Court rules closed records might also be open records

Openness trumps closure

Early in December, the Eastern District Court of Appeals wrote another chapter on access to investigative reports when law enforcement is involved, which is important to understand if you frequently request access to public records.

Law enforcement investigative records are closed under Missouri's open meetings law (610.100.2) until the investigation is "inactive."

Several years ago a St. Louis police officer subject to an internal investigation, but cleared, requested the investigative report. Law enforcement argued it was not an open record because it was a personnel record. The Missouri Supreme Court ruled that a report can be both an investigative report and a personnel record.

Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000, jmaneke@manekelaw.com.

In Guyer v. City of Kirkwood the Court held that if a report falls into both categories, the sunshine law mandates that the public body must make its determination on the basis of openness, that openness trumps closure and the record must be disclosed. Lacking the particulars of the report, it did not make a final determination as to openness.

Subsequently, a criminal defendant who alleged police brutality during his arrest requested the law enforcement internal affairs report. He was given that document but was denied the underlying statements by other officers or information on other existing complaints against those officers. In that case, State ex. rel City of Springfield v. Brown, the court again held that if a record can be both open and closed under the sunshine law, it must be made public.

Thus, the scene is set that a public body must determine if a record it claims is closed could be both open and closed.

Then comes the December decision, which added a new layer to that requirement. This case was brought by two persons involved with separate police department employees.

Eventually, the litigants suspected that one or both of these employees accessed the Regional Justice Information System (REJIS) to search for their personal records. It is illegal for law enforcement officials to access this database for other than official duties. A record is kept of every access made to the database for just this reason.

Ultimately, an internal affairs investigation was conducted of the two employees "for the purpose of determining their fitness to perform their job duties." The two litigants sent a sunshine law request seeking reports and records regarding investigations and communications about the employees' use of REJIS, background checks they might have ordered on the litigants and any subsequent disciplinary action.

The city claimed there was no criminal investigation performed on the employees and that these records were closed under Exception 3 of Section 610.021, which allows closing records relating to employee discipline. But the litigants' attorney argued that the underlying conduct was criminal and therefore this was a criminal investigation, now complete, so records should be open.

The appellate court said any analysis must start with the assessment of whether the record sought is otherwise an open record. For starters, the court noted, "a log showing a REJIS inquiry is not a personnel record or a job performance rating." The court went on to say that it's possible a record of REJIS inquiries could be contained in a personnel record, but in that case, "the City is obligated to make available the public portions of the records responsive to these two requests."

Bingo! That's a statement we all need to remember to remind public bodies of when we get a blanket denial of access under a general exemption. The odds are good that some of the material in the file is not related to the reason for closure, and the body must make that information available to a requester.

A second point of interest relates to the court saying that an investigative report must be directed to alleged criminal conduct. The city had claimed that the internal affairs report constituted a personnel and disciplinary record and therefore it was closed. However, the court noted that there is a requirement that any closed record be reviewed and the exempt and non-exempt portions separated, with the non-exempt portion made available to the requester.

While existing case law did not clarify that this obligation also applies to investigative reports (ie: law enforcement reports rather than just records held by a public body), this court for the first time held that it does. Therefore, even if an investigative report is still closed because the investigation is not "inactive" as that term is defined in Section 610.100, it still may have portions of the report that must be released upon request as they are not investigative reports.

What that means is left a little unclear. Investigative reports are defined as a record "prepared by personnel of a law enforcement agency inquiring into a crime or suspected crime..."

What would not be considered as an "investigative report" contained within that report? Possibly materials prepared by someone other than law enforcement personnel?

There is still the exception contained farther down in Section 610.100 that closed records otherwise open if they are "reasonably likely to pose a clear and present danger" to various persons.

Food for thought. Regardless, a great decision that clearly draws lines for openness.