In the Missouri Court of Appeals
Eastern District

DIVISION THREE

CYPERSS HORAN, LLC, Respondent, v. CITY OF FENTON, MISSOURI, ET AL., Appellants.	))))))))))	ED113842 Filed: July 28, 2026

Appeal from the Circuit Court of St. Louis County
The Honorable Bruce Hilton, Judge

Introduction

Appellants City of Fenton and City Clerk Jane Hungler appeal the circuit court's grant of summary judgment in favor of Respondent Cypress Horan, LLC, on Respondent's claim alleging Appellants violated the Missouri Sunshine Law by charging Respondent a flat rate fee of $1,900 to produce email records. Appellants raise five points on appeal. Because we find that the circuit court improperly entered judgment on a claim that was not pleaded in Respondent's petition, in that Respondent pleaded a statutory violation pursuant to Section 610.026, and the circuit court granted relief on a purposeful

violation pursuant to Section 610.023, we vacate the judgment, and reverse and remand to the circuit court.

Factual and Procedural Background

On April 16, 2021, Respondent made a Sunshine Law request on behalf of Respondent to the City, seeking four categories of public records. Respondent clarified that the "records" requested were to include all City staff and elected officials' emails, City staff reports, City meeting minutes, City executive session minutes and votes, preliminary and final plats, zoning applications for text amendment, petitions to rezone, applicant submittals, citizen correspondence, and any related legislation.

The City received and responded to Respondent's request on the next business day, April 19, 2021. The City Clerk advised Respondent that the extensive nature of the requests would require longer than three days to compile and would necessitate the use of the City's contracted IT consultant to conduct server searches because the City did not have inhouse IT services. The City Clerk informed Respondent that the IT consultant charged the City a flat fee of $1,900 to conduct server searches and that the City had the right to recoup its fees. The City Clerk acknowledged that counsel for Respondent had spoken with the City Attorney about whether Respondent wished to alter or refine their requests for email records in order to better identify what emails Respondent was seeking from the City. The City Clerk stated that, pursuant to Respondent's agreement with City Attorney, the City would hold this part of the request in abeyance until they received further direction from Respondent.

On May 6, 2021, Respondent replied to the City Clerk's letter. Relevant to the facts of this appeal, Respondent stated that the flat fee to retrieve the requested emails records "shocks the conscious." Counsel for Respondent expressed that he would discuss the $1,900 fee and the "demand for 'keywords' to retrieve" the electronic records with his client, and would address the matters in future correspondence.

On May 7, 2021, the City Attorney for the City responded to Respondent's May 7, 2021, letter. The City Attorney clarified that, due to the breadth of the email records being requested, a server search would be necessary, and she suggested that Respondent "provide the City with search terms since as a practical matter that is how you search a server," but did not make the production of the email records contingent on the City receiving such terms. The City Attorney noted that for email requests that are "limited in time and/or involve limited email accounts and servers," the affected City employees may be able to search their own computers; however, such a search was impossible for Respondent's request as it included searching every email account and all electronic files within the City's past and present systems, with no time limits. The City Attorney reiterated that the City was currently holding that request in abeyance in order for counsel for Respondent to speak with Respondent and potentially further develop and refine the search so that Respondent "receives all electronic records it is seeking from the City at one time and for one fee." The City attorney noted that counsel had stated during their phone conversation that Respondent would likely wish to expand the request and that the City, as communicated in the City Clerk's letter, was holding that request in abeyance until it received further direction from Respondent.

On June 1, 2021, Respondent sent a letter authorizing the server search for electronic records and included nine categories of email records it was seeking, some with time limitations going back to 2010 and some with no time limitations. The ninth category sought all emails containing any of 60 listed keywords provided by Respondent.

On June 4, 2021, the City Attorney responded to Respondent's June 1, 2021, correspondence informing Respondent that, due to the breadth of the expanded email requests, the City's IT consultant was charging the City for the actual research time necessary to produce the records, rather than just the flat fee, as the search was estimated to include hundreds of thousands of emails. The City Attorney requested that Respondent make an additional deposit of $2,000 before the City conducted additional searches. Additionally, the City Attorney estimated that it would take City employees approximately 1,250 hours to review the email records in order to redact and pull closed records, resulting in a projected eight-month timeline as the employees would be handling the requests in addition to their full-time duties.

On June 18, 2021, the City Attorney sent a follow-up correspondence to her June 4, 2021, letter stating that the City's IT consultant, to date, had recovered more than 225,000 emails so far, but that the City had instructed them to halt further research until the additional $2,000 deposit was received. The City Attorney informed Respondent that if the City did not receive the deposit by June 25 then the City would assume that Respondent did not wish to proceed with the email records request.

On June 18, 2021, Respondent sent a letter expressing frustration with the additional deposit required for obtaining the email records, given that the City had

previously expressed that the only cost would be a one-time flat fee of $1,900, and for the projected timeline of eight months to receive the records. Respondent inquired about what records could be acquired for the $1,900 they had already paid.

On June 23, 2021, the City Attorney responded to Respondent's June 18, 2021, correspondence and reiterated the explanations provided in the City's two previous letters. Following no response from Respondent, the City sent a letter on July 6, 2021, informing Respondent that the email records requests were considered withdrawn and that the City was refunding Respondent's deposits.

On December 10, 2021, Respondent filed its Petition alleging nine counts of Sunshine Law violations. Appellants filed a motion to dismiss and the circuit court subsequently dismissed five of the counts, including Counts Three, Six, Seven, Eight, and Nine. Following a period of discovery, both Appellants and Respondent filed motions for summary judgment on Counts One, Two, Four, and Five. The circuit court denied Appellants' motion for summary judgment and granted Respondent's motion for summary judgment as to Count Five, but denied the motion on all other counts.

Count Five of Respondent's petition alleges that Appellants statutorily violated the Sunshine Law by charging a flat fee of $1900 that would be used to pay an outside IT consultant contracted by the City to access the City's current and historical email records. Respondent alleges that this is a Sunshine Law violation because the City was required to utilize and could have utilized their own employees to search each employees' email

accounts to produce the records, which would have resulted in the lowest amount of charges, as required by Section 610.026.[1]

In her affidavit, the City Clerk testified that, while City employees were capable of searching their own email accounts, this only included emails on the current system used by the City beginning in 2018. For any emails from prior systems used by the City prior to 2018, only the IT consultant could restore and access such emails. The City Clerk stated that any work to perform such email searches was beyond the capabilities of any City employee as the City did not retain in-house IT specialists.

In its motion for summary judgment, Respondent argued that Appellants purposely violated the Sunshine Law by demonstrating a conscious design, intent, or plan to violate the law by treating Respondent differently from other records requesters and demanding a $1,900 fee and an additional $2,000 deposit to pay an outside IT consultant to conduct the searches, even though the City admitted to being able to have employees search their own email accounts. Respondent argued that such a fee was in violation of the Sunshine Law because the email records search did not require any special expertise or programing to produce.

In response, Appellants argued that fulfilling the records request required "programming" within the meaning of Section 610.026 that allowed them to charge for the actual costs of such programming because accessing the records contained on prior

[1] All Section references are RSMo. Cum Supp. 2016.

email systems used by the City dating back to the City's first use of electronic messaging systems was beyond the scope of what an ordinary employee could do.[2]

In its order granting partial summary judgment on Count Five, the circuit court found that the City purposely violated the Sunshine Law in that

> [t]he costs for the IT Consultant are not permitted to the extent that programming beyond the usual and customary was not required and further not permitted in that the City has chosen to maintain the emails which the City has either archived or left on legacy email systems, in such a manner that violates the Sunshine Law's prohibition on granting the exclusive right to access and disseminate public records by maintaining such records in a format that can only be accessed by City Defendant's IT Consultant.

The circuit court further found that the violation was purposeful because it demonstrated

> conscious design, intent, and plan to violate the Sunshine Law and prevent Cypress Horan's access to records by first attempting to impose an illegal fee of $1,900, then changing the requirements to access records by seeking additional sums of money, then, when Cypress Horan refused to agree to pay the illegal sums, preventing Cypress Horan's future access to records.

The circuit court additionally found that the City "knew of their obligations under the Sunshine Law and persisted in their efforts to prevent Cypress Horan from obtaining the requested public records."

Respondent subsequently filed a motion to amend the judgment, requesting that the court impose a civil penalty against Appellants and granting attorney's fees to Respondent. On September 13, 2024, the circuit court entered an order amending the judgment, ordering Appellants to pay $131,088.75 in attorney's fees and a civil penalty

[2] Respondents conceded to this Court during oral argument that accessing the email records from previous email servers used by the City prior to the current system adopted in 2018 did fall within the meaning of "programming" as defined in Section 610.026.

of $5,000. On June 30, 2025, Respondent voluntarily dismissed remaining Counts One, Two, and Four. This appeal follows.

Standard of Review

We review the grant of summary judgment *de novo*. *Estes as Next Friend for Doe v. Bd. of Trs. of Mo. Pub. Entity Risk Mgmt. Fund*, 623 S.W.3d 678, 686 (Mo. App. W.D. 2021). Summary judgment is appropriate when "there is no genuine issue as to any material fact and… the moving party is entitled to judgment as a matter of law." Rule 74.04(c)(6). In determining whether the entry of summary judgment was appropriate, we "review[ ] the record in the light most favorable to the party against whom judgment was entered, and give[ ] the non-movant the benefit of all reasonable inferences from the record." *Estes as Next Friend for Doe*, 623 S.W.3d at 686 (quoting *Truman Med. Ctr., Inc. v. Progressive Cas. Ins. Co.*, 597 S.W.3d 362, 365-66 (Mo. App. W.D. 2020)). A defending party is entitled to summary judgment if it demonstrates one of the following:

> (1) facts negating any one of the claimant's elements necessary for judgment; (2) that the claimant, after an adequate period of discovery, has not been able to--and will not be able to--produce evidence sufficient to allow the trier of fact to find the existence of one of the claimant's elements; or (3) facts necessary to support his properly pleaded affirmative defense.

JTB Props., LLC v. Zwillenberg, 626 S.W.3d 255, 262 (Mo. App. W.D. 2021) (quoting *Daniels v. Terranova*, 611 S.W.3d 799, 806 (Mo. App. W.D. 2020)).

Analysis

Appellants raise five points on appeal. In their first point, Appellants allege that the circuit court erred in granting summary judgment in favor of Respondent because the

determination that a city purposely violated the Sunshine Law is a factual determination that a trial court is not permitted to make at the summary judgment stage. In their second point on appeal, Appellants claim the circuit court erred in granting summary judgment in favor of Respondent on the basis that Appellants purposely violated the Sunshine Law by showing a conscious design, intent, or plan to violate the law because the record shows that Appellants produced 2,157 pages of documents and nearly a gigabyte of electronic data, with only email records remaining to be produced. In their third point on appeal, Appellants argue that the circuit court erred in granting summary judgment in favor of Respondent based on the finding that Appellants assessed an illegal fee of $1,900 to produce the email records using a third-party IT consultant because such fees were permitted under Section 610.026.1(2), which allows for the recovery of actual costs when programming beyond the customary and usual level is required to produce the records. In their fourth point, Appellants allege that the circuit court erred in granting summary judgment based on the finding that the City purposely violated the Sunshine Law by impermissibly granting the exclusive right to access and disseminate public records to the City's IT consultant in that this claim was never pleaded by Respondent, therefore making the judgment void, and because there is no evidence in the record to show that any such exclusive right was ever granted. Finally, in their fifth point on appeal, Appellants argue that the circuit court erred in awarding attorney's fees to Respondent because no evidentiary hearing was conducted to determine whether the Sunshine Law violation was knowing or purposeful in order to allow the grant of attorney's fees, and

Respondents improperly moved for an award of fees after entry of an interlocutory order, not a judgment.

This Court reviews the record on summary judgment in the light most favorable to the party against whom judgment was entered. *Coleman v. City of Kansas City, Mo.*, 859 S.W.2d 141, 147 (Mo. App. W.D. 1993) (citing *Zafft v. Eli Lilly & Co.*, 676 S.W.2d 241, 243 (Mo. banc 1984)). "The order of summary judgment will not be set aside on review if supportable on any theory *within the scope of the pleadings and the evidentiary materials before the court on the motion*." *Id*. (citing *Berneathy v. Pursley*, 832 S.W.2d 524, 525 (Mo. App. S.D. 1992)) (emphasis added). Thus, the role of the pleadings is focal to the adjudication of a valid summary judgment, as to any other judgment on the merits. *Id*. Pleadings define the issues and form the foundation of the process of adjudication and judgment. *Id*. (citing *Johnson v. Flex–O–Lite Mfg. Corp.*, 314 S.W.2d 75, 79 (Mo. banc 1958)).

"A trial court may not enter judgment on a cause of action that a plaintiff did not plead." *Rosenfeld v. Boniske*, 445 S.W.3d 81, 89 (Mo. App. E.D. 2014) (quoting *Lonero v. Dillick*, 208 S.W.3d 323, 329 (Mo. App. E.D. 2006)). "The purpose of pleadings is to present, define, and isolate the issues, so that the trial court and all parties have notice of the issues." *Id*. (quoting *The Medve Grp. v. Sombright*, 163 S.W.3d 453, 456 (Mo. App. E.D. 2005)) (internal quotations omitted). "It is well settled that a party may not plead one state of facts and theory and to the unprepared surprise of his adversary recover on another and different theory and state of facts." *Id*. (quoting *Faught v. St. Louis–San Francisco Ry. Co.*, 325 S.W.2d 776, 781 (Mo. 1959)); *see also Leonard v. Robinson*, 276

S.W.3d 868, 878 (Mo. App. E.D. 2009) ("It is axiomatic that a trial court cannot grant judgment on a cause of action not pleaded.") (quoting *Allen Quarries, Inc. v. Auge*, 244 S.W.3d 781, 783 (Mo. App. S.D. 2008)); *Browning–Ferris Indus. of St. Louis, Inc. v. Landmark Sys., Inc.*, 822 S.W.2d 569, 571 (Mo. App. E.D. 1992) ("It is hornbook law that a party cannot recover for a cause of action not pleaded."). Because summary judgment is a judgment, it cannot be entered for a cause of action not pleaded. *Lonero*, 208 S.W.3d at 329. "As stated in Rule 74.04(a), a movant may only seek summary judgment 'upon all or any part of the *pending* issues.'" *Id*. (emphasis in original); Rule 74.04(a). Thus, a movant may only seek summary judgment for a cause of action falling within the scope of the pleadings. *Id*.

Here, in its order granting summary judgment on Count Five, the circuit court adjudicated and found a purposeful violation of the Sunshine Law in violation of both Section 610.026 and 610.023, which was not the claim pleaded in Respondent's petition. The petition pleads only a statutory violation, in violation of Section 610.026, and does not contain allegations related to the specific elements necessary for a purposeful violation, including intent. "In order for a petition to sufficiently state a claim for relief, it must set forth allegations of fact supporting each essential element of the claim for which plaintiff seeks relief." *Lonero*, 208 S.W.3d at 329 (citing *Berkowski v. St. Louis County*, 854 S.W.2d 819, 823 (Mo. App. E.D. 1993)). The petition raised no claims or supporting facts having to do with a purposeful violation of Section 610.023 in Count Five. The fact

that Respondent argued a purposeful violation in its motion for summary judgment is entirely irrelevant. [3]

Additionally, the circuit court imposed a civil penalty of $5,000 against the City and ordered the City to pay Respondent attorney's fees in the amount of $131,088.75. Such remedies are exclusive to a finding of a purposeful violation, and entirely unavailable for a statutory violation, which seeks only enforcement of the statute. Section 610.027. Again, Respondent did not plead a purposeful violation so these remedies were unavailable under the pleadings.

Furthermore, the circuit court improperly considered and relied on findings of Sunshine Law violations in its disposition of Count Five that were either not raised by Respondent in the petition, or were pleaded in counts that were dismissed by the court following Appellant's motion to dismiss. These findings included the determination that the City granted the IT consultant the exclusive right to access and disseminate public records, in violation of Section 610.023.2, which was not an allegation raised in Respondent's petition, and findings that the City "chang[ed] the requirements to access records by seeking additional sums of money" and "prevent[ed] Cypress Horan's future

[3] To the extent that Respondent may argue that Appellants had sufficient notice of the claim of a purposeful violation in that it was argued in Respondent's motion for summary judgment, "[i]f evidence that raises issues beyond the scope of the pleadings is relevant to another issue already before the trial court, then failure to object to its admission does not constitute implied consent to amend the pleadings to conform to the new issue." *Terry*, 526 S.W.3d at 134 (quoting *Heritage Roofing, LLC v. Fischer*, 164 S.W.3d 128, 132 (Mo. App. E.D. 2005)). Respondent raised multiple other claims that Appellants purposely violated the Sunshine Law, however, Count V deals only with a statutory violation. We cannot assume implied consent on such facts.

access to records," which were allegations raised in Counts Seven and Eight that were previously dismissed by the circuit court, and not raised within Count Five. The circuit court's determination that Appellants impermissibly granted the IT consultant the exclusive right to access and disseminate public records forms the basis of the court's holding that Appellant violated the Sunshine Law, which was not pleaded in Count Five or any other remaining Count raised by Respondent. Because a trial court may not enter a judgment on a cause of action that a plaintiff did not plead, the circuit court had no ability to make a finding that the City violated the Sunshine Law pursuant to this portion of the statute, purposely or not.

Existing case law on this issue has previously labeled such a judgment to be "void," in that a trial court "has the authority to grant relief only if: (1) the relief is requested, and (2) issues are raised that support the granting of such relief." *Lay v. Cunningham*, 688 S.W.3d 768, 781 (Mo. App. E.D. 2024) (citing *City of Greenwood v. Martin Marietta Materials, Inc.,* 311 S.W.3d 258, 264 (Mo. App. W.D. 2010), *as modified* (Mar. 30, 2010)); *see also Coleman*, 859 S.W.2d at 147 ("A judgment not responsive to the issues made by the pleadings is *coram non judice* and, to that extent, void.") (citing *Brown v. Wilson*, 348 Mo. 658, 155 S.W.2d 176, 180 (1941)); *Terry v. Korn*, 526 S.W.3d 130, 134 (Mo. App. W.D. 2017) ("[t]o the extent that a judgment goes beyond the pleadings, it is void.") (quoting *Patz v. Patz*, 412 S.W.3d 352, 357 (Mo. App. 2013)). However, the Missouri Supreme Court has clarified that, following the Court's opinion in *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009), a judgment that goes beyond the pleadings is "not void as a jurisdictional matter but is

instead simply voidable because the judgment was based on issues that were not properly pleaded or otherwise interjected into the case." *Smith v. City of St. Louis*, 395 S.W.3d 20, 24 n.2 (Mo. banc 2013). A voidable judgment is defined as

> one rendered by a court having jurisdiction, but which is irregularly and erroneously rendered. Such a judgment is valid until vacated by direct proceeding instituted for that purpose or until reviewed on appeal or by writ of error; it becomes valid by failure within the proper time to have it annulled or by subsequent ratification or confirmation.

Kerth v. Polestar Ent., 325 S.W.3d 373, 388 (Mo. App. E.D. 2010). We therefore hold that, because the circuit court's judgment examined Sunshine Law violations that were not pleaded by Respondents, and granted relief and remedies beyond those available under the applicable statute, such judgment was entered in error and must be vacated. Point Four is granted. We deny as moot the remaining points.

Conclusion

For the foregoing reasons, we vacate the judgment, and reverse and remand to the circuit court for further proceedings consistent with this opinion.[4]



RENÉE D. HARDIN-TAMMONS, CHIEF JUDGE

Angela T. Quigless, Judge., concurs
and Thomas C. Clark II, Judge., dissents in a separate opinion.

[4] Respondent's motion for appellate attorney's fees, which was taken with the case, is denied.

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Dissent

I respectfully dissent from the majority holding that the judgment is voidable because Respondent Cypress Horan, LLC failed to plead that Appellant City of Fenton purposefully violated section 610.026 RSMo (2016). In my opinion, Cypress Horan sufficiently pled that Fenton purposefully violated the sunshine law in the 'allegations common to all counts' section of its petition, specifically in paragraph 66. Further, I would affirm the judgment because the court received sufficient uncontroverted evidence

to enter summary judgment against Fenton for purposefully violating the sunshine law as enumerated in section 610.026 RSMo.

"[A] party 'may not plead one state of facts and theory and to the unprepared surprise of his adversary recover on another and different theory and state of facts.'" *Rosenfeld v. Boniske*, 445 S.W.3d 81, 89 (Mo. App. E.D. 2014) (quoting *The Medve Grp. v. Sombright,* 163 S.W.3d 453, 456 (Mo. App. E.D. 2005)). Summary judgment is affirmed "if supportable on any theory within the scope of the pleadings and the evidentiary materials before the court on the motion." *Coleman v. City of Kansas City, Mo.*, 859 S.W.2d 141, 147 (Mo. App. W.D. 1993) (citing *Zafft v. Eli Lilly & Co.*, 859 S.W.2d 141, 147 (Mo. banc 1984)).

The majority vacates the judgment contending that Cypress Horan only pled that Fenton committed a statutory violation. The majority states that count five does not contain any language alleging the violation was purposeful and that some of the facts the circuit court relied on were pled in dismissed counts and, therefore, the circuit court erred in relying on those facts. The majority makes a compelling case, as all claims and facts related to intent appear outside of point five in other portions of the petition. Standing alone, nothing in count five suggests that Fenton acted knowingly or purposefully, only that that they violated the sunshine law. However, I disagree that Missouri's procedural requirements mandate such facts and allegations be included in each individual count when those facts and allegations were adopted by reference.

Cypress Horan included a claim that the City purposefully violated section 610.026 RSMo in the 'allegations common to all counts' subsection. Specifically,

paragraph 66 states "[t]he actions of [Fenton] demonstrate [Fenton] purposefully violated the Missouri Revised Statutes Chapter 610 by acting with conscious design, intent, and/or plan to violate the law."[1] Missouri Supreme Court Rule 55.12 (2026) explicitly allows that "[s]tatements in a pleading may be adopted by reference in a different part of the same pleading." Every count of the petition incorporated paragraph 66 and the preceding factual allegations into its pleading, including count five. Because count five incorporated these facts and allegations, Cypress Horan correctly pled purposeful violations of section 610.026 RSMo, which fall within the scope of the pleadings. Rule 55.12. Since a purposeful violation appears within the scope of Cypress Horan's pleadings, the circuit court's judgment is valid, not voidable. *Rosenfeld*, 445 S.W.3d at 89 (citations omitted).

Further, the majority states that the circuit court entered judgment in error because it based its judgment on findings that Fenton granted the IT consultant the exclusive right to access and disseminate public records in violation of section 610.023.2 RSMo (2016). While I agree with the majority that Cypress Horan failed to plead this allegation and therefore the circuit court could not base its judgment on this finding, a reviewing court affirms summary judgment "if supportable on any theory within the scope of the pleadings." *Coleman*, 859 S.W.2d at 147. The circuit court evaluated sufficient

[1] Other paragraphs in the petition lay out the facts which allege how Fenton purposefully violated the sunshine law. For example, paragraph 44 alleges Fenton used "illegal fees and other tactics to prevent Plaintiff access" and paragraph 50 states Fenton "moved the goal posts on Plaintiff by changing how Plaintiff could access the Digital Records after Plaintiff already tendered the flat fee." Further, all facts relevant to the claim are laid out in the attached exhibits, and "[a]n exhibit to a pleading is a part thereof for all purposes." Missouri Supreme Court Rule 55.12 (2026).

uncontroverted facts to conclude that Fenton purposefully violated section 610.026 RSMo. These uncontroverted facts were included earlier in the petition and incorporated into count five.

More specifically, the circuit court determined that Fenton received Cypress Horan's request for public records and violated section 610.023 RSMo by charging impermissible fees. Fenton attempted to charge Cypress Horan the costs assessed to them by their IT consultant, whom they relied upon to perform server searches for employee emails. The court found that Fenton could not legally charge the fees because at least a portion of this amount included IT consultant charges to find emails that could have been located using Fenton employees. Section 610.023 RSMo requires Fenton to use its own employees.[2]

After finding that Fenton violated the sunshine law, the circuit court then determined that Fenton "exhibit[ed] a 'conscious design, intent, or plan' to violate the law and d[id] so 'with awareness of the probable consequences,'" satisfying the intent requirements of section 610.027 RSMo (2016). *Laut v. City of Arnold*, 491 S.W.3d 191,

[2] Fenton argues that section 610.026.1(2) RSMo entitles them to recover the "actual costs" of "programming…required beyond the customary and usual level." Regardless of whether Fenton would be entitled to recover such costs for email searches on archived systems no longer in use, Fenton could not charge Cypress Horan the hourly IT consultant rate to search for emails maintained on the current system that Fenton admits its own employees could access. This indefensible posture violates the statute. Section 610.026.1(1) RSMo requires "using employees of … [Fenton] that result in the lowest amount of charges for search, research, and duplication time." Considering the statute requires Fenton to use their own employees, I agree with the circuit court that Fenton violated section 610.026.1(1) RSMo by using IT consultants to provide services that its public sector employees could perform.

193 (Mo. banc 2016) (quoting *Spradlin v. City of Fulton*, 982 S.W.2d 255, 262 (Mo. banc 1998)). Specifically, the circuit court found that Fenton "prevent[ed] Cypress Horan's access to records by first attempting to impose an illegal fee of $1,900, then changing the requirements to access records by seeking additional sums of money, then…prevent[ed] Cypress Horan's future access to public records." The circuit court examined the totality of Fenton's conduct and determined that "the intent and plan was to deny access to public records." I agree.

Fenton concocted a shell game fortified with escalating fees and charges by initially assessing a substantial 'flat fee,' graduating that fee into a 'deposit' twice as expensive, then finally restricting future access unless Cypress Horan paid the substantial and illegal fees, all after Cypress Horan submitted a deposit with its initial public information request. In my opinion, this reply to a public information request provides ample evidence demonstrating that Fenton engaged in a conscious design, intent or plan to prevent Cypress Horan from access to documents Fenton was obligated to provide under the sunshine law. Just as government is accountable to its citizens, Fenton is likewise compelled to comply with the Revised Statutes of the State of Missouri. They did not do so in this matter. For these reasons, I would affirm the judgment of the circuit court.



THOMAS C. CLARK II, Judge