IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

BRADLEY JETMORE,	)	
	)	
Plaintiff,	)	**Docket No. 16-418-IV**
	)	
v.	)	
	)	
THE METROPOLITAN GOVERNMENT OF NASHVILLE and DAVIDSON COUNTY,	)	
	)	
Defendant.	)	

ORDER

This matter came on to be heard on the 16th day of September, 2016, before Honorable Robert E. Lee Davies, Senior Judge, upon Plaintiff's Motion to Alter or Amend the judgment in this case to include an award of attorney's fees, and after argument of counsel and consideration of the declaration of Mr. Pierce and briefs filed by both parties, the Court finds as follows:

T.C.A. § 10-7-505(g) of the Public Records Act provides:

> If the Court finds that the governmental entity, or agent thereof, refusing to disclose a record, knew that such record was public and willfully refused to disclose it, such court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the nondisclosing governmental entity.

Both parties have cited the Court to the case of Friedmann v. Marshall County, TN, 471 S.W. 3d 427 (Tenn. Ct. App. 2015) as the controlling authority on the issue of awarding attorney's fees. In Friedmann, the Court of Appeals addressed the proper standard for determining whether a governmental entity's refusal to produce public records was "willful". According to Friedmann, willfulness is measured in terms of the relative worth of the legal justification cited by a

municipality or other governmental entity to refuse access to records. In other words, the analysis focuses on the validity of the position that the governmental entity used to support its refusal of access to the requested records. In Friedmann, the Sheriff of Marshall County, with the concurrence of the Marshall County Attorney, refused to provide the requested records because the requestor did not appear in person. This erroneous assessment of the law by both the sheriff and the county attorney was contradicted by the Office of Open Records Counsel ("OORC") which specifically stated on its website that a requestor is not required to appear in person either to submit a public records request or to retrieve the requested records.

Metro cites the Court to the OORC website regarding the following "frequently asked question":

> Q: Is a records custodian required to immediately produce requested records? If not, how long does the records custodian have to respond to a request?
>
> A: No. If the records are readily available and there is no need to review and redact, then the records should be made available as "promptly" as possible. However, if it is not "practical" for the records to be made "promptly" available, the records custodian is required to take one (1) of the following three (3) actions within seven (7) business days: Make the records available to the requestor; deny the request in writing with the basis of the denial included; or provide the requestor a written explanation of how long it will take to produce the request.

In this case the Court has found Metro misinterpreted and ignored the "promptness" requirement contained in the Act. The Act specifically provides that "in the event it is not practical for the record to be promptly available for inspection, the custodian shall, within seven (7) days make the information available to the requestor or inform the requestor in writing when the records will be produced. In the face of the undisputed facts of this case, Metro's position that it was promptly producing accident reports as long as it produced them within seven (7) days, is not

consistent with either the Act or the OORC response. Although Metro was able to produce records for inspection and copying within seventy-two hours of the officer's entry of the report into the TITAN system, Metro decided "promptly" meant it had seven (7) days to produce accident reports. Metro's erroneous interpretation is underscored in its own form 720 which states: "MNPD has seven business days to process all request [sic]" (Citing T.C.A. § 10-7-503(a)(2)(B)). Just as the sheriff's reliance on the county attorney did not save him from being found to be in willful noncompliance with the Act, any reliance by the police department upon Metro's legal department does not prevent Metro from being found to be in willful noncompliance.

It is therefore **ORDERED and DECREED** that Metropolitan Government of Nashville and Davidson County's failure to produce accident reports promptly within seventy-two hours of its demonstrated ability to do so, constituted a willful denial of access to the requested records. Therefore, Plaintiff is entitled to an award of attorney's fees and expenses in the amount of $56,884.55. Costs taxed to Defendant, for which execution may issue if necessary.

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 24 day of September, 2016.

ROBERT E. LEE DAVIES, SENIOR JUDGE

CERTIFICATE OF SERVICE

Pursuant to Rule 58 of the Tennessee Rules of Civil Procedure, I hereby certify that I have mailed a copy of the foregoing Judgment to the parties/counsel at the addresses listed below, this the 28 day of September, 2016.

Maria M. Salas, Clerk and Master

By: Vicki Bailey **, D.C.**

cc:

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