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IN THE CIRCUIT COURT OF AUDRAIN COUNTY, STATE OF MISSOURI

Stuart D. Miller, Sheriff of Audrain County, Missouri Plaintiff, v. **Joanna Winnie,** 58302 East 100 Road Miami, Ok. 74354 and **Aaron Malin,** 287 Woodcliffe Place Dr. Chesterfield, Mo. 63005 Defendants.	)	**Case No:**_____

PETITION FOR DECLARATORY JUDGMENT

COMES NOW Stuart D. Miller, in his official capacity as the Sheriff of Audrain County, Missouri, by counsel of record, pursuant to *Section 527.010 RSMo., Missouri Supreme Court Rule 87,* and *Section 610.027 RSMo.* and petitions the Court for a Declaratory Judgment to determine whether or not the Plaintiff is required to provide copies of a certain file/personnel record, described in this petition, to the Defendants. As a basis for this request, he states as follows:

1. Stuart D. Miller is the duly elected and serving Sheriff of Audrain County, Missouri.
2. Joanna Winnie is an individual who resides at 58302 E. 100 Road, Miami, OK 74354. She is the mother of Melissa Winnie who passed away on or about March 1, 2008. At the time of her death, Melissa Winnie had been a member of the East

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Central Missouri Drug Task Force. Employees of the Drug Task Force are considered employees of Audrain County, Missouri.

3. Aaron Malin is an individual who resides in St. Louis County, Missouri at the following address: 287 Woodcliffe Place Dr., Chesterfield, MO 63005.
4. Defendant Malin is authorized to act on behalf of the Defendant Joanna Winnie with regard to requests made to the Plaintiff under the Missouri Open Meetings/Records Law for the Criminal Investigative File concerning the death of Melissa Winnie and the personnel file of Melissa Winnie.
5. Melissa Winnie passed away on March 1, 2008 as a result of a gunshot wound. It has not been determined if the gunshot wound was the result of an accident, a criminal act, or self-inflicted. Her death was investigated and the "investigative file", as that term is used under the Missouri Open Records Law, is in the custody of the Plaintiff.
6. The Criminal Investigative File has not had any activity for more than a year and for practical purposes can be deemed to be an "inactive file" for purposes of the Missouri Open Records Law, *Chapter 610 RSMo.*
7. The Defendant initially requested a copy of the Criminal Investigation File concerning the death of Melissa Winnie. The Plaintiff agreed to provide the contents of the file upon payment of certain expenses associated with retrieving and copying the file (see Exhibits A, B, C, D, E, F, and G which are attached and incorporated by reference).

Electronically Filed - Audrain - December 16, 2016 - 02:19 PM

8. The Defendants have also sought the personnel records of Melissa Winnie. The Plaintiff has declined to produce these records because personnel files are deemed by the Sheriff of Audrain County to be "closed records" as that term is defined by the Missouri Open Records Law.
9. Following a more recent request, Plaintiff discovered a complaint which had been filed by Melissa Winnie alleging a hostile work environment while an employee of the East Central Drug Task Force. This complaint was investigated by representatives of four different law enforcement agencies including the office of the Audrain County Sheriff.
10. The file concerning this investigation consists of a 27-Page Report and CDs of recorded statements from four individuals who were interviewed. Melissa Winnie complained of activities of 2 members of the Missouri State Highway Patrol assigned to the East Central Missouri Drug Task Force. During the course of the investigation, one of the members of the State Highway Patrolman against whom a complaint had been filed, accused Melissa Winnie of receiving stolen property while working as an Undercover Law Enforcement Agent.
11. This accusation is contained in the file, but no follow-up investigation was conducted by the Plaintiff, or to his knowledge the members of the East Central Missouri Drug Task Force concerning this allegation against Melissa Winnie.
12. The Defendants claim that the investigation of Melissa Winnie's hostile work environment claim is an "Incident Report" or "Investigative Report" as those terms are defined by Missouri's Sunshine Law.

Electronically Filed - Audrain - December 16, 2016 - 02:19 PM

13. *Sections 610.021(3) and (13) RSMo.* provides that the hiring, firing, disciplining or promoting of a particular employee by a public governmental body when personal information about the employee is discussed or recorded is a closed record and individually identifiable personnel records, performance ratings, or records pertaining to employees are closed records except for the name, position salary and length of service.

14. The Defendants have been provided with information concerning the position, salary, and length of service of Melissa Winnie.

15. The Plaintiff has not produced the 27-Page Report and CDs of interviews because this is a closed record dealing with the possibility of disciplining particular employees and the identifiable personnel record of Melissa Winnie.

16. The 27 page report and the CDs were not part of her personnel file but were discovered to be in the possession of Deputy James Enlow of the Audrain County Sheriff's office, since he was one of the individuals investigating the complaint of hostile work environment and sexual harassment on behalf of the East Central Missouri Drug Task Force.

17. *Section 610.027.6 RSMo.* permits the Plaintiff who has a question or doubt about the legality of closing a record to file a lawsuit in the Circuit Court of the county of the governmental body's principal place of business to ascertain whether it is appropriate to produce the 27-Page Report and the CDs which are part of the investigation into the complaint of Melissa Winnie with regard to a hostile work

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environment and sexual harassment. These records are now located in her personnel file.

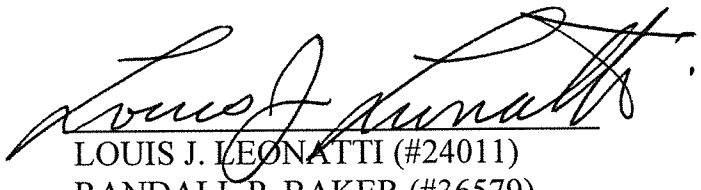
18. The Defendants informed the Plaintiff by letter dated December 12, 2016, see Exhibit H attached and incorporated by reference, that they wanted the Plaintiff to voluntarily produce the 27-Page Report and the CDs.

19. An actual justiciable controversy exists concerning whether or not the 27-Page Report and the CDs involve the investigation of criminal conduct or an "incident" as that term is defined or not defined in *Section 610.100 RSMo.*

20. If the Court should determine that the 27-Page Report and the CD should be produced, the Plaintiff requests that he be allowed to redact the report to protect the identity of the members of the MSHP against whom the complaint was filed and the identity of other individuals interviewed since they are law enforcement personnel and have worked as undercover investigative agents for law enforcement.

WHEREFORE, Plaintiff prays that this Court enter a judgment declaring that the 27-Page Report and the CDs referenced in this Petition are Closed Records, that they should not be produced to the Defendants, or in the alternative that if the Court should determine that the Records and CD should be produced that they be redacted to protect the identity of law enforcement personnel named in the complaint and interviewed, for the reasons set forth in the Petition, that the costs of this matter be taxed against the Defendants, and for such other relief which the Court deems just and proper.

Respectfully submitted,



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