

IN THE CHANCERY COURT FOR SUMNER COUNTY, TENNESSEE, AT GALLATIN

KENNETH L. JAKES,)
Plaintiff,)
vs. #2014-CV-53)
SUMNER COUNTY BOARD)
OF EDUCATION,)
Defendant.)

FILED REC
SUMNER CO. CHANCERY COURT
JAN 23 2015
DARLENE D. DAUGHTRY
CLERK & MASTER
BY: AW 4.12
DEPUTY CLERK & MASTER

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On April 9, 2014, Kenneth Jakes filed a complaint against the Sumner County Board of Education alleging the denial of a public records request for "inspection and review" for the "records policy" for the Sumner County Board of Education.¹ The Defendant's answer was filed on May 9, 2014, and the Defendant later filed a Motion for Summary Judgment on August 22, 2014. A hearing was conducted on the Motion for Summary Judgment on January 9, 2015, and this Motion was denied by the Court.²

¹ The complaint was filed under the provisions of T.C.A. §10-7-505 of the Tennessee Public Records Act.

² Other motions were considered on that date: a Motion to Amend Complaint was denied; a Motion to Compel was denied; and, a Motion for Protective Order was granted as to further discovery in this case.

FINDINGS OF FACT³

The parties stipulated to the following evidence and facts for the basis for the Motion for Summary Judgment⁴: (1) an email request from the Plaintiff to Jeremy Johnson at the Sumner County Board of Education on March 21, 2014⁵; (2) a phone call from the Plaintiff to Jeremy Johnson where the Plaintiff left a voicemail on the phone of Jeremy Johnson confirming the above email⁶; (3) an email message from Jeremy Johnson to Plaintiff on 3/24/14⁷; (4) Sumner County Board of Education Policy for handling public records requests from 1997⁸.

From these undisputed exhibits, the Court finds that on March 21, 2014, the Plaintiff made a very specific public records request by email to the Defendant for the “inspection and review” of

³ The facts of this matter are atypical, in that the actions of both parties appear to have been designed to bring about the unique facts of this case.

⁴ Rule 56.03. Tennessee Rules of Civil Procedure

⁵ “Mr. Johnson as a public record request to inspect and review please provide the following for my inspection.

The records policy for the Board of Education. If the records policy is online you can simply provide the link. If not contact me when ready for my review.” (From Exhibit “A”, Complaint)

⁶ “Jeremy, this is Ken Jakes. I’m just calling to verify that you did receive, according to where my email went, on my public records request. (sic) I’m just verifying that. My cell phone number is 615-347-3379. It was for a public records request for the records policy of the Board of Education. So if you will, just give me a call confirming that you did receive my email.” (From Exhibit “D”, Declaration of Jeremy Johnson)

⁷ “In keeping with our practice regarding open records requests, you will need to either submit your request in person or via the postal service.” (From Exhibit “B”, Complaint)

⁸ ... “Any citizen of Tennessee, state official or other authorized person shall be permitted, upon written request, at a reasonable time to inspect all records maintained by the school system unless otherwise prohibited by law, regulation or board policy.” (From Exhibit “A”, Motion for Summary Judgment, pg. 1)

the records policy for the Sumner County Board of Education. In addition, by that email, the Plaintiff specifically asked if the policy was on the internet (“online”) and that if it was “online”, that the Sumner County Board of Education provide “the link”. The Court specifically finds that this email request was followed by a telephone request confirming what was requested by the email. The Court finds that the Defendant responded to the Plaintiff’s request by an email that set out the Defendant’s policy for addressing all public records requests whether a request was for viewing or copying - that their policy mandated that all public records requests must be submitted in person or via the postal service.

The Court also finds that the Plaintiff, in making a specific request for the inspection or viewing of records by email and by telephone, also asked for a specific time when he could come to the Board of Education to inspect what he had requested. Further, the Court finds after the Plaintiff had made his viewing/inspection request by email and by phone, that the Defendant would not respond to these requests after advising Plaintiff by email of the Board’s policy. Because Plaintiff’s specific request for a record view was never addressed by the Defendant, this court finds that the public records request was denied⁹.

From the pleadings and exhibits the Defendant claims that the Board of Education is entitled to a Motion for Summary Judgment because of the mootness of the Plaintiff’s complaint, in that the records requested were on the internet, and further, that the Plaintiff’s public records request was not valid under the Defendant’s policy.

⁹ “Failure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the right to bring an action as provided in §10-7-505.” T.C.A. §10-7-503(a)(3).

CONCLUSIONS OF LAW

In order to grant the Defendant's Motion for Summary Judgment, the Defendant must "show that there is no genuine issue as to any material fact and that the [Defendant] is entitled to a judgment as a matter of law."¹⁰

MOOTNESS

The Court finds that "mootness" is a very interesting issue to be raised in this matter, as the Defendant argues because the information requested was online that the requested records were already public and not within the records under the control of the Sumner County Board of Education under the Tennessee Open Records Act.

The Court notes that the Plaintiff specifically requested an internet link, if there was a link, so that he could go to the link to get that information. The Defendant's argument for mootness fails to consider the Board's total inaction and lack of response to the Plaintiff's first email about a possible website link. Had the Defendant specifically given the Plaintiff the link at that time this lawsuit would not have been necessary. Without sending an immediate response that would satisfy the Plaintiff, by giving the link, the Defendant then sent the policy of the Sumner County Board of Education, an attitude that gave rise to this lawsuit.

This Court finds that it would not be equitable, it would not be proper, and that it would not be fair for the Defendant to come in at this time and say that this issue is moot because the policy was online when the Plaintiff specifically asked for a link, and then was never provided that link by

¹⁰ Rule 56.04. Tennessee Rules of Civil Procedure

the Defendant.

By this conduct, the Court is also concerned whether the Board did not give Plaintiff “access” by not giving the link to Plaintiff when requested as set out in T.C.A. §10-7-123(a)(4). “Once a remote electronic access information system is in place, access must be given to all members of the public who desire access to such records...”. Therefore, for the above stated reasons, the Court finds that the mootness issue is not well-taken under the facts, circumstances, and purpose of the Tennessee Public Records Act.¹¹

**WHETHER DEFENDANT’S ACTIONS AND POLICY DENYING PLAINTIFF’S
REQUEST TO VIEW PUBLIC RECORDS WAS LAWFUL UNDER THE TENNESSEE
OPEN RECORDS ACT**

The Court finds that the Best Practice Guidelines for Records Custodians Responding to Request for Public Records helps to understand the overall intent of the Tennessee Public Records Act.

In an effort to provide records custodians with a resource that can be utilized when responding to public records request made pursuant to the Tennessee Public Records Act, the Office of Open Records Counsel, in conjunction with the Advisory Committee on Open Government, has developed Best Practices Guidelines for Records Custodian Responding to Requests for Public Records. Records custodians must follow the provisions of the Tennessee Public Records Act. The guidelines serve as a resource for records custodians but records custodians are not required to adhere to the guidelines. However, a court may consider these guidelines in determining whether action by records custodian is willful [T.C.A. §10-7-505(g)].

¹¹ The Tennessee Public Records Act “shall be broadly construed so as to give the fullest possible access to public records.” T.C.A. §10-7-505(d)

These guidelines specifically state that any public records policy should “balance the governmental entity’s need to function efficiently and to maintain the integrity of records with the public’s right to access pursuant to the Tennessee Public Records Act”¹². The guidelines also recommend that “a records custodian should make the requested records available as promptly as possible”¹³ and “should strive to respond to all records requests in the most economical and efficient manner possible.”¹⁴

The guidelines also speak to websites and electronically maintained records:

To the extent possible, when records are maintained electronically, records custodians should produce records requests electronically. Records should be produced electronically whenever feasible as a means of utilizing the most economical and efficient of producing records.”¹⁵ “If a governmental entity maintains a website, records custodians should post as many records, and particularly records such as agendas and minutes from meetings, on the website whenever it is possible to do so. A records custodian may direct a requester to the website for requested records. However, a requester may still exercise the right to inspect the public record during regular business hours in the office of the records custodian and/or to receive a copy or duplicate made by the records custodian”¹⁶.”

Further, and most importantly, T.C.A. §10-7-503(7)(A) specifically states what custodians

¹² Best Practice Guidelines, Guideline #1, last paragraph. This Court is aware of the needed balance and is sensitive to the time required of a governmental entity for compliance with the public records act; however, this simple request would not have been time consuming.

¹³ Best Practices Guidelines, Guideline #3

¹⁴ Best Practices Guidelines, Guideline #4

¹⁵ Best Practices Guidelines, Guideline # 5 and 6

¹⁶ Best Practices Guidelines, Guideline #4

may and may not do concerning requests for public records.

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

The language of this statute is clear. The intent of this statute is clear. The legislature has developed distinctions between a request to view a public record and a request for copies of a public record. If a request is for viewing a public record, a records custodian may not require written request, however, a written request may be required if the public records request is for copies of public records.

A governmental entity therefore, may not adopt a policy requiring a written request to view public records. In Wells v. A.C. Wharton, Jr., et al., 2005 WL 3309651 (Tenn.CivilApp. 2005), the Court of Appeals addressed the issue of whether Shelby County Government's requirement that the Plaintiff must first present a written request before being allowed public records access constituted a denial of access to public records. In looking at T.C.A. §10-7-503(a), the Court stated that, "[i]t is clear from the language of this statute that an official may refuse inspection of public records by a citizen only when state law provides for such nondisclosure. Nowhere in the Tennessee Public Records Act allows for an official to deny access to public records if a citizen does not first request access in writing. 'When the words of a statute are plain, clear, and unambiguous, we merely look

to the statute's plain language to interpret its meaning'.¹⁷ The Court of Criminal Appeals finally concluded: "Therefore, appellees initial denial of appellant's request to access to public records because appellant did not first request access in writing states a claim upon which relief may be granted."¹⁸

CONCLUSION

The position of the Defendant in response to Plaintiff's public records request for "inspection and review" has placed the Plaintiff in a position to whether the Plaintiff must: (1) come to the Sumner County Board of Education to make a request to view or inspect records, and then come back to view and inspect records.¹⁹; or (2), submit a written request for viewing or inspection of the desired records. The latter option is not appropriate under the Tennessee Records Act, and the former option should not be the only option available for a request for viewing/inspection. The Board has required a records request to be made in writing for a view of the records. This option is clearly in violation of T.C.A. §10-7-503(7)(A). That limits a reviewer to one option: only to come

¹⁷ Wells, p. 7 and 8 citing Planned Parenthood of Tennessee v. Sundquist, 38 S.W.3d 1, 24 (Tenn.2000) and Schering-Plough v. State Bd of Equal., 99 S.W.2d 777, 775 and 776 (Tenn. 1999)

¹⁸ Wells, p. 8

¹⁹ Although the Plaintiff is a resident of Tennessee, he is not a resident of Sumner County. The Board never stated to the Plaintiff that "inspection and review" could be accomplished in one visit although the Tennessee Open Records Act provides that school board records shall, "at all times during business hours...be open for personal inspection to any citizen, unless otherwise provided by state law. T.C.A. §10-7-503(2)(A). The Court notes that Plaintiff did ask Defendant when he could come for "my review".

in person concerning a request to view records. If the records cannot be located at that time, the reviewer must come back another day. The Court notes that there are other valid options for requesting the inspection of public records that could and should be used for making “requested records available as promptly as possible”...²⁰ and in striving “to respond to all records requests in the most economical and efficient manner possible”²¹. The Court will not tell the School Board what public records request policy to follow. This Court will determine if there is a violation of the Tennessee Public Records Act in this case.

Therefore, in considering the law as applied to the unique facts of this case, it is clear that the Defendant has not carried the burden of showing that the Sumner County Board of Education is entitled to a judgment as a matter of law, and this Court **ORDERS** that the Motion for Summary Judgment be denied.

SO ORDERED and ENTERED this the 23RD day of January,
2015.



DEE DAVID GAY, JUDGE BY INTERCHANGE

xc: Kirk Clements
Todd Presnell

²⁰ Best Practice Guidelines, guideline #3

²¹ Best Practice Guidelines, guideline #4