



**CIRCUIT ATTORNEY
CITY OF ST. LOUIS**

KIMBERLY M. GARDNER

CIRCUIT ATTORNEY'S OFFICE
1114 Market Street, Room 401
St. Louis, Missouri 63101
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June 4, 2018

Josh Hawley
Attorney General
Missouri Attorney General's Office
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102


RE: Request for Attorney General Opinion

Dear Attorney General Hawley:

Enclosed is a copy of my request for an Attorney General Opinion on a Sunshine Law issue regarding documents relating to the prosecution of former governor Eric Greitens.

As this is a matter which is of great interest to the public, I respectfully request that this request be expedited.

Sincerely,


Kimberly M. Gardner
Circuit Attorney

Enclosure

Request for Attorney General Opinion

1. Information about requestor:

Name: Kimberly M. Gardner
Circuit Attorney for the City of St. Louis

Address: Carnahan Courthouse
1114 Market Street, Rm. 401
St. Louis, MO 63101

Phone: 314-622-4941

Date Request Made: June 4, 2018

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

Circuit Attorney for the City of St. Louis, Missouri

3. The question of **LAW** upon which I request your **legal** opinion is as follows:

Whether a government agency should cause to be released, or to what extent content should be released, of a document pursuant to a Sunshine Law request where the majority of the content of that document is part of a court record in a criminal case that has been dismissed.

4. A complete statement of the **FACTS** giving rise to this question is as follows:

1. The Circuit Attorney's Office is a public governmental body subject to the Sunshine Law for the purposes of §610.027 RSMo.
2. The Circuit Attorney's Office initiated prosecution in State v. Eric Greitens, Cause No. 1822-Cr01377 in this Court on April 20th, 2018.
3. That cause was dismissed on May 30th, 2018 (see Exhibit I, attached).

4. In the course of that proceeding, a document containing redactions entitled: “Stipulation for Dismissal” was submitted to the Court.
 - a. PLEASE NOTE: Though the words “under seal” are hand-written in the margins next to the redactions, the document was not, in fact, filed under seal by the Court (see footnote 1, below)
5. Copies of the redacted “Stipulation for Dismissal” were publicly disseminated prior to dismissal of the cause. (see Exhibit II, attached).
6. On Wednesday, May 30th, 2018, and again on May 31st, 2018, the Circuit Attorney’s Office received Sunshine Law requests for “unredacted” copies of the “Stipulation for Dismissal” (see Exhibit III, attached).
7. The Circuit Attorney’s Office is in possession of a copy of the unredacted “Stipulation for Dismissal”.
8. The copy of the unredacted “Stipulation for Dismissal” is a “record” of the Circuit Attorney’s Office as defined in §610.010 RSMo.
9. §610.011 RSMo states that records: “...of public governmental bodies be open to the public unless otherwise protected by law.”
10. The Circuit Attorney’s Office is in doubt as to the legality of the disclosure of a copies of the unredacted “Stipulation for Dismissal” for the following reasons:
 - a. The redacted “Stipulation for Dismissal” was filed in the now-dismissed cause, State v. Eric Greitens, Cause No. 1822-CR01377.
 - b. The aforementioned cause was dismissed by nolle prosequi.

- c. Records relating to a criminal case that was nolle prosequi'd: "... shall thereafter be closed records when such a case is finally terminated..."
§610.105 RSMo.
- d. However, the copies of the unredacted "Stipulation for Dismissal" being sought by requestors pursuant to the Sunshine Law are not the same as the redacted "Stipulation for Dismissal" filed in the nolle prosequi'd case.
- e. Prior to bringing this action, the Circuit Attorney's Office sent a letter to the attorney for the defendant in State v. Eric Greitens, Cause No. 1822-CR01377 where the substance of the Sunshine Law requests were communicated, and where the Circuit Attorney's Office inquired as to whether the defendant would object to disclosure of copies of the unredacted "Stipulation for Dismissal". (See exhibit IV, attached).
- f. An attorney for the defendant objected to the disclosure of copies of the unredacted "Stipulation for Dismissal", and wrote the Circuit Attorney:
"...I am going to Judge Burlison's courtroom div 10 right now to stop the release of the undredacted material. We are asking the court to hold you in contempt of court for the unredaction without court order." ¹

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

Circuit Attorney's Office

¹ Subsequently, on June 1st, 2018, Counsel for Eric Greitens met with Judge Burlison and the Chief Trial Assistant for the Circuit Attorney's Office. Counsel for Eric Greitens argued that disclosure of the redacted paragraphs would violate an order of a document "under seal". Judge Burlison told the parties that the agreement had not been ordered filed "under seal", despite the hand-written marginal notations.

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

All

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

See Exhibit V, attached

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

As Circuit Attorney, I am responsible for the discharge of my duties for the Office of the Circuit Attorney - a governmental agency that maintains records subject to Sunshine Law requests.

8. Is any litigation pending involving the issues raised in your opinion request? Yes or circle No (one)

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: N/A
Court where pending: N/A
Docket Number: N/A

MISSOURI CIRCUIT COURT
TWENTY-SECOND CIRCUIT
(City of St. Louis)

FILED

MAY 30 2018

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

STATE OF MISSOURI,)

Plaintiff,)

v.)

ERIC GREITENS,)

Defendant.)

No. 1822-CR01377
Div. 16/25

Dismissal

Pursuant to the Stipulation of Dismissal filed with the Court,
the matter is dismissed with prejudice.

So Ordered

Reubel
5-30-2018

Kimberly M. Gardner
Kimberly M. Gardner
Circuit Attorney *by RT ACA*

DOWD BENNETT

By *[Signature]*
Counsel for Defendant

DATED: May 30, 2018

ENTERED
MAY 31 2018
D P

Governor's defense team offered resignation for felony dismissal

ST. LOUIS (AP) — The prosecutor's office in St. Louis will drop a felony charge of computer data tampering against Missouri Gov. Eric Greitens, now that the Republican governor has announced his resignation.



ST. LOUIS, MO — The prosecutor's office in St. Louis will drop a felony charge of computer data tampering against Missouri Gov. Eric Greitens, now that the Republican governor has announced his resignation.

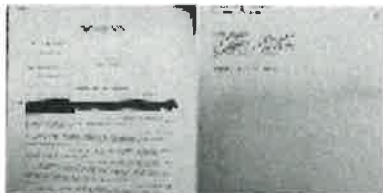
The Missouri Governor's defense team tells FOX 2 that it offered Eric Greitens' resignation in return for the dismissal of the felony computer tampering case. Dismissal of Greitens' case was part of a signed agreement (not a plea deal) in which a City Circuit Office spokesman says, "The Governor would resign from (computer tampering charge) was dropped."

"Sometimes pursuing charges is not the right thing to do," said St. Louis Circuit Attorney Kim Gardner.

St. Louis Circuit Attorney Kim Gardner announced the decision Wednesday a day after Greitens' surprise announcement that he would step down effective Friday afternoon.

The charge, filed in April following an investigation by the Missouri attorney general's office, accused Greitens of using a donor list from the Republican Party he founded, The Mission Accomplished, for his 2012 gubernatorial campaign.

Greitens also was indicted on felony invasion of privacy in February in St. Louis, stemming from an extramarital affair in 2015. The case was dismissed earlier this month and a special prosecutor in Jackson County is still considering whether to refill the charge.



Chris Redner @ChrisRednerTV
Here is the official resignation for Greitens in the Eric Greitens case given to the judge today.
Note the 21 day period of the defendant's resignation and the 10 day deadline for the state to file a motion to set aside the conviction. (The 10 day period is set for 5-31-18)
5/30/18
See Chris Redner's other tweets



RECOMMENDED CONTENT ON FOX2



Save! Pay \$10 to Carry Your Summer Gear to a Huggy Place
By Catherine Berry



- Eric Greitens signing 17 bills into law as Gov leaving office
- Full list of items and items given away about the United States
- Gay 'Security System' outside school displaying 'Addict' Teacher's open



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Edward L. Dowd, Esq.
Dowd Bennett LLP
7733 Forsyth Blvd., No. 1900
St. Louis, MO 63105
VIA FAX 314-863-2111

Re: State v. Greitens, No. 1822-CR01377, Sunshine Law Issue

Dear Ed:

This office has been inundated with Sunshine Law requests for disclosure of the unredacted stipulation executed by us in regard to the above case.

As you know, Judge Burlison permitted the filing only of the blacked-out version of the stipulation, so the unredacted version is not part of the official record of the Court. Consequently, we believe that the Sunshine Law requires us to treat the unredacted stipulation as an open record and subject to disclosure, notwithstanding the agreement to seal paragraph 1.

By this letter, we are providing notice that we consider that the law requires us to release the unredacted version of the stipulation in conformity to Sunshine Law requests, unless a court orders otherwise. Pending Sunshine Law requests will necessitate a response by June 1 by close of business.

Please advise if you intend to seek relief to prevent disclosure of the unredacted stipulation, as we do not consider it proper to expend time and effort in defending media Sunshine Law actions on this issue.

Sincerely,

Kimberly M. Gardner
Circuit Attorney



CIRCUIT ATTORNEY
CITY OF ST. LOUIS

Kimberly M. Gardner

CARNAHAN COURTHOUSE

1114 Market St. Room 401
St. Louis, Missouri 63101
(314) 622-4941
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June 4, 2018

Josh Hawley
Attorney General
Missouri Attorney General's Office
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102

RE: Request for Attorney General Opinion:

Whether a government agency should cause to be released, or to what extent content should be released, of a document pursuant to a Sunshine Law request where the majority of the content of that document is part of a court record in a criminal case that has been dismissed.

Dear Attorney General Hawley:

The Circuit Attorney's Office has a direct interest in this dispute as it is obligated to comply with §610.011 RSMo the Sunshine Law in providing open records, when lawful to do so, but must also comply with the closed records provision as set out in §610.105 RSMo as the redacted "Stipulation for Dismissal" is part of an official record of a case that was nolle prosequi'd.

The Circuit Attorney's Office takes the legal position that the copies of the unredacted "Stipulation for Dismissal" are records subject to disclosure under the Sunshine act, and that such disclosure is not barred from disclosure under the closed records provision.

§610.024.1 RSMo states: "If a public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public governmental body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying". Further, exemptions to the Sunshine Law do not apply "...where a particular type of document fits equally under exemption and other section requiring disclosure" *Laut v. City of Arnold*, 417, S.W. 3d 315, 319 (Mo. App. E.D. 2013) (citing *Guyer v. City of Kirkwood*, 38 S.W. 3d 412, 414 (Mo banc 2001))

Subject to §610.024.1 RSMo, the Circuit Attorney's Office believes that, at the very minimum, the unredacted "Stipulation for Dismissal" is a disclosable record- but with any needed redactions made only to those portions of the record mirroring the contents of the court-filed document, and permitting the disclosure of the previously redacted portions sought by the Sunshine Law requestors. Arguably, the public dissemination of the redacted "Stipulation for Dismissal" prior to the dismissal of the cause, along with the general availability of that document on the internet today makes any redaction whatsoever to the unredacted document moot.

Given the Sunshine Law requests received by the Circuit Attorney's Office for copies of the unredacted "Stipulation for Dismissal" and the objection thereto of the defendant in State v. Eric Greitens, Cause No. 1822-Cr01377, the Circuit Attorney's Office respectfully requests that you issue an opinion finding that copies of the unredacted "Stipulation for Dismissal" are public records disclosable under the Sunshine Law.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. A. Michaels".

James A. Michaels MBE #43192
Assistant Circuit Attorney