

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI

MINNESOTA PUBLIC RADIO,	)	
	)	
Plaintiff,	)	
	)	Case No.: 2122-CC09767
v.	)	
	)	Division No: 1
METROPOLITAN POLICE DEPARTMENT	)	
OF THE CITY OF ST. LOUIS,	)	
	)	
Defendant.	)	

**DEFENDANT METROPOLITAN POLICE DEPARTMENT OF THE CITY OF ST. LOUIS’ MEMORANDUM OF LAW IN SUPPORT OF ITS AMENDED MOTION TO DISMISS**

COMES NOW Defendant St. Louis Metropolitan Police Department (“Defendant”), pursuant to Missouri Rule of Civil Procedure 55.27(a) and for its Memorandum of Law in Support of Defendant’s Amended Motion to Dismiss Plaintiff’s Petition states as follows:

Introduction

Plaintiff Minnesota Public Radio (“Plaintiff”) brings this petition for judicial enforcement against Defendant, alleging Defendant willfully violated the Missouri Sunshine Act, RSMo. §§ 610.010-610.035. Specifically, Plaintiff alleges Defendant failed to provide it with information about homicide offenses from 2010 to 2020. *See* Pet.

Legal Standard

Missouri courts have found that if a party lacks standing sufficient to maintain an action, the court necessarily does not have jurisdiction over the claims presented. *Borges v. Mo. Pub. Entity Risk Mgmt. Fund (MOPERM)*, 358 S.W.3d 177, 183 (Mo. App. 2012) (citing *W. Cas. & Surety Co. v. Kansas City Bank & Trust Co.*, 743 S.W.2d 578, 580 (Mo. App. W.D. 1988) (“If [appellant] lacked standing, then its petition was subject to dismissal because it failed to establish

the requisite subject matter jurisdiction. It must also follow that the trial court, lacking subject matter jurisdiction, could not enter a judgment on the merits for the [respondent].”). Therefore, a claim that a party lacks standing has generally been treated as a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 55.27(a)(1). *Id.* (citing *State ex rel. Christian Health Care of Springfield, Inc. v. Missouri Dep't of Health and Senior Serv.*, 229 S.W.3d 270, 276 (Mo. App. W.D. 2007) and *Columbia Sussex Corp. v. Mo. Gaming Comm'n*, 197 S.W.3d 137, 140-1 (Mo. App. 2006) (holding that, where a question is raised about a party’s standing, courts have a duty to determine the question of their jurisdiction before reaching substantive issues)). Here, Plaintiff lacks standing to bring this action under the Missouri Sunshine Act, and so this Court should dismiss this action per Rule 55.27(a)(1).

#### Argument

For standing, this state requires that plaintiffs have a legally protectable interest in the litigation so as to be directly and adversely affected by its outcome. *Weber v. St. Louis Cty.*, 342 S.W.3d 318, 323 (Mo. 2011). A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff’s interest is conferred by statute. *Id.* A plaintiff must show a personal stake in the outcome of the controversy and allege some threatened or actual injury resulting from the putatively illegal action. *Id.*

Plaintiff’s petition fails to allege facts giving it standing to sue under Missouri’s Sunshine Act. Under Missouri’s Sunshine Law “[a]ny aggrieved person, taxpayer to, or citizen of, this state” has standing to enforce its provisions. RSMo. § 610.027.1. While the Sunshine Law does not define the term “aggrieved,” the term has been interpreted in a variety of other contexts. *See e.g., Hertz Corp. v. State Tax Comm'n*, 528 S.W.2d 952, 954 (Mo. banc 1975) (“a party is aggrieved [under section 536.100] when the judgment operates prejudicially and directly upon

his personal or property rights or interests and that such must be immediate and not merely a possible remote consequence.”); *Shelter Mut. Ins. Co. v. Briggs*, 793 S.W.2d 862, 863 (Mo. banc 1990) (a party is “aggrieved” within the meaning of section 512.020 when “the judgment operates prejudicially and directly on his personal or property rights or interests and such effect is immediate and not merely a possible remote consequence.”). Implicit in these definitions is the concept that “a party cannot be said to be ‘aggrieved,’ unless error has been committed against him.” *Shoate v. State*, 529 S.W.3d 869, 876 (Mo. App. W.D. 2017) (quoting *Fenton v. Thompson*, 352 Mo. 199, 176 S.W.2d 456, 460 (Mo. 1943)).

Plaintiff’s petition alleges that on February 2, 2021, Rachel Lippman “submitted a Sunshine Law request to SLMPD for records....” Pet. ¶ 26. Then on October 12, 2021, Tom Scheck “submitted a Sunshine Law request to SLMPD...for records.” Pet ¶ 42. SLMPD’s alleged failure to appropriately respond to these requests is the basis of Plaintiff’s Sunshine Law claim. *See* Pet. ¶¶ 40, 55, Counts I-IV. Although the petition alleges that, at the time of these requests, Lippman and Scheck were somehow associated with a “division” of Plaintiff’s entity, the Sunshine requests made to Defendant were not on behalf of Plaintiff, nor is Plaintiff mentioned in the requests. *See* Ex. A, Lippman Request (No. P0022461-020221); Ex. B, Scheck Request (No. P027942-101221).<sup>1</sup> Because Plaintiff did not make a request for documents, no error was committed against it. Further, the petition fails to allege facts demonstrating how Plaintiff was directly and adversely affected by Defendant’s actions. *See* Pet. Consequently, Plaintiff is not an aggrieved party under the statute, and does not have standing to bring this

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<sup>1</sup> Because this motion is brought under Rule 55.27(a)(1), this Court may consider evidence extrinsic to the petition as it pertains to the issue of standing. *Smith v. City of St. Louis*, 573 S.W.3d 705, 713 (Mo. App. 2019) (upon review of City’s motion to dismiss under Rule 55.27(a)(1), district court did not err in considering evidence extrinsic to the petition).

action. *See Perkins v. Caldwell*, 363 S.W.3d 149, 154 (Mo. App. 2012) (to state a cause of action under RSMo. § 610.023.3, a plaintiff must allege she requested access to a public record).

Because Plaintiff is not aggrieved, as required for standing under Missouri's Sunshine Act, Plaintiff does not have standing to bring this lawsuit, and this Court should dismiss the petition for lack of subject matter jurisdiction under Rule 57.27(a)(1).

Respectfully Submitted,  
SHEENA HAMILTON  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 7, 2022 the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to all attorneys of record.

/s/ Abby Duncan