

FIRST REGULAR SESSION

# HOUSE BILL NO. 838

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES JONES (117) (Sponsor) AND ROORDA (Co-sponsor).

Read 1st time February 12, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2126L.01I

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### AN ACT

To repeal sections 610.021 and 610.100, RSMo, and to enact in lieu thereof two new sections relating to closed records.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 610.021 and 610.100, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 610.021 and 610.100, to read as follows:

610.021. Except to the extent disclosure is otherwise required by law, a public  
2 governmental body is authorized to close meetings, records and votes, to the extent they relate  
3 to the following:

4 (1) Legal actions, causes of action or litigation involving a public governmental body  
5 and any confidential or privileged communications between a public governmental body or its  
6 representatives and its attorneys. However, any minutes, vote or settlement agreement relating  
7 to legal actions, causes of action or litigation involving a public governmental body or any agent  
8 or entity representing its interests or acting on its behalf or with its authority, including any  
9 insurance company acting on behalf of a public government body as its insured, shall be made  
10 public upon final disposition of the matter voted upon or upon the signing by the parties of the  
11 settlement agreement, unless, prior to final disposition, the settlement agreement is ordered  
12 closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the  
13 action clearly outweighs the public policy considerations of section 610.011, however, the  
14 amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed;  
15 provided, however, in matters involving the exercise of the power of eminent domain, the vote

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 shall be announced or become public immediately following the action on the motion to  
17 authorize institution of such a legal action. Legal work product shall be considered a closed  
18 record;

19 (2) Leasing, purchase or sale of real estate by a public governmental body where public  
20 knowledge of the transaction might adversely affect the legal consideration therefor. However,  
21 any minutes, vote or public record approving a contract relating to the leasing, purchase or sale  
22 of real estate by a public governmental body shall be made public upon execution of the lease,  
23 purchase or sale of the real estate;

24 (3) Hiring, firing, disciplining or promoting of particular employees by a public  
25 governmental body when personal information about the employee is discussed or recorded.  
26 However, any vote on a final decision, when taken by a public governmental body, to hire, fire,  
27 promote or discipline an employee of a public governmental body shall be made available with  
28 a record of how each member voted to the public within seventy-two hours of the close of the  
29 meeting where such action occurs; provided, however, that any employee so affected shall be  
30 entitled to prompt notice of such decision during the seventy-two-hour period before such  
31 decision is made available to the public. As used in this subdivision, the term "personal  
32 information" means information relating to the performance or merit of individual employees;

33 (4) The state militia or national guard or any part thereof;

34 (5) Nonjudicial mental or physical health proceedings involving identifiable persons,  
35 including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or  
36 treatment;

37 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including  
38 records of individual test or examination scores; however, personally identifiable student records  
39 maintained by public educational institutions shall be open for inspection by the parents,  
40 guardian or other custodian of students under the age of eighteen years and by the parents,  
41 guardian or other custodian and the student if the student is over the age of eighteen years;

42 (7) Testing and examination materials, before the test or examination is given or, if it  
43 is to be given again, before so given again;

44 (8) Welfare cases of identifiable individuals;

45 (9) Preparation, including any discussions or work product, on behalf of a public  
46 governmental body or its representatives for negotiations with employee groups;

47 (10) Software codes for electronic data processing and documentation thereof;

48 (11) Specifications for competitive bidding, until either the specifications are officially  
49 approved by the public governmental body or the specifications are published for bid;

50 (12) Sealed bids and related documents, until the bids are opened; and sealed proposals  
51 and related documents or any documents related to a negotiated contract until a contract is  
52 executed, or all proposals are rejected;

53 (13) Individually identifiable personnel records, performance ratings or records  
54 pertaining to employees or applicants for employment, except that this exemption shall not apply  
55 to the names, positions, salaries and lengths of service of officers and employees of public  
56 agencies once they are employed as such, and the names of private sources donating or  
57 contributing money to the salary of a chancellor or president at all public colleges and  
58 universities in the state of Missouri and the amount of money contributed by the source;

59 (14) Records which are protected from disclosure by law;

60 (15) Meetings and public records relating to scientific and technological innovations in  
61 which the owner has a proprietary interest;

62 (16) Records relating to municipal hotlines established for the reporting of abuse and  
63 wrongdoing;

64 (17) Confidential or privileged communications between a public governmental body  
65 and its auditor, including all auditor work product; however, all final audit reports issued by the  
66 auditor are to be considered open records pursuant to this chapter;

67 (18) Operational guidelines and policies developed, adopted, or maintained by any public  
68 agency responsible for law enforcement, public safety, first response, or public health for use in  
69 responding to or preventing any critical incident which is or appears to be terrorist in nature and  
70 which has the potential to endanger individual or public safety or health. Nothing in this  
71 exception shall be deemed to close information regarding expenditures, purchases, or contracts  
72 made by an agency in implementing these guidelines or policies. When seeking to close  
73 information pursuant to this exception, the agency shall affirmatively state in writing that  
74 disclosure would impair its ability to protect the safety or health of persons, and shall in the same  
75 writing state that the public interest in nondisclosure outweighs the public interest in disclosure  
76 of the records. This exception shall sunset on December 31, 2008;

77 (19) Existing or proposed security systems and structural plans of real property owned  
78 or leased by a public governmental body, and information that is voluntarily submitted by a  
79 nonpublic entity owning or operating an infrastructure to any public governmental body for use  
80 by that body to devise plans for protection of that infrastructure, the public disclosure of which  
81 would threaten public safety:

82 (a) Records related to the procurement of or expenditures relating to security systems  
83 purchased with public funds shall be open;

84 (b) When seeking to close information pursuant to this exception, the public  
85 governmental body shall affirmatively state in writing that disclosure would impair the public

86 governmental body's ability to protect the security or safety of persons or real property, and shall  
87 in the same writing state that the public interest in nondisclosure outweighs the public interest  
88 in disclosure of the records;

89 (c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the  
90 receiving agency within ninety days of submission to determine if retention of the document is  
91 necessary in furtherance of a state security interest. If retention is not necessary, the documents  
92 shall be returned to the nonpublic governmental body or destroyed;

93 (d) This exception shall sunset on December 31, 2008;

94 (20) Records that identify the configuration of components or the operation of a  
95 computer, computer system, computer network, or telecommunications network, and would  
96 allow unauthorized access to or unlawful disruption of a computer, computer system, computer  
97 network, or telecommunications network of a public governmental body. This exception shall  
98 not be used to limit or deny access to otherwise public records in a file, document, data file or  
99 database containing public records. Records related to the procurement of or expenditures  
100 relating to such computer, computer system, computer network, or telecommunications network,  
101 including the amount of moneys paid by, or on behalf of, a public governmental body for such  
102 computer, computer system, computer network, or telecommunications network shall be open;  
103 [and]

104 (21) Credit card numbers, personal identification numbers, digital certificates, physical  
105 and virtual keys, access codes or authorization codes that are used to protect the security of  
106 electronic transactions between a public governmental body and a person or entity doing business  
107 with a public governmental body. Nothing in this section shall be deemed to close the record  
108 of a person or entity using a credit card held in the name of a public governmental body or any  
109 record of a transaction made by a person using a credit card or other method of payment for  
110 which reimbursement is made by a public governmental body; **and**

111 **(22) Records and documents of and pertaining to internal investigations by law**  
112 **enforcement agencies into matters of fitness and conduct of law enforcement officers**  
113 **employed by such investigating law enforcement agencies used solely in connection with**  
114 **matters relating to the employment of such law enforcement officers, and records and**  
115 **documents pertaining to any determinations or actions relating to an officer's employment**  
116 **status taken in connection with or following such investigations. Notwithstanding whether**  
117 **the subject matter of or allegations involved in the internal investigation involve criminal**  
118 **conduct on the part of a law enforcement officer, such records shall be considered records**  
119 **authorized to be closed under this section, including subsections (3) and (13) of this section,**  
120 **and not incident reports, investigative reports or other documents covered under section**

121 **610.100, unless such records and documents are used or shared by the agency in a criminal**  
122 **investigation by the law enforcement agency involving the officer.**

610.100. 1. As used in sections 610.100 to 610.150, the following words and phrases  
2 shall mean:

3 (1) "Arrest", an actual restraint of the person of the defendant, or by his or her  
4 submission to the custody of the officer, under authority of a warrant or otherwise for a criminal  
5 violation which results in the issuance of a summons or the person being booked;

6 (2) "Arrest report", a record of a law enforcement agency of an arrest and of any  
7 detention or confinement incident thereto together with the charge therefor;

8 (3) "Inactive", an investigation in which no further action will be taken by a law  
9 enforcement agency or officer for any of the following reasons:

10 (a) A decision by the law enforcement agency not to pursue the case;

11 (b) Expiration of the time to file criminal charges pursuant to the applicable statute of  
12 limitations, or ten years after the commission of the offense; whichever date earliest occurs;

13 (c) Finality of the convictions of all persons convicted on the basis of the information  
14 contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such  
15 persons;

16 (4) "Incident report", a record of a law enforcement agency consisting of the date, time,  
17 specific location, name of the victim and immediate facts and circumstances surrounding the  
18 initial report of a crime or incident, including any logs of reported crimes, accidents and  
19 complaints maintained by that agency;

20 (5) "Investigative report", a record, other than an arrest or incident report, prepared by  
21 personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in  
22 response to an incident report or in response to evidence developed by law enforcement officers  
23 in the course of their duties;

24 **(6) Investigative reports and incident reports, or other law enforcement records**  
25 **covered under this section, shall not include any records or documents pertaining to**  
26 **internal investigations by law enforcement agencies into matters of fitness and conduct of**  
27 **law enforcement officers employed by such investigating law enforcement agencies and**  
28 **used solely in connection with such officers' employment, as described in subsection (22)**  
29 **of section 610.021.**

30 2. Each law enforcement agency of this state, of any county, and of any municipality  
31 shall maintain records of all incidents reported to the agency, investigations and arrests made by  
32 such law enforcement agency. All incident reports and arrest reports shall be open records.  
33 Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6  
34 of this section or section 320.083, RSMo, investigative reports of all law enforcement agencies

35 are closed records until the investigation becomes inactive. If any person is arrested and not  
36 charged with an offense against the law within thirty days of the person's arrest, the arrest report  
37 shall thereafter be a closed record except that the disposition portion of the record may be  
38 accessed and except as provided in section 610.120.

39         3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a  
40 record or document of a law enforcement officer or agency, other than an arrest report, which  
41 would otherwise be open, contains information that is reasonably likely to pose a clear and  
42 present danger to the safety of any victim, witness, undercover officer, or other person; or  
43 jeopardize a criminal investigation, including records which would disclose the identity of a  
44 source wishing to remain confidential or a suspect not in custody; or which would disclose  
45 techniques, procedures or guidelines for law enforcement investigations or prosecutions, that  
46 portion of the record shall be closed and shall be redacted from any record made available  
47 pursuant to this chapter.

48         4. Any person, including a family member of such person within the first degree of  
49 consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a  
50 person involved in any incident or whose property is involved in an incident, may obtain any  
51 records closed pursuant to this section or section 610.150 for purposes of investigation of any  
52 civil claim or defense, as provided by this subsection. Any individual, his or her family member  
53 within the first degree of consanguinity if such individual is deceased or incompetent, his or her  
54 attorney or insurer, involved in an incident or whose property is involved in an incident, upon  
55 written request, may obtain a complete unaltered and unedited incident report concerning the  
56 incident, and may obtain access to other records closed by a law enforcement agency pursuant  
57 to this section. Within thirty days of such request, the agency shall provide the requested  
58 material or file a motion pursuant to this subsection with the circuit court having jurisdiction  
59 over the law enforcement agency stating that the safety of the victim, witness or other individual  
60 cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If,  
61 based on such motion, the court finds for the law enforcement agency, the court shall either order  
62 the record closed or order such portion of the record that should be closed to be redacted from  
63 any record made available pursuant to this subsection.

64         5. Any person may bring an action pursuant to this section in the circuit court having  
65 jurisdiction to authorize disclosure of the information contained in an investigative report of any  
66 law enforcement agency, which would otherwise be closed pursuant to this section. The court  
67 may order that all or part of the information contained in an investigative report be released to  
68 the person bringing the action. In making the determination as to whether information contained  
69 in an investigative report shall be disclosed, the court shall consider whether the benefit to the  
70 person bringing the action or to the public outweighs any harm to the public, to the law

71 enforcement agency or any of its officers, or to any person identified in the investigative report  
72 in regard to the need for law enforcement agencies to effectively investigate and prosecute  
73 criminal activity. The investigative report in question may be examined by the court in camera.  
74 The court may find that the party seeking disclosure of the investigative report shall bear the  
75 reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the  
76 decision of the law enforcement agency not to open the investigative report was substantially  
77 unjustified under all relevant circumstances, and in that event, the court may assess such  
78 reasonable and necessary costs and attorneys' fees to the law enforcement agency.

79         6. Any person may apply pursuant to this subsection to the circuit court having  
80 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest  
81 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance  
82 of the evidence that the law enforcement officer or agency has knowingly violated this section,  
83 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.  
84 If the court finds that there is a knowing violation of this section, the court may order payment  
85 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the  
86 court finds by a preponderance of the evidence that the law enforcement officer or agency has  
87 purposely violated this section, the officer or agency shall be subject to a civil penalty in an  
88 amount up to five thousand dollars and the court shall order payment by such officer or agency  
89 of all costs and attorney fees, as provided in section 610.027. The court shall determine the  
90 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the  
91 offense, and whether the law enforcement officer or agency has violated this section previously.

92         7. The victim of an offense as provided in chapter 566, RSMo, may request that his or  
93 her identity be kept confidential until a charge relating to such incident is filed.

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