

Looten, Kathy

From: SPS Communications
Sent: Thursday, February 02, 2017 8:57 AM
To: Looten, Kathy
Cc: Bledsoe, Teresa
Subject: FW: Sunshine Request

DriveForOfficeId: 12a3e013-6e19-4650-a776-bdf606be31ed

Kathy,
This arrived in the communications general email box very late last night.
Emily

From: Steven Reed [mailto:mrstevenreed@yahoo.com]
Sent: Wednesday, February 01, 2017 11:07 PM
To: SPS Communications
Subject: RE: Sunshine Request

This is a Sunshine Request for any information concerning the decision and what facts were considered in allowing write in candidates for school board elections. Any correspondence to the county clerk is requested. Please e-mail to mrstevenreed@yahoo.com

Thanks Steven Reed



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February 6, 2017

Mr. Steven Reed
mrstevenreed@yahoo.com

Sent By Electronic Mail

Dear Mr. Reed:

This email will respond to your email which was received by me on February 2, 2017. Your email was sent to the SPS Communications email address rather than to me as the District's Records Custodian which caused a slight delay.

Your email requests certain public records pursuant to the Missouri Sunshine Statute. Your email requests the following:

“This is a Sunshine Request for any information concerning the decision and what facts were considered in allowing write in candidates for school board elections. Any correspondence to the county clerk is requested..”

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 (“District”), the “public governmental body” is the Board of Education for the District.

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.

With this information in mind, the District provides you with the following response concerning your requests for public documents.

Response To Your Requests

Please accept the following response to the request contained in your email, which is noted above:

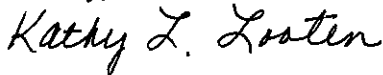
We are unable to determine with any certainty the exact public records you are requesting. In order to be able to properly respond to a request pursuant to the Sunshine Law, the custodian of records must be able to identify records with reasonable specificity in order to be able to provide access to them. *Anderson v. Village of Jacksonville*, 103 S.W.3d 190 (Mo. App. 2003).

In addition, it appears from your request that you are asking the District to explain its process regarding whether the ballot for elections of Board of Education members contains a space for a write-in vote. 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).

We interpret your request to be asking for a copy of any public records which constitute written communications to the Greene County Clerk, which explain whether the ballot for the election for members of the District's Board of Education should contain a space for a write-in vote. We are aware of only one public record which meets your request. That record is a letter from Kathy Looten, Secretary to the Board of Education, to Mr. Shane Schoeller, County Clerk for Greene County, Missouri, dated January 25, 2016. A copy of this letter is attached.

Thank you for your request.

Sincerely,



Kathy Looten
Executive Office Liaison/Records Custodian

cc: Ransom A. Ellis, III

Looten, Kathy

From: Steven Reed <mrstevenreed@yahoo.com>
Sent: Tuesday, February 07, 2017 3:52 PM
To: Looten, Kathy
Subject: Re: 2/1/17 Sunshine Law Request Response

Sunshine Request per Missouri Law:

Dear Ms. Kathy Looten:

It past write in candidates were not allowed in school elections. Last year it was decided to allow after someone had sued over the issue. I am asking for any records of that decision. Of course this is a public issue and transparency in elections is a good thing.

Please send what ever you can.

Thanks Steven Reed

On Monday, February 6, 2017 12:18 PM, "Looten, Kathy" <klooten@spsmail.org> wrote:

Mr. Reed,

Attached please find the response to your February 1, 2017, Sunshine Law Request.

Thank you,

*Kathy L. Looten
Executive Office Liaison/Records Custodian
Office of the Superintendent
Springfield Public Schools
1359 E. Saint Louis Street
Springfield, MO 65802
417-523-0026*



*Engaging. Relevant. Personal.
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February 8, 2017

Mr. Steven Reed
mrstevenreed@yahoo.com

Sent By Electronic Mail

Dear Mr. Reed:

This email will respond to your email which was received by me on February 7, 2017.

Your email makes an additional request for public records pursuant to the Missouri Sunshine Statute. Your email requests the following:

“[In the] past write in candidates were not allowed in school elections. Last year it was decided to allow after someone had sued over the issue. I am asking for any records of that decision.”

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 (“District”), the “public governmental body” is the Board of Education for the District.

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.

With this information in mind, the District provides you with the following response concerning your requests for public documents.

Response To Your Requests

Please accept the following response to the request contained in your email, which is noted above:

1. The District is unaware of any lawsuit which has been brought against the School District of Springfield, R-12 which alleged that the District should be allowing write-in votes in elections to fill seats on the District's Board of Education.
2. The District allows write-in votes in elections to fill seats on the District's Board of Education when the number of candidates who were certified through the procedure set forth in Section 162.491.3 RSMo is more (or less) than the number of open seats in the election.
3. In accordance with Section 115.124.1 RSMo, the District is not required to conduct an election to fill seats on the District's Board of Education when the number of candidates who were certified through the procedure set forth in Section 162.491.3 RSMo are equal to the number of open seats in the election.
4. The District has no public records that meet your current request for public records, other than its letter to the County Clerk for Greene County, Missouri, dated January 25, 2016, which was provided to you in the District's response to your Sunshine Request dated February 2, 2017.

Thank you for your request.

Sincerely,

Kathy L. Looten

Kathy Looten
Executive Office Liaison/Records Custodian

cc: Ransom A. Ellis, III

Looten, Kathy

From: Steven Reed <mrstevenreed@yahoo.com>
Sent: Wednesday, February 08, 2017 1:52 PM
To: Looten, Kathy
Subject: Re: 2/1/17 Sunshine Law Request Response

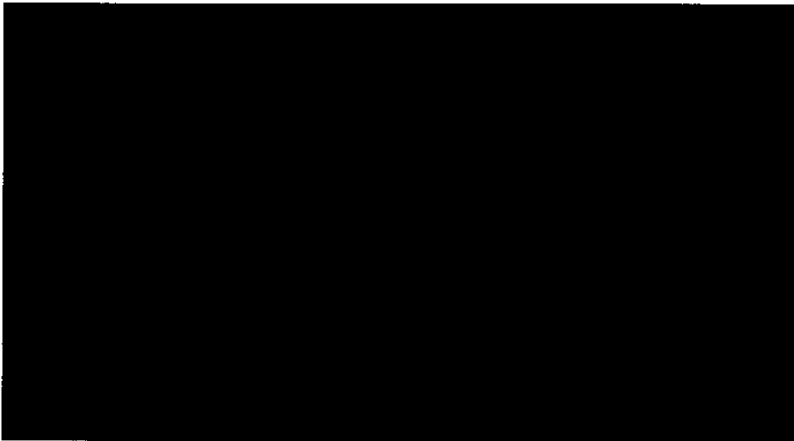
SUNSHINE REQUEST

Dear Ms. Kathy Looten:

There was an article in paper stating your law department was checking with the state school board about write in candidates before last year none allowed. This article mentions Loftis lawsuit. I am asking law department summary of why they allow write in candidates which I agree with. This is one article:

Also I request the law department e-mail. Clearly addressing election issues are public knowledge with no reason to hide behind closed doors.

[SPS board picks three finalists for vacancy](#)



SPS board picks three finalists for vacancy

The Springfield school board received 19 letters of interest including a former member and others who made unsuc...

End of Sunshine Request Thanks Steven Reed

On Wednesday, February 8, 2017 11:30 AM, "Looten, Kathy" <klooten@spsmail.org> wrote:

Mr. Reed,

Attached please find the response to your 2/7/17 Sunshine Law Request.



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February 13, 2017

Mr. Steven Reed
mrstevenreed@yahoo.com

Sent By Electronic Mail

Dear Mr. Reed:

This email will respond to your email dated February 8, 2017.

Your email makes an additional request for public records pursuant to the Missouri Sunshine Statute. Your email requests the following:

“There was an article in paper [stating] your law department was checking with the state [school] board about write in candidates [before] last year none allowed. This article mentions Loftis lawsuit. I am asking [sic] law department summary of why they allow write in candidates which I agree with. This is one article:

Also I request the law department e-mail. Clearly addressing election issues are public knowledge with no reason to hide behind closed doors.
SPS board picks three finalists for vacancy”

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.

With this information in mind, the District provides you with the following response concerning your requests for public documents.

Response To Your Requests

Please accept the following response to the request contained in your email, which is quoted above:

1. Your request asks for a copy of any communications to the District from the District's "Law Department." Please be advised that the District does not have a "Law Department." However, the District does utilize local private attorneys to provide legal advice to it. As we have consistently advised you in the District's responses to your previous two Sunshine Law Requests, the communications between the District's Board of Education or its representatives, and its attorneys will not be provided in that they constitute closed records pursuant to Sections 610.021(1) and (14) RSMo.

2. The link you provided to a story by the Springfield News Leader does not mention the "Loftis Case" or write-in ballots. Rather the story is about the Board of Education filling a "vacancy" on the Board which occurred when a member of the Board resigned. The District's Board of Education followed the statutory procedure for filling vacancies on the Board which is set forth in Section 162.471 RSMo. and Board of Education Policy BBE-2 – *Unexpired Term Fulfillment/Vacancy*. It may be helpful to you to review the Board of Education Policies which are open records which are contained on the District's website at:

<http://www.springfieldpublicschools.mo.org/pages/SPSMO>

3. The "Loftis Case," (*Loftis v. Ridder, et al*, Case No 1431-CC-00188), which was filed in 2014 did not involve or allege claims involving write-in ballots. The Loftis Case was dismissed by the Circuit Court on February 14, 2014. This case is likely to be available on Case Net.

4. You may also be interested to review the applicable open public records that are posted on the District's website, including:

- Board of Education Policy BBB-2 – *School Board Elections* at: <https://simbli.eboardsolutions.com/ePolicy/policy.aspx?PC=BBB->
- Open Minutes and Agendas of the Meeting of the Board of Education at: <http://www.springfieldpublicschoolsмо.org/pages/SPSMO>

5. Finally, the Sunshine Statute, 610.023.3 RSMo, requires that the Custodian of Records for the District provide "access to a public record . . . [no] later than the end of the **third business day** following the date the request is received by the custodian of records . . ." Please note that your request dated Wednesday, February 8, 2017, was received by me that same day. "The third business day following the date [of] receipt" is today, Monday, February 13, 2017.

Thank you for your request.

Sincerely,



Kathy L. Looten
Executive Office Liaison/Records Custodian

cc: Ransom A. Ellis, III