

Form to Request Attorney General Opinions

1. Information about requestor:

Name: State Auditor Nicole Galloway

Address: PO Box 869

Jefferson City, Mo 65102

Phone: 573-751-4213

Date Request Made: May 7, 2019

2. Official capacity of requestor (*See Section 27.040, RSMo*):

Section 27.040, RSMo, provides (in part), "When required, he shall give his opinion, in writing, without fee, to the . . . auditor . . . upon any question of law relative to their respective offices or the discharge of their duties."

As the duly elected State Auditor, charged with auditing state and local government entities, as provided by Missouri Constitution, Article IV, Section 13, and Chapter 29, RSMo, I request that the Attorney General issue this opinion.

3. The question of **LAW** upon which I request your **legal** opinion is as follows: (**Note:** Make certain the phrasing of the question is complete and clearly stated because only this question will be considered for an official opinion.)

In responding to Sunshine Requests, the State Auditor's Office does not redact any identifying information related to an individual who is conducting or seeking to conduct business before the entity, advocating on behalf of a third party or lobbying that entity, or otherwise attempting to influence or advise on any action taken by the government entity based on an exception found in the First Amendment. Should a Missouri government entity, such as the State Auditor's Office, assert that the First Amendment of the US Constitution provides an exception to the Sunshine Law such that it can redact, any or possibly all, identifying information related to an individual who is conducting or seeking to conduct business before the entity,

advocating on behalf of a third party or lobbying that entity, or otherwise attempting to influence or advise on any action taken by the government entity?

4. A complete statement of the **FACTS** giving rise to this question is as follows:
(**Note:** If **all** facts are not furnished which this office needs to respond to this question, it may be rejected as an incomplete request which this office cannot answer.)

The question presented is one of a predominantly legal nature. The State Auditor's Office does not, and has not, closed information based on an exception to the Sunshine Law found in the First Amendment. In Missouri Law, there is not a specifically enumerated exception in the Missouri Revised Statutes that would permit the office to close or redact information under the First Amendment. Additionally, there is no exception imposed by any judge in Missouri caselaw that would permit such an exception solely on First Amendment grounds.

This question nonetheless arises because a Missouri state government entity has asserted that the First Amendment in and of itself requires redaction of information, effectively rendering the Missouri Sunshine Law, and the state's public policy that records of governmental entities be open to the public, unconstitutional.

This government entity appears to redact information that identifies information related to individuals conducting or seeking to conduct business before the entity, lobbying that entity, or otherwise attempting to influence any action taken by the government entity, claiming that the First Amendment protects this information. Essentially, this government entity asserts that individuals attempting to influence actions taken by the government would not do so without fear of retribution were it to provide in a Sunshine request response identifying information that the individuals voluntarily gave. This position provides greater protections to those lobbying or conducting business with the government entity than is given to individuals who are referenced in arrest and incident report records. *See* Sections 610.100 to 610.150, RSMo (providing that incident reports and arrest records are open records). While this office does not believe that the

First Amendment exception is a valid exception under Missouri law, it requests the opinion of the Attorney General to ensure that it is properly complying with the law.

5. List each and every governmental entity involved in this request:

The Missouri State Auditor's office as a public governmental body under Missouri law, and as the executive office whose primary duty is to audit state and local government entities.

6. Which of the entities listed in response to Question 5 have attorneys paid with public funds?

For each entity listed, attach a copy of the written **legal opinion** of **each** such attorney on the question involved herein.

(Note for prosecuting attorneys: Also attach a copy of your legal opinion giving Missouri statutes, significant Missouri appellate decisions and your conclusions drawn therefrom.)

Missouri State Auditor's Office. See attached legal opinion.

7. State in detail how the question of law relates to **your** official position or to the discharge of your duties.

The Auditor's Office, as the executive office whose primary duty is to audit state and local government entities. requests this opinion as an entity subject to the Sunshine Law.

8. Is any litigation pending involving the issues raised in your opinion request?

None are known to date.

9. If the answer to Question 8 is "yes" list the name of case, court in which it is pending and docket number of case:

Name of case: _____

Court where pending: _____

Docket Number: _____