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IN THE CHANCERY COURT FOR SUMNER COUNTY
AT GALLATIN, TENNESSEE

KENNETH L. JAKES,)
)
Plaintiff,)
)
vs.) NO. CV-53-2014
)
SUMNER COUNTY BOARD OF)
EDUCATION,)
)
Defendant.)

EXCERPT OF PROCEEDINGS
FINDINGS OF FACT AND CONCLUSIONS OF LAW
Before the Honorable Dee David Gay
January 9, 2015

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A P P E A R A N C E S :

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P R O C E E D I N G S

THE COURT: Thank you, Mr. Clements.

This might seem like a real nit-picky issue to some people, but it's really not. And the more I review this, the more I see the significance of the issue.

If we look at the agreed -- if we look at the agreed facts here, without getting into the policy issue, it's clear. Mr. Jakes requested, quote, "a public record request to inspect and review." That's the thing that he makes in the second request on March 31st, "a public record request to inspect and review." The request is not for copies. And that could be by design; it could be by coincidence. I don't know. But I think that is a significant factual issue that we must deal with that maybe has not been addressed anywhere else.

And then we have the response of Jeremy Johnson: "In keeping with our practice regarding open records requests" -- doesn't say anything about copies or anything else, open records requests, all requests -- "you will need to either submit your request in person" -- okay, that's fine

1 -- "or via the Postal Service." Does that comply
2 with 10-7-503(a)(7)(A)?

3 And then we have the policy that was
4 submitted. If I could see Exhibit No. 5: "Any
5 citizen of Tennessee, state official, or other
6 authorized person shall be permitted, upon written
7 request, at a reasonable time, to inspect all
8 records maintained by the school system unless
9 otherwise prohibited by law." This policy concerns
10 inspection. And it says that it must be on a
11 written request. The issue is how does that line up
12 with the first sentence of the law, "A records
13 custodian may not require a written request or
14 assess a charge to view a public record"? That is
15 the issue.

16 Now, the first argument by the
17 defendant here is somewhat interesting. Mr. Jakes
18 goes on in the second paragraph: "If the records
19 policy is online, you can simply provide the link."
20 The defendant says it's online, and we don't have to
21 provide this because it's online.

22 Well, I note, and is something that
23 Mr. Clements alluded to: Why didn't he just say,
24 Mr. Jakes, the link is such and such, you can go
25 right there? Isn't that kind of in compliance with

1 the policy of the Open Records Act? And Mr.
2 Clements talks about motivation here. And then you
3 come in and say it's online, but you didn't mention
4 it in your response. And that doesn't make much
5 sense to me, especially in light of 10-7-123,
6 Electronic Access to Government Information, (a)(4):
7 "Once a remote electronic access information system
8 is in place, access must be given to all members of
9 the public who desire access to such records." You
10 didn't give him access.

11 This particular statute here, it
12 doesn't appear that it was complied with. It would
13 have been easy to give him access. It says access
14 must be given to all members of the public who
15 desire such access. You didn't do it. If you'd
16 have done it, we wouldn't be here.

17 I just don't think it's fair. I don't
18 think it's equitable. I don't think it's right to
19 say this case is moot on the grounds that the
20 information is available online, and yet the
21 defendant didn't say a word or provide access, did
22 nothing to follow up.

23 You know this court, Chancery Court,
24 has equitable jurisdiction, and it just doesn't
25 smell right. And I'm not going to allow this to be

1 moot simply when everything was under the control of
2 the defendant, and the defendant doesn't do anything
3 until you come into court.

4 Next, 10-7-503(a)(7)(A), we cannot --
5 we cannot overlook this particular language of the
6 law. The language is clear, the intent is clear,
7 and the law must be followed, and it can't be
8 changed unless the legislature does it. And the law
9 states, quote, "A records custodian may not require
10 a written request or assess a charge to view a
11 public record unless otherwise required." This
12 tells me in straight language you must accept a
13 request by any means to view or inspect.

14 Now, I'm not going to be here telling
15 the Board of Education what they've got to do, but
16 all I know is that they may not require a written
17 request. They can do anything other than require a
18 written request.

19 It goes on to say that "this section
20 shall be broadly construed so as to give the fullest
21 possible public access to public records."

22 Going on, the *Best Practice*
23 *Guidelines*, Guidelines 1, last paragraph: The
24 policy adopted by a government entity should
25 balance. "The governmental entities need to

1 function efficiently and to maintain the integrity
2 of records with the public's right to access such
3 records."

4 A governmental need to function
5 efficiently is something that we need to look at.
6 An interesting case in that extreme is the case of
7 *Byron Wells v. A. C. Wharton, Jr.*, 2005 WL 3309651.
8 You talk about problems on Shelby County government.
9 Byron Wells was a resident of Shelby County who
10 previously accessed public documents via the Shelby
11 County Portal website. Using a computer program
12 that he specially created, Mr. Wells would download
13 public documents in bulk format.

14 After access through the website
15 overloaded its computer system, the Shelby County
16 Government had to close the website for several
17 weeks. That's pretty demanding, and it destroys the
18 need for a governmental entity to function
19 efficiently. And we hear other examples of that
20 extreme.

21 And then there is another extreme
22 here, to maintain the integrity of the records with
23 a public's right to access records. When somebody
24 comes in, has a legitimate request to see public
25 records in the United States of America, that should

1 be provided. And anybody that's a public officer
2 should treat their duties as a public officer as if
3 *60 Minutes* is looking over their right shoulder on
4 audio and video. And anybody that's in public
5 office that doesn't want to do that, they shouldn't
6 be in office.

7 So you've got to maintain a balance
8 here. And looking at this case, there's not much
9 here a burden on the school board.

10 You go down to paragraph number three:
11 "A records custodian should make requested records
12 available as promptly as possible in accordance with
13 Tennessee Code Annotated, Section 10-7-503." Why in
14 the world did you not say the link is on such and
15 such, and then take care of it?

16 Number four: "A records custodian
17 should strive to respond to all records requests in
18 the most economical and efficient manner possible."
19 Why didn't you say so on the e-mail, that there was
20 a link? "To the extent possible, when records are
21 maintained electronically, records custodians should
22 produce records request electronically."

23 It goes on to just stand for the
24 proposition that you want to make public records
25 available as quickly as possible, as less burdensome

1 as possible, considering the problems of the load
2 that is placed on that particular governmental
3 agency, and that is not the case here.

4 But, lastly, I want to look again at
5 the case of *Wells v. A. C. Wharton* at 2005 WL
6 3309651. I read you a little bit about this
7 situation, but it's the only case I could find
8 that's right on point.

9 He filed a lawsuit -- Mr. Wells filed
10 a lawsuit against A. C. Wharton, Jr., everybody in
11 Shelby County. And also he alleged that the
12 defendant's requirement that Mr. Wells must first
13 present a written request before being allowed
14 public access constituted a denial of access to
15 public records.

16 If you look at the opinion, the
17 "Issues Presented" section, issue No. 7, "Whether
18 appellees may require any request for public records
19 to be in writing," on page 5 of the opinion, it says
20 and holds -- this was from the Court of Appeals
21 opinion by Alan Highers with David Farmer and Holly
22 Kirby, who is now Supreme Court Justice:

23 (Reading)

24 "Section 10-7-503 of the Tennessee
25 Code requires that a county official may not refuse

1 inspection of any public record to any citizen of
2 Tennessee unless otherwise provided by state law.
3 If a citizen has been denied access to public
4 records by a government official, that citizen may
5 petition for access to any such record and to obtain
6 judicial review of the actions taken to deny the
7 access. This Court must broadly construe this
8 section of the Tennessee Code so as to give the
9 fullest possible public access to public records."

10 This was a Rule 12 motion and then
11 they went on to state:

12 (Reading)

13 "Appellant, a resident of Shelby
14 County, has requested payment records from
15 transactions conducted between the Memphis Daily
16 News and Shelby County. Clearly, these records fall
17 within the definition of a public record. If we
18 view his allegations as true, appellant, a citizen
19 of Tennessee, has been denied access to public
20 records. Thus, appellant has stated a claim upon
21 which relief may be granted."

22 I find, therefore, that the plaintiff
23 here has stated a claim. And in looking at the
24 words of Rule 56, I do find that there's no genuine
25 issue as to any material fact, but I do find that

1 the moving party is not entitled to judgment as a
2 matter of law. Therefore, respectfully, the motion
3 for summary judgment will be denied.

4 Now, as I stated, I don't think we
5 need to do much else. I don't think we need to be
6 in litigation. I don't think we need to be in
7 depositions. I don't think we need to do
8 interrogatories. You know, sometimes we make things
9 more complicated than they really are. I'm ready to
10 move.

11 I will not grant any motion to compel,
12 any further discovery. We don't need it. And I
13 will, to the extent of where we are in this
14 particular lawsuit, grant a protective order because
15 we don't need any further discovery. I don't think
16 we need to make this more complicated than what it
17 is.

18 And I've stated for the record here
19 the legal issue that is ripe. With that in mind,
20 Mr. Clements, do you have any idea -- do we need to
21 schedule this for declaratory judgment? Do we need
22 to schedule a trial? What do you suggest?

23 MR. CLEMENTS: Well, Your Honor --

24 THE COURT: All I've done up to this
25 point is deny the motion for summary judgment to the

1 moving party.

2 MR. CLEMENTS: Well, if we're not
3 allowed to perform any additional discovery,
4 frankly, I guess I'll have to speak with
5 Mr. Presnell and see if can admit to some facts. If
6 we can't, then just set it for a hearing -- a trial.
7 But the problem with that, I guess, Your Honor, is
8 if we have a trial, then, with my limited discovery,
9 I don't know that I'm going to be fully prepared.

10 THE COURT: Well, I've stated the
11 issue pretty clear.

12 MR. CLEMENTS: I understand.

13 THE COURT: I mean, it doesn't get any
14 clearer here. And I don't know what else you need.
15 I mean, as far as motivations, opinions, who did
16 what, who knew what, when and where -- I mean, this
17 isn't Watergate. This is pretty simple.

18 MR. CLEMENTS: Well, again, then I'd
19 suggest --

20 THE COURT: Would you like for me to
21 give you all time to talk or do you want me to go
22 ahead and schedule a trial date? I'll do whatever
23 you all want to do. I think there's an
24 interlocutory appeal situation here. I don't want
25 to keep you all from doing that. I just kind of

1 want input. I want to accommodate you.

2 MR. PRESNELL: Judge, you're right.
3 The denial of my motion just means that the case
4 proceeds. I think the next logical step would be,
5 under the statute, is to schedule a show cause
6 hearing. The Rules of Appellate Procedure, however,
7 do allow us 30 days to seek an interlocutory appeal,
8 which I suspect we will be doing here on this.

9 THE COURT: Let's kind of have a
10 status hearing in 30 days and see where we are,
11 because anything that I said might be moot.

12 Now, I'm going to look to the
13 attorneys for advice here. I did not grant the
14 motion for summary judgment. Am I still required
15 under the rules to submit an order of conclusions --
16 findings of fact and conclusions of law?

17 MR. PRESNELL: You are, Judge. And
18 the 30 days for the interlocutory appeal will begin
19 running when Your Honor enters that order.

20 THE COURT: Okay. I've got an order
21 pending now on 43 wiretap cases on discovery. I'll
22 get this done.

23 MR. CLEMENTS: Your Honor, I'm happy
24 to draft -- I mean, you went through in detail the
25 basis of your finding. I'm happy to draft it.

1 THE COURT: Why don't you all see if
2 you can draft something that I said. I made it
3 pretty specific. You've even got an available
4 transcript to help you. That will help me
5 immensely. If you all could do that, I sure would
6 appreciate it.

7 MR. CLEMENTS: I will do that.

8 MR. PRESNELL: Your Honor, we can also
9 take the chore of drafting your order on the other
10 motions, the motions to amend and the discovery
11 motions.

12 THE COURT: That would be great. I
13 appreciate it.

14 Okay. February 9th is a date that I
15 had a jury trial scheduled and it's been continued.
16 Any time during that day is open. Do the attorneys
17 have any special requests as to whether it's in the
18 morning or afternoon?

19 MR. CLEMENTS: Your Honor, I don't
20 have my calendar with me. Are you talking about a
21 status conference on the phone?

22 THE COURT: Yes, we can maybe do it on
23 the phone. That be okay?

24 MR. CLEMENTS: I should be able to do
25 that.

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MR. PRESNELL: I'm the same way.

THE COURT: I'll do a status conference call. Let's make it at 2:00, and I'll do that like we did the other phone call.

Anything else we need to address?

MR. CLEMENTS: No, Your Honor.

THE COURT: Okay. Thank you. I want to comment and thank the attorneys for your professionalism and the way that you've handled arguments here in court, and we'll be in recess.

END OF PROCEEDING.

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C E R T I F I C A T E

STATE OF TENNESSEE)
) SS.
COUNTY OF SUMNER)

I, GLORIA J. DILLARD, LCR #241, licensed court reporter and notary public in and for the State of Tennessee, do hereby certify that the above hearing was reported by me and that the foregoing 15 pages of the transcript is a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am not related to nor an employee of counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 16th day of January, 2015.

GLORIA J. DILLARD, LCR #241
Expiration Date 6/30/2016
Notary Public Commission Expires:
December 21, 2015

1	<p>accommodate [1] - 13:1</p> <p>accordance [1] - 8:12</p> <p>Act [1] - 5:1</p> <p>actions [1] - 10:6</p> <p>additional [1] - 12:3</p> <p>address [1] - 15:5</p> <p>admit [1] - 12:5</p> <p>adopted [1] - 6:24</p> <p>advice [1] - 13:13</p> <p>afternoon [1] - 14:18</p> <p>agency [1] - 9:3</p> <p>ahead [1] - 12:22</p> <p>Alan [1] - 9:21</p> <p>allegations [1] - 10:18</p> <p>alleged [1] - 9:11</p> <p>allow [2] - 5:25, 13:7</p> <p>allowed [2] - 9:13, 12:3</p> <p>alluded [1] - 4:23</p> <p>amend [1] - 14:10</p> <p>America [1] - 7:25</p> <p>Annotated [1] - 8:13</p> <p>appeal [3] - 12:24, 13:7, 13:18</p> <p>Appeals [1] - 9:20</p> <p>appear [1] - 5:12</p> <p>Appellant [1] - 10:13</p> <p>appellant [2] - 10:18, 10:20</p> <p>appellate [1] - 13:6</p> <p>appellees [1] - 9:18</p> <p>appreciate [2] - 14:6, 14:13</p> <p>argument [1] - 4:16</p> <p>arguments [1] - 15:10</p> <p>assess [2] - 4:14, 6:10</p> <p>attorneys [3] - 13:13, 14:16, 15:8</p> <p>audio [1] - 8:4</p> <p>authorized [1] - 4:6</p> <p>available [4] - 5:20, 8:12, 8:25, 14:3</p>	Byron [2] - 7:7, 7:9	15:10	electronically [2] - 8:21, 8:22	
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