ct. App. 2003). The 3 day response rule requires a custodian to respond to a request honestly and reasonably regardless of whether the honest response is "no such record exists", "such a record exists and will be provided", or "I am unable to determine whether such a record exists". Count 2 of the petition sufficiently pleads facts showing that a request for records was received by the custodian, but the custodian did not respond within 3 business days.

Because Count 2 of Appellant's petition clearly pleads that Respondent Skaggs received the May 12,

18 RSMo § 610.011

2023 email request for records (LF p.11 para.40), knew that she was obligated to respond to the request for records within 3 business days but did not respond (LF p.11 para.43-44), and her failure to do so was knowing and purposeful (LF p.12 para.48), Count 2 of the petition clearly pleads facts sufficient to support a claim for violation of the Sunshine Law. The Court of Appeals should reverse dismissal of Count 2 of Appellant's petition and remand the cause for further proceedings.

Relief Sought by Appellant

Because the Circuit Court erred in dismissing Count 1 and Count 2 of Appellant's petition, the Court of Appeals should reverse the judgment of dismissal, and remand the cause for further proceedings.

Certification of Service, Redaction, and Compliance

I the undersigned do hereby certify that this brief includes the information required by Rule 55.03, this brief complies with the limitations contained in Rule 84.06(b) and is 5,756 words in length. I further certify that this brief was served upon Charles J. Dykhouse and

Jason Glahn, Attorneys for Respondents Boone County Prosecutor's Office, Roger Johnson and Tracy Skaggs by electronic mail at cdykhouse@boonecountymo.org and jglahn@boonecountymo.org on the 13th day of September, 2024. I further certify that this document complies with the redaction requirements set forth in Rule 84.015.

/s/ Sylvia Pride

Sylvia Pride, Appellant
P.O. Box 248,
Sturgeon, MO 65284
573-687-2014
spride@emailsplash.com

Appendix J

Filed March 19, 2025 in WD86900

IN THE MISSOURI COURT OF APPEALS

WESTERN DISTRICT

SYLVIA PRIDE,)
vs.) Appellant,)) WD86900
BOONE COUNTY PROSECUTOR'S OFFICE,)
ROGER JOHNSON, and TRACY SKAGGS,)
Respondents.)

**MOTION FOR REHEARING AND MOTION TO
MODIFY**

COMES NOW Appellant Sylvia Pride and requests that the appeal be reheard en banc pursuant to Court Operating Rule 22.01 and Local Rule 31 for the reason that the opinion is contrary to previous decisions of Missouri appellant courts. Further, Appellant requests rehearing due to the fact that the opinion of the court of appeals is supported by legal and factual errors effecting the disposition of the case.

**The opinion is supported by material
misstatements of fact**

The opinion of the Court of Appeals makes a number of material misstatements of fact and relies upon those factual errors to support its decision. The opinion erroneously alleges that respondents provided Appellant with the only Sunshine Law compliance policy in existence at the time of her requests, and that the document existed at the time of her requests.

“Pride's well-pleaded facts show that the Prosecutor's Office timely disclosed its Sunshine Law compliance policy *as it existed at the time of her requests* and that policy *was the only existing document responsive to her requests*. That is all the Sunshine Law required here. Pride may have wanted a version in effect on a specific date, but she did not allege that such document existed and was withheld from her.”

Pride v. Boone Cnty. Prosecutor's Office, No. WD86900, at *9 (Mo. Ct. App. Mar. 4, 2025)
(Emphasis Added.)

This statement is patently false. The petition pleads that the forgery which was provided to Appellant *did not exist* at the time of Appellant's May 5, 2023 request for the Sunshine Law Compliance Policy "as it was on May 3, 2023", and respondents conspired to create the forgery *after receiving the request*. The petition expressly pleads that "after receipt of the request described in paragraph 18, [respondents] created a new Sunshine Law Compliance Policy." (LF p.9 para.28). The petition pleads that respondents engaged in a scheme to create a new policy and back-date it to make it appear as if it had been created and signed by Respondent Johnson in May of 2022.¹⁹ ²⁰ (LF p.9 para.26 – p.10 para.38). The petition alleges that respondents created the forgery for the purpose of causing Appellant to believe that she had been provided with the real policy that had been in effect on May 3, 2023 as requested by Appellant. (LF p.11 para.45,47). The opinion's assertion that the policy which was provided to Appellant existed at the time of

19 As detailed in the petition, Respondent Johnson was not the Boone County Prosecutor in May of 2022, and did not work in the Prosecutor's Office in May of 2022. (LF p.10 para.31-32). Roger Johnson assumed the office of Prosecutor on August 3, 2022. (LF p.7 para.4-6).

20 As detailed in the petition this act of misdating the document may have been an attempt to influence pending litigation. (LF p.8 para.19; LF p.9 para.23-25; LF p.10 para.39).

Appellant's request is pure fiction. The opinion should be corrected to conform to the facts of the case.

The claim that Appellant failed to plead that a document was withheld from her is also false. The petition reasonably infers that the document which Appellant requested did exist and was withheld from Appellant. The petition pleads that BCPO was legally required to keep such a policy at all times. (LF p.8 para.19). Because RSMo 610.028.2 requires a public governmental body to keep a Sunshine Law Compliance Policy, there is a presumption that such a policy did exist. "There is a presumption that public officials have rightfully and lawfully discharged their official duties until the contrary appears." *Dittmeier v. Missouri Real Estate Commission*, 316 S.W.2d 1, 5 (Mo. 1958). The petition expressly pleads that "[Appellant] had a right to receive a copy of [Respondent] BCPO's Sunshine Law Compliance Policy as it was on May 3, 2023". (LF p.9 para.22). Because it is impossible to receive a copy of a document that does not exist, the petition clearly infers that the requested policy did exist. The petition also pleads that respondents created a forgery and provided Appellant with the forgery "for the purpose of depriving [Appellant] of her right to receive a copy of BCPO's

*Sunshine Law Compliance Policy as it was on May 3, 2023". (LF p.10 para.45,47). By pleading that respondents engaged in a scheme to avoid providing Appellant with *a copy of the document*, the petition clearly infers that the document itself existed. By pleading that respondents forged a document to avoid providing Appellant with a copy of the real document which she requested, the petition clearly infers that a real document did exist and was withheld from her.*

The opinion's false announcements that respondents provided Appellant with a copy of the policy which existed at the time of Appellant's request, and that the forged document was the only policy in existence at the time of Appellant's requests is a serious distortion of the facts. Because the decision of the Court of Appeals expressly relies upon these false and distorted facts, the Court should correct these factual errors, reverse the dismissal of the Appellant's petition, and remand the cause to the circuit court for further proceedings.

The opinion also misconstrues the facts regarding the second request for records. Referencing the previously provided policy which was a forgery, the request stated: "*[i]f that policy was not in effect on May*

14, 2022, please send me a copy of the policy as it was on May 14, 2022." (LF p.11 para.39). As pled in the petition, the previously provided policy had not been in effect on May 14, 2022 and Respondent Skaggs was aware that the previously provided policy had not existed on May 14, 2022. (LF p.11 para.42). Therefore, Respondent Skaggs understood Appellants' request to be for a copy of the policy that had existed on May 14, 2022, and Respondent Skaggs was required to respond within 3 days by either providing a copy of such a policy if it existed, or providing an appropriate response denying the request if no such record existed.²¹ The opinion acknowledges the fact that the custodian would have been required to respond if the policy that was previously provided was not in effect on May 14, 2022, but the opinion erroneous avers that the policy had been in effect on May 14, 2022.

21 Although the petition does plead that a Sunshine Law Compliance Policy existed on May 3, 2023, The petition does not plead facts alleging that a policy existed on May 14, 2022. Instead, Count 2 of the petition alleges that Respondent Skaggs failed to respond within 3 days, and the failure was knowing, and for the purpose of not making further statements that could be used as evidence of the criminal acts of forgery perpetrated by herself and Respondent Johnson. (LF p.11 para.43 - LF p.12 para.48).

“It would then follow that if the document previously provided was not in effect on May 14, 2022, and the Prosecutor’s Office did not have a policy in effect on that date (or no longer retained that document), then they would have had to respond to Pride’s May 12 request with that information because the contingency in the request would have been triggered.”

Pride v. Boone Cnty. Prosecutor’s Office, No. WD86900, at *10 n.11 (Mo. Ct. App. Mar. 4, 2025)

However, contrary to the incorrect factual assertions in the opinion, that contingency was triggered because the petition pleads that the previously provided forgery *did not exist in May of 2022* (LF p.11 para.42), and Skaggs was fully aware of that fact since she had been involved in creating the forgery *after* receiving the May 5, 2023 request. (LF p.8 para.20 p.10 para.38). Because the decision of the Court of Appeals expressly relies upon this mistake of fact in concluding that Count 2 failed to state a claim, the Court should correct this error and find that Count 2 of the petition states a claim under the Sunshine Law.

The decision is contrary to previous decisions of
Missouri appellate courts

As detailed above, the Court of Appeals has rejected the facts pled in the petition and has instead relied upon different, even opposite facts of its own creation to support its decision affirming the judgment of dismissal. In doing so, the Court has departed from one of the most basic and foundational rules applicable to appeal of a petition dismissed for failure to state a claim, the standard of review.

“In reviewing a motion to dismiss for failure to state a claim, this Court accepts as true all facts properly pleaded and all reasonable inferences therefrom.”

Madden v. C K Barbecue Carryout, Inc., 758 S.W.2d 59, 61 (Mo. 1988)

“A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom.

No attempt is made to weigh any facts alleged as to whether they are credible or persuasive.”

Bosch v. St. Louis Healthcare Network, 41 S.W.3d 462, 464 (Mo. 2001)

By ignoring the facts pled in the petition, and instead substituting facts of its own creation to support its decision, the Court of Appeals has departed from the standard of review prescribed by the Supreme Court of this state. Because the Court of Appeals had declined to follow the law as set forth in prior appellate decisions, the case should be reheard by the Court in Banc pursuant to Court Operating Rule 22.01 and Local Rule 31. However, because the Court of Appeals lacks authority to depart from Missouri Supreme Court precedent, if the Court of Appeals remains convinced that the current standard of review is incorrect and should not be followed, the Court of Appeals should transfer the case to the Missouri Supreme Court pursuant to Rule 83.02 for reconsideration of existing law.

The Court erred in finding that the petition does not sufficiently allege conduct constituting knowing and purposeful violations of the Sunshine Law.

The opinion erroneously asserts that although the petition alleges that the violations were knowing and purposeful,²² it does not sufficiently plead supporting facts.²³

However, this finding is contrary to the Missouri Supreme Court's decision in *Gross v. Parson*, 624 S.W.3d 877. In *Gross v. Parson* the court found that a petition reasonably inferred a knowing violation when it alleged that the public governmental body was aware of the requirements of the Sunshine Law, and violated the requirements of the Sunshine Law.

22 "Pride's petition included two counts, each alleging a knowing and purposeful violation of the Sunshine Law—one for failure to respond to her May 5 request for records (Count I) and the other for failure to respond to her May 12 records request (Count II)." *Pride v. Boone Cnty. Prosecutor's Office*, No. WD86900, at *3-4 (Mo. Ct. App. Mar. 4, 2025)

23 "Here, Pride seeks civil penalties against the Prosecutor's Office, but she fails to allege any conduct amounting to a knowing or purposeful violation of the Sunshine Law." *Pride v. Boone Cnty. Prosecutor's Office*, No. WD86900, at *11 n.12 (Mo. Ct. App. Mar. 4, 2025)

In his petition, Mr. Gross pleaded that the Governor's Office, without explanation and without closing records, redacted portions of the records it produced to him in violation of the Sunshine Law, despite knowing the requirements of the Sunshine Law and despite the fact the records were subject to disclosure. The reasonable inference raised by these allegations is that the Governor's Office knew it could not redact records without explanation. Mr. Gross alleged it did so anyway. These allegations are sufficient to plead a knowing violation of the Sunshine Law.

Gross v. Parson, 624 S.W.3d 877, 892-93 (Mo. 2021)

For Count 1 the petition alleges that Appellant requested a public record (LF p.8 para.18,19), and had a right to receive the public record that she requested (LF p.9 para.22). Count 1 further alleges that respondents engaged in a scheme to avoid providing the requested document to Appellant (LF p.9 para.26 – p.10 para.38), and that respondents did so to avoid properly responding to Appellant's request for records. (LF p.11 para.45,47). Count 1 alleges that respondents were aware of the

requirements of the Sunshine Law (LF p.7 para.7,13), and respondents' "failure to properly respond to [Appellant's] request for record on May 5, 2023 was a knowing and purposeful violation of the Missouri Sunshine Law." (LF p.13 para.53).

Count 2 alleges that on May 12, 2023 Appellant made a request for Respondent BCPO's Sunshine Law Compliance Policy "as it was on May 14, 2022", and although Respondent Skaggs was required to respond to the request within 3 days she failed to do so. (LF p.11 para.43,44). Count 2 alleges that Respondent Skaggs failed to respond for the purpose of hiding evidence of crimes committed by herself and Respondent Johnson. (LF p.12 para.48). Count 2 alleges that respondents were aware of the requirements of the Sunshine Law (LF p.7 para.7,13), and respondents' "failure to respond to [Appellant's] request for records on May 12, 2023 was a knowing and purposeful violation of the Missouri Sunshine Law." (LF p.13 para.55).

Because both Count 1 and Count 2 of the petition allege that respondents were aware of the requirements of the Sunshine Law and violated the law anyway, both counts

sufficiently pled knowing violations of the Sunshine Law.

The petition also pled that the violations were purposeful. "A public governmental body purposely violates the Sunshine Law when it "exhibit[s] a 'conscious design, intent, or plan' to violate the law and do[es] so 'with awareness of the probable consequences.'" *Gross v. Parson*, 624 S.W.3d 877, 893 (Mo. 2021). In *Gross v. Parson* the petition alleged that the governor's office engaged in a scheme to withhold public records and information in order to hide evidence of misconduct. The Missouri Supreme Court held that these allegations were sufficient to plead a purposeful violation of the Sunshine Law.

Further, Mr. Gross alleges the Governor's Office "repeatedly refused to abide by the requirements" of the Sunshine Law in order to "delay the release of information that may implicate the Office of the Missouri Governor in a scheme to circumvent Missouri campaign finance laws" and "delay the release of information that may implicate donors to Attorney General Josh Hawley's campaign for

United States Senate in a scheme to circumvent Missouri campaign finance laws."

With respect to his second sunshine request, Mr. Gross alleges the Governor's Office violated the Sunshine Law when it redacted open public records. Further, he alleges the Governor's Office purposely violated the Sunshine Law when it redacted the records "to avoid providing information pertinent to [Mr. Gross's] investigation into government corruption." These allegations sufficiently allege the Governor's Office had an intent to violate the law.

Gross v. Parson, 624 S.W.3d 877, 893-94 (Mo. 2021)

Appellant's petition pleads that respondents acted purposefully by forging a document to avoid properly responding to Appellant's May 5, 2023 records request, and then failing to respond to the May 12, 2022 request for records in order to avoid providing Appellant with information regarding misconduct committed by respondents. (LF p.9 para.23 – p12. para.48). Like the petition in *Gross v. Parson*, Appellant's petition

sufficiently pleads that respondents acted with purpose to violate the Sunshine Law.

Whether a violation is knowing or purposeful is a determination of the state of mind of a violator. *Id.* at 893. Rule 55.15 provides that “[m]alice, intent, knowledge and any other condition of mind of a person may be averred generally.” Not only does Appellant’s petition allege facts showing that the violations were knowing and purposeful, the petition expressly avers that the violations were “knowing and purposeful”. (LF p.13. para.53,55). The Court of appeals erred by finding that Plaintiff’s petition did not sufficiently plead knowing and purposeful violations of the Sunshine Law.

Because the decision of the Court of Appeals is contrary to the holding in *Gross v. Parson*, 624 S.W.3d 877 (Mo. 2021), the case should be reheard by the Court in Banc pursuant to Court Operating Rule 22.01 and Local Rule 31. Because the Missouri Supreme Court’s holding in *Gross v. Parson* is binding upon the Court of Appeals, the Court of Appeals should reverse its decision and find that the petition sufficiently pleads knowing and purposeful violations of the Sunshine Law.

**The Court should modify the opinion because it
erroneously suggests that Appellant's points
relied upon are deficient**

The opinion states that Appellant's points relied upon "do not follow the format prescribed by Rule 84.04". This is also untrue. Appellant's points relied upon follow the exact format required by Rule 84.04.

Rule 84.04(d)(1) requires that a point relied upon must "(A) Identify the trial court ruling or action that the appellant challenges; (B) State concisely the legal reasons for the appellant's claim of reversible error; and (C) Explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error." The rule requires that "[t]he point shall be in substantially the following form: "The trial court erred in [identify the challenged ruling or action], because [state the legal reasons for the claim of reversible error], in that [explain why the legal reasons, in the context of the case, support the claim of reversible error]." Each of Appellant's points relied on specifically identifies the challenged ruling, states the legal reasons for Appellant's claims of reversible error, and then explains why, in the context of the case, those legal

reasons support the claims of reversible error.

Appellant's three points on appeal are as follows:

1. The Circuit Court erred in dismissing Count 1 of Appellant's petition for failure to state a claim upon which relief could be granted, *because* Count 1 of the petition sufficiently alleges facts showing that respondents violated the Sunshine Law, *in that* the Missouri Sunshine Law requires a public governmental body to respond to a request for records within 3 days of receiving the request by providing the record or an explanation for the delay, and Count 1 of the petition alleges that Appellant requested a specific public record and respondents did not provide Appellant with the record that she requested, and instead forged a document to appear as if it was the record requested by Appellant and provided it to Appellant for the purpose of depriving Appellant of her right to receive a copy of the actual record which she had requested.
2. The Circuit Court erred in dismissing Count 1 of Appellants petition for failure to state a claim

upon which relief could be granted, *because* Count 1 of the petition sufficiently alleges facts showing that respondents violated the Sunshine Law, *in that* the Missouri Sunshine Law requires a public governmental body to respond to a request for records within 3 days, and Count 1 of the petition alleges in the alternative that respondents provided a forged document in response to Appellant's request for a public record, and provision of a forged document is not sufficient to comply with the legal requirement to respond to a request for records within 3 days of receiving the request for a public record.

3. The Circuit Court erred in dismissing Count 2 of Appellant's petition for failure to state a claim upon which relief could be granted, *because* Count 2 of the petition sufficiently alleged facts showing that respondents violated the Sunshine Law, *in that* RSMo § 610.023.3 requires a custodian to respond to a request for public records within 3 business days of receiving the request, and Count 2 of the petition alleges that Appellant requested a public record, the request was received by the

custodian, the custodian did not respond within 3 business days, and the failure to respond was knowing and purposeful.

Respondent did complain that the points relied upon failed to conform to the requirements of Rule 84.04(d), but the main thrust of the complaint was the contention that the points are “multifarious” because of the inclusion of the word forgery.

“In this matter, all of Appellant’s Points are multifarious and fail to state a clear claim of legal error because they assert a vague notion of “forgery” as one of several necessary components of the alleged violation of the Sunshine Law.

Appellant neither defines “forgery” nor explicates its relation (if any) to any remedial violation of RSMo. 610.027. Therefore, it is impossible to determine if the trial court made any error.”

(Resp. Brief p.12).

“A statement of a point relied on violates Rule 84.04(d) when it groups together multiple contentions not related to a single issue.” *State v. McFadden*, 369 S.W.3d 727, 746 n.3 (Mo. 2012). The inclusion of a commonly used

English word in the points on appeal does not render any of the points on appeal “multifarious”.²⁴⁶

The Court of Appeals has a policy of striking briefs for the smallest technical violations of Rule 84.04, but Appellant’s brief was never stricken. The opinion does not give any explanation for the claim that the points relied upon “do not follow the format prescribed by Rule 84.04”, and the opinion also does not indicate that the supposedly deficient points impacted the decision of the Court of Appeals. Nevertheless, because the assertion that the points relied upon do not comply with the requirements of Rule 84.04 is completely false, the opinion should be modified to remove any suggestion that the points relied on are deficient.

²⁴⁶ While it is true that the conduct of respondents may constitute felony forgery as defined by RSMo § 570.090.1(1) in that they “[made a] writing so that it [purported] to have been made . . . at another time . . . than was in fact the case”, the words forged and forgery are also commonly used and understood English words.

/s/ Sylvia Pride

Sylvia Pride, Appellant

P.O. Box 248,

Sturgeon, MO 65284

573-687-2014

spride@emailsplash.com

I, Sylvia Pride, do hereby certify that copies of this document were served upon Charles Dykhouse and Jason Glahn, Attorneys for respondents Boone County Prosecutor's Office, Roger Johnson, and Tracy Skaggs by electronic mail at cdykhouse@boonecountymo.org and jglahn@boonecountymo.org on this 19th day of March, 2025. I further certify that this document complies with the redaction requirements set forth in Rule 55.025.