

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

BRADLEY JETMORE,

Plaintiff,

v.

THE METROPOLITAN GOVERNMENT OF
NASHVILLE and DAVIDSON COUNTY,

Defendant.

NS
Docket No. 16-418-IV

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DAVIDSON COUNTY CHANCERY CT
D.C. & M.

MEMORANDUM AND ORDER

This matter comes before the Court on the Verified Complaint filed by Plaintiffs Jetmore and Speers for access to public records and upon the Response of Defendant, Metropolitan Government of Nashville and Davidson County.

PROCEDURAL HISTORY

On June 6, 2016, Chancellor Russell Perkins entered an Order denying Metro's Motion to Dismiss and further ordered Metro to appear on July 14, 2016 to show cause why Plaintiffs' Petition under the Tennessee Public Record Act should not be granted. On July 14, 2016 the parties appeared before this Court and pursuant to the agreement of the parties, evidence was presented by affidavits, declarations and depositions. Specifically, the Court has considered the following evidence: (1) Declaration of Jody Spears; (2) Declaration of Bradley Jetmore; (3) Declaration of Douglas Friedman; (4) Deposition of Jason Starling; (5) Declaration of Jason Starling; and (6) Amended Declaration of Jason Starling.

FINDINGS OF FACT

The supervising officer will either reject and send the report back to the investigating officer for revision or approve and submit the report to the Central Records Division for the Metro Police Department. The Central Records staff then manually redacts prohibited information from the traffic accident reports (such as driver's license numbers). The redaction process involves opening each document in a software program and manually selecting the protected information for redaction.

Of course, there are occasions (infrequent) where an officer may not enter his or her report data into TITAN during the shift that the accident took place. Likewise, a supervising officer may not make the required revisions to the report during their shift, but generally the accident report is completed and entered into an electronic database, "TITAN" before the end of the shift for both the patrol and supervising officer.

The Tennessee Highway Patrol developed the Tennessee Integrated Traffic Analysis Network ("TITAN") electronic database to serve as a portal into the State of Tennessee's repository for traffic crash and surveillance reports completed by Tennessee law enforcement agencies. Metro police officers draft accident reports in TITAN. They typically submit their draft accident reports to their supervisor during the same shift that the accident occurs. Supervising officers generally are assigned to work the same shift as the patrol officers they supervise.

Paragraph 9 of the Verified Complaint alleges that for well over two decades, Metro provided access to inspect traffic accident reports daily during normal business hours; that Metro would produce each day a folder of traffic accident reports released for public inspection by the mid-morning hour; that these reports were almost exclusively for accidents which had occurred

within the last two to three days (unless it was on a Monday when the reports from the end of the prior week would be released). In its Answer, Metro does not deny these specific factual allegations. Likewise, neither in his deposition, or in any of his declarations does Captain Starling deny this past course of conduct by Metro for many years. At some point and time within the last twenty years, these reports were made available for inspection at the North Precinct.

The Central Record Division's Administrative Office and Administrative Compliance Training Unit are responsible for printing copies of all accident reports and their distribution to the appropriate departments, divisions and sections. Generally, Print Shop staff logs into the TITAN's system each business day and searches for reports on accidents which occurred two to three days earlier.

Each business day the set of accident reports that have been reviewed and redacted are picked up by a North Precinct officer and transported to the North Precinct. The reports are transported to the North Precinct in the afternoon or evening. Once at the North Precinct, the reports are available for public inspection during business hours.

This procedure benefits both Metro (so it will not be overwhelmed by producing the same report for inspection again and again) and the public (anyone can come to the North Precinct to inspect all of the accident reports which have been printed).

This process ensures that the majority of accident reports are available for public inspection from the Records Division within seventy-two hours after the report is submitted into TITAN by the supervising officer. That means if an accident occurred during the day on a Tuesday, the final accident report would be submitted into TITAN by the end of the patrol and supervising officers' shift that day. Thereafter, the redaction process would commence and the redacted reports would

normally be available for inspection at the North Precinct sometime Thursday afternoon or Friday morning. (Approximately seventy-two hours after the end of the patrol and supervising officers' shift on Tuesday).

Metro began using TITAN in 2013. From November 4, 2013 until the fall of 2015, Metro provided regular inspection of its traffic accident reports pursuant to its customary practice for approximately the last twenty years. In August 2014, the standard operating procedure for the Central Records Division of the Metro Police Department changed. Pursuant to the August 2014 SOP, any request for a copy of an accident report and information had to be submitted on a MNPD Form 720.

Form 720 states in part:

MNPD has seven business days to process all request (sic).
If unable to process the requests, a notification of denial or
letter advising the approximate date of when the requests
will be completed will be sent out within the seven days.
Tenn. Code Ann. § 10-7-503(a)(2)(B).

Pursuant to the standard operating procedures of the Central Records Division for Metro Police Department (June 2015), any transaction which exceeds three reports, including an accident report must be submitted on MPND Form 720. Captain Starling testified that this new standard operating procedure took effect August 2014. Although the standard operating procedure requires the staff for the records division to use Form 720 whenever a member of the public requests more than three accident reports, there is nothing on Form 720 to inform the public they will not receive more than three reports on the day they submit Form 720. Captain Starling testified his staff simply

informs persons who ask for more than three copies that they will not receive those copies on that day.

Douglas Friedman has been involved in gathering information from traffic accident reports from states and cities around the country for over twenty years. This includes the Metro Police Department of which Mr. Friedman has specific knowledge. Beginning in the fall of 2015, Metro stopped its release of traffic accident reports for inspection and copying on the same day. Since the fall of 2015, Metro has implemented a procedure to allow certain requestors to purchase up to three accident reports immediately upon request; however, all other requested copies are normally delayed, sometimes exceeding seven business days after the request.

Mr. Friedman produced a copy of a Metro traffic accident report which he purchased for ten dollars (\$10.00) from the Buycrash Portal (private vendor) on June 7, 2016, for an accident which occurred on June 6, 2016. Thus, in some instances Metro is able to complete all of its work (including redactions) so that the reports are available to the public in a period less than twenty-four hours. Captain Starling also indicated there are cases where a report is available within twenty-four hours.

Jody Spears began supervising others in her company in requesting traffic accident reports from the Metro Police Department in August 2015. The accident reports provided by Metro were not being made available for public inspection until approximately three weeks after the date of the accident. On December 29, 2015, Jody Spears went to the police department records division and gave an employee a written list of approximately forty-three accident reports which he wished to purchase. Within ten minutes, the records division produced copies of nearly all of the forty-three requested reports for accidents which had occurred only a few days earlier.

The following day, December 30, 2015, Mr. Spears went to the same downtown location of the Metro Police Department and made a similar request for a list of traffic accident reports. However, this time a different person in the records division (a supervisor of the person with whom Mr. Spears had dealt with the day before) told Mr. Spears that he could only purchase three reports while he waited. The rest of the reports he had requested would be available days later. Mr. Spears made similar requests from the records division for approximately a week thereafter, and each time was allowed to purchase only three accident reports. The remaining reports were received a week or more later.

Bradley Jetmore began personally inspecting and/or requesting traffic reports from Metro in September 2015. Initially, Mr. Jetmore would obtain access to the traffic reports by viewing the photo copies of the reports furnished by the Metro Police Department available to all persons at its North Precinct. However, in the fall of 2015, Metro Police Department ceased providing inspection copies of these accident reports in the same manner as they had in the past. Thereafter, Mr. Jetmore began making written requests for copies with sufficient particularity to enable the police department to identify the specific records he was seeking.

On January 13, 2016, Mr. Jetmore delivered a written request for eighty accident reports. The police department produced three reports on that day. On January 26, 2016, the police department notified Mr. Jetmore that a number of the other records he had requested on January 13, 2016 were now available. On that day, the police department produced thirty-nine additional reports leaving thirty-eight unaccounted for reports. The police department has never produced the remaining thirty-eight records nor has it provided any explanation.

On February 1, 2016, Mr. Jetmore delivered a written request for more copies of traffic accident reports in the same manner as set forth above. On that day, the police department produced only three of the requested reports. On February 4, 2016, the police department representative told Mr. Jetmore that on February 8, 2016 the records which he had requested on February 1, 2016, would be available.

When asked about these specific instances set forth in the Verified Complaint, Captain Starling indicated he had made an effort to determine whether the allegations set forth were true. However, Captain Starling was unable to locate anyone who could either admit or deny those specific allegations. One possible explanation for Metro's inability to respond to these specific allegations is that there is no system in place for Metro to confirm whether it has actually complied with a particular request. Only if a particular requestor complains that he or she did not receive all of the documents requested, will Metro have a record indicating its response.

Beginning in March 2016, Metro Police Department resumed its practice of making copies of accident reports available for public inspection in the North Precinct. However, the reports were generally two to three weeks after the date of each accident.

In his deposition, Captain Starling confirmed that the accident reports were being produced in the same manner as they had been prior to August 2015 with an occasional exception or an extra day, so that the net effect of Metro's policy and practice was to continue to produce these records to be available for inspection within seventy-two hours after the officer completed his shift on the day of the accident. Those reports are then made available for inspection at the North Precinct. He indicated it had never been brought to his attention that he did not have adequate staff to

complete multiple requests by commercial requestors within the seventy-two hour general response time.

CONCLUSIONS OF LAW

Records for Public Inspection

The issue in this case is the application of T.C.A. § 10-7-503 to accident reports created by patrol officers for the Metro Police Department that are then submitted to the Central Records Division of the Metro Police Department. T.C.A. § 10-5-503, commonly referred to as the “Public Records Act” provides that all state, county and municipal records shall at all times during business hours be open for personal inspection by any citizen of the state, and that the officials in charge of said records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. Specifically the statute provides:

The custodian of a public record or the custodian’s designee shall **promptly** make available for inspection any public record not specifically exempt from disclosure. In the event it is **not practical** for the record to be **promptly available for inspection**, the custodian shall, within seven (7) business days:

- (i) Make the information available to the requestor;
- (ii) Deny the request in writing, or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or
- (iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.

T.C.A. § 10-7-503(a)(2)(B).

The statute goes on to provide a right of action in the event the governmental entity fails to respond to the request as set forth above.

Initially, the Court notes it is undisputed these traffic accident reports are public records which fall within the definition of the Tennessee Public Records Act¹. Instead, the issue for the Court is whether Metro is in compliance with T.C.A. § 10-5-503. The Public Records Act requires that the custodian of the public record shall **promptly** make available for inspection any public record not specifically exempt from disclosure. The Act then goes on to provide that in the event it is not practical for the custodian of the record to make the record promptly available for inspection, then the custodian shall within seven (7) business days:

- (1) Make the information available; or
- (2) Deny the request in writing and include the basis for the denial; or
- (3) Respond in writing that the custodian will produce the records requested and stating the time reasonably necessary to produce the records.

The first issue for the Court to determine in this case is whether Metro is making these traffic accident reports available for inspection promptly. “Prompt” is defined as “being ready and quick to act as occasion demands; or to be performed readily or immediately.” Webster’s Dictionary (7th Edition).

Whether a governmental entity is acting “promptly” under the statute will have to be determined on a case by case basis. In this case, the standard operating procedure for investigating officers of an accident is to complete the accident report by the end of their daily shift. Likewise, the supervising officer is required to review these accident reports for corrections by the end of their daily shift. This means that the vast majority of accident reports are in the hands of the records division of the Metro Police Department within twenty-four hours of the accident. The Central Records staff then manually redacts prohibited information from the traffic report. The

¹ Any report of a motor vehicle accident...shall be open to public inspection as a public record. T.C.A. § 55-10-108(f).

proof indicates this procedure is usually accomplished within twenty-four to forty-eight hours. In fact, the proof from Metro establishes these reports should be available for public inspection after seventy-two hours from the end of the shift of the investigating officer. This proof is consistent with Metro's procedure over the last two decades whereby Metro would provide these accident reports for inspection within approximately three days after the date of the accident.

Metro began using the electronic database "TITAN" in 2013. In their brief, Metro appears to suggest that the use of TITAN causes a delay in Metro's ability to make these records available for inspection. The facts do not support this argument. This is because Metro maintains custody of the electronic record from its inception. Metro creates the record and Metro makes the necessary corrections and redactions. It does not need to rely on TITAN to produce records which Metro already has in its custody and control.

However, Metro contends it is not practical for them to be bound by an Order from this Court establishing a definition of "prompt" that is specific to Metro. Instead, Metro argues as long as it complies with the second requirement in the statute after the expiration of seven days it is still in compliance. The Court does not agree with this interpretation. There is no question Metro is able to produce the vast majority of these accident reports for inspection well before the expiration of seven days from the date of the accident. In this case, allowing Metro seven days to produce these records for inspection does not qualify as "prompt" under the Act. Thus, Metro has failed to comply with the promptness requirement for producing these accident reports for inspection.

Copies of Records

The next dispute between the parties pertains to the issue of copies. Any person requesting a copy of a traffic accident report is required to go to the Central Records Division at Metro to

obtain their copy.² The Petitioners argue T.C.A. § 10-7-503 applies to their request for copies. Metro counters the proper code section for copies in this case is T.C.A. § 10-7-506.

Metro argues since these are requests for public records which have a commercial value to the Petitioners then T.C.A. § 10-7-506(c)(1) applies. The Court disagrees. T.C.A. § 10-7-506(c)(1) applies whenever a request is made for a copy of a public record that has commercial value **and** such request requires the reproduction of a computer generated map or other similar geographic data. Accident reports have nothing to do with this section of the code. In fact, Metro's own open records request form 720 specifically refers to T.C.A. § 10-7-503(a)(2)(B).

T.C.A. § 10-7-503 (a)(7)(A) provides as follows:

(7)(A) A records custodian may not require a written request or access 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...

(C)(i) A records custodian may require a requestor to pay the custodian's reasonable cost incurred in producing the requested material and to access the reasonable costs in the manner established by the office of open records counsel pursuant to T.C.A. § 8-4-604.

Clearly, T.C.A. § 10-7-503 applies to Petitioner's request for copies.

A more difficult question is whether T.C.A. § 10-7-503(a)(2)(B) applies to a request for copies after a record has been made available for inspection. The Court finds that it does. Although this portion of the statute does not specifically address copies, as a practical matter, once an accident report has been produced for inspection, a requestor should be able to obtain a copy of

² Anyone wishing to inspect traffic accident reports may do that at the North Precinct where a single copy of each report is made available for inspection purposes only.

that record promptly from the Central Records Division of Metro. Moreover, this interpretation complies with the directive of the Legislature to broadly construe the Public Records Act “so as to give the fullest possible public access to public records”. T.C.A. § 10-7-505(d).

Turning to Metro’s open records request form 720, the Court finds that the form itself fails to comply with the Act. Just as Metro has done in the inspection and process of these records, it likewise overlooks the promptness requirement in its form for copies. In other words, copies should also be produced promptly and in the event it is not practical for the record to be promptly copied, then the custodian shall within seven business days make the information available or send a notification of denial, or a letter advising of the date the copies will be completed. Thus, Metro’s form indicating it has seven days to process requests for copies is not in compliance with the Act.

Finally, Metro argues that its policy of producing copies of three or less accident reports immediately and producing copies at a later date if more than three are requested is an acceptable form pursuant to T.C.A. § 10-7-503(a)(7). The Court finds that Metro’s “three request policy” is not in compliance with T.C.A. § 10-7-503(a) which requires Metro to produce copies of public records which have been made available for inspection, promptly. The “three report rule” is arbitrary and is contradicted by the proof in this case of Metro’s ability to produce copies of multiple accident reports within seventy-two hours of the end of the shift of the investigating officer. If in any particular instance, Metro determines that it cannot promptly produce all of a requestor’s request for documents, it is entitled under the statute, to take whatever time is reasonably necessary to produce the requested records as soon as reasonably possible.

Relief Requested

The enforcement provision of the Tennessee Public Records Act is found at T.C.A. § 10-7-505. It specifically provides in part as follows:

The Court, in ruling upon the petition of any party proceeding hereunder ...shall be empowered to exercise full injunctive remedies and relief to secure the purposes and intentions of this section, and this section shall be broadly construed so as to give the fullest possible public access to public records.

T.C.A. § 10-7-505(d).

In order to ensure that Metro provides for the inspection and copying of accident reports in a prompt manner, the Court hereby **ORDERS and DECREES** as follows:

1. Metropolitan Government of Nashville and Davidson County shall provide for the inspection of traffic accident reports that it creates and maintains within seventy-two hours of the end of the shift of the investigating officer who creates the report.
2. Metropolitan Government of Nashville and Davidson County shall produce copies of all traffic accident reports that it creates and maintains within seventy-two hours of the end of the shift of the investigating officer who creates the report.
3. Metropolitan Government of Nashville and Davidson County shall amend its MNPDP Form 720 to make it consistent with the language set forth in T.C.A. § 10-7-503(a)(2)(B).
4. In the event Metropolitan Government of Nashville and Davidson County is unable to promptly produce requested accident reports, then pursuant to T.C.A. § 10-7-503(a)(2)(B), it shall send within seven business days a written notification advising the requestor of the approximate date when said reports will be available.

The Clerk of this Court shall mail by U.S. Mail (first class) or personally deliver a copy of this filing to each party's attorney of record, or if a party is self-represented, to the individual party.

ENTERED this 19 day of August, 2016.



ROBERT E. LEE DAVIES, Senior Judge

Certificate of Service

I hereby certify that a copy has been served upon the parties below by U.S. Mail:

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