

Doorack Update May 22 2017

**JOSH HAWLEY'S DOESN'T THINK HIDING LEASES OR VOTING TO KEEP THEM FROM THE PUBLIC IS A SERIOUS VIOLATION OF THE SUNSHINE LAW:** After investigating the Doorack lease deal where it was decided by then City Administrator Michael Herring with the knowledge of the entire City Council not to post minutes of the 10-year \$800,000-plus lease deal, for a vacant lot with no plans for its use, from the public, I filed a complaint with the Missouri Attorney's General Office. This seemed to be a very strong case. I guess I was wrong. Here is a letter I sent back to Hawley:

John W. Hoffmann  
13309 Manor Hill Road  
Town and Country, Missouri 63131  
(314) 835-0751  
E-Mail: [johnhoffmann@charter.net](mailto:johnhoffmann@charter.net)

May 22, 2017

Hon. Josh Hawley, Attorney General  
Missouri Attorney General's Office  
P.O. Box 899  
Jefferson City, MO 65102

Non-Responsive Response to Serious Sunshine Law Complaint

Dear. Mr. Hawley,

On January 10, 2017 I sent an open records complaint to your office. This was a very serious complaint, not about one or two non-posted meetings, but how for seven years elected officials and city staff hid from the public real estate an \$800,000-plus lease documents for a vacant lot. They voted to keep the documents at the city attorney's office in Clayton, MO so the documents would not be at city hall for anyone to find.

Here is the opening paragraph of my letter.

"Missouri Attorney General's Office  
Missouri Open Records/Sunshine Complaint Unit  
P.O. Box 899  
Jefferson City, MO 65102

Madam or Sir:

This is an official complaint against the:

City of Chesterfield, Missouri

The complaint involves how the City of Chesterfield intentionally hid since March of 2009 until November of 2016 the vote to lease property known as the Doorack Property at the intersection of Old Chesterfield Airport Road and Baxter Road, the minutes of the vote and the lease itself. “

I had no complaints that the records were not released in November of 2016. My complaint was they were hidden from 2009 to 2016. The 2-year statute of limitations on this violation should not have started until November 2016 when the records were finally produced.

I received a response from your staffer Casey Lawrence saying the complaint was closed. How can you simply close a complaint about a city attorney (now an associated circuit judge), a mayor (now the head of Metro Transit) who were intentionally hiding public records and violating State Law along with an entire City Council in Chesterfield?

It appears that Ms. Lawrence's main function in your office is to close or unfound complaints and not to take action on serious violations.

She enclosed a response from the City Attorney of Chesterfield that never addressed the main heart of the complaint, which was the seven year cover-up beginning on March 2009 and lasting until November 2016. His response dealt with someone else's complaint on a totally different issue and on a side matter that occurred after November of 2016. He ever addressed any defense or made any admission to the intentional hiding for public records for seven years.

He stated the documents were released in November of 2016. However he NEVER explained why they were hidden from the public for seven years!

I supported your candidacy and voted for you. If your office gives tacit approval to elected officials and high ranking city staffers to violate the Missouri Open Records law, I will never be able to support you again.

If you don't respond to this, it will be fine. I will simply know that it is business as usual from the Koster Administration to the Hawley Administration.

Yours truly,

John Hoffmann

For the entire letter from Hawley's office and the non response from Chesterfield City Attorney go to our website homepage at <http://johnhoffmann.net>

**The January 10, 2017 complaint:**

John W. Hoffmann  
13309 Manor Hill Road  
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E-Mail: [johnhoffmann@charter.net](mailto:johnhoffmann@charter.net)

January 10, 2017

Missouri Attorney General's Office  
Missouri Open Records/Sunshine Complaint Unit  
P.O. Box 899  
Jefferson City, MO 65102

Madam or Sir:

This is an official complaint against the:

City of Chesterfield, Missouri

The complaint involves how the City of Chesterfield intentionally hid since March of 2009 until November of 2016 the vote to lease property known as the Doorack Property at the intersection of Old Chesterfield Airport Road and Baxter Road, the minutes of the vote and the lease itself.

The City Council of Chesterfield finally voted to release the documents and records 7 1/2 years later on November 7, 2016.

We have attached newly released documents that show then city administrator Michael Herring, then mayor John Nations and then city attorney (and now judge) Rob Heggie kept the vote from appearing in City Council minutes that were available to the public. This was a clear violation of the Missouri Open Records Law.

Further per the advice of City Attorney Rob Heggie, the actual lease involving payments in excess of \$80,000 a year for rent and taxes of a vacant lot was not kept with documents open to the public at City Hall. Instead the lease was kept at Heggie's law office in an effort for the city to claim the document was part of an attorney-client privilege. This was also a gross violation of the Missouri Open Records Law.

While this overt violation of the Missouri Open Records Sunshine Law began on March 16, 2009, it did not become known to the public until November 16, 2016 when an ongoing Sunshine Open Records request made on November 8, 2016 was complied with. This was done after a 4-4 vote of the City Council on November 7, 2016. (The tie was broken by Mayor Bob Nation voting to release the documents.)

Statute of Limitations should not begin to run until November 16, 2016 when the records from 2009 were finally made public and the illegal activity was publicly known.

I am filing this as a reporter who attempted to obtain public documents for the public's information and knowledge. The fact that ongoing mayors and city councils and city attorneys continued to hide public records associated with vote and lease is a violation of the Open Records Law and a clear detriment to the public being fully informed of city council and government actions.

Respectfully filed,

John Hoffmann

attachments

1) Summary of March 16, 2009 city council meeting Executive Session where the city administrator Michael Herring reports without naming the substance or title of the Bill No. 2897 and how it passed. Herring wrote, "Details to be provided to the appropriate individuals" keeping this document and government action secret from the public.

- 2) A "confidential" Executive Session (closed to the public) Chesterfield City Council meeting minutes on February 23, 2011 where it became clear that a lease between the City of Chesterfield and the Doorack family was not being kept at City Hall but at the law office of city attorney Rob Heggie. The document also has Heggie recommending the lease remain at his office so the public would not have access to it at City Hall.
- 3) A Missouri Open Records Sunshine request made to the Chesterfield city clerk on November 8, 2016. The request included all meeting minutes concerning the Doorack Property Lease. I received 325 pages of documents, but did not receive a copy of the actual vote to release the records taken on November 7, 2016.
- 4) The response of the city clerk on November 16, 2016 that the records were available for pickup.
- 5) Another Missouri Open Records Sunshine Request dated December 6, 2016 asking for documents from 2016 that were not provided with our November 8, 2016 request.
- 6) A December 15, 2016 email from the Chesterfield Ast. City Clerk reference documents and charges connected with my December 6, 2016 Open Records Records.
- 7) An email from me to the Ast. City Clerk asking about (known) records that were not provided in response to my December 6, 2016 Open Records Request.
- 8) A response to my inquiry about missing public records not provided with my December 6, 2016 Open Records request dated December 30, 2016 from Chesterfield City Attorney Chris Graville, admitting a number of records that should have been provided were not.
- 9) From November 7, 2016 the minutes of the Closed Executive Session City Council Meeting of November 7 and the vote to release the records which dated back to November of 2008.

The May 17, letter and enclosed response from Chesterfield City Attorney Chris Graville.



**ATTORNEY GENERAL OF MISSOURI**

**JOSHUA D. HAWLEY**  
ATTORNEY GENERAL

JEFFERSON CITY  
65102

P.O. Box 899  
(573) 751-3321

May 17, 2017

Mr. John W. Hoffmann  
13309 Manor Hill Road  
Town and Country, Missouri 63131

Re: Sunshine Law Complaints

Dear Mr. Hoffmann,

The Missouri Attorney General's Office has received a response letter provided by the city's attorney, Mr. Christopher B. Graville. A copy of the letter is attached for your review.

The Missouri Sunshine Law requires that a public meeting notice and agenda be posted at least twenty-four hours in advance of all public meetings. A public meeting is defined in § 610.010(5), RSMo:

(5) "Public meeting", any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated, whether such meeting is conducted in person or by means of communication equipment, including, but not limited to, conference call, video conference, internet chat, or internet message board. The term "public meeting" shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location in order to conduct public business;

Mr. John Hoffmann  
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Please note that the above material is meant as a summary of relevant provisions of the Sunshine Law for your consideration and not as an official opinion of the Attorney General of the State of Missouri. In providing this response, we do not suggest that we are providing you legal advice or otherwise treating you as a client of the Attorney General or any of his assistants.

Our office has closed your complaint. If you have any further questions or concerns regarding the Missouri Sunshine Law please feel free to contact our office.

Sincerely,

Joshua D. Hawley  
Attorney General



Casey Lawrence  
Sunshine Law Coordinator  
(573) 751-8905 Telephone  
(573) 751-5660 Facsimile  
[Casey.Lawrence@ago.mo.gov](mailto:Casey.Lawrence@ago.mo.gov)

Enclosure

**THE GRAVILLE LAW FIRM, LLC**

130 SOUTH BEMISTON, SUITE 700 • CLAYTON, MISSOURI 63105

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February 17, 2017

Via Certified Mail #7016 0910 0001 2009 0019

And Email to: [Casey.Lawrence@ago.mo.gov](mailto:Casey.Lawrence@ago.mo.gov)

Joshua D. Hawley  
Attorney General  
P.O. Box 899  
Jefferson City, MO 65102

Re: Sunshine Law Complaint

Dear General Hawley,

The undersigned serves as the city attorney for the City of Chesterfield, Missouri (the "City"). This letter is intended to serve as the City's formal response to your letter dated January 30, 2017 regarding complaints alleging that the City has not complied with §610 RSMo (the "Sunshine Law").

I will first address the allegation by the complainant that the City Council and Mayor met in groups sized less than a quorum in order to avoid the requirements of the Sunshine Law. As background, the City was approached during the summer of 2016 by Dan Buck of Big Sports Properties, LLC (hereinafter referred to as "BIG") to either purchase or lease 32 acres of property owned by the City, just east of the Chesterfield Valley Athletic Complex (the "Leased Premises"), for the construction and operation of a sports dome, hotel and medical office building. Presently, the Leased Premises is unused by the City and does not have the necessary utilities for development. The proposed project envisioned a lease between the City and BIG on the Leased Premises, the City negotiating for and purchasing an additional 22 acres of land adjacent to the Leased Premises, and the negotiations of a letter of intent, development agreement and lease between BIG and the City.

This project was originally brought by City staff to the Mayor and Council on June 6, 2016 in executive session. At that executive session, the Council voted 5-3 to continue the Council's discussion with BIG about the proposed development. I have



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confirmed the following meetings between elected officials, City staff and BIG representatives, after the project was introduced to the Mayor and Council in executive session on June 6, 2016:

1. June 16, 2016 at 10:00 a.m. (City Hall)  
Councilmembers Bruce Degroot and Randy Logan  
Dan Buck, BIG  
Libbey Tucker, City Community Services & Economic Development  
Director (the "City CSED")
2. June 16, 2016 at 4:00 p.m. (Busch Stadium)  
Councilmember Dan Hurt  
Dan Buck, BIG  
Mike Matheny, BIG  
Libbey Tucker, City CSED
3. June 29, 2016 at 10:00 a.m. (City Hall)  
Councilmembers Barb McGuinness and Guy Tilman  
Aimee Nassif, City Planning and Development Services Director  
Libbey Tucker, City CSED  
Dan Buck, BIG  
Mike Matheny, BIG
4. June 29, 2016 (Busch Stadium)  
Mayor Bob Nation  
Councilmember Tom DeCampi  
Mike Geisel, City Administrator  
Dan Buck, BIG  
Mike Matheny, BIG
5. June 30, 2016 at 10:00 a.m. (City Hall)  
Councilmember Barry Flachsbart  
Dan Buck, BIG  
Tom McCarthy, City Parks, Recreation & Arts Director  
Libbey Tucker, City CSED.

These meetings between elected officials, staff and BIG representatives were not posted pursuant to the Sunshine Law; however, there was never a quorum present at any of the meetings.

As I understand it, the concern of the Attorney General is whether these meetings were purposely held with less than a quorum present in order to avoid the Sunshine

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Law. Although the Mayor and seven (7) Councilmembers met with Dan Buck and/or Mike Matheny in small groups with various staff members present, these meetings occurred very early in the project, prior to formal negotiations between the City and BIG, and were for informational purposes only.

As previously stated, the project was originally introduced to the Mayor and City Council during the June 6, 2016 executive session. Subsequent to that introduction and approval by the Council to move forward with the BIG project, the Mayor and Councilmembers met on the above dates and times with Dan Buck and Mike Matheny. These meetings were intended to provide a forum where the developers could personally meet the Mayor and Council, explain the concepts related to the nonprofit BASE Foundation and answer questions of the individual elected officials or staff members. These introductory meetings included a general overview of the project and details of BIG's development plan and proposal to the City. These meetings did not include any deliberation by elected officials. A review of the extensive discussions and multiple votes taken at the five (5) separate executive sessions when the City Council actually discussed and deliberated as a public body, indicate that the meetings referenced above were not held to avoid the requirements of the Sunshine Law. Furthermore, these meetings ONLY occurred in the very early stage of the project and prior to the City elected official's consideration of any formal documents or agreements related to the project. After the small group meetings, the City had four subsequent executive sessions (July 18, 2016, August 1, 2016, September 7, 2016 and October 5, 2016) at which times the legal documents were presented, considered, debated and revised prior to any vote on the project. Each of the referenced executive sessions was properly posted, in compliance with the Sunshine Law.

The second allegation by the complainant is that the City did not timely release records pursuant to a lawful sunshine request. It is my understanding that this complaint is specific to a series of actions by the City and subsequent sunshine requests related to the City's lease for a property located at: (the "Doorack Property").

For informational background, the City entered into a lease for the Doorack Property in 2008. The lease generated a substantial amount of public interest, including a front page story in the St. Louis Post Dispatch published on February 6, 2017. Due to public concerns over the City's involvement in the Doorack Property, all records, including the former City Attorney's file (the "Compiled Documents"

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totaling 325 pages), were discussed and reviewed by the current Mayor and City Council in executive sessions on September 19, 2016, October 5, 2016, October 19, 2016 and November 7, 2016. At the September 19, 2016 executive session, the Council directed that all records contained in the Compiled Documents that were required to be released under the Sunshine Law be immediately released. This was done out of an abundance of caution that previous sunshine requests may not have been fully complied with, although it was unknown at that time whether any unreleased documents were contained in the Compiled Documents.

On November 7, 2016, the City Council, in executive session, voted to release all confidential and privileged information that was not subject to disclosure under the Sunshine Law, pursuant to City Resolution 303 (attached hereto as Exhibit "A"). With regards to the complainant's concern that the documents were not timely released, the Compiled Documents were released in its entirety, including the prior City Attorney's legal file.

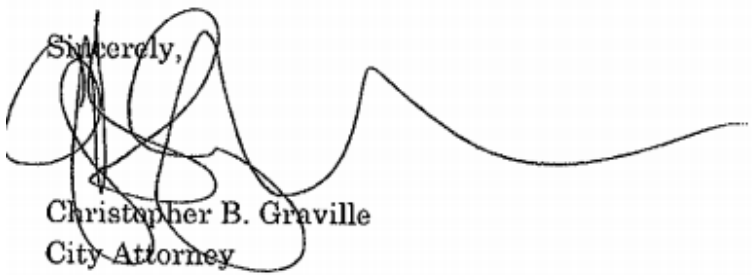
As I understand it, the thrust of the complaint relates exclusively to six (6) documents that were unintentionally omitted in response to a sunshine request filed with the City. The complainant notified the City as to the omitted documents on December 28, 2016. As I stated to the complainant in my email on December 30, 2016, it was an unintended oversight that the six missing documents were not provided to him at the time he was provided the Compiled Documents (325 pages). Upon receiving the follow up request from the complainant, the City immediately acknowledged the error and corrected the oversight by providing the missing documents at no charge.

I would also like to add for your consideration that the complainant's requests were very broad in nature and I have already discussed with the City's custodian of records that, in the future, when the City receives general requests such as the ones submitted by the complainant, the custodian needs to ask for as specific of details as possible as to what documents that the requestor is ultimately seeking so that the City can timely and completely reply. Furthermore, this situation is unique in that the complainant has repeatedly accessed and published confidential and privileged City records without the custodian of records OR the City Council releasing these records. It is very difficult to respond completely to a general sunshine request when the requestor knows specifically what he or she is looking for because they have unapproved access to City records.

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The City Council and Mayor have repeatedly and publicly expressed their dedication to government transparency. The situation involving Doorack is an excellent example of this commitment in that the elected officials compiled and then released records under City Resolution 303 that were not required to be released under the Sunshine Law, including the prior City Attorney's file. It is my hope that this explanation conclude The Mayor and City Council take these allegations seriously and if supplemental information is needed by your office to support the City's response, please contact us immediately and we will provide such information without delay.

Sincerely,



Christopher B. Graville  
City Attorney