



Missouri Department of dnr.mo.gov

# NATURAL RESOURCES

Michael L. Parson, Governor

Carol S. Comer, Director

## MEMORANDUM

2020-011

DATE: December 27, 2019

TO: All Soil and Water Conservation Districts

FROM:  Colleen Meredith, Director  
Soil and Water Conservation Program

SUBJECT: Landowner Confidentiality

The Soil and Water Program Office at the December 2, 2019 Soil and Water Districts Commission meeting presented a report on legal review of Revised Statutes of Missouri (RSMO) 261.130 and how this affects landowner confidentiality with regards to the state cost-share program. The changes in policy listed below go into effect January 1, 2020. A copy of RSMO 261.130 is attached. For additional information on RSMO 261.130, the SWCD board and staff are encouraged to watch the December 2<sup>nd</sup> Soil and Water Districts Commission meeting. The video of the meeting can be found at <https://dnr.mo.gov/env/swcp/meetings.htm>.

The attached document includes information that is protected and must not be considered a public record and shall not be subject to disclosure to the public (261.130 2.). The protected information includes landowners' personal information and conservation practices. Since this information is protected, soil and water conservation district (SWCD) board members and staff cannot discuss this information in a public setting, such as in SWCD board meetings, tours, field days or annual meetings unless allowed by the landowner.

### Board Meetings

When discussing landowner information, conservation practices, and conservation plans for the state cost-share and/or federal programs during board meetings, the SWCD board must go into closed session.

- When the SWCD goes into closed session the board will cite the following: "to discuss legal, confidential, or privileged matters under section 610.021(1) which are otherwise protected from disclosure by law."

- When in closed session the SWCD can discuss landowner names, conservation practices, conservation plans and farm/field locations as needed. Once the board has completed their discussion in closed session, the board will vote to end the closed session.
- When back in open session, the board will vote to approve the cost-share contracts, change orders and contract payments, and also federal conservation plans. When approving these documents in open session, only the contract number and cost-share amount can be mentioned. The program office is in the process of developing new reports in the Missouri Soil and Water Information Management System (MOSWIMS) that list only the contract number and dollar amount. The new report can then be used as documentation for the board meeting minutes. Until a new form is developed in MOSWIMS the SWCD must attach a report to their minutes of approved cost-share contracts, change orders and contract payments that only list the contract number and cost-share amount. When the SWCD board approves conservation plans, landowner names cannot be listed in the minutes. A general statement such as “the SWCD board approved conservation plans”, should be shown in your minutes.

### **In Office Procedures**

SWCD staff must also be cognizant of this law when talking with landowners. Staff must make sure that all protected information is not in the office where your customers can view other landowners' information. This may require not allowing landowners' access to the staff work area and only meeting at the counter or a separate work station.

Discussing landowner names and practices among office staff and our partners that are providing assistance to those landowners is acceptable. Working documents that list landowner name and practice are acceptable as long as these are only shared with other staff and partners and are not shared in public.

Documents that list landowner name and practice cannot be shared with contractors. The only exception to this is if a landowner has given the SWCD written permission to discuss their cost share information with a specific contractor.

### **Sunshine Law Policy**

All SWCDs must also update their current Sunshine Law policy to include information on RSMO 261.130, and what the SWCD is doing to meet the requirements of this statute. Information on conducting board meetings, information/education activities and in-office procedures must all be included.

### **Commission Requests and Appeals**

If the SWCD submits a Commission request or appeal for cost-share, the letter submitted by the SWCD must not include the landowner's name or the practice type. Since the Commission meeting is a public meeting, both the landowner's name and practice type cannot be mentioned; although the contract number and dollar amount should be in the request letter.

**Information/Education Activities**

When the SWCD is conducting an educational event, such as a tour or field day, the district must get written permission from the landowner to discuss the practices that will be highlighted. Also, if a landowner is receiving an award, the district must get written permission from the landowner (who is the cooperator on the contracts) before they can discuss any of the conservation practices that the landowner installed.

**Landowner Permission**

The program office is also discussing the possibility of providing a form for landowners to sign to give the SWCD permission to discuss the landowner's name and conservation practices in open session. The program office is discussing with legal staff if this may be acceptable, but until a determination is made on this form districts should proceed with the guidance mentioned above.

The Cost-Share Handbook and the District Operations Manual will be updated in the near future to reflect the changes mentioned in this memorandum.

The program office understands that this is a significant change to the way SWCDs have conducted their board meetings in the past. The district coordinators will discuss these changes with the board during your January or February board meeting. If you have any questions please contact your district coordinator. Thank you.

JB:CMt

*Missouri*  
**Revisor of Statutes**

Constitution Committee Publications

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Words ▾ 1st search term And ▾ 2nd search term 🔍 ?

◀ ▶ Effective 14 Oct 2016, see footnote ↓

Title XVII AGRICULTURE AND ANIMALS

**Chapter 261**

**\*261.130. Certain agriculture information and data not subject to disclosure, when — disclosure permitted, when.** — 1. For purposes of this section, the following terms shall mean:

- (1) "**Agent**", a duly authorized representative of the Missouri department of agriculture or the Missouri department of natural resources;
- (2) "**Agricultural land**", the same as defined in section 350.010;
- (3) "**Agricultural operation**", any sole proprietorship, partnership, corporation, cooperative, or other business entity which derives income from farming;
- (4) "**Disclose**", to publish or otherwise share with or release to individuals, business entities, political subdivisions, media outlets, or other entities;
- (5) "**Farming**", the same as defined in section 350.010;
- (6) "**Personal information**", data which is linked to a specific individual including, but not limited to, Social Security numbers, telephone numbers, and addresses;
- (7) "**Voluntary participation**", participation in a government program that is not compulsory but requires the collection of specific information from an agricultural producer or owner of agricultural land in order to participate in such program.

2. Information or data in either paper or electronic form concerning an agricultural producer or owner of agricultural land that, in connection with such producer's\*\* or owner's voluntary participation in a program, is collected from or provided by an agricultural producer or owner of agricultural land that is related to a farmer's personal information, their agricultural operation, farming or conservation practices, environmental or production data, details on assets of their farm, or the land itself and any geospatial information maintained by the

Missouri department of agriculture or by the Missouri department of natural resources based on agricultural land or operations where a farmer's agricultural operation, farming or conservation practices, environmental or production data, details on assets of their farm, or the land itself is depicted or identified shall not be considered a public record and shall not be subject to disclosure under chapter 610. Further, such information shall not be disclosed to agents of the department of agriculture or the department of natural resources unless such disclosure complies with subsection 3 of this section.

3. The department of agriculture and the department of natural resources may disclose the information or data described in subsection 2 of this section to agents only if:

(1) Such information or data will not be subsequently disclosed beyond such agent except in accordance with subsection 4 of this section;

(2) Such agent is providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices, and so long as there is a written agreement in place between the parties certifying adherence to this section; or

(3) Such agent is responding to an agricultural disease or pest threat or other related emergency impacting agricultural operations, if the director of the department of agriculture and the director of the department of natural resources both determine that a threat to agricultural operations exists and the disclosure of information to a person or cooperating government entity is necessary to assist such departments in responding to the disease or pest threat or emergency.

4. Nothing in this section shall prevent:

(1) The disclosure of information described in subsection 2 of this section in paper format if such information has been transformed into a statistical or aggregate form, or from an electronic database where such information can be compiled for distribution into a statistical or aggregate form, that prevents the information from directly or indirectly naming or identifying any individual owner, operator, producer, or operation or a specific data gathering site;

(2) The disclosure of information described in subsection 2 of this section pursuant to the expressed written consent of both the agriculture producer and owner of agriculture land; or

(3) The disclosure of information or data required by law as a condition of compliance with any of the departments' regulatory functions;



### History and Fun Facts



6