

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

IN RE SUNSHINE REQUEST INVOLVING  
JOSEPH FINGER ON OCTOBER 24, 2017.

Case No. 1822-CC11513  
Division 20

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**RESPONDENT’S ANSWER, MOTION TO DISMISS, AND COUNTERCLAIM**

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COMES NOW the Respondent, LaDarla Nieder (“Nieder”), by and through her attorney, and for her Answer to the Motion filed by the Petitioner, City of St. Louis (“the City”), states as follows:

1. Nieder admits the averments in Paragraph 1 of the Motion.
2. Nieder admits that within thirty days of certain requests for public records § 610.100.4 grants circuit courts jurisdiction to review motions similar to the City’s Motion, but denies that venue is proper pursuant to that statute because—as the City frankly acknowledges—its Motion was not timely filed.
3. Nieder admits the averments in Paragraph 3 of the Motion.
4. Nieder admits the averments in Paragraph 4 of the Motion.
5. Nieder admits the averments in Paragraph 5 of the Motion.
6. Nieder admits that Paragraph 6 of the Motion accurately quotes § 610.100.4, RSMo.
7. Nieder admits that Paragraph 7 of the Motion accurately quotes *News-Press and Gazette Co. v. Cathcart*, 974 S.W.2d 576, 579 (Mo. App. W.D. 1998), but denies that this quotation has particular relevance where the legislature has

expressly authorized close family members of decedents to obtain “a complete unaltered and unedited incident report concerning the incident, and may obtain access to other records closed by a law enforcement agency pursuant to this section.”

8. Nieder admits the averments in Paragraph 8 of the Motion.
9. Nieder lacks knowledge or information sufficient to admit or deny the averments in Paragraph 9 of the Motion.
10. Nieder denies the averments of Paragraph 10 of the Motion and demands strict proof thereof.
11. Nieder admits the averments in Paragraph 11 of the Motion.
12. Nieder admits that the City’s Motion is untimely and, therefore, that this Court lacks statutory authorization to grant the requested relief; she denies that the City has alleged any facts sufficient to support its claim that justice requires that the Court should grant its Motion.
13. Nieder lacks knowledge or information sufficient to admit or deny the averments in Paragraph 13 of the Motion.

**MOTION TO DISMISS**

14. Nieder moves to dismiss the City’s Motion for failure to state a claim upon which the Court may grant relief.
15. Under § 610.100.4, when a family member of a deceased crime victim exercises their right to obtain “a complete unaltered and unedited incident report concerning the incident, and... other records closed by a law enforcement

agency pursuant to this section,” the law enforcement agency must do one of two things “[w]ithin thirty days of such request”: (1) “provide the requested material,” or (2) “file a motion... stating that the safety of the victim, witness or other individual cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized.”

16. By its own admission in its Motion, the City did neither of these things within thirty days of Nieder’s request.

17. Because the City did not file its Motion within thirty days of Nieder’s request, § 610.100.4 does not grant this Court authority to entertain the City’s Motion and the Court must dismiss the Motion.

### **COUNTERCLAIM**

1. Section 610.027.1 authorizes Nieder to file a counterclaim seeking judicial enforcement of the Sunshine Law.

2. Nieder’s only child, Megan, was the victim of a murder committed in the City of St. Louis on or about October 24, 2017.

3. Section 610.100.4 authorizes the parents of deceased crime victims to obtain “a complete unaltered and unedited incident report concerning the incident, and... other records closed by a law enforcement agency pursuant to this section,” unless within thirty days of the request the law enforcement agency files a motion seeking permission to withhold those records.

4. On or about February 7, 2018, Nieder filed a records request seeking information related to her daughter’s murder.

5. Rather than provide the material that Nieder requested, the City filed a Motion on October 26, 2018, asking this Court for permission to withhold the requested material.
6. At the time it filed its Motion on October 26, 2018, 261 days had elapsed since Nieder had submitted her request.
7. The City was fully aware at the time it filed its motion that it had not complied with § 610.100.4, even going so far as to acknowledge in its own Motion that it had not done so. *See City Motion*, ¶ 12.
8. The City's failure to provide Nieder the requested material despite the City's open admission that it had not complied with § 610.100.4 constitutes a knowing and purposeful violation of the Sunshine Law's express terms.
9. In a telephone conversation that took place on April 5, 2019, Nieder's attorney advised the City's attorney that because it had failed to file its Motion within thirty days of Nieder's request, it had no lawful basis for continuing to withhold the requested material and that its ongoing refusal to produce the requested material constituted a knowing and purposeful violation of the Sunshine Law that would subject the City to this Counterclaim.
10. Despite this notice, the City has still refused voluntarily to dismiss its untimely Motion or to produce to Nieder the requested material.
11. The City of St. Louis is one of the largest municipalities in the State of Missouri.
12. This was a particularly egregious violation of the Sunshine Law not only

because of the City's brazen decision to withhold records even after it had missed by more than 230 days its statutory deadline for trying to avoid producing the requested material to Nieder, but also because the City's decision has prolonged the suffering Nieder is enduring over the loss of her only child.

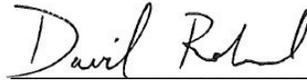
13. Courts have found on numerous previous occasions that the City of St. Louis and its police department have violated the Sunshine Law, including several cases which involved judicial findings that the violations were knowing and/or purposeful.

14. Due to the size of the relevant jurisdiction, the seriousness of this particular offense, and the public governmental body's previous knowing and/or purposeful violations of the Sunshine Law, the maximum possible civil penalty is warranted in this case.

WHEREFORE, having provided her Answer, Motion to Dismiss, and Counterclaim regarding the City's Motion, Respondent Nieder respectfully asks the Court to (1) dismiss the City's Motion, (2) declare that the City has violated § 610.100.4 by failing within thirty days of Nieder's records request either to produce the requested material or file a motion seeking closure of the requested material, (3) declare that the City's violation of § 610.100.4 was knowing and/or purposeful within the meaning of § 610.027, (4) order the City to produce to Nieder all material it sought to withhold from her via its untimely motion, (5) order the City to pay Nieder a civil penalty of \$5,000 for its knowing and/or purposeful violation of the Sunshine Law, and (6) order

the City to pay all costs and reasonable attorney fees associated with this litigation.

Respectfully submitted this 19<sup>th</sup> day of April, 2019.



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*Attorney for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2019, a true and accurate copy of the foregoing was filed with the Court's e-filing system and/or electronic mail upon:

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