

BEFORE THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

SHERIFF JAMES ARNOTT,)
Plaintiff,)
vs.) Case No. 17AC-CC00637
AUDITOR NICOLE GALLOWAY,)
Defendant.)

JUDGMENT

The Court takes up the pending Motion for Summary Judgment filed by Defendant, having considered the arguments of counsel and the authorities cited therein. Being fully advised in the premises, the Court grants the Motion.

At issue is the interplay between § 610.021(14) and § 29.221 RSMo and the application of the same to the “Sunshine Law.”

The record at issue is held by a public governmental body and is presumed to be open. Section 610.021 provides that . . . a public governmental body is authorized to close . . . records . . . to the extent they relate to the following: . . . (14) Records which are protected from disclosure by law[.]

Section 29.221 RSMo, often referred to as the “whistleblower” statute, provides that:

1. The auditor shall provide various means to receive reports of allegations of improper governmental activities, which shall include a telephone hotline, electronic mail, and internet access. The auditor shall periodically publicize the hotline telephone number, electronic mail address, internet website address, and any other means by which the auditor may receive reports of allegations of improper governmental activities. **Individuals who make a report under this section may choose to remain anonymous until the individual affirmatively consents to having the individual's identity disclosed.** (Emphasis added).

A public governmental body is further directed, to the extent practicable, to facilitate a separation of exempt from nonexempt information. §610.024.1 RSMo. The public governmental

body is further allowed to refrain from description of the material exempted if the description would reveal the contents of the exempt information and thus defeat the purpose of the exemption. § 610.024.2 RSMo.

The Court has reviewed the record *in camera*. The record at issue, even if the name was redacted, would identify the “whistleblower.” A description of this record would defeat the purpose of the exemption under the facts of this case. The record need not be disclosed.

Plaintiff argues that the identify of the whistleblower is known, in part as a result of the whistleblower’s own conduct. This conduct is alleged to serve as the consent to disclosure and thus to vitiate the exemption.

The Court finds that as a matter of law that an individual who makes a complaint pursuant to § 29.221 RSMo choose to remain anonymous unless and until they affirmatively consent to the Auditor disclosing their identity. Any other construction of the last sentence of § 29.221.1 RSMo would require the Auditor to seek out other information, determine its veracity and then decide if there has been a consent, a ludicrous construction.

The response of the Auditor on this issue complies with the law. The Court finds that the Auditor is entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judgment be and is hereby entered in favor of Defendant Auditor Nicole Galloway on all issues.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all other claims for relief are denied as moot.

IT IS FINALLY ORDERED, ADJUDGED AND DECREED that costs be taxed against the Plaintiff.

SO ORDERED this 4th day of December, 2019.

A handwritten signature in black ink, appearing to read "Jon E. Beetem". The signature is written in a cursive style with a long horizontal stroke at the end.

Jon E. Beetem, Circuit Judge - Division I