



JUSTIN P. WILSON
Comptroller

JASON E. MUMPOWER
Deputy Comptroller

February 21, 2019

Dawn Robinson, Chairman
Board of Trustees
Tennessee Risk Management Trust
404 BNA Drive
Suite 208
Nashville, Tennessee 37217

Dr. Phillip Wallace
Trust Administrator
Tennessee Risk Management Trust
404 BNA Drive
Suite 208
Nashville, Tennessee 37217

Chairman Robinson & Dr. Wallace:

This letter is to inform you that our office received a complaint from Senator Todd Gardenhire that the Tennessee Risk Management Trust ("TRMT") may be in violation of the Tennessee Public Records Act ("TPRA"). Specifically, the complaint alleges the TMRT is not providing access to settlement agreements that are otherwise open public record.

When this office receives a complaint regarding a possible violation of the TPRA, our routine practice is to contact the chairman of the governmental entity to make him or her aware of the complaint and to advise as to the requirements of Tennessee's public records laws. As such, I am contacting your office to inform you of the concerns presented to this office and to review the requirements of the law.

In Tennessee, settlement agreements between a private party and a governmental entity are generally considered "public record" subject to the TPRA because the agreements are entered into as part of the transaction of official government business. Courts in Tennessee and the Tennessee Attorney General have determined that confidentiality provisions in a settlement agreement that restrict access to an otherwise open public record are unenforceable and violate public policy because only the legislature has authority to make public records confidential. See *Contemporary Media, Inc. v. City of Memphis*, 1999 WL 292264 (Tenn. Ct. App. May 11, 1999); *Tennessean v. City of Lebanon*, 2004 WL 290705 at * 4-5 (Tenn. Ct. App. 2004); Tenn. Atty Gen. Op. No. 96-144, 1996 WL 729106 (December 3, 1996). Accordingly, an entity subject to the TPRA cannot enter into an agreement to make the terms of an otherwise open settlement agreement confidential.



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The TRMT is most likely a governmental entity, or the functional equivalent of a governmental entity, that is subject to the TPRA. In *Memphis Publ'g Co. v. Cherokee Children & Family Services, Inc.* 87 S.W.3d 67, 79 (Tenn. 2002), the Tennessee Supreme Court determined that entities created by some legislative act that perform essential governmental functions, receive government funding, and are regulated by government are generally considered the functional equivalent of a governmental entity and are subject to the TPRA. Here, the TRMT was created by governmental entities pursuant to an interlocal agreement and that interlocal agreement provides that TRMT derives its income from the performance of essential government functions exclusively for political subdivisions of the State of Tennessee. Accordingly, the TRMT is most likely subject to the requirements of the TPRA and it would be required to disclose settlement agreements entered into on behalf of the governmental entities it represents to the extent those settlement agreements are not otherwise made confidential pursuant to state law.

If you have questions or concerns regarding this matter or the application of Tennessee's public records laws, please feel free to contact our office at 615-401-7891 or open.records@cot.tn.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lee Pope", is written over a light blue horizontal line.

Lee Pope
Open Records Counsel