



#### GOVERNMENT & POLITICS

## Greitens' office's response to public records requests: Deny, delay, set high fees

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November 21, 2017 07:00 AM  
Updated November 21, 2017 12:25 PM

JEFFERSON CITY — From the moment he became Missouri's governor, Eric Greitens has worked to shroud the inner workings of his office in secrecy.

Members of his taxpayer-funded transition team were required to sign gag orders banning them from discussing their work publicly. His office continues to withhold emails from the transition, refusing to turn over emails from individuals who played key roles but who conducted public business using private email accounts.

He broke with tradition when he refused to disclose how much lobbyists and corporations donated to fund his inaugural festivities, and his use of private planes for official travel often leaves Missourians in the dark about who is picking up the tab.

The secrecy surrounding Greitens' political fundraising, which is mostly centered on a nonprofit that isn't required to disclose its donors, has resulted in near constant questions about the governor's motives and whether they are tied to special interests trying to curry favor.

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When responding to requests for public records, the governor's office often charges fees some argue are exorbitant, and the time it takes to turn over those records can stretch out for months.

In an investigative series last week, The Star chronicled a litany of problems in Kansas — a state many consider among the most secretive in the nation — including abuses of its open records law.

In Missouri, open government advocates say Greitens' penchant for secrecy is equally troubling, and can have a corrosive effect on taxpayers' faith in government.

Government depends on an open process so taxpayers can examine how their money is being spent and how policies are developed and implemented, said David Roland, director of litigation with the Freedom Center of Missouri.

Public oversight is an essential component of democracy, he said, yet many governmental bodies in Missouri don't appear willing to accept that.

"It's a problem," Roland said, "and it's one I believe is getting worse."

The governor's office appears to regularly "err on the side of a lack of transparency," said Jean Maneke, an attorney for the Missouri Press Association. "That creates suspicion, and it creates concern among citizens."

Greitens' spokesman, Parker Briden, bristled at the notion that the governor's office isn't living up to the spirit of the state's Sunshine Law. He said the office has devoted significant time and resources to responding to records requests, which "began flooding in at the start of the transition."

"In an effort to ensure complete transparency, the governor has devoted a full-time counsel to ensure that the office complies with all of these requests," Briden said in an email to The Star. He later added: "We are confident our responses are within the guidelines of the Sunshine Law with respect to record retention, cost, and timeliness."

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## Private communications

Last year, The Star formally requested that Greitens' taxpayer-funded transition office turn over emails related to public business as defined under the state's public records law.

Nearly a year later, the office still has not turned over all the public documents requested by The Star. And it has refused to include private-account emails discussing public business conducted by those working unpaid for the transition.

Among those whose emails won't be turned over are Sarah Steelman, who now serves in Greitens' Cabinet as commissioner of administration; Lucinda Luetkemeyer, Greitens' general counsel; Kristen Sanocki, Greitens' associate legal counsel; and Jennae Neustadt, Greitens' legislative director.

Greitens' office argued that individuals without government email accounts were not employees of the state. Therefore, the governor's office did not retain the emails and could not turn them over, even though they pertain to public business.

It's unclear if the use of private email continued after Greitens officially took office in January. But the governor's chief adviser, Austin Chambers, is not a government employee. He's paid by the governor's nonprofit and campaign and thus doesn't have a government email account.

Last year, the U.S. Court of Appeals for the District of Columbia Circuit ruled that under federal open records law an agency cannot shield its records from disclosure by storing them in a private email account.

The California Supreme Court made a similar determination earlier this year.

Those close to the governor's office say text messaging is the preferred method of communication among Greitens' staff. Each staff member has a government-provided cell phone, but whether the texts they send pertaining to public business on their private phones are subject to open records laws is not clear.

When The Star requested text messages of one staffer, the governor's office said there were no public records to turn over, refusing to clarify whether that meant there were no texts at all or that texts exist but are not a public record.

Thus far courts in Missouri have not weighed in on whether private email accounts and text messages discussing public governmental business are subject to open records laws.

"There are other states that have decided that, yes, records that relate to public business that are in private email accounts or private text messages are considered public records," Maneke said. "In Missouri, it would have to be clarified by the legislature or by our courts."

## **High fees**

Briden told The Star that the governor's office this year has "provided an estimated 12,000 pages of records in response to more than 150 inquiries."

Some of those requests are extremely broad, he said, and unlike some federal agencies that have numerous people helping review and respond to requests, the governor's office has one full-time attorney.

The result is that records requests can take months to complete. But just as troubling to open government advocates is that those records often come with a hefty price tag.

The governor's office recently asked for \$1,600 up front to begin to process a request for certain emails from two staff members. Earlier this year, two similar requests were greeted with fees of \$1,100 and \$1,400.

In each case nearly all of the expense was for "research/processing," which the governor's office defined as the cost to convert each email to PDF format and to research applicable state and federal laws to determine what provisions may apply to the information contained within the records.

Roland, of the Freedom Center of Missouri, says charging for that sort of legal research "is likely the next big hot legal issue when it comes to the Sunshine Law."

"A judge in St. Louis County recently, and correctly, determined that the government should not be charging citizens for legal research," he said. "The government didn't appeal that case, but sooner or later the appellate courts are going to address it."

Maneke said the issue is clear: "The law does not allow them to charge the cost of legal counsel to look at records to decide whether they are open or closed."

Roland says these sorts of high fees have a practical effect of making records almost inaccessible to ordinary citizens who can't afford to put up the money.

"Not a lot of folks have a spare thousand dollars for records," he said, later adding: "It is completely ridiculous the lengths some offices in Missouri go to prevent people from accessing records."

## **Untouchable**

"Many government entities have come to the conclusion that even if they violate the law they are unlikely to be held accountable," Roland said. "They think they're untouchable. So why not violate the law if it makes their lives easier?"

Fines are low, and even if you sue and win, Roland says courts often don't require the government to pay court costs.

"You win the case," he said. "You prove the government violated the law. Then the court says you have to pay court costs."

It costs so much to sue, Maneke said, and then the penalty is so small, often “it ends up being just the cost of doing business” for governmental bodies.

Lawmakers could mandate payment of court costs if a violation occurs, Roland said. He also suggests lawmakers put a hard deadline on responses to records requests to put an end to government agencies’ dragging their feet to avoid disclosure.

“If the legislature imposes a strict deadline, say six weeks, that takes so much of the flexibility away from the government and forces them to comply in a predictable fashion,” he said.

Access to government records isn’t a topic many in the public think much about, Roland concedes. But it’s a cornerstone to a functioning democracy.

“Our entire system of government hinges on the idea that citizens are the ones in control,” he said. “If we’re going to play our proper role as citizens, we have to be able to understand what the government is doing in our name and with the taxpayer resources we provide to it. If we don’t hold them accountable, our system of government will cease to function the way its supposed to.”



Missouri Gov. Eric Greitens and first lady Sheena Greitens led off the Inaugural Ball by dancing to "The Missouri Waltz" on Monday night, Jan. 9, 2017, in Jefferson City. Keith Myers — The Kansas City Star

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