



ESSAY

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GOVERNMENT SPENDING RECORDS SHOULD BE FREE AND OPEN TO THE PUBLIC

By Philip Oehlerking and Patrick Ishmael

KEY FINDINGS

- Missouri's Sunshine Law is an important tool for government transparency, but it is of limited utility in the search for local government spending records.
- Responses to Sunshine requests sent by the authors confirm that some cities set prices for their records that effectively place them out of reach of the average citizen.
- Municipal governments are already required to regularly submit summary financial information to the state. Requiring the submission of spending records themselves—on which these existing reports are substantively based—would provide better accountability and transparency than is currently available through Sunshine Law requests alone.

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INTRODUCTION

For many Missourians, balancing a checkbook is a normal part of financial life, and as the internet has evolved, tracking where and how we spend our money has become easier and easier. Today we can log into our bank accounts and at a glance see not just how much we've spent, but where we spent it and when. Keeping good financial records helps ensure that the money we earn is used efficiently, maximizing our well-being and that of our families.

Governments also have “checkbooks” that must be balanced. In contrast to most individuals, the money government receives is taken from people rather than earned. The government’s ability to take from the public imposes on it not only a responsibility of stewardship—to spend that money wisely—but also a responsibility of transparency.¹ More to the point, if government can take money, it should be able to account for it to the public; if it can't, that's a serious problem.

That's why we started the Show-Me Checkbook Project—to determine how difficult it is to obtain spending records from Missouri government bodies,² with an emphasis on local government, and to find out how government spending transparency might be improved.

To that end, hundreds of “Sunshine Law” requests were sent to governments across the state, seeking five years of spending records. While some officials were more than willing to provide the information free of charge, others were less cooperative—and sometimes shockingly so. But along with producing information on millions of government transactions statewide,³ the project also demonstrated that whether Missourians have transparent government depends largely on where they live.⁴

MOVEMENTS TOWARD MORE TRANSPARENT GOVERNMENT

American sensibilities favoring spending transparency go far deeper than modern political norms. In fact, the interest in spending transparency extends all the way into our country's founding documents. Specifically, Article I Section 9 of the U.S. Constitution requires:

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a **regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.**⁵ [Emphasis ours]

While applicable only to Federal spending and subject to narrow, court-created exceptions,⁶ Article I Section 9 nonetheless provides a straightforward principle for how American governance and finances are to be administered: to the extent possible, in the light of day.

However, the focus on government transparency more generally is a relatively recent development. Since World War II, public interest in government documents has steadily grown,⁷ with some commentators attributing the interest to a concern over the lingering “opacity” and wartime information restrictions that persisted after 1945.⁸ Despite resistance within the bureaucracy itself, both major political parties included planks in their platforms in the 1950s that articulated the need for greater “freedom of information” and “free access to information” so that the public could be better informed about the government they were paying for, and so that public officials could better weigh their decisions in light of these facts. In 1966, the Federal Freedom of Information Act (FOIA) was signed into law, providing substantial practical improvements over existing transparency statutes that, until that time, had provided public agencies greater latitude to deny or delay information disclosures requested by the public.

Technological advances in recent decades have further accelerated the adoption of “open government”⁹ information practices and systems, for purposes both of public convenience and public oversight. In January of 2009, then-President Barack Obama issued his Memorandum on Transparency and Open Government (MTOG), setting forth a “presumption of openness” for government information maintained by agencies and made available to the public in “open formats,” subject to “valid privacy, confidentiality, security, or other restrictions.”¹⁰ Then in 2011, the United States and seven other countries—Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, and the United Kingdom—joined together in the Open Government Partnership

(OGP) to promote similar principles of transparent governance internationally.

Literature and Terms

Importantly, and as Harlan Yu and David G. Robinson note in “The New Ambiguity of ‘Open Government,’” open government is not the same thing as “open data.”¹¹ President Obama’s MTOG was calculated in making “open format[ed]” data available to the public to ensure that it could be easily accessed and easily digestible by policy researchers and the public itself. However:

Open government and open data can each exist without the other: A government can be an “open government,” in the sense of being transparent, even if it does not embrace new technology (the key question is whether stakeholders end up knowing what they need to know to keep the system honest). And a government can provide “open data” on politically neutral topics even as it remains deeply opaque and unaccountable. The Hungarian cities of Budapest and Szeged, for example, both provide online, machine-readable transit schedules, allowing Google Maps to route users on local trips. Such data is both open and governmental, but has no bearing on the Hungarian government’s troubling lack of transparency.

Moreover, “open government” can also have upstream and downstream communication connotations—that is, an assumption that not only will government share information with the public, but that the public itself can engage directly with and influence the government through these communication channels. A study published by Soonhee Kim and Jooho Lee in 2012 found that a Seoul, South Korea, “e-government” citizen engagement initiative had a significantly positive impact on public perceptions of policymakers and of the government itself.¹² Another analysis focusing on U.S. federal governance came to a similar conclusion: Transparent e-government leads to greater use of the government’s resources and, ultimately, greater trust in government in general.¹³ The primary focus of this paper is practical experience of the downstream communications from government to the public, and specifically the ability of citizens to obtain financial records from government; however, the benefits of open government in building trust between citizens and public

officials should not be overlooked by those weighing the benefits of financial transparency.

While national and transnational open government initiatives such as the MTOG and the OGP have been the highest-profile developments in transparency policy, local governments are increasingly engaging issues of open governance and open data. To some extent, this is unsurprising; as citizens expect certain levels of information access at higher levels of government, those expectations inevitably trickle down to local governing units as well. Moreover, as technological resources become more affordable, the probability of their adoption by smaller governing units with smaller revenue pools tends to grow. Suite phone applications like PayIt and OpenCities are recent examples of digital tools now available to cities for both upstream and downstream communication with citizens—to pay taxes, to level complaints, and to find resources, phone numbers, and a wide variety of other information about a given city, relevant to citizens and public officials alike.

In terms of local government spending transparency, however, there is a paucity of research on real-world attempts by the public to obtain such information at any particular scale. Serious public undertakings like Ohio’s Online Checkbook provide an excellent starting point for research of that state’s finances, but while useful to that end, Ohio’s Checkbook is not a comprehensive resource for its local government spending.¹⁴ This is attributable in part to the “opt-in” nature of the program. Local governments in Ohio are encouraged, but not required, to participate.¹⁵

The paucity of research in the area of large-scale, citizen-to-local-government financial document requests offers the opportunity to add something new to the conversation about open government and open data. Here in Missouri, how difficult is it to receive spending information from local governments? And what could the implications of those difficulties be for researchers and citizens in other places seeking the same or similar information?

MISSOURI’S SUNSHINE LAW

Although Missouri law does not require local governments to post their financial expenditure records online,

Missouri’s Sunshine Law (RSMo. 610) requires public bodies to make records of public interest available to the public, with some exceptions (such as records for some legal proceedings) and subject to the costs for generating such records.

Section 610.026 of the Missouri Revised Statutes makes the method for determining these costs simultaneously plain and ambiguous. In relevant part, the law provides: “Based on the scope of the request, the public governmental body shall produce the copies [of the requested documents] using employees of the body that result in the lowest amount of charges for search, research, and duplication time.”

While the law suggests that the state expects these documents to be produced at the lowest price possible, in practice the Sunshine Law allows governments considerable latitude in determining how much they can charge to produce information covered under the law. It’s possible that municipalities of virtually equal size could require very different fees of requestors to share their records.

THE REQUESTS

For the vendor checkbook portion of the project, a total of 394 Sunshine Requests were sent to 221 municipalities and 114 counties (excluding St. Louis City,) as well as to the top 59 school districts in terms of student population. Each request was for five years of the entity’s spending records: vendors names, dates of expenditures, the amount vendors received, vendor addresses and memo lines or

reasons for the purchase. The requests also asked for the cost for producing the records.

While Excel documents were preferred because they are easier for the public to transform and search, other formats were also accepted in the interest of maximizing the spending information made available to the public and accommodating public officials.

THE RESPONSES

The responses received were varied, with some municipalities demonstrating a willingness to comply at a reasonable cost, while others were much less inclined to do so. Table 1 summarizes the costs reported in response to our requests.

Almost 50 percent of cities quoted a price for their records. As a general matter, counties were more willing than cities to provide spending information at no charge, probably because counties are already required to publish spending information each year (RSMo 50.800)¹⁶ —albeit in a less comprehensive format. School districts provided more of a mixed bag of responses, with some districts directing us to their board of education meeting packets to view that month’s expenditure list.

Show-Me Checkbooks

While state law doesn’t require municipal spending records to be published online, some cities, such as Ballwin, Chesterfield, Kansas City, and Saint Louis City, already post their spending records on their websites before being asked for them.

Table 1: Response to Sunshine Requests for Vendor Spending

Over half of cities and school districts that responded quoted a price for the requested records.

	No Cost	Quotes \$1–\$99	Quotes \$100–\$249	Quotes \$250–\$999	Quotes Over \$1,000	Total Cost of Quotes	Conflicting or No Response
Cities	73	51	20	27	11	\$114,473.95	39
Counties	80	23	6	2	1	\$10,792.31	2
School Districts	17	12	9	3	1	\$5,704.15	17

For those municipalities that do not post their records online, the costs to produce them often differed significantly, depending on which official gathered the records. The response provided by New Madrid, a town in southwest Missouri, provides an example of this. In October 2017, the city quoted the Show-Me Institute a price of \$7,737 for five years of spending records. But a few months later in January 2018, when the *Saint Louis Business Journal* sent an identical request as part of a cover story investigation, New Madrid quoted a price of \$2,997. When the *Business Journal* asked about the difference, New Madrid replied that since the city clerk was on vacation, someone with a lower salary would have to complete their request.

Another example comes from Buckner, a city near Kansas City, Missouri. Buckner requested \$11,000 for five years of spending records. The city attributed the cost to both a software change and the movement of the documents. From the city administrator/clerk's response:

“The City changed accounting software in 2014, so records prior to that time are only available in paper format. In 2014 the City also completed construction of a new City Hall. The staff at that time ... simply put papers into boxes, transported the boxes and stacked them in a storage room. Since I started, we’ve ... found that in numerous cases files have not been stored in any kind of sorted order. It will be necessary to sort each box to find all of the potential data requested. As Buckner is a very small city with a very small staff, I anticipate having to hire temps ... to do the sorting and location of files for the years 2012, 2013 and portions of 2014, and scanning and conversion into pdf format. Since I can have no real understanding of the exact amount of time required, the estimate is, at best, an estimate.”

Hollister also submitted a high quote for their records. It responded to the request by saying,

The estimated cost for requested records would be \$24,885.11, and would take one year to get all the information you requested. If you have any questions please do not hesitate to contact me. We will not begin gathering the information until you let us know whether you want to pay for the information you requested.

We reached out to them after the response below for a cost breakdown, but we did not receive a response.

Although Buckner, Hollister, and several other cities returned responses well into the thousands of dollars, the city of Battlefield returned the highest quote—over \$35,000. Its reasoning was that its staff was limited in both time and people, and “the cost was based on the unknown amount of actual copies to be made since the request goes back five years.”

At the other end of the spectrum were municipalities that willingly complied. For example, the city of Winfield provided its spending information free of charge. In addition, the city posted a link to its spending records on its own website so that visitors could see for themselves how taxpayers' money was being spent. The city even digitized some of its paper spending records in the interest of greater transparency. At last check, Winfield was working on a transparency portal of its own so that spending in future years will be readily available to those interested.

Interestingly, North Kansas City originally quoted us \$1,608.80 for its records. However, after city officials saw our Price of Transparency video and the number of cities that provided their records, they mailed us their records at no charge.

SUNSHINE LAW SHORTCOMINGS

The Sunshine Law can be an effective tool for government transparency, but for obtaining local spending records it is inadequate for several reasons.

First, the degree of success a taxpayer will have in obtaining local spending records will vary greatly depending on where they live. The city of Winfield went out of its way to turn paper records into digital records and produce its checkbook to the public free of charge. In contrast, cities like Hollister, Buckner, and Battlefield demanded tens of thousands of dollars for similar records. Where you live in Missouri shouldn't dictate whether you have transparent government. The Sunshine Law, however, is not written in a way that requires cities to produce spending records that should already be a matter of the public record at little or no cost.

Second, the current system, which requires taxpayers to actively seek out spending records, provides ample room for bad actors who (1) may never receive a request that might expose malfeasance, and (2) may credibly believe that they can price out, or wait out, anyone who may seek records. Such a system can inadvertently direct misplaced scrutiny on cities that believe in transparency and have made their checkbooks public, while cities deserving of enhanced scrutiny remain hidden from public view.

Third, through our checkbook project we were able to contact and communicate with nearly 200 Missouri cities, but there are about 1000 such governments in the state. Lacking standardized data outputs and reliable responses, and without laws that clearly drive governments toward disclosure, a single entity of modest resources cannot deliver anything approaching a comprehensive view of local government spending in Missouri. And that's without considering the question of cost, which *without* counting staff time could total tens of thousands of dollars in fees imposed by local governments every year under the current system, if not far more.

Lastly, the absence of clear spending transparency requirements places well-meaning government officials in the unusual position of acting as gatekeeper to information that should already be public. An inexperienced clerk could, out of ignorance, respond to a spending records request that an exorbitant fee is required to access the city's spending records—even though we might know those spending records could easily be exported from the city's accounting program at a fraction of the quote.¹⁷

We suspect these concerns will not be unique to Missouri, as other states have Sunshine laws that provide similar latitude to local governments and impose similar costs on taxpayers and public officials alike.

CONCLUSION

Because local governments are ultimately subdivisions of Missouri, they (perhaps perversely) tend to be more responsive and accountable to the state itself than they are to citizens filing Sunshine Law requests. Though concerned citizens can and will be able to make requests for financial records, the state itself could collect and publish spending information from its subdivisions as a condition of their continued existence. The principle

is simple: Entities with the power to tax also have the responsibility to disclose their spending in detail to the greatest extent practicable.

Such a requirement is by no means radical, nor a particular imposition. Local governments, including cities, are already required to file certain financial information with the state annually. We recommend that included in those financial filings should be a complete accounting of city spending since the last reporting period, including vendor and transaction information, in a standardized, machine-readable format.¹⁸ Indeed, these annual reports could not exist without the underlying spending data.

After those records are transferred to the state, the state should post (as we have) the spending data on a public website devoted to spending transparency so that taxpayers can see for themselves how their government spends their money. The Treasurer's Office's "Show-Me Checkbook," released in 2018, seems like an obvious state project upon which a site for local government checkbooks could be built. The architecture of the school district spending portal of House Bill 1606 (2018) could also eventually serve as the basis for other local government checkbook portals. Alternatively, an entirely new portal for local government checkbook information could be created for the enterprise.¹⁹

Whatever the location of such an online checkbook, a portal for local government spending in Missouri seems long overdue. Missouri has an opportunity to lead the country with one of the most robust transparency initiatives undertaken in recent years.

When government takes our money, the people paying the bill have a right to see how their money is being spent. And that applies as much to local government as it does to any other level of government.

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NOTES

1. The following characterization of the importance of transparent government, written by Thomas I. Emerson for the Washington University Law Journal in 1976, is particularly applicable. “The public, as sovereign, must have all information available in order to instruct its servants, the government. As a general proposition, if democracy is to work, there can be no holding back of information; otherwise ultimate decision making by the people, to whom that function is committed, becomes impossible.” Thomas I. Emerson, *Legal Foundations of the Right to Know*, 1976 Wash. U. L. Q. 1 (1976). Accessed April 17, 2019 at: http://openscholarship.wustl.edu/law_lawreview/vol1976/iss1/6.
2. This paper features a discrete snapshot of government requests and responses, stretching from July 2017 to early 2019. As we receive spending record responses we will publish them online at: <https://drive.google.com/drive/folders/1RgFoTqh04rGcKQ5MpsQd3C8ZWZpIXeM>.
3. By far the largest single dataset we received during the course of this project was from the Office of Administration for state spending records spanning from FY 2000 to FY 2017. Thanks to the rapid receipt of those comprehensive records, we were able to pivot to local government records, which while individually smaller datasets, sprawled across hundreds of different record keepers and authorities. The state spending records can be found at: <https://drive.google.com/drive/folders/15qHecImchhycdjk8Vi2K-YtpzQzfvrrN>. A prototype displaying one fiscal year of state spending can be found at: <https://showmeinstitute.org/blog/transparency/map-state-spending-fy2017>.
4. In the course of the Show-Me Checkbook Project, we also started a subproject dubbed Show-Me Salaries, which collected spending information specific to local workforces. The results of those requests are at: <https://drive.google.com/drive/u/0/folders/1UR9S4QrbAq2iPqCfcPB6hjNL97FeeGCn>
5. Article I, Section 9. U.S. Constitution. Accessed April 17, 2019 at: <https://www.archives.gov/founding-docs/constitution-transcript#toc-section-9->.
6. *United States v. Richardson*, 418 US 166 (1974). Accessed April 17, 2019 at: <https://www.oyez.org/cases/1973/72-885>.
7. Open Government Principle: Applying the Right to Know Under the Constitution 26 Geo. Wash. L. Rev. 1 (1957-1958). Accessed April 17, 2019 at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/gwlr26&div=10&id=&page=>.
8. The New Ambiguity of “Open Government.” Harlan Yu & David G. Robinson Princeton. CITP / Yale ISP Working Paper—Draft of February 28, 2012. Accessed April 17, 2019 at: http://observgo.quebec.ca/observgo/fichiers/42526_GRI12b.pdf.
9. “Open government” stands for the idea that the public has a right to government documents as a means of enabling effective oversight by citizens.
10. Open Government Directive. Accessed April 17, 2019 at: <https://obamawhitehouse.archives.gov/open/documents/open-government-directive>.
11. “Open data” stands for the idea that information provided by the government—especially information numerical in nature—should be free of undue licensing burdens and released in a format that can be read by machines and easily transformed for the purpose of further research.
12. Soonhee Kim and Jooho Lee. E-Participation, Transparency, and Trust in Local Government. 2012. Accessed April 17, 2019 at: <http://faculty.cbpp.uaa.alaska.edu/afgjp/PADM601%20Fall%202012/E%20participation%20and%20Trust%20in%20Local%20Govt.pdf>.
13. Sternstein, Aliya. 2010. Study Links Online Transparency Efforts, Trust in Government. Accessed April 17, 2019 at: <https://www.nextgov.com/cio-briefing/2010/02/study-links-online-transparency-efforts-trust-in-government/45965/>.
14. Ohiocheckbook.com. Accessed April 17, 2019 at: <https://local.ohiocheckbook.com/>.
15. Borchardt, Jackie. “Joining Ohio online ‘checkbook’ made easier for small governments.” Cleveland Plain Dealer. 18 Aug 2016. Accessed April 17, 2019 at: https://www.cleveland.com/open/index.ssf/2016/08/joining_ohio_online_checkbook.html.

16. RSMo 50.800. Accessed April 17, 2019 at: <http://revisor.mo.gov/main/OneSection.aspx?section=50.800&bid=1797&hl=>.
17. Another benefit to local officials of having spending records online is the opportunity to compare the costs of services paid to the same or similar vendors by other local governments. If a local government is "overpaying" for a service compared to a peer city, a statewide local government checkbook would aid in discovering this.
18. While outside the scope of the Checkbook Project, it should be noted that cities also take money from taxpayers to pay the salaries of their workers. Accordingly, shouldn't taxpayers have the right to know who is on the government payroll and how much each employee is receiving in compensation? Currently, the last 12 years of state employee salary information are available to download and search on the Missouri Accountability Portal. It shouldn't be that difficult for local governments to do the same, either on their websites or through the portals discussed herein.
19. <https://house.mo.gov/billtracking/bills181/hrbillspdf/5562H.02I.pdf>.



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