



**DREW SHENKMAN**  
Counsel  
T 404 878 5696  
F 404 878 4516  
drew.shenkman@turner.com

October 7, 2014

VIA Mail and Email ([attorney.general@ago.mo.gov](mailto:attorney.general@ago.mo.gov))

Hon. Chris Koster  
Missouri Attorney General  
Supreme Court Building  
207 W. High St.  
Jefferson City, MO 65102

Missouri Attorney General's Office  
Attn: Sunshine Complaint Unit  
PO BOX 899  
Jefferson City, MO 65102

**Re: SUNSHINE LAW COMPLAINT:  
EXCESSIVE FEES CHARGED BY CITY OF FERGUSON**

Dear Mr. Attorney General:

I file this Sunshine Law Complaint on behalf of CNN against the City of Ferguson, Missouri regarding the excessive hourly-rate structure and exorbitant fee deposit required by the City prior to responding to CNN's Sunshine Law request for emails to and from Officer Darren Wilson and other Ferguson Police Department personnel in the days following the August 9<sup>th</sup> police shooting of Michael Brown. The excessive financial demands made to CNN by the City are a deliberate attempt to delay this important information from reaching the public, and to prevent CNN and other media from investigating a police shooting that is of obvious public interest.

On October 1, 2014, CNN National Correspondent Sara Sidner filed a Sunshine Law request for "copies of any and all emails to and from Officer Darren Wilson and anyone in the Police Department including but not limited to the Chief of Police the day of and the days following August 9, 2014." (Request and related correspondence attached as Exhibit A). The next day, Ferguson City Clerk Megan Asikainen stated that "due to the scope and technical nature of your requests, we will require a \$2,000.00 deposit prior to gathering the relevant documents." Ms. Asikainen indicated that the City would not start the search until receiving the initial deposit.

The City enclosed a generic search and retrieval proposal from an IT consulting firm requiring a base fee of \$500, an hourly working rate of \$135 per hour, a four-hour minimum, and a \$1,040 deposit before any work would commence. The City requested a \$2,000 deposit from CNN, and said that it would require further payments as necessary prior to producing any records. Later correspondence from the City indicated that the City would also be charging \$175 per hour for the work of the City Attorney to review documents. See Email attached as Exhibit B.

The City of Ferguson's actions here are against both the spirit and letter of the Sunshine Law. As you are aware, Missouri law permits public records to be provided without charge or at a reduced cost when it is in the public interest to do so because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body. RSMo. 610.026.1(1). Certainly, the shooting of Michael Brown, and the officer's correspondence with his

professional colleagues after the shooting, are squarely in the public interest. Thus, the City's blanket refusal to consider CNN's fee waiver request, as well as the fee waiver request of any other media outlet, is an obvious abuse of the City's discretion under the Sunshine Law.

Yet, even if the City's denial of CNN's fee waiver were based in sound reasoning, the outlandish fees and upfront costs demanded by the City of Ferguson contravene Missouri law governing the reasonableness of fees which may be charged to a requestor. *See* RSMo 610.026.1; *R.L. Polk & Co. v. Missouri Department of Revenue*, 309 S.W.3d 881 (Mo. App. W.D. 2010). The City has articulated no rational justification for its extraordinary fee demand beyond a conclusory statement that "there is a tremendous amount of work involved in researching whether records exist which are responsive to your requests, analyzing the records, redacting the records as necessary, and any copying or duplication that will be needed." *See* Ex. A.

Further, the City's financial demand here bears no rational relationship to the work necessary to respond to CNN's request. For example, even though he has been placed on administrative leave, the City has not said that Officer Wilson was unable or unwilling to retrieve his own emails, some of which may be located on his personal computer or wireless devices and/or email accounts. Indeed, the City apparently has neither asked Officer Wilson for his emails, nor even conducted an initial search of his City-maintained inbox or sent mail folders by the City Network Administrator or other personnel familiar with the City's IT systems. *See* Ex. B. Thus, the City has failed to comply with CNN's request in the most basic and cost-effective manner. Moreover, there is no sound basis in the Sunshine Law to charge CNN for a City lawyer's time to do her job in the regular course of conducting City business. *See* RSMo 610.026.1(1).

Finally, while CNN acknowledges that research time necessary for fulfilling requests may be charged, the law requires the City to use "employees of the body that result in the lowest amount of charges for search, research, and duplication time." RSMo 610.026.1(1). Here, the City is seeking to hire an outside IT consulting firm at a rate of \$135 per hour, far in excess of the \$13.80 lowest clerical rate cited by City Clerk Megan Asikainen, *see* Ex. B, and without making any rational case for why that approach is "required beyond the customary and usual level to comply with a request for records or information." RSMo 610.026.1(2).

For all of the above reasons, CNN respectfully requests the Missouri Attorney General's Office intervene on CNN and the public's behalf, and insist upon the City of Ferguson's full compliance with both the letter and spirit of the Sunshine Law in whatever manner is necessary to ensure that the public remains fully informed on this matter of great public importance.

Please do not hesitate to contact me should you have any questions or concerns.

Respectfully Submitted,



Drew E. Shenkman  
Counsel, CNN

Sunshine Law Complaint  
CNN Request to City of Ferguson  
October 7, 2014  
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cc: David Vigilante, CNN Sr. Vice President, Legal  
Sara Sidner, CNN National Correspondent

Office of Governor Jay Nixon ([mogov@mail.mo.gov](mailto:mogov@mail.mo.gov) and [john.watson@mo.gov](mailto:john.watson@mo.gov))

John Shaw, Ferguson City Manager (via email [administration@fergusoncity.com](mailto:administration@fergusoncity.com))  
Chief Thomas Jackson, Ferguson Police Chief (via email [tjackson@fergusoncity.com](mailto:tjackson@fergusoncity.com))  
Megan Asikainen, Ferguson City Clerk (via email [measikainen@fergusoncity.com](mailto:measikainen@fergusoncity.com))

# **Exhibit "A"**

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**From:** Sidner, Sara  
**Sent:** Monday, October 06, 2014 12:39 PM  
**To:** Shenkman, Drew  
**Subject:** Fwd: Public Records Request  
**Attachments:** Exchange Data Export Agreement.pdf; ATT00001.htm

**From:** "Megan Asikainen" <[measikainen@fergusoncity.com](mailto:measikainen@fergusoncity.com)>  
**To:** "Sidner, Sara" <[Sara.Sidner@turner.com](mailto:Sara.Sidner@turner.com)>  
**Cc:** "Hannah, Jack" <[Jack.Hannah@turner.com](mailto:Jack.Hannah@turner.com)>  
**Subject:** RE: Public Records Request

Sara,

I have attached the proposal from our IT consultant to retrieve those records. I won't know the full scope and number of responsive records until that work is completed. As described in the first email, once the records are retrieved, we will begin the review, redaction, and copying of the records. Since our City Attorney's assistance is required, some of that work will be at \$175 per hour, her rate, and some will be at the rate of \$13.80 per hour which is the lowest clerical rate of City staff.

Hope that helps. Please call me if you have any questions.

Megan

Megan Asikainen  
City Clerk  
City of Ferguson, Missouri  
110 Church Street  
Ferguson, MO 63135  
(314) 524-5152 Phone  
(314) 524-5173 Fax  
[measikainen@fergusoncity.com](mailto:measikainen@fergusoncity.com)

From: Sidner, Sara [<mailto:Sara.Sidner@turner.com>]

Sent: Monday, October 06, 2014 11:26 AM  
To: Megan Asikainen  
Cc: Hannah, Jack  
Subject: Re: Public Records Request

Hello Megan,

Can you give me a break down of the costs and what exactly I would be paying for? What is that 2000 dollars going towards?

Thanks,  
Sara

From: Megan Asikainen  
<[measikainen@fergusoncity.com](mailto:measikainen@fergusoncity.com)<<mailto:measikainen@fergusoncity.com>>>  
Date: Thursday, October 2, 2014 at 2:33 PM  
To: cnnuser sidner <[sara.sidner@turner.com](mailto:sara.sidner@turner.com)<<mailto:sara.sidner@turner.com>>>  
Cc: "Hannah, Jack" <[Jack.Hannah@turner.com](mailto:Jack.Hannah@turner.com)<<mailto:Jack.Hannah@turner.com>>>  
Subject: RE: Public Records Request

Sarah,

In response to Request 1- Due to scope and technical nature of your requests, we will require a \$2,000.00 deposit prior to gathering the relevant documents. I will not start this project until I have received the initial deposit. I have attached a proposal from an IT consultant to retrieve those records.

The cost of this project may exceed the deposit amount. There is a tremendous amount of work involved with researching whether records exist which are responsive to your requests, analyzing the records, redacting the records as necessary, and any copying or duplication that will be needed. Additionally, the City Attorney's assistance is required with regard to determining the extent to which certain information should be redacted.

When the deposit is received, we will assemble, research and redact documents until the deposit amount is reached. At that time, an additional deposit will be required to proceed with the remaining work.

In response to Request 2- We have previously released the only report the City of Ferguson has. I have attached the previously released report for reference. The investigation is being conducted by the St. Louis County Police Department, so you would need to contact them for any additional records.

From: Sidner, Sara [<mailto:Sara.Sidner@turner.com>]  
Sent: Wednesday, October 01, 2014 11:52 AM  
To: Megan Asikainen  
Cc: Hannah, Jack  
Subject: Public Records Request

Hello Megan,

This is Sara Sidner with CNN. I am sending you a records request. Please let me know that you received it and if there is anything else I need to do to receive these records.

Thanks,  
Sara

PUBLIC RECORDS REQUEST:

October 1, 2014  
Megan Asikainen City Clerk  
Custodian of Records  
222 S. Florissant Road Ferguson, MO 63135

This is a request for records under the Missouri Sunshine Law, Chapter 610, Revised Statutes of Missouri.

I request that you make available to me the following records:

Copies of any and all emails to and from Officer Darren Wilson and anyone in the Police Department including but not limited to the Chief of Police the day of and the days following August 9th, 2014.

Copies of any documents that pertain to the shooting of Michael Brown.  
We request the documents not be redacted.

I request that the records responsive to my request be copied and sent to me via email to [Sara.Sidner@turner.com](mailto:Sara.Sidner@turner.com)<<mailto:Sara.Sidner@turner.com>>

I request that all fees for locating and copying the records be waived.  
If the fees are not waived, Please let me know in advance if any search or copying fees will exceed \$500.

Sincerely,

Sara Sidner  
CNN  
National Correspondent  
[Sara.Sidner@turner.com](mailto:Sara.Sidner@turner.com)<<mailto:Sara.Sidner@turner.com>>  
+13232295730

## Exchange Data Export Agreement

This Service Agreement is entered into by and between Acumen Consulting I Corp. DBA Acumen Consulting ("Company"), and City of Ferguson ("Client"). This contract is confidential and proprietary between the parties.

### Overview

The City of Ferguson has requested professional IT services to assist them in responding to requests for electronic information contained within their email server.

### Service Scope

Acumen Consulting will use standard industry methods to produce the information from the City's systems.

1. A data export from the Microsoft Exchange email server will be performed based upon the requested search criteria. The resulting data will be presented in searchable Adobe PDF file format.
2. A notarized statement of the work performed and a summary of the results will be provided.
3. All travel time, waiting time, and court appearance time will be charged at the standard rate.

Estimated hours for this project are 8-16 hours, not including travel time and court time. The above hours are estimates that may be slightly higher or lower. Actual time will be billed with a minimum of four hours.

### Assumptions and Conditions

- Acumen assumes that all necessary physical and administrative access will be provided.
- Acumen will use the Exchange retention mechanism to export all unpurged deleted emails. It is our understanding that no one has intentionally deleted or purged emails from the Exchange system.

### Fee Structure

This service has a base fee of \$500 plus an hourly rate of \$135 per hour with a minimum of four hours. A deposit of \$1040 is required before work will commence.





1750 S. Brentwood Boulevard, Suite 200  
 St. Louis, Missouri 63144  
[ACUMEN-CORP.COM](http://ACUMEN-CORP.COM)  
 314.333.3330

### Payment Structure

Acumen will invoice for the deposit at time of acceptance of this agreement. Additional services will be invoiced weekly as performed. Invoices are due upon receipt.

### Acceptance

The undersigned is authorized to enter into this Contract and acknowledges that Client has received, understands, and accepts the provisions of this Service Agreement and the Terms and Conditions.

By accepting the Service Agreement(s) and engaging services, continuing to use the services, placing and continuing to maintain or place information on Company servers and systems, Client is affirming and acknowledging that Client has read the Terms and Conditions and Service Agreement(s) and that Client understands and agrees to be bound by them.

	City of Ferguson	Acumen Consulting
Signed	_____	_____
Date	_____	_____
Print Name	_____	_____
Title	_____	_____
Address	_____	1750 S. Brentwood Blvd, Suite 200
City/State/Zip	_____	St. Louis, Missouri 63144

*Thank you for choosing Acumen Consulting as your Technology Service provider.*

# **Exhibit "B"**

**From:** [Sidner, Sara](#)  
**To:** [Shenkman, Drew](#)  
**Subject:** FW: Public Records Request  
**Date:** Monday, October 06, 2014 2:27:29 PM

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**From:** Megan Asikainen <[measikainen@fergusoncity.com](mailto:measikainen@fergusoncity.com)>  
**Date:** Monday, October 6, 2014 at 2:26 PM  
**To:** cnnuser sidner <[sara.sidner@turner.com](mailto:sara.sidner@turner.com)>  
**Cc:** "Hannah, Jack" <[Jack.Hannah@turner.com](mailto:Jack.Hannah@turner.com)>  
**Subject:** RE: Public Records Request

We can do a very limited search of emails from one single user – this would NOT be a search of the server and it would NOT be a search of emails on a particular topic or to a particular person.

This would involve ONLY a search of the emails in the person's inbox and sent items box. It will NOT include any emails that have been deleted or moved to archive folders which may be located on the server.

We would ask for a deposit equal to the hourly wage of the person who logs on to the person's account and retrieves any emails. Then, if any emails are recovered, you would have to pay for the City Attorney's time to review the emails to determine if they are subject to disclosure under the Sunshine Law.

In conclusion, this is a very unreliable method of searching for emails and this will not capture all emails that have been sent by or to that person, emails that have been deleted or emails that have been archived on the server.

The only thing that you would be getting are those current emails in the inbox and recent emails in the sent items folder (if there are any).

If you are willing to pay the amounts above and if you are willing to acknowledge and accept in writing the limitations of this kind of search, we can complete this limited search.

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**From:** Sidner, Sara [<mailto:Sara.Sidner@turner.com>]  
**Sent:** Monday, October 06, 2014 12:34 PM  
**To:** Megan Asikainen  
**Cc:** Hannah, Jack  
**Subject:** Re: Public Records Request

But is there any way to just search his account so it wouldn't take as long for the initial emails anyway?

-Sara

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**From:** Megan Asikainen <[measikainen@fergusoncity.com](mailto:measikainen@fergusoncity.com)>  
**Date:** Monday, October 6, 2014 at 1:07 PM  
**To:** cnnuser sidner <[sara.sidner@turner.com](mailto:sara.sidner@turner.com)>  
**Cc:** "Hannah, Jack" <[Jack.Hannah@turner.com](mailto:Jack.Hannah@turner.com)>  
**Subject:** RE: Public Records Request

Sara,

Darren Wilson hasn't had access to the City email system since he went on paid administrative leave. Does that help?

Megan

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**From:** Sidner, Sara [<mailto:Sara.Sidner@turner.com>]  
**Sent:** Monday, October 06, 2014 12:03 PM  
**To:** Megan Asikainen  
**Cc:** Hannah, Jack  
**Subject:** Re: Public Records Request

Hey Megan,

Thanks for the quick response. Isn't there a way to just ask Officer Darren Wilson for this emails at least. I would assume he has all the sent mails. Which would make it cheaper and faster?

-Sara

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**From:** Megan Asikainen <[measikainen@fergusoncity.com](mailto:measikainen@fergusoncity.com)>  
**Date:** Monday, October 6, 2014 at 12:35 PM  
**To:** cnnuser sidner <[sara.sidner@turner.com](mailto:sara.sidner@turner.com)>  
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Hope that helps. Please call me if you have any questions.

Megan

**Megan Asikainen**  
**City Clerk**  
**City of Ferguson, Missouri**  
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If the fees are not waived, Please let me know in advance if any search or copying fees will exceed \$500.

Sincerely,

Sara Sidner  
CNN  
National Correspondent  
[Sara.Sidner@turner.com](mailto:Sara.Sidner@turner.com)  
+13232295730