

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT, AT NASHVILLE

THE TENNESSEAN, ASSOCIATED)
PRESS, *CHATTANOOGA TIMES*)
FREE PRESS, *KNOXVILLE NEWS*)
SENTINEL, TENNESSEE COALITION)
FOR OPEN GOVERNMENT, INC.,)
TENNESSEE ASSOCIATED PRESS)
BROADCASTERS, WZTV FOX 17,)
WBIR-TV Channel Ten,)
WTVF-TV Channel Five, *THE*)
COMMERCIAL APPEAL and)
WSMV-TV Channel Four,)

Plaintiffs/Petitioners,)

v.)

METROPOLITAN GOVERNMENT)
OF NASHVILLE AND DAVIDSON)
COUNTY,)

Defendant/Respondent.)

FILED
2014 FEB -5 PM 3:03
CLERK OF COURT
DAVIDSON COUNTY
CHANCERY CT

No. 14-156-IV

COMPLAINT AND PETITION FOR ACCESS TO PUBLIC RECORDS

Plaintiffs/Petitioners have requested access to public records obtained from third parties by the Police Department of the Metropolitan Government of Nashville and Davidson County ("Metropolitan Government"), but the requests have been denied. These records pertain to an alleged rape which occurred on the Vanderbilt University campus on June 23, 2013. Several former members of the Vanderbilt football team have been charged. The incident and the cases have caused intense scrutiny by the Vanderbilt and regional community and have attracted national public attention. The records sought in this Complaint/Petition were created by third parties; they are not "reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with

investigating or prosecuting the case.” Tenn. R. Crim. P. 16(a)(2). Plaintiff/Petitioner files this Complaint for access to public records which are within the custody of the Metropolitan Government pursuant to the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501 *et seq.* As grounds for this Complaint/Petition, the Plaintiffs state as follows:

1. The Plaintiffs/Petitioners include the following:

a. *The Tennessean*, the Nashville-based regional daily newspaper which is owned by Gannett Satellite Information Network, Inc. Requests were made by Brian Haas and Maria De Varenne, in their official and individual capacities;

b. Associated Press, which gathers and distributes news of local, national and international importance to its member newspapers and broadcast stations and to thousands of other customers in all media formats across the United States and throughout the world. A request was made by Adam Yeomans, in his official and individual capacities;

c. *Chattanooga Times Free Press*, the Chattanooga-based regional daily newspaper which is owned by WEHCO Media, Inc. A request was made by Allison Gerber, in her official and individual capacities;

d. *Knoxville News Sentinel*, the Knoxville-based regional daily newspaper which is owned by E.W. Scripps Co. A request was made by Jack McElroy, in his official and individual capacities;

e. Tennessee Coalition for Open Government, Inc., a Tennessee public benefit corporation, which is a non-profit and non-partisan coalition of citizen, professional and media groups working to educate Tennesseans about their right to know about the affairs of their government as set out in the Tennessee Constitution and the Tennessee Open Meetings and Public Records laws. A request was made by Deborah Fisher, in her official and individual capacities;

f. Tennessee Associated Press Broadcasters, Tennessee’s representative board for radio and television member stations of the Associated Press. A request was made by Derall Stalvey, in his official and individual capacities;

g. WZTV Fox 17, the Nashville-based television station which is an affiliate of the Fox Network and is owned by Sinclair Broadcast Group. A request was made by Bryan McGruder, in his official and official capacities;

h. WBIR-TV Channel Ten, the Knoxville-based television station which is an NBC network affiliate and is owned by Gannett Pacific Corp. A request was made by Christy Moreno, in her official and individual capacities;

i. WTVF-TV Channel Five, the Nashville-based television station which is a CBS network affiliate and is owned by Journal Broadcast Group. A request was made by Sandy Boonstra, in her official and individual capacities;

j. *The Commercial Appeal*, the Memphis-based regional daily newspaper which is owned by Memphis Publishing Company. A request was made by Louis Graham, in his official and official capacities; and

k. WSMV-TV Channel Four, the Nashville-based television station which is an NBC network affiliate and is owned by Meredith Corporation. A request was made by Matthew Hilk, in his official and official capacities.

2. Defendant/Respondent, Metropolitan Government, is a governmental entity which is required to comply with the Tennessee Public Records Act, §§ 10-7-501 *et seq.* One of Metropolitan Government's departments or divisions is the Police Department (the "Metro Police Department"). The Metro Police Department has been involved in gathering information relating to the alleged crime(s) which occurred on the Vanderbilt campus on June 23, 2013 and shortly afterwards involving members of the university's football team.

3. The alleged crimes on the Vanderbilt campus on that date and/or the following few days have resulted in significant public interest, not only because of the prominence of Vanderbilt University in the community, state and nation, but also because of the larger public discussion regarding crimes allegedly committed by collegiate athletes, the handling of the investigations regarding those alleged crimes, and the ultimate disposition of the cases involving athletes.

4. In this particular instance, conflicting reports have arisen concerning the presence of certain individuals at or near the scene of the alleged crime on the evening in question. *The Tennessean* seeks to clarify the public reporting regarding this incident, including its own reporting. Plaintiffs/Petitioners also seek to bring to light additional facts regarding this incident and the criminal justice system which have not yet been revealed through other means.

5. The Tennessee Public Records Act is among the broadest open records statutes in the country. It provides: “All state, county and municipal records shall, at all times during business hours, . . . 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(2)(A).

6. Public records subject to the Act include “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). “Given this definition, the Public Records Act has been described as an ‘all encompassing legislative attempt to cover all printed material created or received by government in its official capacity.’” *Schneider v. City of Jackson*, 226 S.W.3d 332, 339 (Tenn. 2007) (quoting *Griffin v. City of Knoxville*, 821 S.W.2d 921, 923 (Tenn. 1991)).

7. The Tennessee Supreme Court has been vigilant in protecting the public’s right of access under the Act, emphasizing the legislative mandate of government transparency “even in the face of serious countervailing considerations.” *Memphis Publ’g Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994); *see also Memphis Publ’g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74 (Tenn. 2002) (“[We] interpret the terms of the Act liberally to enforce the public interest in open access to the records of state, county, and municipal governmental entities.”); *Tennessean v. Elec. Power Bd. of Nashville*, 979 S.W.2d 297 (Tenn. 1998); *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991); *Memphis Publ’g Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986).

8. The State of Tennessee does not recognize a law enforcement investigative exception to the Public Records Act. In prior years, law enforcement agencies have sought to establish an exception to the Public Records Act for records pertaining to law enforcement investigations. In *Schneider v. City of Jackson*, the Tennessee Supreme Court stated that “none of the[] express exceptions [to the Public Records Act] incorporate the law enforcement privilege” and “the law enforcement privilege has not previously been adopted as a common law privilege in Tennessee.” *Schneider*, 226 S.W.3d at 343-44. As the Court was “unwilling[] to judicially adopt public policy exceptions to the Public Records Act,” it found that “the law enforcement privilege is not a ‘state law’ exception to the Public Records Act.” *Id.* at 344.

9. Rule 16 of the Tennessee Rules of Criminal Procedure governs discovery in state criminal cases. Tenn. R. Crim. P. 16(a)(2) generally prohibits “the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with investigating or prosecuting the case.” Tenn. R. Crim. P. 16(a)(2) is a “work product” rule, protecting against the disclosure of mental impressions, conclusions, and legal theories of the pending case. *Wilson v. State*, 367 S.W.3d 229, 236 (Tenn. 2012); *Swift v. Campbell*, 159 S.W.3d 565, 572-73 (Tenn. Ct. App. 2004).

10. In *Appman v. Worthington*, 746 S.W.2d 165 (Tenn. 1987), the Tennessee Supreme Court stated that records covered by Tenn. R. Crim. P. 16(a)(2) would be exempt from disclosure under the Public Records Act “where the files are open and are relevant to pending or contemplated criminal action.” *Appman*, 746 S.W.2d at 166.

11. In *Appman*, the Tennessee Supreme Court did not expand the scope of Rule 16(a)(2) beyond those “reports, memoranda, or other internal state documents made by the

district attorney general or other state agents or law enforcement officers.” *Appman* did not amend Tenn. R. Crim. P. 16 or add a new criminal procedure rule. The Tennessee Supreme Court does not have the authority to amend rules of procedure by judicial decision. New or amended rules governing the courts of Tennessee

shall not take effect until they have been reported to the general assembly by the chief justice at or after the beginning of a regular session of the general assembly, but not later than February 1 during the session, and until they have been approved by resolutions of both the house of representatives and the senate.

Tenn. Code Ann. § 16-3-404.

12. A written Public Records Act request made by *Tennessean* reporter Brian Haas to the Metro Police Department is attached hereto as Exhibit A (the “*Tennessean* Request”). This written request sought “[a]ny records (as that term is broadly defined in the Act) regarding the alleged rape on the Vanderbilt campus.”

13. In addition, the *Tennessean* Request stated that, if the Metropolitan Police Department chose to assert Tenn. R. Crim. P. 16(a)(2), “materials obtained or gathered but which were recorded or prepared by persons or institutions other than state agents or law enforcement officers . . . be provided. This would include, but not be limited to, text messages received or sent and videos provided and/or prepared by any third-party sources.” The *Tennessean* Request has made clear that the Plaintiffs are seeking access to materials obtained by the Metro Police Department from third parties; however, the Plaintiffs are not seeking access to the video which has been reported was recorded during the actual alleged assault.

14. The Metropolitan Law Department denied the *Tennessean* Request. A copy of Metropolitan Government’s response is attached hereto as Exhibit B. As its basis

for rejecting the request, Metro stated, “The records you seek are part of an open criminal investigation/pending prosecution and, therefore, are presently exempt from disclosure.” Metropolitan Government cited some cases which it contended supported its position, including *Appman v. Worthington*.

15. The authorities cited by Metropolitan Government in its initial rejection of the *Tennessean* Request do not stand for the broad proposition that all records in an open investigative file are exempt from disclosure under the Public Records Act. Rather, each of the cited cases involved records “made by” law enforcement, the district attorney general, or other state agents and therefore fell within the scope of Rule 16(a)(2). In addition, case law provides that only those documents constituting “work product” are exempt from disclosure.

16. In a subsequent letter (attached hereto as Exhibit C), *The Tennessean* asked that Metropolitan Government reconsider its denial of the *Tennessean* Request. Metropolitan Government reasserted its denial of the *Tennessean* Request in its response attached hereto as Exhibit D. In that response, Metropolitan Government

disagree[d] with [Plaintiff/Petitioner’s] analysis, and . . . maintain[ed] that the requested records are confidential under the legal authority cited in the Police Department’s October 23 denial. The cases holding that investigative files are confidential during a pending criminal prosecution do not draw a distinction between the records in the files that were made by law enforcement and the records in the files that were made by third parties.

The Metropolitan Law Department did not respond to the argument that Rule 16(a)(2) exempts only “work product” documents.

17. In its subsequent response, Metropolitan Government said that “[w]ith respect to criminal investigations, a balance must be struck between the potential for harm that may result from disclosure of the records and the public interest in access to the records.”

18. Next, Maria De Varenne, Executive Editor and Vice President/News of *The Tennessean*, and *The Tennessean*'s counsel wrote to Mayor Karl Dean (letter attached hereto as Exhibit E) and asked Mayor Dean to reconsider Metropolitan Government's denial of the *Tennessean* Request. This letter reiterated the limitations of Tenn. R. Crim. P. 16(a)(2), and noted that "the Tennessee Supreme Court has not by judicial fiat expanded the scope of Criminal Rule 16 beyond its actual language." This renewed request asked that Mayor Dean reconsider "*The Tennessean*'s position that it and other requesters are entitled to public records which were not 'made by' law enforcement."

19. Metropolitan Government through its Law Director responded to the renewed request (email attached hereto as Exhibit F). Metro's Law Director stated that the Metropolitan Law Department had "carefully considered and reconsidered the analysis set forth in [the November 13 letter] and after due deliberation . . . [had] concluded that [it] should continue to deny the request made by *The Tennessean*" because "in ongoing criminal prosecutions, the potential for harm that may result from public disclosure of matters under investigation must be weighed against the public interest in access to records." According to Metro's Law Director, "it is clear that in the matter under discussion, the harm that may result from public disclosure of the requested records outweighs the public interest."

20. Metropolitan Government has refused to provide the third party records requested in the *Tennessean* Request as amplified.

21. "Any citizen of Tennessee" who submits a public records request and "whose request has been in whole or in part denied. . . shall be entitled to petition for access to any such record and to obtain judicial review of the actions taken to deny the access." Tenn. Code Ann. §

10-7-505(a). “[E]xpeditious hearings” are appropriate in such cases. Tenn. Code Ann. § 10-7-505(b).

22. “The burden of proof for justification of nondisclosure of records sought shall be upon the official of and/or designee of the official of those records and the justification for the nondisclosure must be shown by a preponderance of the evidence.” Tenn. Code Ann. § 10-7-505(c).

23. In addition to the requests made by *The Tennessean* and its news staff, several other entities and individuals made a supplemental written request by letter through counsel attached as Exhibit G.

24. In response to this supplemental written request, Metropolitan Government through its Law Director asserted that the requested records “are not public records” and that some of them are subject to a protective order entered in a pending criminal proceeding (response attached hereto as Exhibit H).

25. The Plaintiffs/Petitioners have asked Metropolitan Government to provide a schedule of materials which have been received or obtained from third parties in connection with the underlying investigation. Metropolitan Government has produced no schedule. Metropolitan Government has, on information and belief, produced voluminous materials to the defense counsel in the underlying cases.

26. In response to the *Tennessean* Request (as amplified) that Metropolitan Government could not assert Rule 16(a)(2) to exempt disclosure of the requested records that were not “made by” law enforcement and “work product,” Metropolitan Government has argued in its response(s) that “the harm that may result from public disclosure of the requested records

outweighs the public interest.” Metropolitan Government has cited to no statute, rule or common law exemption to justify its nondisclosure of these records.

27. No statute, rule or common law exemption to the Public Records Act justifies Metropolitan Government’s nondisclosure of the records requested by the Plaintiffs/Petitioners.

28. The public has a strong interest in learning about alleged assaults of young women and men on college campuses, including those allegedly committed by athletes on high-profile sports teams. The public has an especially strong interest in being confident that high-profile cases such as the ones involving this incident are investigated and prosecuted without regard for perceived power, prestige or prominence.

29. What Metropolitan Government has identified as a “public interest” weighing against disclosure of public records is not a factor under the Tennessee Public Records Act. To the extent that the Court considers the “public interest” articulated by Metropolitan Government, Plaintiffs/Petitioners submit that the interest of the public in the requested public records and the clear directive of the Tennessee Public Records Act militating in favor of transparency outweighs the suggested harm that Metropolitan Government has stated.

30. Metropolitan Government has violated the Public Records Act by refusing to disclose the requested records. Plaintiffs/Petitioners are entitled to the relief set forth in Tenn. Code Ann. § 10-7-505(b).

31. Metropolitan Government’s continued refusal to disclose the requested records constitutes a willful violation of the Public Records Act.

WHEREFORE, Plaintiffs/Petitioners pray:

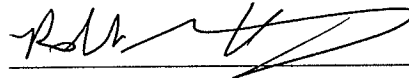
1. That process issue and be served upon Defendant/Respondent, Metropolitan Government.

2. That the Court issue the following orders:
 - a. That Defendant/Respondent Metropolitan Government be required to immediately appear and show cause for its refusal to produce documents in response to the Public Records Act requests;
 - b. That Defendant/Respondent Metropolitan Government be required immediately to provide the Court with a log of all requested materials which it has refused to produce. These include all case files relating to the alleged rape that occurred on the Vanderbilt University campus on or about June 23, 2013, and which are not records generated by law enforcement, the District Attorney General, or persons acting as agents for the State of Tennessee. Plaintiffs/Petitioners do not seek production of the video of the actual alleged assault;
 - c. That the Court hold that a formal written response/Answer to this Complaint/Petition is not required and the generally applicable period for filing an Answer under Tenn. R. Civ. P. 12 shall not apply in the interests of an expeditious hearing as provided in Tenn. Code Ann. §10-7-505(b);
 - d. That the Court set a date at least five (5) business days prior to the date of the hearing which it schedules for Metropolitan Government to file any brief;
 - e. That the Court enter the proposed Order submitted by Plaintiffs/Petitioners with this Complaint/Petition; and
 - f. That the Court issue an Order in favor of Plaintiffs/Petitioners requiring that the requested records immediately be made available.
3. That the Court determine that Metropolitan Government's refusal to disclose these public records has been willful, and award Plaintiffs/Petitioners attorneys' fees and

costs, pursuant to Tenn. Code Ann. § 10-7-505(g); such amount shall be shown to the Court at the conclusion of this matter.

4. That the costs of this action be taxed against Defendant/Respondent.
5. That the Court grant such further relief as it deems just and equitable.

Respectfully submitted,



Robb S. Harvey (Tenn. BPR No. 11519)
Lauran M. Sturm (Tenn. BPR No. 030828)
WALLER LANSDEN DORTCH & DAVIS LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219
Tel.: (615) 244-6380
Fax: (615) 244-6804

Attorneys for Plaintiffs/Petitioners

Stroud, Joseph Scott

From: Haas, Brian
Sent: Thursday, October 17, 2013 2:50 PM
To: Aaron, Don (MNPd)
Cc: Robb Harvey; Dew, Toni; Downey, Meg; Stroud, Joseph Scott
Subject: Public records request

Don,

I write to make a request under the Tennessee Public Records Act, Tenn. Code Ann. Sections 10-7-501 *et seq.* (the "Act"). As you know, I am a reporter for *The Tennessean*.

The formal written request is as follows:

- Any records (as that term is broadly defined in the Act) regarding the alleged rape on the Vanderbilt campus and in which Vandenburg, Banks, Batey and McKenzie are charged
- Any records regarding the case recently concluded against Boyd by his plea bargain

To the extent that the Metropolitan Police Department chooses to assert the exemption under Rule 16(a)(2) of the Tennessee Rules of Criminal Procedure, then the only public records which may be withheld are "reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with investigating or prosecuting the case." Tenn. R. Crim. P. 16(a)(2). If the Metro Police choose to assert that particular exemption, we ask that materials obtained or gathered but which were recorded or prepared by persons or institutions other than state agents or law enforcement officers should be provided.

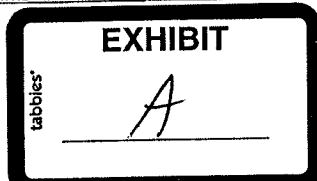
This would include, but not be limited to, text messages received or sent and videos provided and/or prepared by any third-party sources.

If the Department is relying on some exception(s) to the Public Records Act with respect to any portion of this request, I would ask that you let me know immediately and provide citation to the exception(s) relied upon. I would ask that the Department's response provide sufficient detail that we may contest the sufficiency of the exemption cited. I will be making an appointment to review these records during regular business hours. To the extent that I ask that copies be made, I would ask that you waive the applicable copying fees for this request. However, if charges are intended to be made, we ask that you not perform that work until we can be provided an estimate of the costs involved.

We trust that you will understand our position that the requested records are public under the Tennessee Public Records Act and the Tennessee Constitution. Neither *The Tennessean* nor I am waiving any rights under statute, constitution or common law.

I appreciate your prompt attention to this matter. I would request an official response as soon as it is possible. If you have any questions about this, please contact me at 615/726-8968.

Brian Haas
The Tennessean
Office: 615-726-8968
Fax: 615-259-8093
Twitter: <http://www.twitter.com/brianhaas>
Facebook: <http://www.facebook.com/pages/Brian-Haas-The-Tennessean/172649086129964>
<http://www.tennessean.com>



From: Haas, Brian
Sent: Wednesday, October 23, 2013 3:19 PM
To: Robb Harvey
Cc: Stroud, Joseph Scott
Subject: FW: Public records request
Attachments: April 3, 2009 - Opinion from Tennessee Office of Open Records Counsel.pdf

We have our answer, gentlemen.

Brian Haas
The Tennessean
Office: 615-726-8968
Fax: 615-259-8093
Twitter: <http://www.twitter.com/brianhaas>
Facebook: <http://www.facebook.com/pages/Brian-Haas-The-Tennessean/172649086129964>
<http://www.tennessean.com>

From: Aaron, Don (MNPd) [mailto:don.aaron@nashville.gov]
Sent: Wednesday, October 23, 2013 3:18 PM
To: Haas, Brian
Cc: Solomon, Saul (Legal); Cavanaugh, Jennifer (Legal); Gross, Cynthia (Legal)
Subject: RE: Public records request

Brian,

After careful consideration of your October 17 email for records pertaining to the investigation of a June 23 rape on the Vanderbilt University campus, the police department, in consultation with the Metropolitan Department of Law, respectfully denies your request. The records you seek are part of an open criminal investigation/pending prosecution and, therefore, are presently exempt from disclosure.

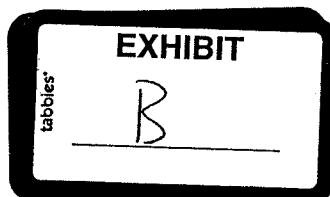
The Metropolitan Police Department bases this denial on the following authorities:

- Tenn. R. Crim. P. 16(a)(2).
- *Appman v. Worthington*, 746 S.W. 2d 165 (Tenn. 1987).
- *Swift v. Campbell*, 159 S.W.3d 565 (Tenn. Ct. App. 2004).
- *See Schneider v. City of Jackson*, 226 S.W.3d 332 (Tenn. 2007).
- Tenn. Op. Att'y Gen. No. 08-147 (Sept. 11, 2008).
- Tenn. Op. Att'y Gen. No. 05-155 (Oct. 13, 2005).
- Tennessee Office of Open Records Counsel Opinion (April 3, 2009) (attached).

As we have previously discussed both in person and on the telephone, I am keenly aware of, and appreciate, your continuing and strong interest in this case.

Don

c: Saul Solomon, Metropolitan Director of Law
Jennifer Cavanaugh, Metropolitan Attorney
Cynthia Gross, Metropolitan Attorney



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October 28, 2013

SUPERSEDING LETTER TO ORIGINAL HAND DELIVERED TODAY

Saul Solomon, Esq.
Director of Law, Metropolitan Government of Nashville
Metro Courthouse, Suite 108
P.O. Box 196300
Nashville, TN 37219-6300

Re: *The Tennessean's* Public Records Request

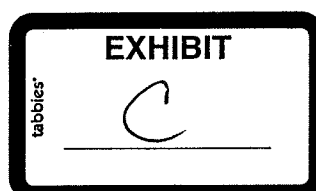
Dear Mr. Solomon:

This firm represents *The Tennessean* and its reporting team. This letter is to respond to the Metropolitan Police Department's October 23 rejection of the October 17 Tennessee Public Records Act request made by reporter Brian Haas and the newspaper, and also to clarify the request. We understand that the Police Department's response was prepared by or in consultation with your office.

In its response, the Metro Police expressed appreciation for *The Tennessean's* "continuing and strong interest" in the criminal cases involving several former members of the Vanderbilt football team. However, we do not believe that Metro Police's denial of *The Tennessean's* request comports with either the letter or spirit of the Tennessee Public Records Act. We write to ask that the Metro Police reconsider the refusal to release any requested records.

The Tennessean requested records regarding the alleged rape that took place on the Vanderbilt University campus on or about June 23, 2013. A copy of that request is attached to this letter. The incident has resulted in one plea agreement so far. In its Public Records request, *The Tennessean* and Mr. Haas sought materials prepared by Metro Police as well as materials obtained from third parties, such as Vanderbilt University and those charged with criminal offenses. At the time the request was made, it was not yet known whether the Metro Police would assert that certain materials are exempt from production under the Public Records Act pursuant to Rule 16(a)(2), Tennessee Rules of Criminal Procedure.

In Don Aaron's October 23 email, the Metro Police responded that it had carefully considered *The Tennessean's* request but was denying the request in its entirety because "[t]he records. . . are part of an open criminal investigation/pending prosecution and, therefore, are presently exempt from disclosure." Metro Police and your office cited several authorities upon which the denial purportedly was based. Rule 16(a)(2) has been broadly asserted as a blanket



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Saul Solomon, Esq.
October 28, 2013--Superseding
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exemption for all materials in a police investigative file. With due respect, we submit that Metro's position is mistaken, as discussed below.

We first would like to clarify *The Tennessean's* request, and then address the authorities you have cited. As *The Tennessean* has stated on multiple occasions, it has no intention of publishing the name of the alleged victim prior to trial without her permission. In addition, our client is not interested in obtaining a copy of photographs or video taken by any of the defendants during the alleged assault.

Our client does request other documents, videos, photographs, text messages, or other records which Metro Police have obtained or received from third parties in connection with the investigation. These records would include, for example, dormitory surveillance video from Vanderbilt, videos/photographs (other than those mentioned in the preceding paragraph), and text messages received from third parties such as the defendants, their friends, or the alleged victim. As we are sure you are aware, the plea hearing of Mr. Boyd left certain questions unanswered, particularly with respect to what appeared to be his text reference to the team's quarterback. *The Tennessean* wishes to get those questions answered and to clarify its earlier reporting as appropriate.

Even if the Metro Police Department chooses to assert Rule 16(a)(2), Tenn. R. Crim. P., as an exemption to the Public Records Act, we believe that records prepared by or obtained from third parties are not exempted from disclosure under Rule 16(a)(2). Instead, they are "public records" open to inspection under the Tennessee Public Records Act.

As you are well aware, the Tennessee Public Records Act is among the broadest in the country. It provides: "All state, county and municipal records shall, at all times during business hours . . . 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(2)(A). The Tennessee Supreme Court has been one of the most vigilant in the country in protecting the public's right of access, emphasizing the legislative mandate to "interpret the terms of the Act liberally to enforce the public interest in open access to the records of state, county and municipal governmental entities."¹

"Public records" are defined as "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

¹ *Memphis Pub'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74 (Tenn. 2002) (noting that "the Act serves a crucial role in promoting accountability in government through public oversight of governmental activities"); see also *Tennessean v. Electric Power Bd. of Nashville*, 979 S.W.2d 297 (Tenn. 1998); *Memphis Publ'g Co. v. City of Memphis*, 871 S.W.2d 681 (Tenn. 1994) ("Our courts have been vigilant in upholding this clear legislative mandate, even in the face of serious countervailing considerations."); *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991); *Memphis Publ'g Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986).

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Saul Solomon, Esq.
October 28, 2013--Superseding
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in connection with the transaction of official business by any governmental agency.” Tenn. Code Ann. § 10-7-503(a)(1)(A) (emphasis added). Thus, all records in the relevant investigative files that were either made or received by Metro Police are “public records” for purposes of the Act.

Rule 16(a)(2) provides some limits on which investigative records must be disclosed in response to a Public Records Act request. *Appman v. Worthington*, 746 S.W.2d 165 (Tenn. 1987). Rule 16(a)(2) states: “Except as provided in paragraphs (A), (B), (E), and (G) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or *other internal state documents made by* the district attorney general or other state agents or law enforcement.” (Emphasis added). This language makes clear that not all public records in an investigative file will fall within the Rule 16(a)(2) exemption. For instance, those records that are “received by” law enforcement and are not “reports, memoranda, or other internal state documents made by” law enforcement must still be disclosed.

None of the authorities mentioned in the rejection by Metro Police of the Public Records Act request stand for the broad proposition that all materials in the police file are exempt from disclosure. We will address each in turn below:

Rule 16(a)(2) – As discussed above, this rule exempts from disclosure “reports, memoranda, or *other internal state documents made by* the district attorney general or other state agents or law enforcement.” It does not exempt records made by third parties, which happen to have been *obtained by or received by* the government.

Appman v. Worthington, 746 S.W.2d 165 (Tenn. 1987) – The Public Records Act request involved memoranda, documents and records that were “the results of the investigation by Internal Affairs of the Department of Correction” into the murder of an inmate. *Id.* at 166-67. The requested records were therefore “made by” state agents. The Supreme Court held that such records were not required to be disclosed under the Public Records Act “where the files are open and are relevant to pending or contemplated criminal action.” *Id.* at 166.

Swift v. Campbell, 159 S.W.3d 565 (Tenn. Ct. App. 2004) – The court addressed “whether the State’s investigative and prosecutorial work product prepared in the defense of [a] writ of error coram nobis proceeding . . . is a public record that must be disclosed.” *Id.* at 575. As work product documents, the requested records were “made by” state agents. The court found that these records were “of the sort covered by Tenn. R. Crim P. 16(a)(2)” and were thus not subject to disclosure under the Tennessee Public Records Act. *Id.* at 576.

Schneider v. City of Jackson, 226 S.W.3d 332 (Tenn. 2007) – The Public Records Act request involved “field interview” documents (such as photographs and interview notes) prepared by city police. These documents were therefore “made by” law enforcement. The Supreme Court remanded the case for consideration of whether any of the requested documents

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Saul Solomon, Esq.
October 28, 2013--Superseding
Page 4

were “involved in an ongoing criminal investigation and exempt from disclosure” under the Tennessee Public Records Act. *Id.* at 346.

Tenn. Op. Att’y Gen. No. 08-147 (Sept. 11, 2008) – The Attorney General addressed whether “a list of names of individuals” generated by the Tennessee Department of Safety was required to be produced under the Public Records Act. *Id.* at 1. The Attorney General characterized this list as “an internal state document made by state agents” and expressed his opinion that it would not be required to be produced “[t]o the extent that any criminal prosecutions are in fact contemplated by the district attorney general.” *Id.* at 3.

Tenn. Op. Att’y Gen. No. 05-155 (Oct. 13, 2005) – The Attorney General addressed whether “911 or law enforcement radio transmission tapes” were required to be produced under the Tennessee Public Records Act. *Id.* at 3. These records were “made by” state agents. The Attorney General expressed his opinion that “[t]hese materials are not open to inspection and copying when they are relevant to an active criminal case.” *Id.*

Tennessee Office of Open Records Counsel Opinion (Apr. 3, 2009) – The Office of Open Records Counsel (a branch of the Comptroller’s Office) addressed whether “in-car videos taken from the vehicles of the police officers who responded” to an accident were required to be produced under the Public Records Act. *Id.* at 1. These records were therefore “made by” law enforcement. The Office of Open Records stated its opinion that “a request made pursuant to the [Tennessee Public Records Act] for any record *made by the district attorney general, persons acting as agents for the state, or law enforcement officers*, in connection with a pending or contemplated criminal action. . . may be denied based upon Tenn. R. Crim. P. 16(a)(2).” *Id.* at 4 (emphasis added).

As shown by the discussion above, none of the authorities cited by the Metro Police stand for the broad proposition claimed. Each of these authorities reinforce the point that Rule 16(a)(2) offers an exemption from disclosure under the Public Records Act only those records in an open investigative file that were “made by” the district attorney general, other state agents, or law enforcement.

This interpretation comports with the Tennessee Supreme Court’s characterization of Rule 16(a)(2) as a “work product” rule. *See, e.g., State v. Wilson*, 367 S.W.3d 229, 236 (Tenn. 2012) (“The [work product] doctrine ‘has a vital role in assuring the proper functioning of the criminal justice system’ and, applicable to criminal proceedings, is embodied in Tennessee Rule of Criminal Procedure 16(a)(2).”(internal citations omitted); *see also Swift v. Campbell*, 159 S.W.3d 565, 573 (Tenn. Ct. App. 2004) (“The version of the [work product] doctrine applicable to criminal proceedings is found in Tenn. R. Crim. P. 16(a)(2).”) (internal citations omitted).

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Page 5

The work product doctrine “protects parties from ‘learning of the adversary’s mental impressions, conclusions, and legal theories of the case,’ and prevents a litigant ‘from taking a free ride on the research and thinking of his opponent’s lawyer.’” *Swift*, 159 S.W.3d at 572. Thus, the “reports, memoranda, or other internal state documents made by . . . law enforcement” which qualify for Rule 16(a)(2) protection are only those which convey impressions or strategies concerning the case. *Wilson*, 367 S.W.3d at 236 (“The assistant district attorney’s handwritten note recording her impressions as to the credibility of the witnesses qualifies as a memorandum reflecting a mental impression that she formed in connection with prosecuting this case and is, therefore, protected work product under Rule 16(a)(2).”); *see also* Tenn. Op. Att’y Gen. No. 81-86 (Feb. 12, 1981) (finding that an earlier Attorney General Opinion removing “internal state documents made by the district attorney general or other state agents or law enforcement officers . . . from the requirement of public disclosure. . . only applied to so-called ‘work-product.’ . . . The opinion was not meant to have any reference to the official records kept by any organization which have a function other than the ‘work product’ function mentioned in that opinion.”).

Therefore, to the extent the Police Department’s files regarding these cases contain documents received by third parties (and are thereby not “work product”), those records should be disclosed to *The Tennessean* pursuant to its Public Records Act request. We ask that the Metro Police promptly provide a list of (1) all records in the relevant files; and (2) those records that Metro Police views as “work product” (i.e., those records which its agents “made”) and which it chooses to declare exempt from disclosure under Rule 16(a)(2).

We are confident that the Metropolitan Government of Nashville and Davidson County takes its responsibilities under the Public Records Act seriously. The Tennessee Supreme Court’s continued vigilance in the protection of open government was underscored in *Schneider v. City of Jackson*, where the Supreme Court rejected the attempt by certain law enforcement agencies to institute a “law enforcement investigative” exemption to the Public Records Act. In addition, the Supreme Court awarded the *Jackson Sun* its fees and costs. We would ask that you and your office re-examine the Public Records Act and the numerous court decisions affirming Tennessee’s commitment to openness in government, as well as those cases recognizing Rule 16(a)(2) as a “work product” rule.

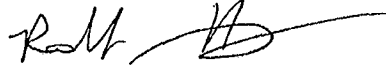
The Tennessean, and we, respectfully submit that many of the requested records are not exempt under Rule 16(a)(2), but in fact are public under the Tennessee Public Records Act and the Tennessee Constitution. We also believe that the Metro Police Department’s blanket rejection of the request may be deemed to be a willful violation of the Act, and encourage the Department to re-consider and reverse its decision with respect to materials which are not “work product” created by Metro law enforcement personnel.

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Saul Solomon, Esq.
October 28, 2013--Superseding
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In light of the fact that the Public Records request was made on October 17, we ask for your response to this letter by Friday, November 1. Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robb S. Harvey', with a long horizontal flourish extending to the right.

Robb S. Harvey
Waller Lansden Dortch & Davis LLP

cc: Jennifer Cavanaugh, Metropolitan Attorney (via hand delivery)
Cynthia Gross, Metropolitan Attorney (via hand delivery)
Maria De Varenne, Executive Editor and Vice President/News (via email)
Brian Haas, Reporter (via email)

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



KARL F. DEAN
MAYOR

SAUL SOLOMON
DIRECTOR OF LAW

DEPARTMENT OF LAW
METROPOLITAN COURTHOUSE, SUITE 108
P O BOX 196300
NASHVILLE, TENNESSEE 37219-6300
(615) 862-6341 • (615) 862-6352 FAX

October 31, 2013

Robb S. Harvey, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
P.O. Box 198966
Nashville, TN 37219-8966

Re: *The Tennessean's* Public Records Request

Dear Mr. Harvey:

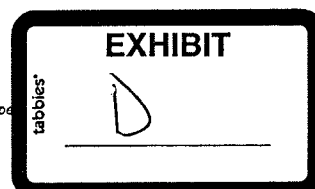
The Department of Law has reviewed your October 28, 2013 letter concerning the Metropolitan Nashville Police Department's denial of *The Tennessean's* October 17 Public Records Request. We respectfully disagree with your analysis, and we maintain that the requested records are confidential under the legal authority cited in the Police Department's October 23 denial.

The cases holding that investigative files are confidential during a pending criminal prosecution do not draw a distinction between the records in the files that were made by law enforcement and the records in the files that were made by third parties.

The records subpoena at issue in *Appman* "invoked the Public Records Act and was directed to *all records and documents* in the possession and control of Sergeant Worthington "relating to the death of Carl Estep...." *Appman v. Worthington*, 746 S.W.2d 165, 166 (Tenn. 1987) (emphasis added). The *Appman* Court held:

This appeal presents the issue of whether *records of the investigation* into the death of an inmate of a state correctional facility are available for inspection under T.C.A. § 10-7-503 of the Public Records Act. *We hold that they are not where, as in this case, the records are relevant to a pending criminal prosecution.*

Id. at 165 (emphasis added).



The *Appman* Court concluded, "This exception to disclosure and inspection does not apply to *investigative files* in possession of state agents or law enforcement officers, where *the files* have been closed and are not relevant to any pending or contemplated criminal action, but does apply where *the files* are open and are relevant to pending or contemplated criminal action." *Id.* at 166 (emphasis added).

Thus, the exception to disclosure applies to the entire investigative file. While there will almost always be records created by third parties contained in investigative files, the *Appman* Court did not distinguish between the records in the file that were created by law enforcement or the records created by third parties. The Court succinctly concluded that open investigative files are exempt from disclosure under the Public Records Act.

The Tennessee Supreme Court reiterated the *Appman* holding related to investigative files in *Schneider*: "Acknowledging that no statute specifically exempted these records from disclosure, the *Appman* Court nonetheless held that Rule 16(a)(2) exempted from disclosure under the Public Records Act *all 'open' criminal investigative files* that 'are relevant to pending or contemplated criminal action.'" *Schneider v. City of Jackson*, 226 S.W.3d 332, 341 (Tenn. 2007) (emphasis added).

With respect to criminal investigations, a balance must be struck between the potential for harm that may result from disclosure of the records and the public interest in access to the records, as reflected in *Schneider's* description of the "harmful and irreversible consequences could potentially result from disclosing files that are involved in a pending criminal investigation..." *Id.* at 345-46. Under *Schneider* and the other cited cases, criminal investigative files become public records when the files are closed and no longer relevant to a pending criminal prosecution, because at that point the disclosure of the records will no longer harm the prosecution.

We have a good faith belief that the Police Department's denial of *The Tennessean's* Records Request was proper under the case law and the other legal authority cited in the denial letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Saul Solomon".

Saul Solomon
Director of Law

waller

Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
P.O. Box 198966
Nashville, TN 37219-8966

615.244.6380 main
615.244.6804 fax
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Robb S. Harvey
Waller Lansden Dortch & Davis, LLP
615.850.8859 direct
robb.harvey@wallerlaw.com

November 13, 2013

VIA HAND DELIVERY

Mayor Karl F. Dean
Mayor's Office
100 Metropolitan Courthouse
Nashville, Tennessee 37201

Re: Appeal of *The Tennessean's* Public Records Request

Dear Mayor Dean:

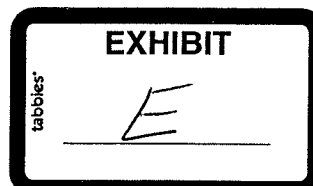
We write, as Executive Editor/Vice President-News of *The Tennessean* and its counsel, to ask that you reconsider the City's denial of the recent Tennessee Public Records Act for records in the custody of the Metropolitan Police Department.

This appeal to the Mayor of a City department head's rejection of a public records request by the media may be unprecedented in the history of Metropolitan Government. We believe, however, that your experiences as the former Metropolitan Public Defender and Metropolitan Legal Director place you in a unique position to reverse Metro's current course, adhere to the spirit of transparency required under state law, and avoid unnecessary expense to our taxpayers.

We know, and appreciate the fact, that you are a close reader of *The Tennessean*, and particularly as it concerns Metropolitan Government issues. Therefore, you already are aware of the fact that *The Tennessean* on October 17 made a Public Records Act request for records in the hands of the Metropolitan Police Department relating to the alleged rape that took place on the Vanderbilt University campus on or about June 23, 2013.

Metropolitan Legal Director Saul Solomon no doubt has informed you that he, on behalf of the Metropolitan Police Department, has taken the position that *The Tennessean's* request for public records is rejected on the ground that "[t]he records. . . are part of an open criminal investigation/pending prosecution and, therefore, are presently exempt from disclosure." We are attaching to this letter for your reference *The Tennessean's* original request to the Metropolitan Police Department (Ex. 1), the initial rejection of the request (Ex. 2), *The Tennessean's* request for reconsideration (Ex. 3), and the Metropolitan Legal Director's re-assertion of the rejection of the Public Records Act request (Ex. 4).

In our letter of October 28, we acknowledged the Metropolitan Government's position (which had not previously been taken) that its investigative records should be exempted under Rule 16(a)(2) of the Tennessee Rules of Criminal Procedure. As we pointed out in our response



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Karl Dean, Mayor
November 13, 2013
Page 2

letter, while that exemption might allow Metro to decline to produce work product created by the District Attorney General's Office or Metropolitan Police in connection with the criminal investigation, it did not permit Metropolitan Government to refuse to produce third-party records. We demonstrated that the authorities cited by Metropolitan Government did not support the broad assertion that all materials in an open investigative file are exempted from the Public Records Act. Rather, based on the express language of Tennessee Rule of Criminal Procedure 16(a)(2) and case law, only those materials "made by" law enforcement and constituting "work product" are exempt from disclosure. In our letter, we explained that *The Tennessean* has no interest in publishing the victim's name prior to trial without her permission, and was not seeking any videos or photographs taken by the defendants during the alleged assault.

In Law Director Solomon's rejection of our Public Records Act request, he declined on behalf of Metropolitan Government to acknowledge that Rule 16(a)(2) clearly states that it applies to "internal" records which are "made by" law enforcement or the District Attorney's Office. Instead, he opined that Metropolitan Government had "a good faith belief that the . . . denial of *The Tennessean*'s Records Request was proper." Since the Public Records Act contains a provision which permits courts to assess attorney's fees and costs against the governmental entity, we certainly appreciate the fact that Metropolitan Government wishes to avoid such an assessment.

As we are sure you are aware, the Tennessee Supreme Court in several decisions has stated its support of transparency, including its rejection in a 2007 decision of a proposed "law enforcement investigative" exemption to the Tennessee Public Records Act argued by a municipality. *Schneider v. City of Jackson*, 226 S.W.3d 332 (Tenn. 2007). The Metropolitan Law Department has relied exclusively upon Tennessee Rule of Criminal Procedure 16(a)(2) in rejecting our public records request. Based upon your unique experiences as Metropolitan Public Defender and Metropolitan Legal Director, in addition to serving as our Mayor, we are sure that you recognize the limitations of Criminal Rule 16, and the fact that the Tennessee Supreme Court has not by judicial fiat expanded the scope of Criminal Rule 16 beyond its actual language.¹

The Tennessean's Public Records request involves records which the Metropolitan Police Department and Law Department would prefer not to disclose. However, the Tennessee Supreme Court has held that the Public Records Act's mandate of disclosure must be upheld

¹ We are sure that you are aware that Criminal Rule 16(a)(2) is treated as a "work product" rule. See, e.g., *State v. Wilson*, 367 S.W.3d 229, 235-236 (Tenn. 2012) ("The [work product] doctrine 'has a vital role in assuring the proper functioning of the criminal justice system' and, applicable to criminal proceedings, is embodied in Tennessee Rule of Criminal Procedure 16(a)(2)."); CHARLES ALAN WRIGHT & PETER J. HENNING, FEDERAL PRACTICE AND PROCEDURE § 254 (4th ed. 2009) (collecting cases). As such, it protects only against the disclosure of legal impressions, conclusions, and theories. *Swift v. Campbell*, 159 S.W.3d 565, 572 (Tenn. Ct. App. 2004).

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Karl Dean, Mayor
November 13, 2013
Page 3

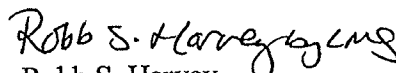
“even in the face of serious countervailing considerations.” *Memphis Publ’g Co. v. City of Memphis*, 871 S.W.2d 681 (Tenn. 1994). We ask that you reconsider *The Tennessean’s* position that it and other requesters are entitled to public records which are not “made by” law enforcement. Metropolitan Government’s denial of the Public Records Act request may be deemed a willful violation of the Act. In that event, *The Tennessean* would be entitled to recover its attorneys’ fees in a future legal proceeding. Such a proceeding may be avoided, and this imposition on taxpayers become unnecessary, if you will intervene and overrule the current rejection by your Law Department head.

We are confident that you will take the public’s request for reconsideration seriously and further the Public Records Act’s goal of openness in government.

Sincerely,



Maria De Varenne,
Executive Editor and Vice President/News



Robb S. Harvey
Waller Lansden Dortch & Davis LLP

Robb Harvey

From: Solomon, Saul (Legal) <Saul.Solomon@nashville.gov>
Sent: Thursday, November 21, 2013 11:05 AM
To: 'mdevarenne@tennessean.com'; Robb Harvey
Cc: Gross, Cynthia (Legal)
Subject: Records Request
Attachments: Tennesseancorr.pdf

Categories: Filed, #11352070

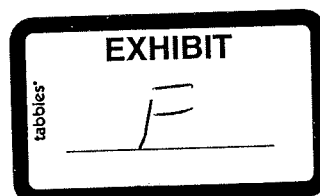
Ms. De Varenne and Mr. Harvey,

Mayor Dean had asked me to respond to your letter to him dated November 13. We have carefully considered and reconsidered the analysis set forth in that letter and after due deliberation we have concluded that we should continue to deny the records request made by *The Tennessean* in communications dated October 17 and October 28, 2013. This City has a long track record of openness and transparency in government and strongly supports both the letter and the spirit of the Tennessee Public Records Act. Nevertheless, as discussed in prior communications with you (copy attached to this email), in ongoing criminal prosecutions, the potential for harm that may result from public disclosure of matters under investigation must be weighed against the public interest in access to records. We believe it is clear that in the matter under discussion, the harm that may result from public disclosure of the requested records outweighs the public interest.

Respectfully,

Saul Solomon

Saul Solomon
Director of Law
Metropolitan Government of Nashville & Davidson Cty
Historic Courthouse, Suite 108
Nashville, TN 37201
(615) 880-1522



January 31, 2014

VIA EMAIL to Saul.Solomon@nashville.gov

Saul Solomon, Esq.
Director of Law, Metropolitan Government of Nashville
Metro Courthouse, Suite 108
P.O. Box 196300
Nashville, TN 37219-6300

Re: Supplement to Public Records Requests

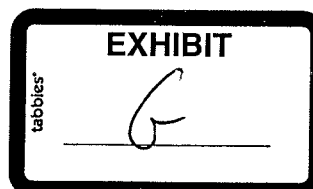
Dear Mr. Solomon:

This letter follows up on our earlier communications regarding requests made under the Tennessee Public Records Act by *The Tennessean*, reporter Brian Haas and Executive Editor Mara De Varenne (in their official and individual capacities)(collectively, "*The Tennessean*") in connection with the Metro Police Department's collection of materials from third parties regarding allegations concerning Brandon Vandenburg and others, and which concern a June 23, 2013 incident on the Vanderbilt University campus, and communications and events relating to that incident.

Several additional citizens are joining in and incorporating the prior Public Records Act requests concerning these cases. Their joinder in the requests does not modify *The Tennessean's* months-old requests. All requestors ask that the Metropolitan Police Department provide the requested materials on or before Tuesday, February 4, 2014. While I assume your response (if any) will be the same as before, denying *The Tennessean's* requests, I wanted you to be aware of these requestors' joinder.

The citizens joining in the prior requests are as follows:

- a. Associated Press and Adam Yeomans (in his official and individual capacities);
- b. *Chattanooga Times Free Press* and Allison Gerber (in her official and individual capacities);
- c. *Knoxville News Sentinel* and Jack McElroy (in his official and individual capacities);
- d. Tennessee Coalition for Open Government, Inc. and Deborah Fisher (in her official and individual capacities);
- e. Tennessee Associated Press Broadcasters and Derall Stalvey (in his official and individual capacities);



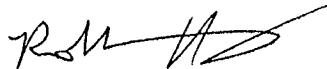
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Saul Solomon, Esq.
January 31, 2014
Page 2

- f. WBIR-TV Channel Ten/Knoxville and Christy Moreno (in her official and individual capacities);
- g. WZTV-TV Fox 17/Nashville and Bryan McGruder (in his official and individual capacities);
- h. WTVF-TV Channel Five/Nashville and Sandy Boonstra (in her official and individual capacities);
- i. *The Commercial Appeal* and Louis Graham (in his official and individual capacities); and
- j. WSMV-TV Channel Four/Nashville and Matthew Hilk (in his official and individual capacities).

Thank you for your anticipated cooperation.

Sincerely,



Robb S. Harvey
Waller Lansden Dortch & Davis LLP

cc: Cynthia Gross, Esq. (Metropolitan Government)(via email)
Clients (via email)

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



KARL F. DEAN
MAYOR

SAUL SOLOMON
DIRECTOR OF LAW

DEPARTMENT OF LAW
METROPOLITAN COURTHOUSE, SUITE 108
P O BOX 196300
NASHVILLE, TENNESSEE 37219-6300
(615) 862-6341 • (615) 862-6352 FAX

February 4, 2014

Robb S. Harvey, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
P.O. Box 198966
Nashville, TN 37219-8966

Re: *The Tennessean's* Public Records Request

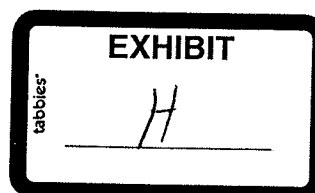
Dear Mr. Harvey:

The Department of Law has received your January 31, 2014 letter providing the names of additional news organizations and individuals who join in your public records request related to the June 23, 2013 incident on the Vanderbilt University campus.

The Department of Law maintains that the matters requested from the Police Department are not public records, as stated in my October 31, 2013 letter. In addition, some of the records you requested are also subject to a protective order entered in *State of Tennessee v. Banks et al.*, Davidson County Criminal Court No. 2013-C-2199. I am enclosing a copy of that order for your convenience.

Sincerely,

Saul Solomon
Director of Law



FILED

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IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION V

BCH

STATE OF TENNESSEE)

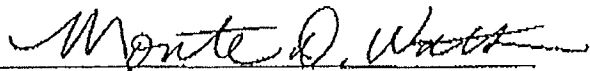
VS.)

CASE NO: 20013-C-2199)

BRANDON E. BANKS,)
CORY LAMONT BATEY,)
JABORIAN DASHON MCKENZIE,)
BRANDON ROBERT VANDENBURG)

AGREED PROTECTIVE ORDER

As evidenced by the signatures below, the State of Tennessee and the defendants have agreed that any and all photographs and videos provided in discovery by the State shall not be disseminated in any manner to any person other than the defense team. In addition to any other penalties this Court or any other body might lawfully impose, any dissemination shall be considered to be a violation of defendant's bond.

Entered this 2nd day of Oct September, 2013.
Hon. Monte D. Watkins, Judge

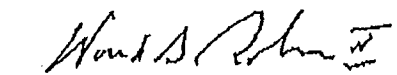
AGREED TO:



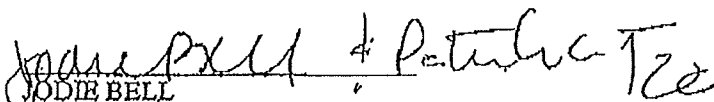
KATHY MORANTE
Tenn. Sup. Ct. Reg. #9616
Assistant District Attorney General
Washington Square, Suite 500
Nashville, Tennessee 37219



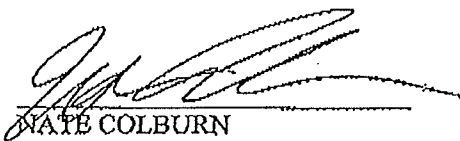
MARK SCRUGGS
Attorney for Brandon E. Banks



WORRICK ROBINSON
Attorney for Cory Lamont Batey



JODIE BELL
Attorney for Jaborian Dashon McKenzie



NATE COLBURN
Attorney for Brandon Robert Vandenburg