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says Lewis evaluation should be released to public

A circuit court judge has ruled that the former city administrator's employee evaluation report should be released to the local newspaper.

On Tuesday, *The Republic-Monitor* received Judge Ben Lewis's judgment in the case of *The City of Perryville v. Perryville Newspapers Inc. and William Lewis*.

The city filed the lawsuit in May asking the court to decide if the city should turn over a copy of former city administrator Bill Lewis's job evaluation report to the newspaper.

Publisher Kate Martin requested a copy of that report after a May 5 city council hearing during which Bill Lewis's attorney presented the report as a public exhibit. On May 7, Martin filed a written request with City Clerk Tracy Prost asking for a copy of the document along with four other documents which had been presented to the council by Bill Lewis's attorney Robert Sweeney during the meeting.

The four other documents were released immediately. City officials, however, weren't sure if they could release the second copy of the document, because it was an employee record, which the city maintains as a closed record in accordance with law.

During a July 31 hearing before Judge Lewis, attorneys for the newspaper and the city agreed that there

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were two separate copies of the job evaluation report maintained by the city — the one prepared for the board and the one presented by Sweeney. Neither Sweeney or Lewis attended that hearing.

Both sides stipulated at the hearing that either Lewis or Sweeney had provided copies of the record to at least one other newspaper. Sweeney, in e-mail correspondence, offered the record to *The Republic-Monitor*, but never provided it.

Sweeney expressed concern about *The Republic-Monitor's* ability to remain unbiased because Perryville Mayor Debbie Gahan is a part-time employee of the newspaper.

In a judgment dated Aug. 19, Judge Lewis noted that Missouri law provides that the term “public record” shall not include any internal memorandum prepared by or on behalf of a member of a public governmental body ... “unless such records are ... presented at a public meeting.”

Judge Lewis also notes that in the case of *Guyer v. City of Kirkwood*, the Supreme Court held that Missouri’s Sunshine Law permits closure of personnel records in one section, but other sections require that records be made public, so in case of conflict such as this one, when one record fits under two specific provisions of the Sunshine Law, the record should be made public.

In the judgment, Judge Lewis notes that “the city also asserted that (Bill) Lewis has filed suits against the city and against its city attorney. It is reasonable to infer that the city was motivated to file this action because it is unwilling to disclose Lewis’s personnel record on its own accord and possibly subject itself to further claims or suits by Lewis.”

Bill Lewis has filed lawsuits against the mayor, city clerk, city attorney and aldermen alleging that his job evaluation was unfair and accusing city officials of conspiring to fire him.”





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The suits seek at least \$25,000 in damages.

Jean Maneke of Kansas City represented the newspaper at the hearing.

"The city's former employee chose to make these private records public when they were used at a public hearing," Maneke said. "He cannot now claim they are private records and, unfortunately, the city felt it necessary to go through this process in order to ensure that they were protected from future frivolous litigation over this issue.

"We appreciate the judge's prompt ruling in this case and his understanding about the importance of making public records available to the public."

Mayor Gahan said she was not surprised by Judge Lewis's ruling in this case.

"I thought that the newspaper's attorney made a good case, as did our city attorney," Gahan said. "We wanted to do what we thought was the conscientious thing for an ex-employee — to 'err on the side of the angels,' if you get my point."

Gahan said she hopes that people understand that the lawsuit doesn't indicate a contentious relationship between the city and the

newspaper.

"It was the newspaper's responsibility to ask for the evaluation document that Mr. Lewis and his attorney gave to other media and our responsibility to follow our policy that is designed to protect the privacy of our employee, whether current or former."

It's not clear yet whether portions of the evaluation will be published in *The Republic-Monitor*.

"I don't know what, if anything, we will publish about the job evaluation document," said Martin. "We just received the judgment and I have not yet seen the document.

"And while Mr. Lewis's termination by the city and the reasons that led to that termination are news, the bigger issue here became the public's right to obtain documents from our government.

"Judge Lewis applied the law to this case, and the law says that any private citizen — not just a newspaper — has the right to see public documents relating to any aspect of government."

Judge Lewis also ruled that the city must pay the newspaper's attorney's fees and court costs, around \$5,300.