IN THE COURT OF APPEALS FOR THE STATE OF TENNESSEE
MIDDLE DIVISION AT NASHVILLE

KENNETH L. JAKES, Plaintiff/Appellee, v. SUMNER COUNTY BOARD OF EDUCATION, Defendant/Appellant.	)	No. M2015-02471-COA-R3-CV On Appeal From The Sumner County Chancery Court Criminal Court Judge Dee David Gay No. 2014CV53

REPLY BRIEF OF APPELLANT SUMNER COUNTY BOARD OF EDUCATION

E. Todd Presnell (BPR No. 17521)
Edmund S. Sauer (BPR No. 29966)
Kristi Wilcox Arth (BPR No. 30404)
BRADLEY ARANT BOULT CUMMINGS LLP
1600 Division Street, Suite 700
Nashville, TN 32703
(615) 252-2582 (phone)
(615) 252-6380 (fax)
tpresnell@bradley.com
esauer@bradley.com

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

State Cases

Statutes

Rules

Other Authorities

INTRODUCTION

Jakes asks this Court to impose on state and local government entities an obligation to accept requests to inspect records made in advance of the inspection, and to accept such inspection requests sent via all "contemporary forms of communication." Jakes Br. 63. But Jakes does not cite a single statutory provision requiring entities to accept advance inspection requests. Nor does he cite a provision requiring entities to accept such requests in any particular format, including electronic mail.

Rather than adopting a one-size-fits-all approach, the Tennessee General Assembly has directed each state and local government entity to adopt its own public records policy, consistent with the TPRA's express requirements, setting forth "[t]he process for making requests to inspect public records." 2016 Tenn. Laws Pub. ch. 722, § 4 (to be codified at Tenn. Code Ann. § 10-7-503(g)(1)). Jakes' brief completely ignores this legislative directive, recognizing that it disproves his implied-obligation theory. If Jakes wants to impose obligations on the Board in addition to those set forth in the TPRA, his recourse lies with the General Assembly or with the Board's elected members, not with this Court.

Jakes' argument that the chancery court abused its discretion in denying his request for attorney's fees is meritless. A fee award is only proper under the TPRA when a custodian "willfully refused to disclose" a record. Tenn. Code Ann. § 10-7-505(g). The chancery court acted well within its discretion in finding that the Board did not willfully refuse to disclose a record. There is no legal requirement that custodians accept advance inspection requests sent by email. For this reason alone, the Court should affirm the chancery court's denial of Jakes' fee request. But even if the Court elects to establish a new requirement here, the Court should still affirm the chancery court's fee decision. At the time of Jakes' requests, there was no statutory provision or case law alerting custodians of the need to accept advance inspection requests sent via email. And,

in handling Jakes' requests, both the Board's attorney and the Tennessee Office of Open Records Counsel advised the Board that it was not required to accept inspection requests via email. For these reasons, the chancery court did not abuse its discretion in denying Jakes' request for attorney's fees.

ARGUMENT

I. The Board's Public-Records Policy Does Not Violate The TPRA.

A. The TPRA Allows Governmental Custodians To Adopt Policies Setting Forth The Process Of Making Public-Records Requests.

Jakes does not cite any statutory provision requiring state and local governmental entities to accept electronic requests to inspect public records. The only provision he cites, Tenn. Code Ann. § 10-7-503(a)(2)(A), merely provides that custodians "shall, at all times during business hours . . . be open for personal inspection by any citizen of this state." Jakes Br. 15. This provision only requires custodians to be open during business hours for personal inspection. It does not expressly or implicitly require custodians to accept inspection requests before the requestor appears in person, nor does it require custodians to accept such requests in electronic format.

In fact, the Board's policy goes above and beyond the statutory requirement for record inspection. The Board's policy not only allows citizens to appear in person during normal business hours to inspect records (as the statute requires), it also allows citizens to submit an advance inspection request by U.S. Mail. By permitting citizens to make an inspection request in advance, the Board's policy actually *increases* access to records above and beyond what the TPRA requires. There is simply no authority (statutory or otherwise) requiring custodians to accept such advanced requests by electronic means. Instead, governmental entities are permitted to decide for themselves whether to accept such inspection requests.

Jakes argues that the Court can "infer" that "the legislature did not intend to afford a governmental entity the right to dictate how a request can be made." Jakes Br. 17. But the General Assembly's recent amendment to the TPRA, extensively discussed in the Board's opening brief—which Jakes completely ignores—conclusively disproves any such implied intent.

The General Assembly has expressly required governmental custodians to "establish a written public records policy" that, among other things, includes "[t]he process for making requests to inspect public records." 2016 Tenn. Laws Pub. ch. 722, § 4 (to be codified at Tenn. Code Ann. § 10-7-503(g)(1)). This statutory directive makes express what the Office of Open Records Counsel and governmental custodians across the State have long recognized—*i.e.*, that custodians can (and now must) establish a public-records policy, tailored to the agency's particular needs and resources, that includes "[t]he process for making requests to inspect public records." *Id.* Jakes' argument—that the Board should not be allowed to formulate its own policy consistent with the TPRA's express requirements—violates the Tennessee General Assembly's clear mandate. Notably, Jakes does not dispute that adopting his proposed interpretation would invalidate numerous public records policies across the State. Appellant Br. 15, 19.

Jakes also challenges the Board's reliance on guidance from the Office of Open Records Counsel, claiming that Elisha Hodge's advice to Board attorney Jim Fuqua was inadmissible hearsay. Jakes Br. 26–27, 39–40. The chancery court, however, properly considered the evidence to show its effect upon the Board. TE Vol. VI at 231 (Trial Tr., Vol. II). In any event, the Office of Open Records Counsel provided the same advice on its website. The FAQs confirm the Counsel's view that the TPRA does not require custodians to accept requests via email or fax. FAQ, No. 25. Trial Ex. 15. Even though this FAQ addresses requests for copies, the point is the same: the TPRA leaves to individual governmental custodians whether to accept electronic inspection or records requests.[1] A publicly available *Practice Points* video from the Office of

[1] Jakes misstates the facts at trial when he alleges that Johnson accepted public records requests via electronic mail prior to Mr. Jakes' request. Jakes Br. 32. Instead, the proof at trial showed that Johnson occasionally shared information with the media via email in his role as the Supervisor of Board and Community Relations. TE Vol. X at 95–98 (Trial Tr., Vol. I). He never testified that he accepted requests made pursuant to TPRA by email. *Id.*; *see also* Appellant Br. 7.

Open Records Counsel reaffirms this advice. *See* Tennessee Bar Assoc., *Practice Points: Using Public Records*, *available at* http://www.tba.org/info/practice-points-using-public-records (at approx. 2:05–2:20) ("The second tip is know exactly where you are going to send your request and to whom you are going to send your request . . . So, you want to know: (1) Does the records custodian receive requests in email form? Do they receive it through the mail only? Will they take them via fax?").

B. Jakes Incorrectly Relies on *Waller v. Bryan* and *Allen v. Day*, Which Do Not Address The Issue Presented.

Jakes relies on *Waller v. Bryan*, 16 S.W.3d 770 (Tenn. 1999), and *Allen v. Day*, 213 S.W.3d 244 (Tenn. Ct. App. 2006), but neither of those cases expressly or implicitly suggests that custodians must accept electronic requests to inspect public records.

In *Waller*, the custodian required a prisoner to appear in person to make a request for copies of records that he ultimately wanted mailed to him. 16 S.W.3d at 772. Since prisoners (and other similarly incapacitated citizens) cannot appear in person to request copies or to retrieve them, the court held that a personal appearance was not necessary to request *copies* of records. *Id.* at 773. As the court explained, such a restriction "would prohibit all Tennessee citizens who are unable, because of health reasons or other physical limitations, to appear before the records custodian from obtaining copies of public documents." *Id.*

In contrast to citizens requesting copies of records, citizens who wish to personally inspect records—such as Jakes—by definition, do not have the health or physical limitations that would prevent them from appearing before the records custodian. Since a request to inspect, by its nature, contemplates an appearance before the records custodian, the rationale applied in *Waller* simply does not fit inspection cases. Thus, *Waller* does not require the Board to accept advance requests to inspect public records, including electronic requests.

The Court's decision in *Allen v. Day*, 213 S.W.3d 244 (Tenn. Ct. App. 2006), is also inapposite. In that case, the Court merely concluded that a custodian cannot claim lack of subject matter jurisdiction based on a deficiency with the request procedure when that custodian had already both accepted the request *and* issued a preemptive denial on the substance of the requested record. *Id.* at 249. The substantive denial, then, created the subject matter jurisdiction under TPRA. *Id.* at 250. When the requestor submitted her request for a settlement agreement to the custodian's agent after hours, that agent both accepted her request *and* preemptively advised her that the custodian would refuse to produce the requested settlement agreement. *Id.* at 249. The custodian essentially advised the requestor that—no matter how she submitted the request—the substance of the request was going to be rejected. And the custodian issued the preemptive and substantive denial even though both parties "agree[d] that the settlement agreement [wa]s not exempt." *Id.* at 261.

This case is completely different. Here, the Board has never advised Jakes that it would ultimately refuse to produce the requested policy document. The Board has no objection to producing the requested record; and, in fact, it already publishes all of its policy documents online for public view. At any point in this litigation, that document was already available to Jakes. The Board, however, never accepted Jakes' request like the agent did in *Allen*. *Id.* at 249–50. When the Board became aware that Jakes was attempting to improperly submit a public-records request via email, it promptly advised him on the proper way to submit it, so that the Board could actually receive and process his request. Jakes, however, never complied with the Board's instructions, and the Board never said it would ultimately refuse the request.

Because the Board never accepted the request, never issued a preemptive denial, and produced the record online, *Allen* is simply inapplicable here, and Jakes' reliance on it is

misplaced. Contrary to Jakes' argument, *Allen* simply does not establish a cause of action under the TPRA whenever a custodian receives a request, through any agent, through any medium, even if directly contrary to the custodian's lawful public-records policy.

C. Custodians, Not Courts, Are Required to Consider Competing Policy Concerns.

Jakes asks the Court to wade into the weeds of a policy analysis, weighing the pros and cons of accepting requests via email, telephone, or fax. These policy arguments, however, are precisely the type of policy considerations that the General Assembly directed state and local government custodians to consider when formulating and enacting their own procedures for accepting requests. If the General Assembly desired to impose a blanket requirement that all custodians accept records requests via email (or other "conventional methods of communication" (Jakes Br. 5)), then that requirement would appear in the TPRA, as recently amended. But it does not. Instead, the General Assembly leaves that policy determination to the discretion of each individual governmental entity.

II. Jakes' Claims Seeking A Copy Of The Board's Public-Records Policy Became Moot When The Board Provided Him With A Copy Of The Policy.

Jakes expressly "concedes" that the Board gave him a copy of its public-records policy early in this litigation. Jakes Br. 35. He also does not dispute that the Board's policy has, at all relevant times, been publicly available on the internet. For these and the other reasons set forth in the Board's opening brief, Jakes' claim seeking to inspect the Board's public-records policy is moot and the chancery court should have dismissed the claim on that ground after evaluating whether Jakes was entitled to attorneys' fees relating to the request. This Court should hold that a public-records request becomes moot when a custodian makes the record publicly available or otherwise provides the requested record to the plaintiff. *See Lance v. York*, 359 S.W.3d 197, 204 (Tenn. Ct. App. 2011).

The Board acknowledges, however, that Jakes' "cross appeal" raises additional issues that are not moot on appeal, including his claim relating to the March 31, 2014, email request to inspect "[a]ny and all communications between [the Board] and any other party or parties concerning [Jakes'] first public record request." Trial Ex. 9. The Board responded to this request. Trial Ex. 11 (Records-Request Response Letter). The chancery court held that the Board did not have to allow Jakes to inspect those documents and the Board has not done so. Consequently, Jakes' claim relating to the March 31, 2014 request is not moot.

III. The Chancery Court Acted Within Its Discretion In Denying Jakes' Request For Attorneys' Fees.

The chancery court found that attorneys' fees should not be awarded because the Board had not acted willfully. As the court found:

> I can definitely state from the proof that I've heard as to whether the defendants denial was willful. I can conclusively say I have heard all the proof and I'll rule on that issue now. Any denial here was not willful. It was not intentional, not entitling the plaintiff attorneys' fees.

TE Vol. XII at 426–27 (Trial Tr., Vol. III). The chancery court properly applied the willfulness standard articulated in *Friedmann v. Marshall County*, 471 S.W.3d 427 (Tenn. Ct. App. 2015), to find that the Board had not acted willfully. As the chancery court recognized, this case involves legal issues with no clear precedent, and the Board consulted and relied upon the advice of its staff attorney and the Office of Open Records Counsel. Considering all the facts and circumstances presented at trial, including the Board's commitment to transparency and Jakes' litigious attitude, the chancery court acted well within its discretion in declining to award attorneys' fees.

The TPRA provision authorizing attorneys' fees in certain cases (Tenn. Code Ann. § 10-7-505(g)) is "by its terms a limited award provision." *Memphis Pub. Co. v. City of Memphis*, 871 S.W.2d 681, 689 (Tenn. 1994). A chancery court's decision regarding an award of attorneys' fees under Tenn. Code Ann. § 10-7-505 is reviewed under an abuse of discretion standard. *Clarke v.*

City of Memphis, 473 S.W.3d 285, 290 (Tenn. Ct. App. 2015). To receive a fee award, a plaintiff must prove that the governmental custodian "willfully refused to disclose [a record]" and "knew that such record was public." Tenn. Code Ann. § 10-7-505(g). Even then, the chancery court has discretion to award fees or not. *Id.* (noting that a "court *may, in its discretion*, assess . . . reasonable attorneys' fees.") (emphasis supplied). Importantly here, the TPRA expressly provides that "[i]n determining whether the action was willful, the court may consider any guidance provided to the records custodian by the office of open records counsel." Tenn. Code Ann. § 10-7-505(g).

Willfulness is evaluated in light of the law's clarity at the time. *Friedmann v. Marshall Cty.*, 471 S.W.3d 427, 436 (Tenn. Ct. App. June 24, 2015); *see also Clarke*, 473 S.W.3d at 290 (stating, "we stress[] that willfulness should be measured in terms of the relative worth of the legal justification cited by a municipality to refuse access to records," and holding custodian willful where no precedent justified denial of request just because requestor was also a litigant); *The Tennessean v. City of Lebanon*, No. M2002-02078-COA-R3-CV, 2004 WL 290705, at *4 (Tenn. Ct. App. Feb. 13, 2004) (addressing the willfulness standard, stating "the knowledge component of the standard implicates the issue of the clarity of the law"). Courts evaluate the clarity of the law in terms of both "existing law" and any "good faith argument[s] for the modification of existing law." *Clarke*, 473 S.W.3d at 290.

Where the law is unclear or unsettled, Tennessee courts are less likely to find willfulness because they do not "impute to a governmental entity a duty to foretell an uncertain juridical future." *Compare Memphis Pub. Co. v. City of Memphis*, 871 S.W.2d 681, 689 (Tenn. 1994) (governmental custodian not willful where there was a lack of legal clarity on whether the requested "deposition transcripts were public at the time") *with Friedmann*, 471 S.W.3d at 440 (custodian who refused to provide copies of records absent a personal appearance was willful

because of the clear precedent in *Waller*, an Attorney General's Opinion, and the direct advice from the Office of Open Records Counsel, which all firmly established that personal appearance was not necessary to request copies).

Here, the chancery court did not abuse its discretion in denying Jakes' request for fees. *First*, Jakes argues that the chancery court erred by failing to apply the *Friedmann* standard. *See* Jakes Br. 38–40. The chancery court, however, expressly analyzed willfulness in light of the law's clarity, quoting *Friedmann* for the proposition that "the majority of cases discussing willfulness under the act have analyzed the issue in terms of the law's clarity at the time when the records request is made." TE Vol. XIII at 37 (Nov. 11, 2015, H'rg Tr.). The chancery court then specifically found "that the clarity of the law as to these particular issues" in this case "was not clear and those issues are presently being resolved in this particular lawsuit." *Id.* at 38. The chancery court further found that the Board did not refuse to produce the record, but rather simply refused to permit an email request procedure. *Id.* at 37 ("The Court finds that there was no showing of an unwillfulness to produce a particular record but rather involved a question or concern of the proper procedure to follow by the defendant in accepting a request for inspection.").

Second, the chancery court also correctly considered the direct "guidance [that was] provided to [the Board] from the Office of Open Records Counsel" to "measure willfulness in terms of the legal expectations that should have attached" in light of that advice. *Friedmann*, 471 S.W.3d at 439; *see also* Tenn. Code Ann. § 10-7-505(g). The chancery court specifically made findings of fact that the Board appropriately relied on the advice of counsel—both the staff attorney for the Board and the Office of Open Records Counsel. TE Vol. XIII at 38 (Nov. 11, 2015, H'rg Tr.) ("The Court finds that the records custodian . . . relied upon the advice of staff attorney Jim Fuqua. Fuqua was a staff attorney for the board of education and had been in that position since

2005. Mr. Fuqua relied on the advice from the Open Records Counsel."). The chancery court also acknowledged that the Board's records custodian, Jeremy Johnson, "pursued this records request in good faith." TR Vol. VII at 953 (Findings of Fact and Conclusions of Law at 22).

Third, the Board's policy presents the same two request options that this Court specifically outlined in *Hickman v. Tennessee Board of Probation & Parole*, No. M2001-02346, 2003 WL 724474, at *3 (Tenn. Ct. App. Mar. 4, 2003) ("In order to access public records, a citizen must either [1] appear in person ... or [2] if unable to appear in person, the citizen may identify those documents sought by mail . . . ."). Consequently, Jakes' argument that the Board's adoption and enforcement of a policy consistent with that case law constitutes a willful denial of records lacks any substantive basis.

Finally, additional facts and circumstances presented at trial favor a denial of fees. In keeping with the Board's commitment to transparency, the Board places all of its policies, Board agendas, Board minutes, budgets, and other such documents on the Board's website. TE Vol. X at 39 (Trial Tr., Vol. I). Jakes sent his request for a publicly posted document via email, knowing that the Board did not accept email requests. TE Vol. XII at 375 (Trial Tr., Vol. III) ("Q. Now, you knew before sending this March 21 email that the board's practice was not to accept email requests . . . [y]et you chose to send it by email anyway, didn't you? A. That is correct."). As the court found, Jakes then became immediately litigious "as soon as he got out of the starting blocks" and "threatened, challenged, intimated, and made fun of the Defendant through various emails." TR Vol. VII at 950 (Findings of Fact and Conclusions of Law at 19). In stark contrast to Jakes' bullying communications, the chancery court "f[ound] that Mr. Johnson's record with the school board is good." TE Vol. XII at 427 (Trial Tr., Vol. III). Thus, the chancery court found that the proof at trial "does not even come close" to supporting a fee award. *Id.*

In sum, the chancery court did not abuse its discretion in ruling that "there was no bad faith or unwillingness in denying the request on March 21st, 2014" and in declining to award fees. TR Vol. VII at 954 (Findings of Fact and Conclusions of Law at 23). For all the reasons stated herein and in the Board's opening brief, the Board did not violate the TPRA at all, much less willfully.

IV. The Chancery Court Did Not Abuse Its Discretion By Entering A Protective Order.

Jakes also challenges the chancery court's pre-trial decision to limit discovery and deny Jakes' request to depose Dr. Del Phillips, Sumner County Director of Schools, and Jeremy Johnson, Supervisor of Board and Community Relations. According to Jakes, the chancery court should not have entered a protective order preventing him from conducting these depositions. Jakes Br. 55–58. "[W]hether or not to issue a protective order lies within the sound discretion of the trial court, and its decision will not be reversed absent an abuse of discretion." *Loveall v. Am. Honda Motor Co.*, 694 S.W.2d 937, 939 (Tenn. 1985). The abuse of discretion standard "does not permit reviewing courts to second-guess the court below . . . or to substitute their discretion for the lower court's." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). Instead, an "abuse of discretion occurs when a court strays beyond the applicable legal standards or when it fails to properly consider the factors customarily used to guide the particular discretionary decision." *Id.*

Jakes has waived any argument challenging the chancery court's protective order. A party wanting to challenge a pre-trial discovery ruling on appeal must either file an interlocutory appeal or "proceed with trial, but preserve the discovery issue on appeal by preparing a complete and thorough record." *Comm'r of Dep't of Transp. v. Hall*, 635 S.W.2d 110, 112 (Tenn. 1982). Jakes did neither. He did not take an interlocutory appeal. Nor did he renew during trial any argument that he needed to depose Phillips or Johnson to prove his claims. Moreover, Jakes did not even subpoena Johnson or Phillips to testify at trial, as he could have done, further evincing Jakes' waiver. In fact, the Board called Johnson to testify at trial and Jakes extensively cross examined

him, which gave Jakes ample opportunity to question Johnson on any matter he wished. Jakes not only failed to subpoena Phillips to testify at trial, he made no offer of proof as to what types of information he expected to receive from Phillips or Johnson. *See* Tenn. R. Evid. 103(a)(2) (requiring offer of proof to preserve issue for appeal). For all of these reasons, Jakes has waived any objection to the chancery court's order not allowing him to depose Phillips or Johnson before trial.

Additionally, the chancery court acted well within its discretion in finding that "additional discovery [was] not required to adjudicate" the "limited" issues presented in this case. TR Vol. V at 628. Jakes did not explain to the chancery court—and he does not explain in his appellate brief—what deposition testimony he needed from Phillips or Johnson to help him prove his claims at trial. Jakes generally speculates that the witnesses would help him prove that the Board's denial of his public-records requests was "willful," and that the Board's policy was "changed with the specific intent to frustrate the citizens[']' access to records." Jakes Br. 57. But such self-serving, vague, and baseless assertions are inadequate to establish an abuse of discretion, particularly when Jakes extensively cross examined Johnson at trial and could have called Phillips to testify (but decided not to). Jakes also fails to explain how any deposition testimony would have altered the chancery court's well-reasoned determination that the Board did not act willfully given existing law and the Office of Open Records Counsel's advisory opinion. In short, Jakes has not—and cannot—establish that the chancery court abused its discretion and that the court's protective order prejudiced him. *See* Tenn. R. App. P. 36 (permitting reversal only where an "error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process").

V. The Chancery Court Correctly Refused to Issue Jakes' Proposed Overreaching Injunction.

Jakes also claims that the chancery court should have entered an injunction requiring the Board to accept all inspection requests, without limitation, "made by citizens through contemporary forms of communication." Jakes Br. 63. For the reasons set forth in the Board's opening brief and discussed above, the TPRA does not expressly or implicitly require governmental custodians to accept electronic or telephone requests to inspect public records. Instead, governmental custodians are directed to develop their own individual policies to establish, among other things, "[t]he process for making requests to inspect public records." 2016 Tenn. Laws Pub. ch. 722, § 4 (to be codified at Tenn. Code Ann. § 10-7-503(g)(1)). If Jakes does not agree with the Board's lawfully adopted policy and its concomitant request procedures, then his "recourse lies not with the judiciary, but with the legislature," *Home Builders Ass'n of Middle Tenn. v. Williamson Cty.*, 304 S.W.3d 812, 822 (Tenn. 2010), or with the publicly elected members of the Sumner County Board of Education.

VI. The Chancery Court Correctly Found That Jakes' March 31, 2014 Email Was Not A Valid Public-records request.

Finally, Jakes summarily challenges the chancery court's denial of his March 31, 2014 email seeking to inspect "[a]ny and all communications between [the Board] and any other party or parties concerning [Jakes'] first public record request." Trial Ex. 9. Jakes' request continued: "This is to include but not limited to the following. All emails SENT OR RECEIVED. All audible recordings and voice mail by all parties. All letters. All memos. All text messaging." *Id.* (emphasis in original). This Court should affirm the chancery court on this issue for several reasons, each of which is independently sufficient to affirm the chancery court's decision.

First, as explained above, the TPRA did not require the Board to accept inspection requests sent via email. For this reason alone, the Board was not required to comply with Jakes' March 31,

2014 email request. *Second*, as the chancery court found, Jakes' request was not "sufficiently detailed to enable the records custodian to identify the specific records to be located or copied." Tenn. Code Ann. § 10-7-503(a)(4). In these circumstances, Jakes' broad and unlimited "any and all communications" request is "not specific enough to comply with the TPRA." TR Vol. VII at 952 (Findings of Fact and Conclusions of Law at 21). Jakes acknowledges that the chancery court's specificity determination "is a finding of fact," Jakes Br. 63, but he fails to overcome the presumption of correctness to which the chancery court's finding is entitled. Tenn. R. App. P. 13(d). *Finally*, even though the TPRA did not require it to do so, the Board voluntarily conducted a review of its records for all potentially responsive documents. As the Board explained to Jakes, all responsive records were privileged communications. Trial Ex. 11. Consequently, the Board was not required to divulge such privileged records to Jakes. For each of these reasons, the Court should affirm the chancery court's finding that the Board did not have to comply with Jakes' March 31, 2014 email.

CONCLUSION

The Board respectfully requests that the Court reverse the chancery court's judgment on the validity of the Board's policy. The Court should hold that the Board's public-records policy complies with the TPRA. The Board further requests that the Court deny the injunctive relief sought by Jakes and uphold the chancery court's judgment on the issues of attorneys' fees, the protective order, and the invalidity of Jakes' March 31, 2014 email request.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: Edmund S. Sauer

E. Todd Presnell (BPR No. 17521)
Edmund S. Sauer (BPR No. 29966)
Kristi Wilcox Arth (BPR No. 30404)
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 32703
(615) 252-2355 (phone)
(615) 252-6355 (fax)

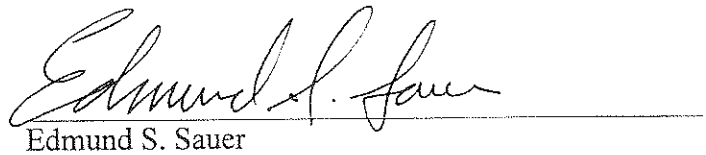
Attorneys for Sumner County Board of Education

Sept. 26, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document is being forwarded, via U.S. Mail, first class postage prepaid, this 26th day of Sept., 2016, to:

Kirk L. Clements
Haynes, Freeman & Bracey, PLC
P.O. Box 527
Goodlettsville, TN 37070
kirk@haynes-freeman.com
Attorneys for Plaintiff



Edmund S. Sauer