

STATE OF MISSOURI)
)
COUNTY OF COLE)

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

CHERYL A. RAFERT,)
)
Plaintiff)
)
v.) No. 01CV325895
)
MISSOURI DEPARTMENT OF)
CORRECTIONS,)
)
Defendant.)

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Plaintiff, by and through counsel, moves for summary judgment pursuant to Rule 74.04(a), on grounds that there is no dispute of material fact and plaintiff is entitled to judgment as a matter of law. In support this Motion, plaintiff states as follows:

UNDISPUTED MATERIAL FACTS

1. In a letter dated August 28, 2000, plaintiff requested from defendant a copy of the Missouri Department of Corrections Execution Protocol, otherwise known as its Capital Punishment Procedure. *Plaintiff’s Deposition Ex. 1*
2. Defendant responded on or about September 11, 2000 with a letter stating that the Execution Protocol was closed for safety and security reasons pursuant to §217.075 RSMo. *Plaintiff’s Deposition Ex. 2.*
3. On or about October 10, 2000, Plaintiff submitted a letter requesting a copy of the Execution Protocol that excluded matters relating to institutional security. *Plaintiff’s Ex. 1, attached to Plaintiff’s Complaint.*

4. Defendant released a redacted copy of the Execution Protocol consisting of approximately thirteen (13) pages of the approximately seventy-six (76) page document to Plaintiff along with a cover letter on or about November 27, 2000. *Plaintiff's Ex. 2, attached to Plaintiff's Complaint.*

5. As a "department or division of the state," Defendant is a "public governmental body" within the meaning of the Missouri Open Record's law. §610.010(4)(c).

6. The Execution Protocol, otherwise known as the Department's Capital Punishment Procedure, is a "record retained by any public governmental body" making it a public record within the meaning of the Missouri Open Record's law. §610.010(6) RSMo.

7. The materials redacted by defendant do not clearly fit within any of the Open Record Law's strictly construed statutory exceptions. §610.021 RSMo.; *See State ex rel. Mo. Local Gov't Retirement Sys. V. Bill*, 935 S.W.2d 659, 664 (Mo. App. 1996).

8. The materials redacted by defendant do not fall into the "institutional security" exception for disclosure of offender records outlined in §217.075 because plaintiff's Open Record's request did not include any request for records of an "offender" within the meaning of that chapter. §217.075.1(3), §217.010(12).

9. Defendant failed to "generally describe" the material redacted to the plaintiff. §610.024(2), *Plaintiff's Exhibit 2, Lombardi Depo*, pg 64, ln 17-25, pg 65, ln 1-12.

10. In its response to Plaintiff's record request, defendant failed to provide an explanation of why the redacted materials were not provided. §610.023, *Plaintiff's Ex. 2.*

11. Defendant failed to make available to plaintiff all portions of the requested record that were not subject to any statutory exemption from disclosure. §610.024(1).

12. The burden of persuasions rests on Defendant pursuant to §610.027 RSMo. to justify closure of the portions of the record it refused to disclose to plaintiff.

WHEREFORE, there is no genuine issue of material fact and plaintiff is entitled to judgment as a matter of law. Therefore, plaintiff respectfully requests that this court grant summary judgment in its favor.

Respectfully Submitted,

BURTON NEWMAN #22648
130 S. Bemiston, 8th Floor
Clayton, MO 63105
(314) 863-4100
(314) 863-4340 facsimile

On behalf of the American Civil Liberties
Union of Eastern Missouri
ACLU/EM Cooperating Attorney for Plaintiff

CHERYL RAFERT #30548
Pro se
PO Box 19763
St. Louis, MO 63144
(314) 963-9697
(314) 963-7544 facsimile

CERTIFICATE OF SERVICE

The undersigned hereby states that a true and correct copy of the foregoing was sent via fax and via first class mail, postage pre-paid, on the ____ day of October, 2002 to counsel for Defendants:

Tina Crow Halcomb
Doug Leyshock
Missouri Attorney General's Office
PO Box 899
Jefferson City, MO 65102
FAX: (573) 751-2921
