

**IN THE SUPREME COURT
STATE OF MISSOURI**

No. SC100427

PHILLIP WEEKS,
Plaintiff/Appellant,

v.

ST. LOUIS COUNTY, MO, et al.,
Defendants/Respondents.

**Appeal from the Judgment of the Circuit Court of the County of St. Louis
Twenty-First Judicial Circuit
The Honorable Thomas C. Albus
Cause Number 19SL-CC05244**

**SUBSTITUTE BRIEF OF RESPONDENT
CITY OF WEBSTER GROVES**

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INTRODUCTION

You cannot get a record that doesn't exist under the Sunshine Law. Respondent, Webster Groves ("Webster Groves") did not have "public records" responsive to Appellant's, Phillip Weeks' ("Appellant") specific request for **"raw" data files** and, therefore, did not violate the Sunshine Law by not authorizing its third-party contractor, the Regional Justice Information Services Department Commission ("REJIS"), to create records with the specifications requested by Appellant from "raw" data files stored pursuant to §590.650 RSMo. (D175 p. 8-9 ¶18; App 13-14 ¶18). Similarly, Appellant did not ask for, nor did he want, the "report" of the annual compilation of data collected by Webster Groves through REJIS for its mandated report to the attorney general under §590.650 RSMo because it does not include Department Serial Number ("DSN") information "in which to compare individual peace officers' stop and post stop data" within the department." (D175 p. 6-7, ¶14; App 11-12, ¶14). Webster Groves acknowledges this annual compilation of Vehicle Stop Information data/report sent to the Attorney General is a public record. This annual report is publicly available, without a Sunshine Law request, for the years 2000 to present, on the Attorney General's website. Appellant did not want the compilation of data in the annual report. Rather, he clarified he was requesting from Webster Groves, through REJIS, the annual "raw" data files from the vehicle stop data imputed by officers into the mobile data terminals "with all the columns including DSN/PIN" for the years 2014-2018. (D175 p. 8-9, ¶18; App 13-14 ¶18). No record, electronic or otherwise, existed to meet that request.

In his petition, Appellant alleged that REJIS and Webster Groves violated the Missouri Sunshine Law §§610.010 RSMo, *et seq.* by not providing "data" REJIS collects, on behalf of

Webster Groves, of the vehicle stops, including DSN, made by Webster Groves under §590.650 RSMo. (D3, ¶59). Appellant alleged St. Louis County violated the Sunshine Law by redacting the DNS from the produced files. (D3). The Circuit Court, on cross-motions for summary judgment, entered judgment in favor of REJIS finding that Appellant's request would require REJIS, on behalf of Webster Groves, to create a record not in existence. (D103; App 1-4). The Circuit Court granted Webster Groves' summary judgment motion on the same grounds and denied Appellant's cross-motions. (D190; App 5). The Circuit Court also granted St. Louis County's Summary Judgment Motion finding that St. Louis County did not violate the Sunshine Law when it redacted the DSNs from the files produced. (D191). Appellant appealed the Summary Judgments entered in favor of REJIS and Webster Groves (D192), but later dismissed his appeal against REJIS. Appellant also appealed the Summary Judgment in favor of St. Louis County. (D192).

The Court of Appeal sustained the trial court with respect to St. Louis County and concluded that the DSN is not a public record, and therefore, neither Webster Groves nor St. Louis County are required to generate any report pursuant to Section 590.650 that includes a DSN. (Appellant's App 10). The Court of Appeals reversed the trial court with respect to Webster Groves finding that Webster Groves is required to provide "vehicle stop records generated for purposes of complying with Section 590.650" without including the DSNs. (Appellant's App 8 & 10). The summary judgment record is uncontroverted that neither Webster Groves, not REJIS on behalf of Webster Groves, had any "public records" responsive to Appellant's specific request for "the annual 'raw' data files for the years 2014-2018 from the Vehicle Stop Forms with all columns including the DSN/PIN that REJIS uses to compile the

stats for the annual Vehicle Stop Reports.”. (D175 p. 8-9 ¶18; D175 p. 12 ¶25; D109 p. 5 ¶¶34-35; App 13-14 ¶18; App. 17, ¶25; App 76, ¶¶34-35). The trial court correctly determined that no records existed in response to Appellant’s specific request, and therefore, Webster Groves did not violate the Sunshine Law.

STATEMENT OF FACTS.

I. Factual Background:

Appellant is a resident of the City of St. Louis, an activist and organizer and runs a journalistic publication. (D3 p. 3 ¶12). Webster Groves is a constitutional charter city under Article VI, Section 19 of the Missouri. (D175 p.1 ¶1; App 6 ¶1). REJIS is a quasi-governmental body governed as a joint commission to §§70.210 through 70.320 RSMo, and various ordinances from governmental entities and provides information technology services to departments and divisions of Webster Groves, and other municipalities and governmental bodies in the St. Louis County. (D3 p.1 ¶2).

Mo. Rev. Stat. §590.650, on which Appellant based his Sunshine Law request to Webster Groves, requires law enforcement officers in the state of Missouri to gather certain demographic information from drivers during each traffic stop they perform. *See* §590.650.2 RSMo.¹ (App 79-81). The statute requires a police officer who stops a motor vehicle to report to his or her law information agency certain enumerated data. The following enumerated data is required by statute:

- (1) The age, gender and race or minority group of the individual stopped;
- (2) The reasons for the stop;
- (3) Whether a search was conducted as a result of the stop;
- (4) If a search was conducted, whether the individual consented to the search, the probable cause for the search, whether the person was searched, whether the person's property was searched, and the duration of the search;
- (5) Whether any contraband was discovered in the course of the search and the type of any contraband discovered;
- (6) Whether any warning or citation was issued as a result of the stop;
- (7) If a warning or citation is issued, the violation charged or warning provided;
- (8) Whether an arrest was made as a result of either the stop or the search;

¹ All statutory references are to Missouri Annotated Statutes as amended unless otherwise indicated.

- (9) If an arrest was made, the crime charged; and
- (10) The location of the stop.

§590.650.2 RSMo. (App 79-80). The Missouri Attorney General has a “Vehicle Stop Information” template for use by police departments for compiling the data for the Attorney General to prepare the annual report. *See* Missouri Attorney General website and 15 CSR 60-10.030. (App 112). The “Vehicle Stop Information” template does not have a data field for the stopping officers’ name, PIN, or Department Service Number (“DSN”). *See* 15 CSR 60-10.020 (App 111-112). According to Section 590.650.2, neither DSNs nor the police officer’s name is a required enumerated category of reporting to the Missouri Attorney General. *See* §590.650.2 RSMo (App 79-80). Section 590.650 RSMo does not require local law enforcement agencies to maintain any records. *See* §590.650 RSMo *et seq.* (App 79-81). It only requires each law enforcement agency to compile certain aggregated demographic information about vehicle stops annually and report it to the Missouri Attorney General. *See* §590.650.2-3 RSMo. (App 79-80). The Attorney General, in turn, compiles the data submitted by all law enforcement agencies in the state into a report to the Governor, the General Assembly, and law enforcement agencies, which annual reports, from 2000 to the present, are available to the public on the Attorney General’s website without a Sunshine Law Request.² *See* §590.650.4 RSMo. (App 80).

Webster Groves entered into a management control agreement with REJIS, which provides that Webster Groves retain “management control” over its data stored in REJIS’

² As a clarification to Appellant’s statement of facts (Appellant’s Brief p. 8), Webster Groves did admit that the report containing a compilation of data, without DSNs, provided to the Attorney General pursuant to Section 590.560.3 RSMo (App 80), as outlined in the statutes and regulations, is a public record; but that is not what Appellant wanted or requested.

computers. (D147 p. 7 ¶17; D147 p. 9 ¶¶21-22; App 26 ¶17; App 28 ¶21-22). Once a Webster Groves police officer enters the required data into the data fields pursuant to §590.650.2 RSMo, the data is submitted electronically through Webster Groves' Mobile Data Terminals directly to REJIS. (D175 p. 2-3, ¶6; App 7-8 ¶6). This data entered by a Webster Groves police officer is neither electronically submitted to or through Webster Groves' database, nor stored or maintained by Webster Groves, before submission to REJIS. (D175 p. 3-4, ¶¶7-8; App 8-9 ¶¶7-8). REJIS collects, stores and compiles all electronic data received from Webster Groves for Webster Groves to submit annually their vehicle stops data / report, without DSNs, to the Missouri Attorney General, as required by §590.650.3 RSMo. (D175 p. 4-5, ¶9; App 9-10, ¶9). The annual compiled vehicle stop data / report submitted by Webster Groves, and ultimately included in the annual report prepared by the Attorney General, was not requested by Appellant because the annual report does not separate vehicle stop information by DSN number.

On July 23, 2018, Appellant sent the following Sunshine Law request to Captain Gregory S. Perks, custodian of records for Webster Groves Police Department ("Captain Perks"):

"I hereby request the following records from the Webster Groves Police Department pertaining to the Missouri Revised Statute 590, Section 590.650. Section 590.650 requires that all peace officers fill out "Vehicle Stop Information" forms for each vehicle stop made in the state, and that the law enforcement agencies provide the **data** to the Attorney General. Please provide, from 2011 to 2016, **any annual compilations of data** generated by the Webster Groves Police Department or received from the Attorney General **in which individual peace officers stop and post stop data** (as catalogued in the "Vehicle Stop Information" forms) can be compared to other peace officers within the department."

[emphasis added] (D175 p. 6-7, ¶14; App 11-12, ¶14). In response, Captain Perks advised Appellant to contact REJIS directly with his request and that REJIS would "need to create a

custom program with associated costs” to “create a special report” to provide the information requested by Appellant. (D175 p. 7-8, ¶¶15, 16 & 17; App 12-13 ¶¶15, 16 & 17). Appellant admitted, in his response to Webster Groves’ Statement of Uncontroverted Facts ¶15 that reports, including monthly reports, existed, but stated, without supporting evidence in the record, that: “The same program that is used to produce the monthly report can be used to produce the **records Plaintiff has requested with little to no modification.**” [emphasis added] (D175 p. 8 ¶15; App 13 ¶15).

On November 2, 2018, Appellant sent the following amended Sunshine Law request to the Chief of Operations for REJIS, Lt. Shelia Pearson (“Lt. Pearson”), and Webster Groves’ Captain Perks:

“I am hereby requesting the **annual “raw” data files** from the Vehicle Stop Forms with all columns including the DSN/PIN, that REJIS uses to compile the stats for the annual Vehicle Stop Reports for the Webster Groves Police Department for the years 2014-2017, and the monthly data for 2018.”

[emphasis added] (D175 p. 8-9, ¶18; App 13-14 ¶18). Although a stopping officer’s DSN is used to access REJIS’s servers when officers input information required by §590.650 RSMo, REJIS does not maintain a record listing of the DSN for each officer, or keep it for the annual compilation, because that information is not required to comply with §590.650.2 RSMo. (D175 p. 10 ¶¶21-22; D109 p. 2, ¶14; App 15 ¶¶21-22; App 73 ¶14). Accordingly, Lt. Pearson advised Appellant that REJIS would have to create a program for their IT Division to aggregate the “raw” data files to provide the information requested for 2016, 2017 and partial 2018. (D175 p. 9-10, ¶¶19 & 20; D109 p.3, ¶¶16, 17, 18, 19, 20, 21; App 14-15, ¶¶19 & 20; App 74, ¶¶16, 17, 18, 19, 20, 21). It is uncontroverted that REJIS and Webster Groves made clear in their Sunshine Law response that the specific information requested by Appellant for “raw”

data was not a record and would require REJIS, on behalf of Webster Groves, to create records not presently in existence and not typically prepared in the regular course of REJIS's business.³ (D175 p. 12, ¶25; D109 p. 5, ¶35; App 17, ¶25; App 76, ¶35). Further, Lt. Pearson's uncontroverted affidavit stated that REJIS does not, nor did it have, either at the time of or any time earlier or subsequent to Weeks' November 2, 2018 request, any responsive records of vehicle stops by Webster Groves police department. (D175 p. 11 ¶24; D109 p. 5 ¶34; App 17 ¶24; App 76 ¶34). The uncontroverted facts supported by Lt. Pearson's affidavit were that: "to prepare the records requested by Weeks, REJIS would have to create records not presently in existence and not typically prepared in the regular course of REJIS's business." (D175 p. 12, ¶25; D109 p. 5, ¶35; App 17, ¶25; App 76, ¶35).

On November 16, 2018, the attorney for Webster Groves, Mr. David Streubel, advised Appellant that the information he requested regarding certain vehicle stops for 2016, 2017 and 2018 did not exist and "it would have to be created." (D175 p. 13, ¶26; App 18, ¶26). Mr. Streubel further advised that Missouri law did not require Webster Groves to create a new record, and therefore, Webster Groves did not have existing records responsive to Appellant's Sunshine Law request. (D175 p. 13, ¶26; App 18, ¶26).

University City, an original defendant in Appellant's Petition, did authorize REJIS to extract University City's vehicle stop information and data from REJIS' stored data and create a new record, in the form of an Excel spreadsheet. (D36; D147 p.15 ¶35; D147 p. 35 ¶82; App

³ Appellant denied this statement of fact in its response to Webster Groves' Statement of Uncontroverted Fact ¶25 (D175 p.12; App 17). In his denial, however, Appellant admits that in order to obtain the information he requested for 2016, 2017 and 2018, REJIS would have to "extract" the information and "enter a few instructions of computer code" in order to provide the requested information as University City did for him. (D175 p. 12; D36; App 17).

34, ¶35; App 54 ¶82). REJIS, on behalf of University City, created a program to extract the information requested by the Appellant and created a special report for University City. (D175 p. 7-9, ¶¶15 17, 19, 20; D109 p.3, ¶20; D36; App 12-14, ¶¶15, 17, 19, 20; App 74, ¶20). St. Louis County has its own data collection and record keeping system regarding the vehicle stop information data which is different from Webster Groves and University City.

II. Procedural History

Appellant filed his Amended Petition, Count II asserting that Webster Groves violated §§610.010 through 610.026 RSMo by “refus[ing] to provide the requested records to Plaintiff.” (D3). Count I asserted claims against REJIS, Count III asserted a claim against University City, and Count IV asserted a claim against St. Louis County. (D3).

REJIS filed its Motion for Summary Judgment against Appellant asserting that REJIS was entitled to judgment as a matter of law on two independent bases: (1) REJIS is not the custodian of records of the vehicle stop data sought by Appellant; and (2) the data sought by Appellant, which Appellant characterizes as “raw data”, is not a presently existing “public record” as defined by §610.010(6) RSMo, and that REJIS, on behalf of Webster Groves, is not obligated under the Sunshine Law to create a record to respond to Plaintiff’s/Appellant’s requests. (D44-46). On December 30, 2020, the Circuit Court issued its Order/Judgment granting REJIS’s Motion for Summary Judgment, ruling, in part, that:

“Plaintiff requests records that do not exist. In order to respond to Plaintiff’s Sunshine Law requests, if authorized by one or more Other Defendants, REJIS would have to create a record not presently in existence. The Sunshine Law does not obligate REJIS (or any of the Other Defendants) to do so, even if the new

record could be created from the information culled from existing records. *See Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. W.D. 2005).” (D103; App 3-4).

Webster Groves then filed its Motion for Summary Judgment asserting, just as REJIS did, that it was entitled to judgment as a matter of law because Appellant’s request was not a currently existing “public record” as defined by §610.010(6) RSMO, and such, would have obligated Webster Groves, through REJIS, to create a new record not presently in existence. (D148-151). Based upon the summary judgment record, the Circuit Court, without further opinion, issued its Judgment on December 28, 2022, granting Webster Groves’ Motion for Summary Judgment and denying Appellant’s Motion for Summary Judgment. (D190; App 5).

St. Louis County filed its Motion for Summary Judgment on May 16, 2022 (D166-168), which was granted by the Circuit Court on February 2, 2023. (D191), disposing of all parties and claims pending before the Circuit Court.

Appellant filed an appeal from the summary judgments in favor of Webster Groves, REJIS and St. Louis County. (D192). Appellant later dismissed his appeal of REJIS’ Summary Judgment but maintained his appeal against Webster Groves and St. Louis County. Following the Opinion by the Eastern District Missouri Court of Appeals, this court accepted transfer on March 5, 2024.

ARGUMENT

- I. The trial court correctly granted Webster Groves’ Motion for Summary Judgment, as a matter of law, because: (a) Appellant requested “raw” data and not reports in existence and therefore, not “public records” as defined by §610.010(6) RSMo; (b) Appellant cites no caselaw to support his argument that “public records”, as defined under the Sunshine Law, includes raw “data” not stored as an electronic record or report by Webster Groves or by REJIS on behalf of Webster Groves; and (c) DSN information is not required to be reported to the Attorney General under §590.560.2 RSMo and is not a part of a “public record” of Webster Groves. (Responding to Appellant’s Point Relied On I)**

Standard of Review. Review of a circuit court’s grant of summary judgment is *de novo*. *Holmes v. Steelman*, 624 S.W.3d 144, 148 (Mo. banc 2021). An appellate court applies the same criteria as the trial court and summary judgment is only proper if the moving party established that there is no genuine issue as to the material facts and the movant is entitled to judgment as a matter of law. *Green v. Fotoohigham*, 606 S.W.3d 113, 115 (Mo. banc 2020). The facts contained in affidavits or otherwise in support of a parties’ motion are taken as true unless contradicted by the non-moving parties’ response. *Bacon v. Friedman*, 621 S.W.3d 170, 175 (Mo. App. E.D. 2021). Facts come into a summary judgment record only via the numbered-paragraphs-and-response framework set out in Rule 74.04(c). *Almat Builders and Remodeling, Inc. v. Midwest Lodging, LLC.*, 615 S.W.3d 70, 76 (Mo. App. E.D. 2020). The right to summary judgment “boils down to certain facts, established per Rule 74.04(c), that legally guarantee one party’s victory regardless of other facts or factual disputes.” *Id.* at 77 (quoting *Pemiscot County Port Authority v. Rail Switching Services, Inc.*, 523 S.W.3d 530, 533 (Mo. App. S.D. 2017)). The appellate court will affirm the trial court’s granting of summary judgment if it is correct as a matter of law on any grounds raised in the motion and supported by the summary judgment record. *Loerch v. City of Union Missouri*, 643 S.W.3d 597, 602 (Mo.

App. E.D. 2022). In determining whether a party has established a right to judgment, issues of statutory interpretation are questions of law reviewed *de novo*. *Lisle v. Meyer Electric Co., Inc.*, 667 S.W.3d 100, 103 (Mo. banc 2023).

Preservation. In so far as Appellant’s Point I can be construed as claiming err in the trial court’s holding that Webster Groves had no “public records” satisfying Appellant’s Sunshine Law request, this issue was raised in the trial court in the motion for summary judgment and is preserved for review.

- a) Appellant’s request for “raw” data to Webster Groves is not covered under the Sunshine Law because it is not a request for a “public record” as defined by ¶610.010(6).

Appellant’s first request on July 23, 2018 was for “any annual compilations of data generated by the Webster Groves Police Department or received from the Attorney General in which individual peace officers stop and post stop data (as catalogued in the ‘Vehicle Stop Information’ forms) can be compared to other peace officers within the department” pursuant to §590.650 RSMo. (D175 p. 6-7, ¶14; App 11-12, ¶14). Webster Groves receives each year an annual compilation of data from REJIS, without DSNs, for its annual reports under §590.650 RSMo, but those compilations did not compare individual peace officers stop information with other officers in the department. *See* §590.650 RSMo *et seq.* (App 79-81). Further, the “Vehicle Stop Information” template does not have a data field for the stopping officer’s DSN, pin or name pursuant to 15 CSR 60-10.020 and CSR 60-10.030. (App 110-112). Accordingly, under the plan language of the request, no records existed that met Appellant’s July 23, 2018 request criteria as Webster Grove’s annual compilation of data reported to the Attorney General did not contain individual peace officer stop information. This is a reasonable

interpretation of Appellant's July 23, 2018 request. *Anderson v. Village of Jacksonville*, 103 S.W.3d 190, 196 (Mo. App. W.D. 2003).

Appellant's amended November 2, 2018 request clarified that he did not want the existing annual Attorney General report records, but rather, requested REJIS, on behalf of Webster Groves, to release, pursuant to Section 590.650 RSMo:

“the **annual ‘raw’ data files** from the Vehicle Stop Forms with all columns including the DSN/PIN, that REJIS uses to compile the stats for the annual Vehicle Stop Reports for the Webster Groves Police Department for the years 2014-2017, and the monthly data for 2018.”

[emphasis added] (D175 p 8-9, ¶18; App 13-14, ¶18). Appellant clarified to Webster Groves and REJIS that he sought “raw data” rather than existing electronic “records”. It was uncontroverted, based on the summary judgment record, that neither Webster Groves, nor REJIS, prepared, stored or retained any “records”, electronic or otherwise, and Appellant was requesting annual “raw” data. (D175 p. 10-12 ¶¶22-25; D109 p. 3 ¶¶16-20; D109 p. 5 ¶¶34-35; App 15-17 ¶¶22-25; App 74 ¶¶16-20; App 76 ¶¶34-35). “One seeking access to public records must communicate a request in language that a reasonably competent custodian of records would understand”. *Id.* Based upon Appellant's November 2, 2018 request clarification, a reasonable custodian of records would conclude Appellant sought “data” to be put into a special report per his criteria. *Id.* at 196-197.

“When a statute defines a word used in a statute, the statutory definition of that word must be employed in determining the statute's meaning.” *Lisle v. Meyer Electric Co., Inc.*, 667 S.W.3d at 104. A “Public record,” as defined in §610.010(6), means “any record, whether

written or electronically stored, *retained by or of any public governmental body*...including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body...” See ¶610.010(6) RSMo [emphasis added]. (App 83-84). If a document is not retained by a public government body, it is not a “public record” which is required to be produced in response to a Sunshine Law request. *Sansone v. Governor of Missouri*, 648 S.W.3d 13, 22 (Mo. App. W.D. 2022). The law is clear that a public government body would be obligated, under the Sunshine Law, to produce a public record in its custody.⁴ However, the Sunshine Law does not obligate a public government body to generate a new record or report derived from raw data available to that public governmental body which is not typically prepared by that public government body. *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. W.D. 2005).

In *Jones*, the Court ruled that the circuit court was not obligated to compile a report derived from court filing data which is not ordinarily compiled in the regular course of business. *Jones v. Jackson County Circuit Court*, 162 S.W.3d at 60. Like Appellant’s request here, the plaintiff in *Jones* argued he was not asking to create new records, but to “retrieve records that were already in existence **in a different form**”. [emphasis added] *Id.* at 58. Specifically, plaintiff requested “information concerning landlord petitions and complaints for rent and possession, unlawful detainer, and damages for breach of lease or rental agreements...including the date the case was filed; the case style; the names and addresses of the plaintiff and defendant; the assigned court; the case number; the party against whom judgment was entered; the date the judgment was entered; the amount of the judgment; the date

⁴ Webster Groves does not dispute that it, and not REJIS, is the custodian of records for any “records” that REJIS maintains as a third-party contractor.

the judgment was satisfied; disposition of the petition; and the case type.” *Id.* at 56. In upholding the decision to deny the Sunshine Law request, the *Jones* court cited *Schulten, Ward & Turner, LLP v. Fulton-DeKalb Hosp. Auth.*, 535 S.E.2d 243, 245 (2000):

“open records law ‘does not require a public agency or officer to create or compile new records by any method, including the development of a computer program or otherwise having a computer technician search the agency’s or officer’s database **according to criteria conceived by the citizen making the request.**’”

[emphasis added] *Id.* at 60. *Jones* noted that “the definition of ‘public records’” includes only those records – either written or electronic – *that are already in existence* that the public governmental body is ‘holding’ or ‘maintaining’ in its possession. *Id.* at 59. [emphasis added].

“There is nothing in the definition of ‘public records,’ however, that indicates that it includes written or electronic records that *can* be created by the public governmental body, **even if the new record could be created from information culled from existing records.** The plain language of 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.” *Id.* at 60. “Since the plain language of the Sunshine Law does not require a public governmental body to create a new record, but requires only that the public governmental body allow access to existing records, this court holds that, if the Sunshine Law applies, the Circuit Court did not violate it by denying Mr. Jones’ request to create a new, customized record from information contained in its existing records.”

[emphasis added] *Id*; See also *Sansone v. Governor of Missouri*, 648 S.W.3d 13, 22 (quoting *Jones, Id.* at 60); *Douglas v. Office of the State Courts Administrator*, 470 S.W.3d 29, 30, n.2 (Mo. App. W. D. 2015).

Similarly, in *Am. Family Mut. Ins. Co. v. Missouri Department of Insurance*, the court stated that:

“[t]he record reflects that MDI [the Missouri Dept. of Insurance] does not currently have the requested data but that it might be able to make such calculations from the data that it has...however, the Sunshine Act does not empower individuals or the courts to order a governmental agency to create records. (citation omitted) For the purposes of the Sunshine Act, ‘public records’ include only those written or electronic records ‘that are already in existence that the public governmental body is ‘holding’ or ‘maintaining’ in its possession.’ (citation omitted). ‘There is nothing in the definition of ‘public records,’ ... that indicates that it includes written or electronic records that can be created by the public governmental body, even if the new record could be created from information culled from existing records (citation omitted).”

Am. Family Mut. Ins. Co. v. Missouri Dept. of Ins., 169 S.W.3d 905, 914-915 (Mo. App. W.D. 2005). “Where Requesters have asked government agencies to create customized compilations or summaries of their records, we have held that the Sunshine Law was inapplicable, since it only requires agencies to disclose existing records – not to create new ones.” *Sansone v. Governor of Missouri*, 648 S.W.3d at 22.

Here, when looking at the specific language of Appellant’s request, Appellant is not

seeking existing records, but rather, attempts to compel Webster Groves, through REJIS, to create a record per his specifications and parameters using Webster Groves' electronic "raw" data. (D175 p. 8-9, ¶18; App 13-14, ¶18). Appellant's Sunshine Law request references §590.650 RSMo which requires law enforcement officers to gather certain demographic information from drivers during vehicle traffic stop to be annually compiled and submitted to the Attorney General. *See* §590.650.2 RSMo. (App 79-80). Section 590.650.2 RSMo does not require the DSN/PIN of the reporting officer. *Id.* (App 79-80). Further, the facts are undisputed that REJIS, on behalf of Webster Groves, did not maintain a record listing the DSNs for Webster Groves officers as that information is not required to be included in the annual report to the Attorney General. (D175 p. 10, ¶22; D109 p. 2-3, ¶¶ 14-18; App 15, ¶22; App 73-74, ¶¶ 14-18).

Both *Jones* and *Am. Family Mut. Ins.* make it clear that the Sunshine Law does not obligate Webster Groves to authorize REJIS to take the data contained on REJIS' electronic repository, associate such data with individual officers' DSNs, and create the special report for the dates, specification and parameters Appellant requested. As in *Jones*, although the raw data requested exists on REJIS' servers, this does not dictate that such data in disaggregated electronic form is a "public record" "retained" by REJIS on behalf of Webster Groves under §610.010 RSMo. *See* §610.010(6) RSMo (App 83-84). In interpreting the definition of "public record," the Missouri Supreme Court has held that the ordinary meaning of the word retain is to "hold or continue to hold in possession or use: continue to have, use, recognize, or accept: maintain in one's keeping[.]" *Jones v. Jackson*, 162 S.W.3d at 59 (citing *Hemeyer v. KRCG-TV*, 6 S.W.3d 880, 881 (Mo. banc 1999); *State ex rel. Moore v. Brewster*, 116 S.W.3d 630, 637

(Mo. App. E.D. 2003). The summary judgment record included an affidavit from REJIS that “such a report” requested by Appellant would require REJIS, on behalf of Webster Groves, to create report not typically prepared in the regular course of REJIS’ business. (D175 p. 12, ¶25; D109 p. 5, ¶35; App 17, ¶25; App 76, ¶35). Webster Groves relied on REJIS’ and determined that no “record” met Appellant’s specific Sunshine Law request. (D175 p. 9-12 ¶¶ 19-25; D109 p. 3 ¶¶16-20; D109 p. 5 ¶¶34-35; App 14-17 ¶¶ 19-25; App 74 ¶¶16-20; App 76 ¶¶34-35).

The trial court, in reviewing the summary judgment record, correctly found Webster Groves was not required to “create” a document not in existence from electronic data stored by Webster Groves. (D103; D 190; App 1-5). The trial court relied on *Jones v. Jackson County*, 116 S.W.3d at 60. There was no issue raised before the trial court whether the monthly data summaries REJIS electronically sent to Webster Groves should have been retained pursuant to §610.010(6) and provided to Appellant. (D146; D148; D186; D187). There was no evidence in the summary judgment record that these electronic summaries satisfied Appellant’s Sunshine Law request and Appellant never argued this issue at the trial court.

Appellant was aware of these monthly summaries of data prior to the motions for summary judgment from depositions taken on February 22, 2021 of Webster Groves’ officials. (D175 p. 5 ¶10; App 10 ¶10). At no time did Appellant demand these monthly electronic summaries be produced in his motions for summary judgment to REJIS and Webster Groves, nor his appellate briefs. (D146; D186). In the trial court, Appellant argued: “Webster Groves stated that it gets monthly vehicle stop record reports from REJIS and has for several years before 2020 but did not retain those records. (WSUMF #10). Surely the program that REJIS used to provide those records to Webster Groves could be adapted to provide the requested

records to Plaintiff.” (D186, p. 14). Appellant’s argument and the plain language of his Sunshine Law request was reasonably interpreted by the trial court as seeking a custom report from data rather than these interim monthly reports referenced in Webster Groves’ Statement of Uncontroverted Facts and Appellant’s responses. (D103; D109; D175 p. 7-8 ¶15; D175 p. 11-12 ¶¶24-25; App 105; App 12-13 ¶15; App 16-17 ¶¶24-25). Appellant repeatedly demanded the annual compilation of “raw” data entered into the REJIS system pursuant to Section 590.650 RSMo “in which individual peace officers stop and post stop data (as catalogued in the “Vehicle Stop Information” forms)” to be extracted into a document according to parameters set by Appellant (i.e., format of “columns” including the DSN/PIN) “to compare to other peace officers within the department” by DSN. (D175 p. 6-9, ¶¶ 14 & 18; D147 p. 29, ¶69; App 11-14, ¶¶ 14 & 18; App 48, ¶69). It is undisputed, no REJIS report or summaries sent to Webster Groves or to the Attorney General pursuant to Section 590.650 RSMo ever existed with these specific parameters. (D175 p. 9-10 ¶¶19-20; D175 p. 12 ¶25; D109 p. 5 ¶¶34-35; App 14-15 ¶¶19-20; pp 17 ¶25; App 76 ¶¶34-35).

In his summary judgment responses and reply memorandum, Appellant continually argued that Webster Groves could and should produce what University City voluntarily produced, a Microsoft Excel spreadsheet with all his requested columns and parameters. (D146 p. 16-18; D147 p. 35, ¶82; D186 p. 5; App 54, ¶82). *See also* Appellant’s Exhibit 31a University City’s Excel spreadsheet (D36). Appellant’s argument in the trial court was that just like University City, Webster Groves, through REJIS, “can produce all the vehicle stop records (information) for a client agency with relatively little effort.” (D146 p. 12). Appellant conceded that the records he requested had yet to be created. It does not matter how much or how little

effort it would take to create the new record. Once Appellant acknowledged that a record containing all criteria conceived by Appellant could be created “with relatively little effort,” the inescapable conclusion that such record does not presently exist and would have to be created. *Jones* at 60. This is the precise holding in *Jones v. Jackson. Id.* If Webster Groves, or REJIS, had an Excel, or comparable format, spreadsheet in existence containing the criteria requested by Appellant, *Jones* would not apply. The uncontroverted facts before the trial court showed that neither Webster Groves, nor REJIS, had such a record. (D175 p. 11-12 ¶¶ 23, 24, 25; App 16-17, ¶¶ 23, 24, 25).

Section 590.650 RSMo *et seq.* does not mandate a public government body retain the “data” generated. *See* §590.650 RSMo *et seq.* (App 79-81). There is also no mandate under §590.650 RSMo to create, retain or maintain any “records”. *See* §590.650 RSMo *et seq.* (App 79-81). Furthermore, even if monthly electronic data summaries could be considered a “study” or “document” under §610.010(6) RSMo, it does not negate the fact there is no evidence in the record before the trial court that these summaries were responsive to Appellant’s specific request. REJIS makes that abundantly clear when it affirmatively stated under oath that the reports requested by Appellant were not *typically prepared* by REJIS in the regular course of business and that responsive records would have to be created. (D175 p. 12, ¶25; D109 p. 5, ¶35; App 17, ¶25; App 76, ¶35).

Accordingly, Webster Groves did not violate the Sunshine Law by failing to “authorize” REJIS, on its behalf, to create records with the specifications requested by Appellant. This is further supported by the Circuit Court’s Order/Judgment in this case granting REJIS’ summary judgment motion which Appellant has failed to appeal. (D103; App 1-4). The Circuit Court

found that the Sunshine Law did not obligate Webster Groves or REJIS to generate a report from data on REJIS's servers merely to respond to Appellant's request as the Sunshine Law does not obligate REJIS to do so "even if the new record could be created from the information culled from existing records". *See Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 60 (Mo. App. W.D. 2005)." (D103 p. 3-4; App 3-4). The Circuit Court, in granting REJIS' Summary Judgment, further found that: "[t]he uncontroverted facts demonstrate that REJIS would need to create a record in order to respond to Plaintiff's requests, and Plaintiff's claims against REJIS also fails for this reason." *Id.* The same undisputed facts also support the summary judgment in Webster Groves' favor as a matter of law, even though the Circuit Court granted Webster Groves' Summary Judgment Motion without further opinion.

- b) "Records" as defined under the Missouri Sunshine Law does not include "data" not stored as an electronic record.

The undisputed summary judgment facts are that Appellant requested and insisted he was entitled to, under the Sunshine Law, the "raw" data on REJIS' server to be formatted under Appellant's parameters, which is exactly his November 2, 2018 request. (D175 p. 8-9 ¶18; App 13-14 ¶18). The crux of Appellant's Sunshine Law petition and summary judgment motion filed against REJIS and Webster Groves, was that the term "data" is indistinguishable from the term "record" and that the data in REJIS' server was a "public record" under the Sunshine Law. (D146). Although the Appellate Court did not address this issue, Webster Groves reasserts its argument set forth in its summary judgement and prior Appellate Court brief that "data" is not a "record" if it is not stored as an electronic document meeting the definition of "public record" under the Missouri Sunshine Law. *See* §610.010(6) RSMo. (App 83-84).

Appellant leaps from the statutory definition of “public record” that includes records “electronically stored” to his argument that “raw data” electronically stored is also a “record.” (D146; D186). Webster Groves does not dispute that a “record” can be electronically stored and be subject to production under the Sunshine Law. *See* §610.010(6) RSMo. (App 83-84). However, Appellant’s conclusion that all “data” stored electronically are “records” under the Missouri Sunshine Law is contrary to the plain language of the statute. *Id.* This Court should not expand the definition of a “public record” beyond the plain language of the statute. Electronic “data” in a database that can only be disseminated by generating a new report is not, by definition, a record covered by the Sunshine Law. *See Jones, Id.* at 56-60 and *Am. Family Mut. Ins., Id.* at 914-915.⁵ Whether the definition of “public record” should be updated to reflect current technology is a matter for the state legislature. *See Sansone v. Governor of Missouri*, 648 S.W.3d at 23, n.7.

Appellant’s summary judgment argument also cited REJIS’ Public Records Policy (D58) and REJIS’ December 2019 Service Announcement (D141) which states that REJIS “provides an electronic repository for records maintained by other public bodies.” (D146 p. 6-7).⁶ Despite Appellant’s arguments to the contrary, just because a document uses the term “record,” does not make it a “public record” for purposes of the Sunshine Law as defined under

⁵ The Circuit Court specifically found that Appellant could cite no authority for the proposition that “data” and “public record” are the same and further found that Missouri law to be contrary to Appellant’s position as set forth in *Jones* and *Am. Family Mut. Ins.* (D103; App 4).

⁶ Appellant included in his summary judgment memorandum snippets of deposition testimony of Mr. Isom, Executive Director of REJIS, in an attempt to support his proposition that “data” and “record” are the same and that REJIS’ contention otherwise is a “mischaracterization of what REJIS maintains for its clients.” (D146 p. 6-7). However, Appellant provided no supporting evidence or caselaw, and failed to address the *Jones* and *Am. Fam. Mutual Ins.*, and the legal conclusion reached by the Circuit Court which clearly hold to the contrary.

§610.010 RSMo. Whether data or information constitutes a “public record” is a legal conclusion based on statutory interpretation. The uncontroverted facts presented in both REJIS’ and Webster Groves’ Motions for Summary Judgment were that REJIS maintained only “data” that would require aggregation from REJIS’s IT Division in order to create a report in response to Appellant’s request and criteria. (D175 p. 4-11, ¶¶ 9, 15, 17, 19, 20, 22, 23 and 25; App 9-16, ¶¶ 9, 15, 17, 19, 20, 22, 23 and 25). The trial court made the legal conclusion in REJIS’s Motion for Summary Judgment that the “raw data” requested from Appellant is not a “public record” that is presently in existence as required under the Sunshine Law; but, instead, must be created. (D103; App 1-4). Appellant dismissed his appeal of the trial court’s summary judgment for REJIS. The trial court later granted summary judgment for Webster Groves without opinion. (D190; App 5). If the trial court grants a summary judgment motion without opinion, the Appellate court presumes the trial court based its decision on the grounds stated in the motion. *Rapp v. Eagle Plumbing, Inc.*, 440 S.W.3d 519, 522 (Mo. App. E.D. 2014).

Further, Appellant erroneously argued in the trial court that *State ex rel Daly vs. Info Tech Serv. Agency*, 417 S.W.3d 804 (Mo. App. E.D. 2013) for the proposition that there is no distinction between data and records. (D146 p. 10-11; D186 p. 21-22). *Daly* simply held that payroll records of City employees held by a third-party payroll processor were not “closed” personal records and should be disclosed under the Sunshine Law. *Id.* at 812-813. *Daly* does not address whether “raw data” is a public record.

Appellant also asserted in the trial court that REJIS is obligated to grant access to the electronically stored data of its clients under §610.029 RSMo. (D146 p. 9-10, 17, 21; D186 p. 12, 14-15). Appellant argued that §610.029 prohibits a government body from maintaining its

records in an electronic format with a third party if doing so prevents access to any inquiring member of the public. (D146; D186 p.2, 14-15); *See* ¶610.029 RSMo (App 90-91). Webster Groves does not dispute this. However, this provision is irrelevant if Appellant’s request is not for an existing “public record.”

- c) DSNs are not a public record under Appellant’s Sunshine Law request pursuant to §590.650 RSMo because the DSN information is not specifically delineated information under §590.650.2 RSMo and therefore, is not a public record.

Appellant’s request was made pursuant to §590.650 RSMo requiring a police officer who stops a motor vehicle to report to his or law information agency specific enumerated data. §590.650.2 RSMo. (App 79-80). Nowhere in the statute does it mention or refer to a DSN, police officer’s name or any other identification of an individual peace officer. §590.650 *et seq.* RSMo (App 79-81). The statute only requires that each local law enforcement agency compile an enumerated list of information about vehicle stops annually and send it to the Missouri Attorney General. *See* §590.650.2-3 RSMo. (App 79-80). The Attorney General, in turn, compiles the data submitted by all law enforcement agencies in the state into a report to the Governor, the General Assembly, and law enforcement agencies. *See* §590.650.4 RSMo. (App 80). This annual report makes no reference to DSNs or police officer’s individual identity and are available to the public on the Attorney General’s website. *See* §590.650.4 RSMo. (App 80).

In *State ex rel. Goodman*, the Appellate Court considered a similar Sunshine Law request by the appellant, Goodman, for incident reports pursuant to Section 610.100.1(4). *State ex rel. Goodman v. St. Louis Bd. Of Police Com’rs*, 181 S.W.3d 156 (Mo. App. E.D. 2006). Section 610.100.1(4) defines an “incident report” as “a record of a law enforcement agency

consisting of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by that agency.” *Id.* at 159. The Board provided the incident reports after redacting other information not enumerated in the definition, including the drivers license numbers, license plate numbers, addresses, telephone numbers and month and date of birth (not year) of the parties to the accident. *Id.* at 158. Goodman filed a writ of mandamus seeking to prevent the Board from redacting the information, which was dismissed by the trial court. *Id.*

On appeal, the *Goodman* court affirmed the trial court’s dismissal of the writ and held the Board could redact certain information in the incident reports because only the specifically delineated information under the statute in Section 610.100.1(4) is considered an “open record” under the Sunshine Law. *Id.* at 160. Accordingly, anything outside of the statute’s “exhaustive” list could be redacted by the Board because it is not considered a “public record”. *Id.* Section 590.560 RSMo sets forth an “exhaustive” list of information to be gathered and included in the annual reports. *See* §590.650.2 RSMo. (App 79-80). Appellant’s express and limited request was for records used to “compile the stats for the annual Vehicle Stop Reports” pursuant to §590.650 RSMo. (App 79-81). Therefore, under the logic and holding of *Goodman*, any information outside that list (i.e. DSN) is not a public record under the circumstances and therefore, is not subject to Appellant’s Sunshine Law request.

Appellant argues that subsection 5 of §590.650 RSMo does require DSNs be included because he argues that section “mandates that the governmental agency keep information about each individual officer’s vehicle stops in additional to the information required to be recorded

on each vehicle stop by R.S.Mo. Section 590.650.2 for reporting to the Attorney General.” (Appellant’s Supreme Court brief p. 11). However, the plain language of subsection 5 has no such implied mandate. *See* §590.650 RSMo *et seq.* (App 80-81). Rather, it requires that the law enforcement agency periodically review the *annual report of the attorney general*, which annual report does not include DSNs, to determine if there is a pattern of peace officers stopping minority groups. [emphasis added] Section 590.650.5(2)(a) & (b) RSMo. (App 80-81). The statute does not dictate to a law enforcement agency a process of reviewing possible “patterns” or the manner of investigating peace officers for racial profiling. *See* ¶590.650.5(5) RSMo (App 80-81).

Chapter 610 embodies Missouri’s commitment to open government and is to be construed liberally in favor of open government. *See* §610.011 (Appellant’s App 38). However, in analyzing whether a government entity has violated the Sunshine Law, the court must look at the specific request made. The request must be made “in language that a reasonably competent custodian of the records would understand.” *Anderson v. Village of Jacksonville*, 103 S.W.3d at 196. “The custodian must be able to identify records with reasonable specificity in order to be able to provide access to them.” *Id.* The statute does not “compel that the recipient custodian solve a mystery to understand the request.” *Id.* In responding to Appellant’s request, Webster Groves reasonably construed his request as being a request for “raw data files”, not a request for any existing records maintained by Webster Groves or REJIS. Webster Grove verified this with REJIS prior to responding to Appellant’s Sunshine Law request. Based upon the uncontroverted facts, Webster Groves did not provide the specific information requested as there were no responsive records in existence and the Sunshine Law does not

require a governmental agency to provide a “record” that does not exist nor create a new record to meet Appellant’s criteria. *Jones v. Jackson*, 162 S.W.3d at 60.

In a similar case filed by Appellant against City of St. Louis, the St. Louis City Circuit Court issued a judgment in favor of the City of St. Louis after a bench trial holding that Appellant’s request for an Excel spreadsheet of the data for each vehicle stop pursuant to Section 590.650 would require the creation of a new record not maintained by the City of St. Louis, and therefore, was not a public record under the Sunshine Law. *Phillip Weeks v. City of St. Louis, Cause #1922-CC11987*. (App 97-109). The St. Louis City Circuit Court further held that Appellant’s request was specific and limited to data kept pursuant to Section 590.610 RSMo, which makes no mention of a DSN, and therefore, the Court need not determine whether a DSN was a public record subject to the Missouri Sunshine Law. (App 105).

The trial court correctly granted summary judgment for Webster Groves for all the above reasons.

II. The trial court correctly granted Summary Judgment for Webster Groves because as a matter of law (as set forth in Webster Groves’ response to Point I), the “raw” data files, including DSN data, are not “public records” in existence subject to the Sunshine Law in that the DSNs are not required to be identified or reported under §590.650 RSMo, nor were they part of any existing record maintained by Webster Groves in the ordinary course of business. The issue of whether Webster Groves can properly redact DSN information under §610.021(3) and (13) was not raised in or ruled on by the trial court and is not preserved as to Webster Groves. (Responding to Appellant’s Point Relied on II).

Standard of Review. The standard of review set forth above in Point I is applicable here.

Preservation. The issue of whether Webster Groves could have properly redacted DSN information under §610.021(3) and (13) was not raised in or ruled on by the trial court and is not preserved as to Webster Groves.

In so far as Appellant's Point II discusses the "closed record" exception for personnel records relied upon by St. Louis County, Webster Groves makes no argument because Webster Groves had no "records" which could be redacted. "Raw" data files cannot be redacted. In response to Appellant's Point II, Webster Groves relies on its Argument in response to Point I. St. Louis County has a distinct and different record system for Vehicle Stop Information from that which is employed by Webster Groves. The personnel record exemption under §610.021(3) and (13) was never an issue raised in the underlying litigation against Webster Groves and this issue was never addressed on summary judgment because Webster Groves had no records to redact. The exception for personnel records under §610.021(3) and (13) and whether it applies to Webster Groves has not been preserved for review. *Old Navy LLC v. South Lakeview Plaza I, LLC*, 673 S.W.3d 122, 132 (Mo. App. E.D. 2023); *Albu Farms, LLC v. Pride*, 685 S.W.3d 468, 485 (Mo. App. W.D. 2023).

CONCLUSION

The Trial Court correctly found that Webster Groves did not violate the Missouri Sunshine Law as Appellant's request would require the creation of a record not presently in existence. The Trial Court did not err in granting Webster Groves' Motion for Summary Judgment and denying Appellant's Motion for Summary Judgment and this Court should affirm the judgment of the trial court. Appellant is not entitled to attorney's fees and costs.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that I prepared this brief using Microsoft Word Times New Roman size 13 font. I further certify that this brief complies with the word limitations of Rule 84.06(b) and that it contains 9180 words and 839 lines.

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2024 the foregoing **Substitute Brief of Respondent City of Webster Groves** was filed electronically with the Clerk of Missouri Court of Appeals to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Neil J. Bruntrager