

EMS Legal Services



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Date: March 14, 2022

Casey Lawrence
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Missouri Attorney General's Office
P.O Box 899
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Sent by First Class Mail and by E-mail: SunshineComplaint@ago.mo.gov

Re: Western Cass Fire Protection District

Dear Ms. Lawrence:

We represent the West Cass Fire Protection District. We are in receipt of your complaint/inquiry of March 8, 2022 and we submit the following in response.

1. Allegation of Meeting Not Noticed Up on February 24, 2022 in Violation of 610.020.1 RSMo: This meeting was a firefighter training staff meeting. Staff meetings have never been held to be public meetings under 610.010(5).

This gathering was not a board sanctioned meeting. Therefore, the gathering was an unofficial meeting not belonging to or emanating from or sanctioned or acknowledged by a public governmental body, Consequently the "meeting" was not a public meeting under 610.010(5) RSMo per *Columbo v. Buford*, 935 S.W.2d 690 (Mo. App. W.D. 1996).

Ms. VanMeveren's attendance was an ad hoc decision made while driving by the base. Ms. VanMeveren did conduct an informal ad hoc discussion with some of the firefighter employees. It has been held that even when public business is discussed in an informal setting no violation of the Sunshine Law necessarily occurs, *Kansas City Star Co. v. Fulson*, 859 S.W.2d 934. 939 (Mo. App. W.D. 1993).

Although three board members were *inadvertently* present at the base that factor is not dispositive of the issue as to whether a public meeting took place. Therefore, this situation is distinguishable from the case of *Kansas City Star Company v. Shields*, 771 S.W.2d 101 (Mo. App. W.D. 1989). In that case a quorum of a budget subcommittee met at a luncheon with the city budget officer and the city manager to discuss the city budget. The Court held it was an illegal meeting not properly noticed up as required by 610.020.1 RSMo. Rather this situation was an informal gathering where some public business may have been discussed with the firefighters but it was not a public meeting in terms of 610.010(5) RSMo per again *Columbo v. Buford*, 935 S.W.2d 690 (Mo. App. W.D. 1996).

Consequently, no minutes for this non-meeting are required and the District is not required to create a record that does not exist, *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53 (Mo. App. W.D. 2005).

2. HIPAA Violation Allegation Specific Call Incident: HIPAA would appear not to be a Sunshine Law issue, though State Attorney General Offices were given HIPAA investigatory authority under the 2009 Hitech Act amendments to HIPAA so we shall respond. It is an open question whether the District is even a covered entity under HIPAA. Nonetheless assuming *arguendo* that the District *may* be a hybrid entity under HIPAA, Ms. VanMeveren came upon this incident with numerous District vehicles and firefighter personnel at the scene blocking the road and with many personnel just idling across the street. Ms. VanMeveren made inquiry as to the nature of the call and inquired why so many personnel and District equipment were tied up at this incident. As a Board member Ms. VanMeveren has fiduciary duty to ensure that there is not a misuse of taxpayer funded resources. Such an inquiry would not be a request for Protected Health Information as defined in 45 CFR s 160.103.

3. HIPAA Allegation Access to “IAMRESPONDING”: This system includes payment information and inventory control information. Ms. VanMeveren as Board Treasurer has a need to access this system. Again, assuming *arguendo* that the District is a hybrid covered entity, covered entities *own* payment activities and operations are an exception to the HIPAA Privacy Rules per 45 CFR 164.506(c) (3) & (4). “Operations” includes not only quality assurance review but more relevantly business planning and management activities 45 CFR 164.501(5)& (6).

4. Payroll Allegations: Again, not a payroll question per se but we shall respond nonetheless. Three firefighters have not been recently paid. Two of three

firefighters have refused and or failed to provide a requisite W-4. The complainant has not been paid due to refusal to set up an automatic deposit option with the District (only employee who has not done so). We are trying to figure out an alternative. The Prompt Pay Act (290.090 RSMo) is not at issue as that statute applies only to private sector factory workers. The District is a political subdivision as defined in 70.210(3) RSMo.

5. Meeting Notices, Agendas and Minutes December 1, 2021 to March 8, 2022:

We belatedly noticed this request separately provided from your letter. Unfortunately, my client District lacks any full-time office staff to assemble this material. Nonetheless we believe we can have these materials to your Office on or before April 8, 2022. Please advise if this deadline is unacceptable.

We believe we have adequately answered the allegations in the complaint and thank you in advance for your attention to this important matter.

Sincerely,

Frank Foster Counsel to the Western Cass Fire Protection District.

ELECTRONIC SIGNATURE

/s/Frank Foster

Electronic Signature

Per 432.230 RSMo &

Electronic Signature &

National Commerce Act