

IN THE CHANCERY COURT OF TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

---

IN RE: INVESTIGATIVE FILE ]  
TENNESSEE BUREAU OF ]  
INVESTIGATION, ]  
INVESTIGATIVE FILE: ]  
ME-76C-000007 ]

No. CH-15-1472-3  
Part III

---

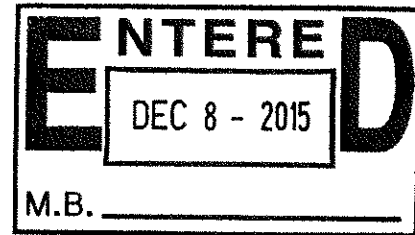
STATE OF TENNESSEE ex rel. ]  
AMY P. WEIRICH, District Attorney ]  
General for the Thirtieth Judicial ]  
District and MARK GWYN, Director ]  
of the Tennessee Bureau of ]  
Investigation, ]

Plaintiff, ]

v. ]

CONNOR SCHILLING, ]

Defendant. ]



---

**ORDER DIRECTING DISCLOSURE OF TBI INVESTIGATIVE FILE  
PURSUANT TO TENN. CODE ANN. § 10-7-504(a)(2)(A)**

---

The court finds that, under the particular circumstances of this case, disclosure of the TBI File at issue is authorized and should be ordered pursuant to the statutory authority set forth at TENN. CODE ANN. § 10-7-504(a)(2)(A).

## CASE STATUS

As recounted in the court's November 30, 2015 Memorandum Opinion and Order Re: Standing and Intervention, the State of Tennessee by and through Amy P. Weirich, District Attorney General for the Thirtieth Judicial District (the "District Attorney") and Mark Gwyn, Director of the Tennessee Bureau of Investigation ("TBI") (together the "State") filed a Petition to Release Tennessee Bureau of Investigation Investigative File (the "Petition") in this court on November 3, 2015. The State's Petition prayed for an order of this court permitting the release to the public of TBI Investigative File ME-76C-000007 (the "TBI File") on the authority of TENN. CODE ANN. § 10-7-504(a)(2)(A).

The TBI File is the TBI's investigative file regarding the July 17, 2015 incident which resulted in the death of Mr. Darrius Stewart, who was shot and killed by Memphis Police Officer Connor Schilling ("Mr. Schilling"). Petition at ¶ 1. The District Attorney exercised her authority pursuant to TENN. CODE ANN. § 38-6-102 to request that the TBI conduct the investigation into the death of Mr. Darrius Stewart.<sup>1</sup> Petition at ¶ 2. The District Attorney later requested that the Grand Jury

---

<sup>1</sup> TENN. CODE ANN. § 38-6-102 permits the Director of the TBI, upon the request of the district attorney general of any judicial district, to assign TBI criminal investigators to aid that district attorney general in the investigation of any crime committed in the district attorney general's judicial district, but only when the district attorney general requests such aid. When detailed by the Director to aid the district attorney general, the criminal investigators have full power to issue subpoenas for witnesses, to serve the subpoenas, to administer oaths to witnesses as they may summon, to take written statements from them and, to have the same powers with reference to the execution of criminal process, making arrests, and the like, as does the sheriff of the county in which the investigators are at work.

indict Mr. Schilling for the criminal offenses of Voluntary Manslaughter and Employing a Firearm During the Commission of a Dangerous Felony. Petition at ¶ 3. On November 3, 2015, a TBI agent presented the case to the Shelby County Grand Jury. Petition at ¶ 3. Pursuant to the Grand Jury's statutory authority, the Grand Jury returned a no true bill. Petition at ¶ 4. The Petition states that there can now be no prosecution of Mr. Schilling. Petition at ¶ 4.

The State asserts that it is in the best interest of the public that the TBI File be made available to the public immediately. Petition at ¶ 7. The State seeks court permission to make the TBI File, less identifying and personal information (to be redacted prior to publication), available to the public through the District Attorney's website. Petition at ¶¶ 6-8. Mr. Stewart's parents and next of kin, Mary Stewart and Henry Williams (the "Parents"), have withdrawn their motion to intervene, expressing their "full confidence that the public's interest [in disclosure] is paramount to their own and do not wish to effectuate further delay." Plaintiff's Withdrawal of Motion to Postpone the Release of the Tennessee Bureau of Investigation's Investigative File ("Parents' Withdrawal") at 2.

On November 30, 2015 the court ruled that this lawsuit is a justiciable controversy in that the State has constitutional and non-constitutional standing to litigate this case. This threshold determination is a necessary prerequisite for the court to consider the merits of the State's claim. Also, the court determined that Mr. Schilling should be allowed to intervene in this lawsuit as a matter of right pursuant to

TENN. R. CIV. P. 24.01(2) as he claims an interest in the subject matter of this lawsuit and is so situated that the disposition of the lawsuit may, as a practical matter, impair or impede his ability to protect that interest. Mr. Schilling has filed his Response to the Petition as directed by the court. With that predicate, and in the interests of justice, the court reaches the merits.

### **THE TENNESSEE PUBLIC RECORDS ACT**

The State has advised the court that there is no precedent for the TBI making a direct request to a Tennessee court of record to disclose the contents of a TBI investigative file. This being an issue of first impression, the court seeks to discern and follow the legislative intent.

The Tennessee Public Records Act (the “TPRA”) as codified at TENN. CODE ANN. §§ 10-7-101, *et seq.*, provides citizens of Tennessee with broad access to records of Tennessee governmental agencies. *Gautreaux v. Internal Med. Educ. Found.*, 336 S.W.3d 526, 529 (Tenn. 2011). The purpose of the TPRA is to facilitate “access to governmental records [which] promotes public awareness and knowledge of governmental actions and encourages public officials and agencies to remain accountable to the citizens of Tennessee. *Schneider v. City of Jackson*, 226 S.W.3d 332, 339 (Tenn. 2007). The TPRA is a statutory codification of the common law public access doctrine that established the “public’s right to examine governmental records.” *Id.* Because the statute has supplanted the common law right, the

provisions of the Public Records Act are the sole basis for public access to government records in Tennessee. *See id.* The Act requires disclosure of public records not specifically exempted from disclosure. TENN. CODE ANN. § 10-7-503(a)(2)(B).

The TPRA defines “public records” or “state record or records” as:

all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency[.]

TENN. CODE ANN. § 10-7-301(6). The TPRA defines a “confidential public record”

as:

any public record which has been designated confidential by statute and includes information or matters or records considered to be privileged and any aspect of which access by the general public has been generally denied[.]

TENN. CODE ANN. § 10-7-301(2).

The TPRA also provides:

All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, ***unless otherwise provided by state law.***

TENN. CODE ANN. § 10-7-503(a)(2)(A) (emphasis added).

The Tennessee Supreme Court has characterized the TPRA as “an all encompassing legislative attempt to cover all printed matter created or received by

government in its official capacity.” *Griffin v. City of Knoxville*, 821 S.W.2d 921, 923 (Tenn. 1991). It has opined that the TPRA’s broad legislative mandate “require[s] disclosure of government records even when there are significant countervailing considerations.” *Gautreaux*, 336 S.W.3d at 529. The TPRA requires the courts to construe the statute broadly “so as to give the fullest possible public access to public records.” TENN. CODE ANN. § 10-7-505(d). Accordingly, there is a “presumption of openness” under the TPRA, “favoring disclosure of governmental records.” *Schneider*, 226 S.W.3d at 340.

Notwithstanding the presumption of openness, in the interest of public policy the General Assembly has provided specific exemptions from disclosure contained in the TPRA itself. It has also “acknowledged and validated both explicit and implicit exceptions from disclosure found elsewhere in state law.” *Swift v. Campbell*, 159 S.W.3d 565, 571 (Tenn. Ct. App. 2004). The TPRA’s general requirement of disclosure is not intended to trump the specific confidential designation by the General Assembly regarding investigative files of the TBI. “As a matter of statutory construction, a specific statutory provision will control over a more general statutory provision.” *State v. Cauthern*, 967 S.W.2d 726, 735 (Tenn. 1998).

The State filed the Petition in reliance on TENN. CODE ANN. § 10-7-504(a)(2)(A). The prohibition of disclosure of TBI investigative files is not absolute. *See* State’s Memorandum of Law in Support of Petition to Release Tennessee Bureau

of Investigation Investigative File (“State’s Initial Memo.”) at 2. The statutory language establishes one such exception to the disclosure mandate of the TPRA:

*All investigative records of the Tennessee bureau of investigation, the office of inspector general, all criminal investigative files of the department of agriculture and the department of environment and conservation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, all criminal investigative files and records of the Tennessee alcoholic beverage commission and all files of the handgun carry permit and driver license issuance divisions of the department of safety relating to bogus handgun carry permits and bogus driver licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record, provided, however, that such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except to the governor and to those directly involved in the investigation in the specified agencies.*

(emphasis added). The section contemplates that disclosure of TBI investigative files “to the public” may occur “only in compliance with a subpoena or an order of a court of record.”

The State poses two alternative arguments in support of the release of the TBI File based on the TPRA. In the first, the State argues that the TPRA provides for a procedural method for obtaining access to TBI investigative files via TENN. CODE ANN. § 10-7-505(a). State’s Initial Memo. at 2. That section states:

(a) Any citizen of Tennessee who shall request the right of personal inspection of any state, county or municipal record as provided in § 10-7-503, and whose request has been in whole or in part denied by the official and/or designee of the official or through any act or regulation of any official or designee of any official, shall be entitled to petition for access to any such record and to obtain judicial review of the actions taken to deny the access.

Emphasizing the phrase “any citizen,” the District Attorney and the Director of the TBI posit that they are themselves “citizens of Tennessee,” who, under the “unique circumstances” of this case, are entitled to seek disclosure of the records to the public pursuant to TENN. CODE ANN. § 10-7-505(a).<sup>2</sup> State’s Initial Memo. at 2-3.

As pointed out by Mr. Schilling, the State’s first argument for disclosure must fail. *See generally* Rebuttal Memorandum of Connor Schilling to the State’s Memorandum of Law (“Schilling Rebuttal Memo.”). While the court does not adopt Mr. Schilling’s argument in its entirety, the court agrees that the statute confers no right on the District Attorney and the Director of the TBI superior to that of any other citizen of the State to utilize the procedure set forth in TENN. CODE ANN. § 10-7-505 to obtain disclosure of TBI investigative records.

As noted above, TENN. CODE ANN. § 10-7-505(a)(2)(A) provides that:

All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any

---

<sup>2</sup> In summarizing this argument, the State concludes “Following the procedures set forth in section 10-7-505, a citizen is to file a petition in the chancery court or circuit court for the county in which the county or municipal records sought are situated. Again, the District Attorney and TBI Director, as citizens of Tennessee, have rightfully and lawfully petitioned this Honorable Court to do just that. The Act confers standing on each as citizens of the state of Tennessee.” State’s Initial Memo. at 4.



citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, *unless otherwise provided by state law*.

(emphasis added). TENN. CODE ANN. § 10-7-504(a)(2)(A) provides that TBI investigative files are one exception to the general posture of the TPRA of openness.

Further, the State's first argument would effectively seek to have the court so read TENN. CODE ANN. § 10-7-505(a) as to *add* the language appearing in bold and brackets below:

(a) Any citizen of Tennessee who shall request the right of personal inspection of any state, county or municipal record as provided in § 10-7-503 [**and § 10-7-504(a)(2)(A)**], and whose request has been in whole or in part denied by the official and/or designee of the official or through any act or regulation of any official or designee of any official, shall be entitled to petition for access to any such record and to obtain judicial review of the actions taken to deny the access.

“When the statutory language is clear and unambiguous, [Tennessee courts] must apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute's application.” *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). If the statutory language is clear and unambiguous, the court's “obligation is to enforce the written language without reference to the broader statutory intent, the history of the legislation, or other sources.” *Chattanooga–Hamilton Cnty. Hosp. Auth. v. Bradley Cnty.*, 249 S.W.3d 361, 366 (Tenn. 2008). The court cannot, in keeping with basic tenants of statutory construction, read the statutory language of TENN. CODE ANN. § 10-7-505(a) in the manner that the State suggests. The court finds that the statutory

procedure set forth in TENN. CODE ANN. § 10-7-505 is not an available method by which public disclosure of a TBI investigative file may be obtained, whether by a member of the public or by the State. The State's first alternative argument fails.

In its second alternative argument, the State argues that the language of TENN. CODE ANN. § 10-7-504(a)(2)(A), by its own operation, entitles the TBI and the District Attorney to seek public disclosure to members of the public who ordinarily cannot inspect a TBI investigative file because of its confidential nature. The State contends that section provides a "path for release" of the TBI File through a subpoena or an order of a court of record. State's Supplemental Memorandum in Support of Petition to Release TBI Investigative File ("State's Supp. Memo.") at 2.

Elaborating on their roles in petitioning for public disclosure, the State argues that the District Attorney requests the release of the TBI File pursuant to her "prosecutorial function attendant to the Grand Jury's decision" conferring standing on her office to seek the release of the TBI File to the public. *Id.* at 2. It is clear, under the circumstances of this case, that the District Attorney's "prosecutorial function" has come to an end as to Mr. Schilling. The grand jury's historic role is one of a "protective bulwark" on behalf of the ordinary citizen. *See, e.g., United States v. Dionisio*, 410 U.S. 1, 17 (1973). As the Grand Jury returned a "no true bill" as to Mr. Schilling, he is protected from further prosecution by the District Attorney, a fact acknowledged in the State's Petition. *See* Petition at ¶ 4. However, having first requested the aid of the TBI in the investigation pursuant to Tenn. Code Ann. § 38-6-

102, the District Attorney retains custody of the TBI File and requests disclosure in that capacity. *See* Petition at ¶ 2. As to the TBI, the State asserts that as the entity which can claim confidentiality pursuant to TENN. CODE ANN. § 10-7-504(a)(2)(A), the TBI's consent to disclosure is necessary for disclosure to occur. *See* State's Supp. Memo. at 2.

As discussed in the court's previous Memorandum Opinion and Order, on a foundational level, there is a separation of powers among the co-ordinate branches of state government. As our Supreme Court explained in *State v. McCoy*, 459 S.W.3d 1, 9 (Tenn. 2014):

The Tennessee Constitution includes two explicit provisions establishing the separation of powers among the three branches of government. Article II, section 1 provides, "The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial." Article II, section 2 elaborates, "No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted." While there are no precise lines of demarcation in the respective roles of our three branches of government, the traditional rule is that "the legislative [branch has] the authority to make, order, and repeal [the laws], the executive ... to administer and enforce, and the judicial ... to interpret and apply." *Underwood v. State*, 529 S.W.2d 45, 47 (Tenn. 1975) (quoting *Richardson v. Young*, 122 Tenn. 471, 125 S.W. 664, 668 (1910)).

In this instance, our Legislature, setting policy, has provided in TENN. CODE ANN. § 10-7-504(a)(2)(A) that TBI investigative files and the certain files of five other

departments or agencies of state government identified by name therein<sup>3</sup> “shall be treated as confidential and shall not be open to inspection by members of the public.” *Id.* The plain language of TENN. CODE ANN. § 10-7-504(a)(2)(A) adds, however, that “The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record.” The General Assembly has determined as a matter of policy that our “courts of record” are uniquely suited to be those “governmental institutions ... competent to address” the question of whether such public disclosure of TBI investigative files should be made, and if so, in what circumstances, under what conditions, and under what constraints. *See Am. Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006) (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)).

The court’s research discloses that the earliest public records act in Tennessee was enacted by the General Assembly in 1957. Tenn. Public Acts of 1957, Pub. Ch. No. 285. That legislation provided in part that medical records of patients in State hospitals and medical facilities were confidential and not open for inspection by members of the public except in compliance “with a subpoena or an order of the court.” *Id.* In 1976, the General Assembly replaced the quoted language as follows “with a subpoena or an order of a court of record.” Tenn. Public Acts of 1976, Pub. Ch. No. 777. The above phraseology has been a portion of portion of the legislative

---

<sup>3</sup> Those being the Office of Inspector General, the Department of Agriculture, the Department of Environment and Conservation, the Department of Safety and the Alcoholic Beverage Commission. *See* TENN. CODE ANN. § 10-7-504(a)(2)(A).

language has remained intact in subsequent revisions of what is now enacted as TENN. CODE ANN. § 10-7-504(a)(2)(A) since that time. The records of the TBI were made explicitly exempt from public disclosure in 1999. Tenn. Pub. Acts of 1999, Pub. Ch. 199.

The fact that the TBI has not previously sought court approval for the public disclosure of records made confidential pursuant to TENN. CODE ANN. § 10-7-504(a)(2)(A) does not demonstrate that it is precluded from doing so via the exception from nondisclosure provided by the statute. The General Assembly has directed such questions as presented by the Petition to the courts for resolution. As the court earlier recognized, the executive department of the State is charged with administering and enforcing the laws. Public officials in Tennessee are presumed to discharge their duties in good faith and in accordance with the law. *West v. Schofield*, 468 S.W.3d 482, 493 (Tenn. 2015) (“*West II*”). The State’s Petition asserts that in the absence of public disclosure of the TBI File, an injury would occur in derogation of “the best interest of the public.” See Petition at 2, ¶ 7. While reasonable minds might differ as to how the public interest would best be served, the court presumes that the State and its executive officials on whose relation the Petition is filed, the District Attorney and the Director of the TBI, have a good faith basis for their assertion that in the absence of public disclosure, injuries that are “distinct and palpable” would occur, injuries that they, due to their positions, experience and due to information available to them, are well-placed to perceive and address.

The bare language of TENN. CODE ANN. § 10-7-504(a)(2)(A), which sets forth that: “The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record . . . .” does not provide guidance to the court as to the factors to be considered in permitting such public disclosure of TBI investigative files. The court in this instance finds aid in the TBI’s own administrative rules, which articulate its policy regarding production of documents and testimony. While not bound by administrative rules as authoritative, “[c]ourts may take judicial notice of the rules and regulations of state administrative agencies which have been promulgated by authority of law, have statewide application and are easily ascertainable.” *Acuff v. Comm’r of Tenn. Dept. of Labor*, 554 S.W.2d 627, 631 (Tenn. 1977).

TBI Administrative Rule 1395-1-6-.02(1) (the “TBI Administrative Rule”) states in part that:

Due to the inherently intrusive nature of criminal investigations and the sensitive nature of material contained in bureau records, access by the public to records of the bureau is extremely limited and subject to several considerations.

Here, the court notes, the District Attorney and the Director of the TBI, that is, the State, have asserted in good faith that disclosure of the TBI File is in the public interest. The Parents have expressed their “full confidence that the public’s interest [in disclosure] is paramount to their own and do not wish to effectuate further delay.” Parents’ Withdrawal at 2. Mr. Schilling states that he has no objection to the public

disclosure of the TBI File, but asks the court to place conditions on the timing, duration and contents of that release. Response of Connor Schilling to Petition to Release Tennessee Bureau of Investigation Investigative File at 1-2.

Mr. Schilling, commenting on TENN. CODE ANN. § 10-7-504(a)(2)(A), points out that the “confidentiality of the TBI File is absolute, *unless a court orders otherwise.*” Memorandum of Connor Schilling in Support of Motion to Intervene (“Schilling Initial Memo.”) at 4 (emphasis added). Mr. Schilling relies on *State v. Cobbins*, No. E2013-02726-CCA-WR-CO, slip op. at 13 (Tenn. Crim. App. Feb. 4, 2015) to argue that the statutory language does not permit a balancing test to take into account an asserted public interest in disclosure.

In *Cobbins*, the parents of the victims in the underlying criminal proceedings filed a petition seeking to intervene in the criminal cases to seek access to the portions of a TBI file that had been filed in the criminal court under seal during the hearing on motions for a new trial. The criminal court released for public view all information in the TBI file on which it relied in adjudicating the criminal defendants’ motions for new trial. The TBI filed a response opposing the petition to intervene and the petitioners’ right to access the TBI file. The criminal court granted intervention but denied the petitioners’ request that the TBI file be unsealed. On appeal, the Court of Criminal Appeals affirmed, concluding that the petitioners had no statutory or constitutional right to intervene in the criminal proceeding, preserving the redacted and sealed portions of the TBI file at issue. *See also State of Tennessee ex rel.*

*Johnson v. Gwyn*, No. M2013-02640-COA-R3-CV, 2015 WL 7061327 (Tenn. Ct. App. Nov. 10, 2015) (holding that *res judicata* served to bar the claims of the same petitioners in a collateral civil action).

This action presents the converse of the circumstance in *Cobbins*. In *Cobbins* the private citizen petitioners sought to overcome the statutory exemption from disclosure granted to TBI investigative files. In such an instance, as *Cobbins* teaches, there can be no balancing between the interests of the private petitioners in public disclosure, and that of the State in continued confidentiality. Herein, however, the State, in a case of first impression, seeks, pursuant to TENN. CODE ANN. § 10-7-504(a)(2)(A), to obtain “an order of a court of record” to release the TBI File. While the language of the statute previously may not have been used by the TBI to seek disclosure, the statute has been previously held to be clear and unambiguous: “the only disclosure of TBI investigative records permitted ... is pursuant to a subpoena or court order.” *Higgins v. Gwyn*, No. M2011-00553-COA-R3-CV, 2012 WL 214829 (Tenn. Ct. App. Jan. 23, 2012).

In certain circumstances, a trial court might find that the TBI and the District Attorney lacked justification for public disclosure of an investigative file following the refusal of a grand jury to return a true bill. Here, however, the State asserts that disclosure of the TBI File is in the best interest of the public, with identifying and personal information to be redacted by the District Attorney General’s office. The Parents do not object to the public disclosure of the TBI File. Mr. Schilling, however,



while not objecting to the public disclosure in principle, asks the court to place conditions on the timing, duration and contents of that release. Response of Connor Schilling to Petition to Release Tennessee Bureau of Investigation Investigative File at 1-2. In the unique circumstances of this case, for the reasons stated herein, the court finds that the State has shown good cause for the disclosure of the TBI File pursuant to TENN. CODE ANN. § 10-7-504(a)(2)(A), and imposes, by way of the Protective Order that follows, conditions on the timing, duration and contents of that release.

### **PROTECTIVE ORDER**

Having found aid in the TBI Administrative Rule quoted above, the court considers whether a protective order should be entered regarding the public disclosure of the TBI File. TBI Administrative Rule 1395-1-6-.02(2), states in part as follows:

Pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-504(a)(2), investigative records of the bureau “shall be treated as confidential and shall not be open to inspection by members of the public.” Access to investigative records may be gained only in compliance with process from a court of record, including either a subpoena or a court order. ... Accordingly, the director ...

(b) opposes any access to investigative records in the absence of a protective order limiting the use of those records, even if records are released pursuant to a court of record’s subpoena or order....

The court accepts the Director’s counsel and considers, as requested by Mr. Schilling, whether the public disclosure of the TBI File should be (a) postponed until after the United States Department of Justice has reached a decision as to whether it will pursue an indictment against Mr. Schilling; (b) made available to the public for a

limited time, but thereafter expunged; and (c) redacted based on guidelines established by the court.

While Mr. Schilling has expressed concerns as to what may occur in the future if the contents of the TBI File were to be disclosed to the public, *i.e.*, in the “unlikely” event of his federal prosecution, the court repeats its observation that the contingent nature of these events should not obscure the State’s present assertion that “It is in the best interest of the public that [the TBI File] be made available *immediately* ... to the public” over Mr. Schilling’s opposition. *See* Petition at 2, ¶¶ 7, 8 (emphasis added). Therefore, the court finds that the requested public disclosure of the TBI File should occur immediately, and should be disseminated to the public through the District Attorney’s internet site, [www.scdag.com](http://www.scdag.com), as prayed for in the Petition. Petition at ¶ 8.

Next, the court considers whether the TBI File should be made available to the public for a limited time. The court notes that while the public interest that has been identified by the State in the public disclosure of the TBI File is keen at the present time, that interest is likely to abate following the initial disclosure. The court instructs the State to monitor the activity on the District Attorney’s website and sets a status conference on February 8, 2016 at 2:00 p.m. to determine whether continued public access to the TBI File through the District Attorney’s internet site would continue to serve the public interest after that time.

The court now considers whether the TBI File should be redacted, and if so, to what extent. The court first notes that, in its disclosure, the State shall adhere to the General Assembly's requirements set forth in TENN. CODE ANN. § 10-7-504(f)(1) which provide that the following records or information of any municipal employee or former employee "shall be treated as confidential and shall not be open for inspection by members of the public" and must therefore be redacted from the TBI File before disclosure. In addition such records or information relating to members of the public who may have cooperated with the TBI's investigation should be similarly redacted. The information to be redacted includes: (A) Home telephone and personal cell phone numbers; (B) Bank account and individual health savings account, retirement account and pension account information; (C) Social security number; (D) Residential information, including the street address, city, state and zip code; (E) Driver license information (and photographs); (F) Emergency contact information; (G) Personal, nongovernment issued, email addresses; and (H) like information of immediate family members, whether or not the immediate family member resides with the person involved.

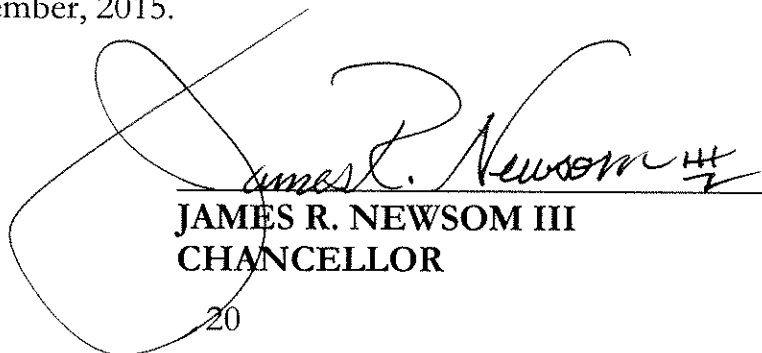
Again, the court also finds the TBI Administrative Rule provides guidance as to additional matters which must be redacted prior to public disclosure. As set forth in TBI Administrative Rule 1395-1-6-.02(3), TBI records are subject to specific restrictions on their release as "otherwise provided by state [and Federal] law." In this regard, the Director must redact material that is specifically confidential and

privileged. For example, the State is to redact (a) Social Security Numbers, pursuant to 5 U.S.C. § 552a Note, Disclosure of Social Security Numbers; (b) information protected by the holding in *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1066 (6th Cir. 1998); (c) medical information protected by the holding in *Stenson v. City of Knoxville*, E.D. Tenn. No. 3:98-cv-142 (Memorandum and Order, R. 27, August 26, 1998); (d) information protected by the informer's privilege; and (e) information protected by the attorney work product doctrine. TENN. R. CRIM. P. 16. The materials produced shall be attested to by the custodian of records.

The court observes that this is not a final order for purposes of TENN. R. APP. P. 3(a) from which an appeal as of right might be taken. TENN. R. APP. P. 9(b) permits a party to seek an interlocutory appeal by filing and serving a motion requesting such relief within 30 days after the date of entry of the order from which interlocutory review is sought. In view of the foregoing, the operation of this order is stayed until December 15, 2015, within which time the adversely affected party should advise the court of his intention to request a further stay pending application for permission to appeal.

**IT IS SO ORDERED.**

This 8th day of December, 2015.


  
\_\_\_\_\_  
**JAMES R. NEWSOM III**  
**CHANCELLOR**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of December, 2015, a true and correct copy of the foregoing Order has been mailed, United States Mail, First Class Postage prepaid and delivered by electronic mail to:

Amy P. Weirich  
District Attorney General  
30<sup>th</sup> Judicial District  
201 Poplar Avenue, 3<sup>rd</sup> Floor  
Memphis, TN 38103

Arthur E. Quinn  
62 North Main Street  
Suite 401  
Memphis, TN 38103

  
\_\_\_\_\_  
Deputy Clerk