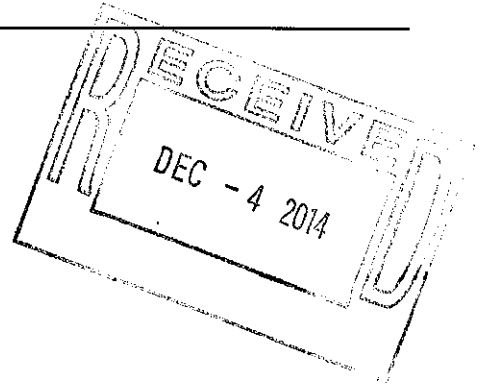


THE MONTGOMERY LAW FIRM, LLC

1910-A E. Battlefield
Springfield, MO 65804
Telephone: (417) 887-4949
Facsimile: (417) 8878618
e-mail: scott@montgomervlaw.org

December 3, 2014



Ms. Kathy L. Looten
Executive Office Liason/Records Custodian
Springfield Public Schools
1359 E. St. Louis St.
Springfield, MO 65802

Re: ID Badge Program

Dear Ms. Looten:

This is a request for records under the Missouri Sunshine Law, Chapter 610, Revised Statutes of Missouri.

I request that you make available to me the following records:

All written records that show the amount of money obtained pursuant to the policy or program whereby "Students who arrive at school without their district-issued ID Badge and Lanyard, and thereby fail to properly display their ID Badge during school hours, are issued a replacement ID Badge and are required to reimburse the District for the cost of the replacement badge and/or lanyard."

Thank you for your attention to this matter.

Very truly yours,

THE MONTGOMERY LAW FIRM, LLC

By


M. Scott Montgomery

MSM:ejo



Helping today's kids fill tomorrow's promise.

John E. Jungmann, Ed.D.
Superintendent

December 9, 2014

Mr. Scott Montgomery
The Montgomery Law Firm L.L.C.
1910A E. Battlefield
Springfield, MO 65804

Certified, Return Receipt Requested

Dear Mr. Montgomery:

This letter will respond to your letter dated December 3, 2014, which was received by me on December 4, 2014, which requests certain public records pursuant to the Missouri Sunshine Statute. The documents you request are as follows:

“All written records that show the amount of money obtained pursuant to the policy or program whereby “Students who arrive at school without their district-issued ID badge and lanyard, and thereby fail to properly display their ID badge during school hours, are issued a replacement ID badge and are required to reimburse the District for the cost of the replacement badge and/or lanyard.”

We have previously responded to written requests made by you on this same issue on two occasions. More specifically, in April, 2014, the District responded to requests made by you which were contained in four (4) separate letters and in November, 2014, the District responded to substantially similar requests made by you which were contained in eight (8) separate letters. We now address your December 3, 2014, letter which is your thirteenth (13) letter dealing with this same issue.

In order to be subject to disclosure under the Missouri Sunshine Law, documents must constitute “public records” of the “public governmental body.” In the case of the School District of Springfield, R-12, the “public governmental body” is the Board of Education for the School District of Springfield, R-12.

The term “public records” is defined in Section 610.010(6) RSMo. as follows:

(6) “Public record,” *any record*, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole

or in part by public funds, including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years. The term "public record" shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting. Any document or study prepared for a public governmental body by a consultant or other professional service as describe in this subdivision shall be retained by the public governmental body in the same manner as any other public record." [emphasis added]

Generally, the District will not provide you with any public documents which may be encompassed by your requests and which are closed records under the Sunshine Law. Included in these closed public documents, but not in limitation thereof, are the following:

- The minutes of closed meetings of the Board of Education which were closed pursuant to Section 610.021 RSMo, and not otherwise required to be revealed;
- Privileged communications between the Board of Education or its representatives and its attorneys pursuant to Sections 610.021(1) and (14) RSMo;
- Records involving the hiring, firing, disciplining or promoting of particular employees by the Board of Education when personal information about the employee is discussed or recorded, except those public records which have been made public pursuant to Section 610.021(3) RSMo;
- Records involving software codes for electronic data processing and documentation thereof pursuant to Section 610.021(10) RSMo;
- Documents which constitute individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, pursuant to Section 610.021(13) RSMo;
- Records which are protected from disclosure by law pursuant to Section 610.021(14) RSMo, including but not limited to information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g;
- Confidential or privileged communications between a public governmental body and its auditors, including all auditor work product pursuant to Section 610.021(17) RSMo;
- Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between the Board of Education and a person or entity doing business with the Board pursuant to Section 610.021(21) RSMo.

Responses To Your Request

Your letter sets forth one (1) request for public records. The following response is made to your request:

Request: "All written records that show the amount of money obtained pursuant to the policy or program whereby 'Students who arrive at school without their district-issued ID badge and lanyard, and thereby fail to properly display their ID badge during school hours, are issued a replacement ID badge and are required to reimburse the District for the cost of the replacement badge and/or lanyard.'"

Response: You previously made a similar request in April and November, 2014. The District's responses to those requests are incorporated herein by reference.

In our responses on those occasions, the District informed you that each school year students at the District's High Schools are issued a photo identification badge and lanyard. All District High School staff and students are required to properly display ID badges during school hours. Students who arrive at school without their District-issued ID badge and lanyard, and thereby fail to properly display their ID badge during school hours, are issued a replacement ID badge and required to reimburse the District for the cost of the replacement badge and/or lanyard. This practice has been in effect at the District's high schools for fourteen (14) or more years.

While the Sunshine Law does not require the District to provide an explanation concerning the subject of the inquiry, the following additional information is provided to help you understand that the District does not have public records which meet your request. More specifically, the current practice concerning payment by students for the cost of a replacement identification badge is handled at each of the District's five (5) high schools. During the past few years, each high school student has been assigned an electronic account. These accounts contain the aggregate dollar amount of any money owed to the District for a number of things such as: (a) the replacement cost of lost identification badges and lanyards; (b) damaged books; (c) damaged equipment; (d) activity fees; or, (e) other established fees or costs. The costs/fees collected are not coded, so the accounts do not indicate which of the sums charged or paid are for the replacement cost of lost identification badges and lanyards or any other fee or cost. Therefore, a review of these documents will not "show the amount of money obtained pursuant to the policy or program whereby students who arrive at school without their district-issued ID badge and lanyard, and thereby fail to properly display their ID badge during school hours, are issued a replacement ID badge and are required to reimburse the District for the cost of the replacement badge and/or lanyard," as you have requested.

Prior to the implementation of this system, each high school separately accounted for the fees/costs which were paid and owed. These student records contain even less information and are also not coded to indicate the nature of the charge or payment.

Therefore, with respect to the current student accounts, we are unaware of any documents which

will show the aggregate amount of money received by, or owed to the District for the replacement of lost or damaged identification badges and lanyards. Nor can an aggregate amount of money be obtained by review of these student records. The same is also true, but to a greater extent, regarding the student records that exist for the years prior to the implementation of the current student accounts.

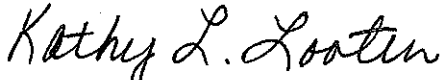
As we have repeatedly noted, the Sunshine Law does not require a public governmental body "to create a new record upon request, but only to provide access to *existing* records held or maintained by the public governmental body." *American Family Mut. Ins. Co. v. Missouri Department of Insurance*, 169 S.W.3d 905, 914, (Mo. App. 2005), citing *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. 2005).

Furthermore, even if other records exist from which an estimate of the aggregate amount of money received by or owed to the District for the replacement of lost or damaged identification badges and lanyards could be determined, which is not the case, those documents would constitute closed records under the Sunshine Law, as follows:

- The records contain personally identifiable information regarding present or former students of the District which is protected by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and is therefore protected from disclosure by law pursuant to Section 610.021(14) RSMo.
- The records may contain credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between the District and students or parents of students, which are protected from disclosure by law pursuant to Section 610.021(21) RSMo.

In summary, the District does not have public records which satisfy your request. Thank you for your request.

Sincerely,



Kathy L. Looten
Executive Office Liaison/Records Custodian

cc: Ransom A Ellis, III

THE MONTGOMERY LAW FIRM, LLC

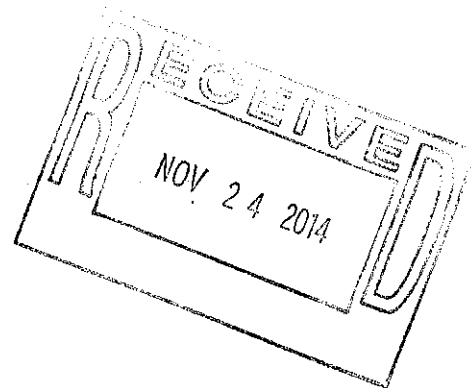
1910A E. Battlefield
Springfield, MO 65804
Telephone: (417) 887-4949
Facsimile: (417) 8878618
e-mail: scott@montgomerylaw.org

M. Scott Montgomery

Liz Osborne, Paralegal

November 19, 2014

Ms. Kathy L. Looten
Executive Office Liason/Records Custodian
Springfield Public Schools
1359 E. St. Louis St.
Springfield, MO 65802



Dear Ms. Looten:

This is a request for records under the Missouri Sunshine Law, Chapter 610, Revised Statutes of Missouri.

I request that you make available to me the following records:

All written or electronic documents or records regarding the system or program pursuant to which students are required to pay the sum of \$5.00, or any dollar amount, when a student neglects to bring their ID badge to school. I will refer to this program as the "ID badge fine program."

Thank you for your assistance in this regard.

Very truly yours,

THE MONTGOMERY LAW FIRM, LLC

By


M. Scott Montgomery

MSM:ejo



Helping today's kids fill tomorrow's promise.

John E. Jungmann, Ed.D.
Superintendent

November 26, 2014

Mr. Scott Montgomery
The Montgomery Law Firm L.L.C.
1910A E. Battlefield
Springfield, MO 65804

Certified, Return Receipt Requested

Dear Mr. Montgomery:

This letter will respond to the eight (8) letters dated November 19, 2014, which were received by me on November 24, 2014. Each of these letters request certain public records pursuant to the Missouri Sunshine Statute.

In order to be subject to disclosure under the Missouri Sunshine Law, documents must constitute "public records" of the "public governmental body." In the case of the School District of Springfield, R-12, the "public governmental body" is the Board of Education for the School District of Springfield, R-12.

The term "public records" is defined in Section 610.010(6) RSMo. as follows:

(6) "Public record," *any record*, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds, including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years. The term "public record" shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting. Any document or study prepared for a public governmental body by a consultant or other professional service as describe in this

KRAFT ADMINISTRATIVE CENTER

1359 E. SAINT LOUIS STREET - SPRINGFIELD, MISSOURI 65802-3409 - TELEPHONE 417/523-0026

subdivision shall be retained by the public governmental body in the same manner as any other public record.” [emphasis added]

Generally, the District will not provide you with any public documents which may be encompassed by your requests and which are closed records under the Sunshine Law. Included in these closed public documents, but not in limitation thereof, are the following:

- The minutes of closed meetings of the Board of Education which were closed pursuant to Section 610.021 RSMo, and not otherwise required to be revealed;
- Privileged communications between the Board of Education or its representatives and its attorneys pursuant to Sections 610.021(1) and (14) RSMo;
- Records involving the hiring, firing, disciplining or promoting of particular employees by the Board of Education when personal information about the employee is discussed or recorded, except those public records which have been made public pursuant to Section 610.021(3) RSMo;
- Records involving software codes for electronic data processing and documentation thereof pursuant to Section 610.021(10) RSMo;
- Documents which constitute individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, pursuant to Section 610.021(13) RSMo;
- Records which are protected from disclosure by law pursuant to Section 610.021(14) RSMo, including but not limited to information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g;
- Confidential or privileged communications between a public governmental body and its auditors, including all auditor work product pursuant to Section 610.021(17) RSMo;
- Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between the Board of Education and a person or entity doing business with the Board pursuant to Section 610.021(21) RSMo.

It is also important to note that the Sunshine Law does not require a public governmental body to explain “public records” or “to create a new record upon request, but only to provide access to existing records held or maintained by the public governmental body.” *American Family Mut. Ins. Co. v. Missouri Department of Insurance*, 169 S.W.3d 905, 914, (Mo. App. 2005), citing *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. 2005).

Responses To Your Request

Your letters set forth eight (8) separate requests for public records. The following responses are made to your requests:

Request No. 1. "All written or electronic documents or records regarding the system or program pursuant to which students are required to pay the sum of \$5.00 or any dollar amount, when a student neglects to bring their ID badge to school. I will refer to this program as the 'ID badge fine program'."

Response: You previously made this same request in April, 2014. At that time, the District informed you that it does not have an "ID badge fine program." Each school year students at the District's High Schools are issued a photo identification badge and lanyard. All District High School staff and students are required to properly display ID badges during school hours. Students who arrive at school without their District-issued ID badge and lanyard, and thereby fail to properly display their ID badge during school hours, are issued a replacement ID badge and required to reimburse the District for the cost of the replacement badge and/or lanyard. This practice has been in effect at the District's High Schools for fourteen (14) or more years. The following documents are relevant to this request:

- Board of Education Policy JFCB – *Care of School Property By Students*
- Board of Education Policy JN – *Student Fees, Fines and Charges*

These Board of Education Policies are located on the District's website at:

[http://www.springfieldpublicschoolsмо.org/pages/SPSMO/DistrictInfo/
Board_of_Education/Board_Links/5284417728819764594](http://www.springfieldpublicschoolsмо.org/pages/SPSMO/DistrictInfo/Board_of_Education/Board_Links/5284417728819764594)

- Springfield Public Schools – School Handbook – School Year 2014-15, *Care of School Property*, page 16
- Springfield Public Schools – School Handbook – School Year 2014-15, *Dress Code Guidelines*, page 17
- Springfield Public Schools – School Handbook – School Year 2014-15, *ID Badges*, page 38

The School Handbook for School Year 2014-15 is located on the District's website at:

[http://www.springfieldpublicschoolsмо.org/pages/SPSMO/
Families/Student_Handbook](http://www.springfieldpublicschoolsмо.org/pages/SPSMO/Families/Student_Handbook)

Since the scope of your request is so broad, exceeding fourteen (14) or more years and involving five (5) separate District High School buildings, the District may have additional documents which respond to this request, including but not limited to editions of the School Handbook for previous school years.

In addition, since your request asks for "all written or electronic documents or records regarding the system or program" it is possible that you are requesting the District to provide public documents which are appropriately closed pursuant to Section 610.021 RSMo. The District will not provide you with any public documents which fall within the definition of closed records defined by that section of the law, including, but not limited to the following types of documents:

- The minutes of closed meetings of the Board of Education which were closed pursuant to Section 610.021 RSMo, and not otherwise required to be revealed;
- Privileged communications between the Board of Education or its representatives and its attorneys pursuant to Sections 610.021(1) and (14) RSMo;
- Records involving software codes for electronic data processing and documentation thereof pursuant to Section 610.021(10) RSMo;
- Records which are protected from disclosure by law pursuant to Section 610.021(14) RSMo, including but not limited to information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g;
- Confidential or privileged communications between a public governmental body and its auditors, including all auditor work product pursuant to Section 610.021(17) RSMo;
- Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between the Board of Education and a person or entity doing business with the Board pursuant to Section 610.021(21) RSMo.

Finally, due to the scope of your request, a sizeable number of public documents may exist which will require District personnel to search, retrieve and copy. In matters such as these, the District charges the reasonable fees allowed by the Missouri Sunshine Statute, Section 610.026 RSMo. Information regarding the estimate of costs required to provide documents which may exist based on the scope of your request, is provided below.

Request No. 2. "All written or electronic documents or records which identify the manner in which the ID badge fine program was instituted or put in place or in effect."

Response: The District does not have an "ID badge fine program." Please refer to the District's Response to Request Number 1 above.

Further, the District is unsure whether there are any public documents which will satisfy this request. It is noted that the Sunshine Law does not require a public governmental body to explain "public records" or "to create a new record upon request, but only to provide access to *existing* records held or maintained by the public governmental body." *American Family Mut. Ins. Co. v. Missouri Department of Insurance*, 169 S.W.3d 905, 914, (Mo. App. 2005), citing *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. 2005).

It is possible that the open meeting minutes of the District's Board of Education may have references to Student Identification badges or the requirement that students reimburse the District for the replacement of lost or damaged identification badges. Copies of the Board of Education open Meeting minutes for years 2009 through 2014 at the following location on the District's website:

(Under the heading "Agendas"). Copies of earlier open minutes of the District's Board of Education are available to be reviewed in my office. If you wish to view these minutes during normal business hours, please contact me directly to make an appointment.

As noted above, a sizeable number of additional documents may exist and it is possible that you are requesting the District to provide public documents which are appropriately closed pursuant to Section 610.021 RSMo. The District will not provide you with any public documents which fall within the definition of closed records defined by that section of the law, including, but not limited to the following types of documents:

- The minutes of closed meetings of the Board of Education which were closed pursuant to Section 610.021 RSMo, and not otherwise required to be revealed;
- Privileged communications between the Board of Education or its representatives and its attorneys pursuant to Sections 610.021(1) and (14) RSMo;
- Records involving software codes for electronic data processing and documentation thereof pursuant to Section 610.021(10) RSMo;
- Records which are protected from disclosure by law pursuant to Section 610.021(14) RSMo, including but not limited to information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g;
- Confidential or privileged communications between a public governmental body and its auditors, including all auditor work product pursuant to Section 610.021(17) RSMo;
- Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between the Board of Education and a person or entity doing business with the Board pursuant to Section 610.021(21) RSMo.

Again, due to the scope of your request, a sizeable number of public documents may exist which will require District personnel to search, retrieve and copy. In matters such as these, the District charges the reasonable fees allowed by the Missouri Sunshine Statute, Section 610.026 RSMo. Information regarding the estimate of costs required to provide documents which may exist based on the scope of your request, is provided below.

Request No. 3. "All written or electronic documents or records that show the date upon which the ID badge fine program was instituted."

Response: The District's Response to Request Number 2 above is incorporated herein by reference.

Request No. 4. "All written or electronic documents or records that show the amount of funds obtained pursuant to the ID badge fine program from the inception of the program to the current date."

Response: The District does not have an "ID badge fine program." The District's Response to Request Numbers 1 and 2 above is incorporated herein by reference.

Request No. 5. "All written or electronic documents or records which show the identity of all individuals who approved of or instituted the ID badge fine program."

Response: The District does not have an "ID badge fine program." The District's Response to Request Numbers 1 and 2 above is incorporated herein by reference.

Request No. 6. "All written or electronic documents or records that show the manner in which the funds generated by the ID badge fine program have been expended."

Response: The District does not have an "ID badge fine program." The District's Response to Request Numbers 1 and 2 above is incorporated herein by reference.

Request No. 7. "An accounting of the funds generated by the ID badge fine program."

Response: The District does not have an "ID badge fine program." The District's Response to Request Numbers 1 and 2 above is incorporated herein by reference.

It is also noted that the Sunshine Law does not require a public governmental body to explain "public records" or "to create a new record upon request, but only to provide access to *existing* records held or maintained by the public governmental body." *American Family Mut. Ins. Co. v. Missouri Department of Insurance*, 169 S.W.3d 905, 914, (Mo. App. 2005), citing *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. 2005). Accordingly, to the extent that you are requesting that the District generate an "accounting" for the subject funds, the District declines such request.

Request No. 8. "An accounting of all of the expenses associated with the ID badge fine program, including amounts expended for lamination, lanyards, etc., associated with the ID badge fine program."

Response: The District does not have an "ID badge fine program." The District's Response to Request Numbers 1 and 2 above is incorporated herein by reference.

It is also noted that the Sunshine Law does not require a public governmental body to explain "public records" or "to create a new record upon request, but only to provide access to *existing*

records held or maintained by the public governmental body.” *American Family Mut. Ins. Co. v. Missouri Department of Insurance*, 169 S.W.3d 905, 914, (Mo. App. 2005), citing *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. 2005). Accordingly, to the extent that you are requesting that the District generate an “accounting” for the subject funds, the District declines such request.

Retrieval, Processing and Copying Fees

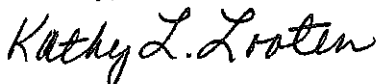
As noted above, the scope of your request is so broad that the District may have a significant number of documents which may respond to the request. In matters such as these, the District charges the reasonable fees allowed by the Missouri Sunshine Statute, Section 610.026 RSMo. Duplication fees include a per copy cost, not to exceed ten cents per regular sized page and an hourly fee for the time spent duplicating the documents. Retrieval and processing fees are based on the average hourly rate of pay for the staff involved in the retrieval and processing process.

If you wish to have the District engage in a search of its records to determine: (1) if public records exist which are described in your request, or (2) to retrieve public records that may exist, then the District will need a check prior to starting the search and retrieval process. Since we will need to search and retrieve documents spanning a time period of over fourteen (14) years and located at five or more different locations, we estimate that the cost of the search of our computer archives, retrieval of any documents which may exist, redacting (if necessary) and copying (if necessary) will be no more than one thousand dollars (\$1,000.00). At the conclusion of the process, the District will provide you with an itemized list of costs. If our estimate is high, the District will return the unused portion of your deposit.

Based on this information, you may also wish to revise your request to scale down its scope. If that is the case, please let us know. Otherwise, we will wait for you to provide the initial check to cover the cost of search, retrieval and copying before we begin the retrieval process.

Thank you for your requests.

Sincerely,



Kathy L. Looten
Executive Office Liaison/Records Custodian

cc: Ransom A Ellis, III