IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION
AT NASHVILLE

KENNETH L. JAKES,	)	
	)	
Plaintiff/Appelleee,	)	No. M2015-02471-COA-R3-CV
	)	
v.	)	Sumner County Chancery Court
	)	No. 2014CV53
SUMNER COUNTY BOARD OF EDUCATION,	)	
	)	
	)	
Defendant/Appellant.	)	

AMICUS CURIAE BRIEF OF TENNESSEE COALITION FOR OPEN GOVERNMENT, INC.

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INTRODUCTION

The Tennessee Coalition for Open Government, Inc. (TCOG) conditionally files this *amicus curiae* brief pursuant to Rule 31(a) of the Tennessee Rules of Appellate Procedure.

STANDARD OF REVIEW

TCOG accepts the Standard of Review as set forth in the Appellee's brief.

STATEMENT OF THE CASE

TCOG accepts the Statement of the Case as set forth in the Appellee's brief.

STATEMENT OF FACTS

TCOG accepts the Statement of Facts as set forth in the Appellee's brief.

ISSUES ADDRESSED IN THIS BRIEF

I. Whether the Sumner County Board of Education violated the Tennessee Public Records Act by refusing to allow a Tennessee citizen to inspect the Board's Public Records Policy simply because that citizen submitted his request by electronic mail?

II. Whether this appeal has been rendered moot by virtue of the Board's action in providing to Kenneth Jakes a copy of the requested public record after Mr. Jakes had filed suit against the Board?

SUMMARY OF ARGUMENT

The Sumner County Board of Education violated the Tennessee Public Records Act (TPRA) when the Board informed Kenneth Jakes that it would not allow him to inspect a public record because he had submitted his request to the Board by electronic mail.

The public's right of access to public records is very broad, and the TPRA does not allow a government agency to establish rules that would inhibit the disclosure of public records for inspection.

The TPRA requires government entities to make records available for inspection "promptly" after the request is made. The TPRA does not limit the manner in which a citizen may submit to a government entity the citizen's request to inspect a public record.

The Board's decision to provide the requested record to Mr. Jakes after he had filed this lawsuit does not render this case moot because the "public interest" exception to the mootness doctrine warrants a decision by this Court of the important issue raised by the facts of this case.

ARGUMENT

I. The Sumner County Board of Education violated the Tennessee Public Records Act by refusing to allow Kenneth Jakes to inspect the public record that he requested to inspect.

The relevant facts of this case are undisputed. Kenneth Jakes, a citizen of Tennessee, sent a request by electronic mail ("email") to Jeremy Johnson, the director of communications for the Sumner County Board of Education ("the Board"), on March 21, 2014, requesting to inspect the Board's Public Records Policy, which is itself a public record.

On the date of Mr. Jakes' request, the Board's Policy stated in pertinent part: "The Director of Schools shall maintain all school system records required by law, regulation and Board Policy. Any citizen of Tennessee . . .shall be permitted, upon written request, at a reasonable time, to inspect all records maintained by the school system unless otherwise prohibited by law, regulation, or board policy. A person who has the right to inspect a record may request and receive copies of the document subject to the payment of reasonable costs." (TE No. 1). According to the Board, the Policy was even available on the Board's website.[1]

After receiving Mr. Jakes' email request, Mr. Johnson could have complied with the request in one of three ways:

(1) He could have replied to Mr. Jakes' email by sending him a link to the page on the Board's website where the Policy was found; or

(2) He could have sent the Policy to Mr. Jakes as an attachment to his email reply to Mr. Jakes' email; or

[1] According to the Board's brief and the testimony of its witnesses at trial, the Board applied this Policy in a manner which was at variance with the language of the Policy. The Board accepted requests to inspect records if the requests were made (1) in person (without a written request) or (2) by a written request sent through the U.S. Mail. It should be noted that an email request is actually a written request (albeit not sent through the U.S. Mail), so Mr. Jakes' request was actually in compliance with the Board's official Public Records Policy.

(3) He could have responded to Mr. Jakes' email by informing Mr. Jakes that he could come to the Board's office during regular business hours and inspect the Policy.

Instead of choosing one of these three options, Mr. Johnson violated the letter and spirit of the Tennessee Public Records Act (TPRA) by sending an email to Mr. Jakes which stated: "In keeping with our practice regarding Open Records Request you will need to either submit your request in person or via the postal service." (TE No. 7)

At the time of Mr. Jakes' request in 2014, the TPRA provided in Tenn. Code Ann. § 10-7-503(a):

> *(a)(1)(A) As used in this part and title 8, chapter 4, part 6, "public record or records" or "state record or records" means 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.*
>
> *(B) "Public record or records" or "state record or records" does not include the device or equipment including, but not limited to, a cell phone, computer or other electronic or mechanical device or equipment, that may have been used to create or store a public record or state records.*
>
> *(2)(A) 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.*
>
> *(B) <u>The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure</u>. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall within seven (7) business days:*
>
> *(i) Make the information available to the requestor;*
>
> *(ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or*
>
> (iii) *Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.*

(3) Failure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the right to bring an action as provided in § 10-7-505.

(4) This section shall not be construed as requiring a governmental entity to sort through files to compile information; however, a person requesting the information shall be allowed to inspect the nonexempt records.

(5) This section shall not be construed as requiring a governmental entity or public official to create a record that does not exist; however, the redaction of confidential information from a public record or electronic database shall not constitute a new record.

(6) A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.

(7)(A) A records custodian may not require a written request or assess a charge to view a public record unless otherwise required by law; however, a records custodian may require a request for copies of public records to be in writing or that the request be made on a form developed by the office of open records counsel. The records custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, that includes the person's address. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.

(B) Any request for inspection or copying of a public record shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied.

(C)(i) A records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested material and to assess the reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.

(ii) The records custodian shall provide a requestor an estimate of the reasonable costs to provide copies of the requested material.

(emphasis added)

Mr. Jakes' request was "sufficiently detailed" to enable Mr. Johnson to identify the public record he was asking to inspect. The Board's Public Records Policy was not exempt from disclosure.

There was no need to review the record to determine whether it contained any confidential information that needed to be redacted. Under these circumstances, the Board had an obligation under Tenn. Code Ann. § 10-7-503(a)(2)(B) to make this public record available for inspection by Mr. Jakes "promptly"[2] after receipt of his emailed request.

The TPRA does not specify all the ways in which a citizen may transmit a request to inspect a public record. However, Tenn. Code Ann. § 10-7-503(a)(7)(A) states that a records custodian "may not require a written request . . .to view a public record." By using this language, the General Assembly obviously intended that a records custodian should comply with requests made in all reasonably available ways, including email.

The Chancery Court held that the Board violated the TPRA by failing to comply with Mr. Jakes' email request to inspect the Board's Public Records Policy. At pages 17-18 of its opinion, the Chancery Court stated:

> *We no longer live in a Pony Express world. Since the 1830's, we have lived in a telegraph world. Now we have telephones, facsimiles, websites, and forms of internet communication. We live in an instant communication world – communication that used to require days now requires only seconds.*
>
> *The Best Practice Guidelines state that "records custodians should make requested records available as promptly as possible"; that a records custodian "should strive to respond to all records requests in the most economical and efficient manner possible" and that "(i)f a governmental agency maintains a website, records custodians should post as many records, and particularly records such as agendas and minutes from meetings, on the website whenever it is possible to do so."*
>
> *Further, the argument that a requester has "choices" or can "elect" to make a request in writing is a very hollow argument when one "choice" or "election" is expressly prohibited under the TPRA –*

[2] The Board argues, at page 12 of its brief, that a government entity has seven (7) business days to make a record available for inspection. This is a misstatement of the law. Tenn. Code Ann. § 10-7-503(a)(2)(B) allows a government entity seven days only when "it is not practicable for the record to be promptly available for inspection." In this case, the Public Records Policy should have been made available for inspection "promptly."

a request to inspect public records in writing, "via postal service". The other "choice" or "election" can be extremely inconvenient by having to come in person to the School Board.

The School Board's Policies allow two forced "choices/ elections" that contravene or are inconsistent with the policy of the Open Records Act which requires the TPRA to be "broadly construed so as to give the fullest possible access to public records," T.C.A. § 10-7-505(d) and present case law. The policies are only for the convenience of the Defendant – an entity which processes only twelve to fifteen requests for public records each year.

Therefore, this Court finds that the policies of the Defendant for accepting requests for public records inspection by writing or in person, and the new policy specifically prohibiting all other forms for requests for inspection, are in violation of the TPRA.

The Board argues that the TPRA does not expressly require a records custodian to comply with a request to inspect a public record that was sent to the custodian by email. While it is true that the TPRA does not address the manner in which a request may be made to a records custodian, there is no logical reason why a records custodian should be allowed to refuse to comply with a request to inspect a public record which is conveyed to the custodian by email.

The Board argues incorrectly that the Office of Open Records Counsel (OORC) has opined that records custodians are not required to accept electronic requests to inspect records. On the Question-and-Answer section of the OORC website, these are the only two questions and answers which pertain to the manner in which records are requested:

May a records custodian require a request to inspect public records to be in writing?

Generally, the answer is No. Tenn. Code Ann. Section 10-7-503(a)(7)(A) states, that a records custodian may not "require a written request...to view a public record unless otherwise required by law." Given that a requestor is not required to make a request in person and given that a request for inspection is not required to be made in writing, a governmental entity should accept requests for inspection via telephone, if the requestor does not want to make the request in person or in writing.

Is a citizen required to make a request to inspect or receive copies of a record in person?

No, as long as the request is sufficient detailed for the records custodian to know what records are being requested, the request does not have to be made in person.[3]

While these two questions and answers do not expressly state that an email request to inspect a public record must be complied with, they do make clear that the requestor does not have to make the request in writing or in person. By inference, a requestor should be allowed to make the request over the telephone or by email.

The Supreme Court of Tennessee has repeatedly held that "[t]he public's right of access to records of governmental agencies under the Public Records Act is very broad." *Memphis Publishing Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994). The Public Records Act "serves a crucial role in promoting accountability in government through public oversight of governmental activities." *Memphis Publishing Co. v. Cherokee Children & Family Services, Inc.*, 87 S.W.3d 67, 74 (Tenn. 2002).

The TPRA creates "a clear legislative mandate favoring disclosure of governmental records." *Schneider v. City of Jackson*, 226 S.W.3d 332, 340 (Tenn. 2007). The TPRA does not allow a government agency "to establish rules that would substantially inhibit disclosure of records." *The Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297, 305 (Tenn. 1998).

The Board's reliance on this Court's decision in *Hickman v. Tennessee Board of Probation and Parole*, 2003 WL 724474 (Tenn. App. 2003), is misplaced. *Hickman* involved a public records request by an inmate who was incarcerated in a correctional facility and was therefore unable to make his request for public records in person. Instead, he allegedly made his request in a document sent by U.S. mail. This Court held that "the citizen may identify those documents sought by mail to the records custodian so that the records custodian can copy and produce those documents without

[3] These questions and answers are found at www.comptroller.tn.gov/openrecords/faq .

requiring an extensive search." Opinion, at page 3. *Hickman* did not deal with a request made by email, and an inmate would obviously not have been able to make a request by email due to his incarceration. *Hickman* provides no guidance to the Court with respect to the issues in this case.

The Board's "public policy" arguments border on the ludicrous. The Board's argument that email requests are not secure because of the risk of computer viruses and spam is belied by the overwhelming use of email communication in the business world, as well as the mandated use of email to file pleadings in the federal court system. The argument that documents sent through the U.S. mail pose no potential threat to the recipient is undermined by the anthrax scare which forever altered the manner in which mailed documents are handled by the U.S. Congress.

The Board's argument that email requests for public records "tend to get lost or overlooked more easily than paper copies" is, if true, a sad commentary on the employees of the Sumner County Board of Education. The argument that an email requesting records might be sent to the wrong person or the wrong email address has no merit, since a request sent by U.S. mail might just as easily be sent to the wrong person or the wrong postal address.

The Board's argument that email correspondence is "less stable and official than written or in-person communication" ignores the manner in which lawyers and business persons communicate with each other on weighty matters every day of the week. The Board's argument that "email requests would be costly" cannot possibly be an argument made with a straight face. If the Board were not already equipped to communicate through the use of email, the Board's argument might have some merit. But the Board's employees – as do the employees of school boards across Tennessee – use email every day to communicate with each other and with the outside world. The notion that email should not be used to receive public records requests is patently absurd as a matter of public policy.

II. The arguments of the other amici curiae have no more merit than the arguments of the Board.

Five organizations purporting to represent the interests of local school boards and local government entities have filed amicus curiae briefs. The arguments in these briefs have no more merit than the arguments of the Board.

The Tennessee Risk Management Trust argues that the TPRA "requires a person to be physically present at the records custodian's office in order to 'review' public records." This is patently false. Tenn. Code Ann. § 10-7-503(a)(2)(B) requires that the public record be "available for inspection" by the requests. The inspection does not have to be made at the office of the records custodian if it is available to the requestor on a website and the requestor is informed how to access that website.

As stated previously in TCOG's brief, the Board's custodian could have made the requested record available to Mr. Jakes by replying to his email with a link to the page on the Board's website where the records policy could be found. This would have been an easy and inexpensive way to comply with Mr. Jakes' request.

The Tennessee Risk Management Trust notes that Tenn. Code Ann. § 10-7-503(a)(2)(A) limits the right of inspection to "any citizen of this state" and argues that the requestor's "physical presence" at the office of the records custodian is necessary to satisfy this requirement through presentation of "a photo identification." Once again, the Trust misses the mark. Proof of the requestor's citizenship (if this is deemed important to the government entity) can as easily be provided electronically as it can in person. Furthermore, a government entity does not violate the TPRA by providing a public record to a requestor without demanding proof of citizenship.[4]

[4] TCOG respectfully suggests to the Court that government entities throughout the state routinely comply with public records requests without demanding proof of citizenship.

The Tennessee Risk Management Trust worries that school officials may fail to comply with the requirement to respond to a public records request within seven business days if an email request is sent on the weekend or initially sent to the wrong person. This argument is totally bogus. If the school's records custodian responds "promptly" in good faith to the records request, the school will not be in violation of the TPRA.

In a final rhetorical flourish, the Trust hypothesizes that the trial court's decision in this case "gives a requesting party the power to single-handedly shut down a government entity by simply sitting in front of a computer and methodically sending emails requesting to inspect records." Trust's brief, at 16. This hypothesis is so far-fetched as to merit no response.

Several of the amici argue that government entities should not be required by a court to respond to email requests to inspect records because the TPRA does not expressly require it. However, the Supreme Court has repeatedly held:

> In interpreting statutes, we are required to construe them as a whole, read them in conjunction with their surrounding parts, and view them consistently with the legislative purpose. ...
>
> The construction must not be strained and must not render portions of the statute inoperative or void. ... We must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning.
>
> (citations omitted)
> State v. Turner,
> 913 S.W.2d 158, 160
> (Tenn. 1995).

The TPRA creates "a clear legislative mandate favoring disclosure of governmental records." Schneider v. City of Jackson, 226 S.W.3d 332, 340 (Tenn. 2007). A government agency is not allowed "to establish rules that would substantially inhibit disclosure of records." The Tennessean v. Electric Power Board of Nashville, 978 S.W.2d 297, 305 (Tenn. 1997). In light of the overall purpose of the TPRA, the only reasonable construction of Tenn. Code Ann. § 10-7-503(a)(2)(B) is that a

government entity must allow a citizen to inspect public records when the request is submitted by email, even though the statute does not expressly discuss the manner of submission of requests to inspect records.

In Dorrier v. Dark, 537 S.W.2d 888, 892 (Tenn. 1975), a case involving the Open Meetings Act, the Supreme Court said:

> In the construction of a statute we must seek to ascertain the intention of the Legislature as it is expressed in the words of the statute and should look to the entire Act and give consideration to the purpose, objective and spirit behind the legislation.

See also Seiber v. Greenbrier Industries, Inc., 906 S.W.2d 444, 447 (Tenn. 1995); Metropolitan Government of Nashville and Davidson County v. Poe, 383 S.W.2d 265, 274 (Tenn. 1964)

The Tennessee Organization of School Superintendents and the Association of Independent and Municipal Schools contend that the trial court's decision will "seriously undermine the efficient operation of Tennessee public school systems and the ability of school boards to develop policies that take into consideration their individual needs and resources." Brief, at 3. In 2016 all school systems use email, and the receipt of email requests to inspect public records will not undermine the operation of Tennessee public schools.

The argument of the Tennessee Municipal League Risk Management Pool, Inc. that "a blanket rule requiring entities subject to the TPRA to accept certain methods of records requests could cripple a great deal of government entities" is utterly absurd. Email communication is such a commonly accepted method of communication in 2016 that no school board or other local government entity should be allowed to refuse a request submitted by email that simply asks to inspect a particular public record.

The Pool argues that the General Assembly's adoption of Chapter 722 of the Public Acts of 2016 supports its argument that a local government should have total discretion in deciding the

manner of submitting records requests that it will respond to. The Pool has completely misconstrued the fundamental purpose of Chapter 722, which is to make local governments more aware of their duties under the TPRA. In no way did Chapter 722 suggest that a local government can refuse to accept requests submitted by email. In fact, Chapter 722 (codified at Tenn. Code Ann. § 10-7-503(g)) states that the public records policy adopted by a local government "shall not impose requirements on those requesting records that are more burdensome than state law." If this Court interprets the TPRA to allow inspection requests to be submitted by email, any contrary policy adopted by a local government would be "more burdensome then state law."

The "sky is falling" arguments of the other amici are simply not persuasive.

III. This appeal has not been rendered moot by virtue of the Board's action in providing a copy of the requested public record to Mr. Jakes after he filed this lawsuit.

At pages 27-30 of its brief, the Board argues that Mr. Jakes' claims are moot because "the Board provided Jakes with a personal hard copy of the requested record early in this litigation." The Board urges this Court to dismiss the appeal on mootness grounds.

In *State v. Rodgers*, 235 S.W.3d 92, 97 (Tenn. 2007), the Supreme Court discussed the mootness doctrine:

> The mootness doctrine provides that before the jurisdiction of the courts may be invoked, "a genuine and existing controversy, calling for present adjudication" of the rights of the parties must exist. ... Courts may not issue advisory rulings.

In *Rodgers* the Court also explained that there are exceptions to this rule:

> There are exceptions to the rule. A court may review the merits of an appeal when the appeal involves issues of great importance to the public and to the administration of justice, or when the appeal involves issues capable of repetition yet evading review. *See Dockery v. Dockery*, 559 S.W.2d 952, 954-55 (Tenn.Ct.App. 1977).

In *Dockery* (the case cited by the Supreme Court in *Rodgers*) this Court gave several examples of the types of cases that fit within the exception to the mootness doctrine:

> The types of issues the courts are likely to resolve despite their mootness are:
> (1) questions that are likely to arise frequently;
> (2) questions involving the validity or construction of statutes;
> (3) questions relating to elections;
> (4) questions relating to taxation, revenue, or governmental financial affairs;
> (5) questions relating to the conduct of public officers or bodies;
> (6) questions involving the governmental regulation of public utilities; and
> (7) questions which must necessarily become moot before the appeal can be heard.
>
> (emphasis added)
> 559 S.W.2d at 955.

The facts of this case fit squarely within items 1, 2, and 5 in the above list of exceptions to the mootness doctrine.

The Supreme Court's most recent pronouncements on the mootness doctrine came in Justice Koch's opinion in *Lynch LLC v. Putnam County*, 301 S.W.3d 196, 210-212 (Tenn. 2009), in which the Court set forth the considerations that should be addressed in deciding whether a case should be dismissed on mootness grounds:

> To guide their discretion, the courts should first address the following threshold considerations: (1) the public interest exception should not be invoked in cases affecting only private rights and claims personal to the parties; (2) the public interest exception should be invoked only with regard to "issues of great importance to the public and the administration of justice"; (3) the public interest exception should not be invoked if the issue is unlikely to arise in the future; and (4) the public interest exception should not be invoked if the record is inadequate or if the issue has not been effectively addressed in the earlier proceedings.
>
> If the threshold considerations do not exclude the invocation of the public interest exception to the mootness doctrine, the courts should then balance the interests of the parties, the public, and the courts to determine whether the issues in the case are exceptional enough to

> address. In making this determination, the courts may consider, among other factors, the following: (1) the assistance that a decision on the merits will provide to public officials in the exercise of their duties, (2) the likelihood that the issue will recur under similar conditions regardless of whether the same parties are involved, (3) the degree of urgency in resolving the issue, (4) the costs and difficulties in litigating the issue again, and (5) whether the issue is one of law, a mixed question of law and fact, or heavily fact-dependent.
>
> 301 S.W.3d at 210-211.

When these considerations are applied to the facts of this case, it is clear that the appeal should not be dismissed as moot:

1. *The public interest exception should not be invoked in cases affecting only private rights and claims personal to the parties.*

In this case, the issues raised on the face of the record and as embodied in the pleadings clearly affect the rights of all citizens of the State of Tennessee.

2. *The public interest exception should be invoked only with regard to issues of great importance to the public and the administration of justice.*

What can be more important to the public and more relevant to the administration of justice than the right of a citizen to inspect records created by his government, particularly when this right has been recognized and codified by the legislature?

3. *The public interest exception should not be invoked if the issue is unlikely to arise in the future.*

Based upon the Board's admissions in its brief, it has a longstanding practice of not accepting email requests to inspect records. The Board also provided the Court with public-records policies from *dozens* of other county boards of education across Tennessee which also prohibit email requests. Therefore, if the issues raised by the parties are not decided in this case, they are certain to arise again in future cases. We live in an electronic age. Business is routinely transacted through the use of email

communication. This Court must decide whether citizens can use this method of communication to exercise their statutory right to inspect public records created by their government.

4. The public interest exception should not be invoked if the record is inadequate.

The adequacy of the record in this case cannot seriously be questioned.

The threshold considerations clearly do not exclude the invocation of the public interest exception to the mootness doctrine in this case. Therefore, the Court must balance the interests of the parties, the public, and the courts to determine whether the issues in this case are exceptional enough to address.

Balancing these interests leads inevitably to a conclusion that the public interest exception to the mootness doctrine is justified in this case, for the following reasons:

1. A decision on the merits will assist school board officials across the state (and other public officials) in understanding whether they must comply with email requests to inspect public records.
2. Based upon the school board policies cited in Tabs D and E to the Board's brief, it is likely that the legal issues in this case will recur regardless of whether the same parties are involved.
3. There is a significant degree of urgency in resolving the legal issues in this case.
4. Because the Board has expended public funds in litigating the issues in this case and because other school boards would have to expend public funds in litigating the same issues in future cases, it is important that the Court settle the issues in this case so that future cases will be unnecessary.

5. The primary issues to be decided by this Court are legal issues, which are not heavily fact-dependent.

If this Court does not resolve the legal issues presented by the facts of this case and provide guidance to the school boards of this state regarding their duties under the Public Records Act, the Court will surely be facing the same or similar issues in future cases. This appeal should not be dismissed on mootness grounds

CONCLUSION

TCOG urges this Court to hold that the TPRA requires the Board and all other local government entities to accept and respond to requests to inspect public records which are submitted by email.

TCOG urges this Court to hold that this case did not become moot when the Board supplied to Mr. Jakes a copy of the requested public record after he had filed suit against the Board under the TPRA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 26th day of October, 2016, a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, to the following:

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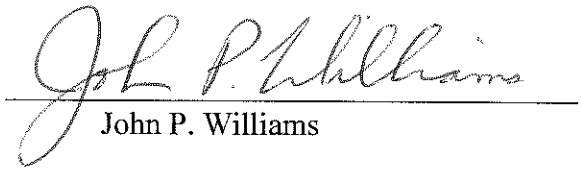

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