IN THE COURT OF APPEALS FOR THE STATE OF TENNESSEE
MIDDLE DIVISION AT NASHVILLE

KENNETH L. JAKES, Plaintiff/Appellee, v. SUMNER COUNTY BOARD OF EDUCATION, Defendant/Appellant.	)	No. M2015-02471-COA-R3-CV On Appeal From The Sumner County Chancery Court Criminal Court Judge Dee David Gay No. 2014CV53

BRIEF OF APPELLANT SUMNER COUNTY BOARD OF EDUCATION

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ISSUES PRESENTED

The Tennessee Public Records Act ("TPRA") grants citizens access to state and local government records. Although the TPRA contains some procedural requirements and directives, governmental entities are largely responsible for establishing their own policies to implement the TPRA. The Sumner County Board of Education's public-records policy—like the policies of many other governmental entities across the state—does not authorize email requests to inspect public records. Instead, the Board's policy requires that inspection requests be made in person or via U.S. Mail.

Believing that governmental entities should accept email requests, Kenneth Jakes decided that he would challenge the Board's policy. He sent several emails to a Board employee seeking to inspect the Board's public-records policy, even though that record had been readily available online since 2011. After the Board's attorney and the Tennessee Office of Open Records Counsel both opined that the TPRA did not require the Board to accept email inspection requests, the Board adhered to its policy and did not immediately fulfill Jakes' requests. Jakes then filed this lawsuit against the Board.

The issues presented are:

(1) Whether the Board's public-records policy violates the TPRA because it does not permit electronic requests to inspect public records.

(2) Whether Jakes' request to inspect the Board's public-records policy is moot because the requested policy has been publicly available online since 2011, and the Board provided a hardcopy of the policy to Jakes early in this litigation.

STATEMENT OF THE CASE

Plaintiff Kenneth Jakes is a self-proclaimed "public records request expert." Tr., Vol. XII, at 353. He boasts of making requests for public records "from probably every municipality in the state of Tennessee and a big, large portion of the counties" numbering "in the upper hundreds [and] [m]aybe in the upper thousands." *Id.* at 306, 317. For example, Jakes once "made records requests with Nashville Electric Service that took [him] about one year to review," appearing in person "Monday through Friday from 1:00 to 4:00 . . . every day for one year" to review over 336,000 emails. *Id.* at 312. He also has asked Metro Nashville to produce over 18,000 statements or comments relating to the city's strategic growth plan. *Id.* at 357.

A. Jakes Initiates This Litigation.

Jakes filed this lawsuit against the Sumner County Board of Education ("the Board") to test its policy—shared by many other state and local governmental entities across Tennessee—of not accepting email requests to inspect public records. *Id.* at 323–24. To challenge the policy, Jakes sent an email on March 21, 2014, to the Board's Supervisor of Board and Community Relations, Jeremy Johnson, asking to inspect the Board's public-records policy. Trial Ex. 5. Jakes sent the request to inspect the Board's policy even though that document had been readily available on the Board's website since August 2011. R., Vol. I, at 29–30; Tr., Vol. X, at 50–53. On March 31, Jakes sent Johnson another email requesting to inspect and review "[a]ny and all communications between [Johnson] and any other party or parties concerning [his] first public record request for the Board['s] records policy." Trial Ex. 9.

The Board notified Jakes that, to comply with the Board's public-records policy, he would need to submit his public-records request by appearing in person (without a writing) or via U.S. Mail (in writing). Trial Ex. 7. In the process of responding to Jakes' requests, the Board confirmed with its attorney and with the Tennessee Office of Open Records Counsel that the

TPRA did not require local governmental entities to accept electronic requests. Tr., Vol. XI, at at 231–32.

Jakes then brought this lawsuit in Sumner County Chancery Court challenging the Board's application of its public-records policy. Asserting claims for denial of requests for public records (Count I), declaratory judgment (Count II), and show cause (Count III), Jakes argued that the Board's failure to comply with his requests was a "willful and intentional violation of the Tennessee Public Records Act." R., Vol. I, at 4–6 ¶¶ 13, 15, 19. Jakes sought attorneys' fees based on the Board's alleged willful noncompliance with the TPRA pursuant to Tenn. Code Ann. § 10-7-505(g). *Id.* at 6.

B. The Board Moves For Summary Judgment.

After answering the complaint, *id.* at 15, the Board moved for summary judgment. *Id.* at 23. The Board argued that the case was moot because the requested public-records policy was publicly available online and because the Board had independently provided the policy to Jakes. *Id.* at 23, 26–28, 43–49. The Board alternatively argued that it was entitled to summary judgment because Jakes' email request was not a valid request under the Board's public-records policy. *Id.* at 23, 49–54.

Jakes opposed the Board's summary-judgment motion, R., Vol. III, at 388, arguing that the TPRA required the Board to accept email requests for public records. *Id.* at 394. Jakes also sought leave to amend his complaint to address another inspection request that he had subsequently submitted to the Board. *Id.* at 356.

While the Board's summary-judgment motion was pending, Jakes moved for Chancellor Louis W. Oliver, III's recusal based on his relationships with Board personnel. R., Vol. II, at 218. Chancellor Oliver granted the recusal motion, R., Vol. III, at 354, and Criminal Court Judge Dee David Gay assigned himself to handle the case through interchange. *Id.* at 366.

The court held a hearing on the Board's summary-judgment motion and Jakes' motion to amend on January 9, 2015. Tr., Vol. III. At this hearing, the court denied both motions. *Id.* at 18–19, 67. In a subsequent order entered on January 23, 2015, the court held that the case was not moot because the Board did not immediately provide Jakes with an internet link to the publicly available policy. R., Vol. IV, at 469–70 (Appx. A). The court further held that summary judgment was not proper on the merits because submitting inspection requests in person or via the U.S. mail "should not be the only option[s] available for a request for viewing/inspection." *Id.* at 473. The court also denied Jakes' motion to amend as futile because the proposed amendment did not change the legal issues presented in the case. R., Vol. V, at 627; Tr., Vol. VIII, at 18–19.

The Board filed a motion to alter or amend or, in the alternative, to certify the order for interlocutory appeal. R., Vol. IV, at 475. The Board attached to its motion an updated copy of its policy reflecting the Board's longstanding practice of not accepting email requests and requiring citizens to submit requests via U.S. Mail or in person. R., Vol. V, at 610. The Board also provided the court with public-records policies from dozens of other county boards of education across Tennessee similarly prohibiting email requests. *Id.* at 605–07. Jakes filed a second motion to amend on March 17, 2015, to address revisions to the Board's public-records policy. *Id.* at 629.

The court held a hearing on March 25, 2015. Tr., Vol. IX. At this hearing, the court declined to amend its holding that the Board was not entitled to summary judgment, but the court did supplement its reasoning to reflect statements made at the hearing. *Id.* at 66–69. The court denied the Board's motion for an interlocutory appeal, *id.* at 68, and allowed Jakes to amend his complaint for the limited purpose of incorporating the amended public-records policy. *Id.* at 91–92.

C. The Trial And The Chancery Court's Decision.

The case proceeded to trial on July 29 and 30, 2015. Tr., Vol. X–XII. At the conclusion of the trial, both parties submitted proposed findings of fact and conclusions of law. R., Vol. VI–VII, at 824, 910.

The court announced its decision at a hearing on November 13, 2015, Tr., Vol. XIII, and entered its findings of fact and conclusions of law on the same day. R., Vol. VII, at 932 (Appx. B). The court held that Jakes' March 21 email seeking to inspect the Board's public-records policy "complied with the TPRA" and was a "valid public records request for inspection." *Id.* at 944–45. Moreover, the court held that the Board's policy of requiring citizens to make inspection requests in person or via U.S. Mail violated the TPRA and the court enjoined the Board from using the policy. *Id.* at 945–48, 954–55. In the court's view, citizens should not have to make a "forced election" between only those two options. *Id.* at 948.

The court, however, held that Jakes' March 31 email request for all documents relating to the March 21 request did not comply with the Act. Finding that the March 31 request was "a manifestation of [Jake's] completely unprofessional, rude, and intimidating attitude," *id.* at 951, the court held that the request "was too broad and was not 'sufficiently detailed to enable the records custodian to identify the specific records to be located.'" *Id.* (quoting Tenn. Code Ann. § 10-7-503(a)(7)(B)).

The court further denied Jakes' request for attorneys' fees, finding that the legal issues presented in the case were "not clear" and that Board employees had acted "in good faith" and in reliance on "advice from the Open Records Counsel" that the Board did not have to respond to email requests. *Id.* at 952–53. According to the court, Jakes' claims of willful misconduct were nothing but "pure speculation" and "conjecture." *Id.* at 953. The court gave the Board until March 1, 2016, to revise its public-records policy to comply with its order. *Id.* at 955. In a

footnote at the end of the order, the court stated that it was not dictating what policy the Board had to adopt, but instead was "only suggest[ing]" that the Board consider allowing requests submitted by "methods of modern communication" such as "website and telephone." *Id.* at 956 n.6.

D. The Parties' Post-Judgment Motions.

Jakes filed a motion for discretionary costs and fees, *id.* at 959, and the Board sought a stay pending appeal. *Id.* at 973. The Board filed a timely notice of appeal from the court's judgment on December 11, 2015. *Id.* at 981. At a hearing on January 25, 2016, the court denied Jakes' motion for costs and the Board's motion for a stay pending appeal. The court subsequently entered orders denying both motions. *Id.* at 999, 1001.

STATEMENT OF FACTS

A. The Board's Public-Records Policy.

The Board first adopted a public-records policy in 1991. Trial Ex. 1. The adopted policy was based on a form policy that the Tennessee School Board Association ("TSBA") recommended to school boards across the state. Tr., Vol. XI, at 220–23. Like the TSBA's form policy, the Board's written policy required requests to inspect or for copies of public records to be made in writing. Trial Ex. 1. The Board's policy complied with the TPRA as the Act existed from 1991 through 2008. Tr., Vol. XI, at 223.

The Tennessee General Assembly amended the TPRA in 2008 to add, among other things, a distinction between requests to *inspect* and requests for *copies*. Tenn. Code Ann. § 10-7-503(a)(7)(A). This amendment made it impermissible for a records custodian to require a citizen to make a written request to inspect records. *Id.* Through oversight, the Board (like many other entities across the state) failed to formally amend its public-records request policy in light of the statutory amendments. Tr., Vol. XI, at 226. Consequently, until 2015, the Board's

formal written policy on its face mistakenly required citizens to submit inspection requests in writing.

In practice, however, the Board has long allowed citizens to inspect public records without submitting a written request in compliance with the 2008 amendment to the TPRA. Tr., Vol. X–XI, at 45–50, 227–28. Beginning no later than January 1, 2008, the Board accepted requests to inspect records if those requests were submitted: (1) in person (without a writing) or (2) via the U.S. Mail (in writing). Tr., Vol. X, at 42–49. Although Board employee Jeremy Johnson (who also serves as media relations supervisor) has sometimes responded to informal questions from reporters without following the Board's public-records policy, Tr., Vol. X–XI, at 97–99, 184–85, 296, the Board has consistently required all formal requests to inspect public records under the TPRA to be made (1) in person without a writing or (2) in writing via the U.S. mail. Tr., Vol. X–XI, at 63–64, 184–85.

B. Jakes Submits Public-records Requests To The Board.

On March 6, 2014, Ken Jakes, Neil Siders, and Kurt Riley attended a public-records seminar hosted by Sumner United for Responsible Government ("SURG"), Tr., Vol. VII, at 354–55, 394, an organization associated with the Sumner County Tea Party. *See* Sumner United for Responsible Government, https://sumnerunited.org/about/ (last visited May 26, 2016). Jakes, who holds himself out as a "public-records expert," Tr., Vol. XII, at 353, addressed the group regarding public-records requests, *id.* at 354–55, and Siders, who has publicly referred to the Board as part of the "public records cartel," also had a teaching role. Tr., Vol. XI, at 288, 293.

On the day of but before the SURG meeting, Siders went to the Board's office and obtained its public-records request form. After the SURG meeting, Riley contacted Johnson and asked how to make an inspection request, and Johnson informed Riley to either appear in person or mail a written request. Tr., Vol. X, at 128. Riley then informed Jakes about the Board's

policy of not accepting electronic public-records requests, Tr., Vol. XII, at 323, and Jakes decided to test the Board's policy. *Id.* He believed that challenging the Board's policy in court "would hold th[e] potential" to change the policy of "every governmental entity in this state." *Id.* at 371. To do so, Jakes sent several emails to the Board in March 2014 demanding to inspect the Board's public-records policy. Trial Ex. 5, 9.

On Friday, March 21, 2014, after the Board's office was closed for the day, Jakes sent a "public record request" via email to Johnson requesting to inspect the Board's public-records policy. Trial Ex. 5. Jakes asked to inspect the policy even though the policy was publicly available on the Board's website. That same day, Jakes also left a message on Johnson's voicemail seeking to "verify" receipt of his email. R., Vol. II, at 244. On Monday morning, March 24, at 10:07 a.m., Jakes forwarded the same March 21 email to Johnson again. Trial Ex. 5. Seven minutes later, Jakes emailed Johnson asking for the name and contact information for the Board's legal counsel. Trial Ex. 6.

That same day, on March 24 at 2:40 p.m.—approximately seven business hours after Jakes sent his request—Johnson sent a response to Jakes' email request. Johnson told Jakes that his email request did not comply with the Board's public-records policy and explained how he could submit a public-records request to the Board. Trial Ex. 7. As Johnson's email explained, "[i]n keeping with the Board's policy please submit your request in person or via the U.S. Mail." *Id.* Johnson's response on behalf of the Board was consistent with the Board's practice, described above, in processing public-records requests.

Four hours later, at 6:57 p.m., again after business hours, Jakes responded to Johnson's email and threatened litigation: "You are about to find out the true meaning of being challenged on an issue. There is no way on earth the court will rule on your behalf. . . . Are you ready to make history? I am." *Id.* Johnson did not respond to this email. The following day, on

Tuesday, March 25 at 7:32 a.m., before business hours began, Jakes sent another email to Johnson threatening litigation: "Mr. Johnson, you left out another way I could obtain your records policy. That method is called DISCOVERY." *Id.*

C. The Board Seeks The Advice of Counsel And An Opinion From The Office of Open Records Counsel.

Johnson contacted the Board's general counsel, Jim Fuqua, about Jakes' email messages. Tr., Vol. X–XI, at 85–86, 91, 200–01. Fuqua did independent research and concluded that the Board was "not required by the statute to take email requests." Tr., Vol. XI, at 230, 232.

Fuqua also called Elisha Hodge, who at the time was Open Records Counsel in the Tennessee Office of Open Records Counsel. Fuqua asked Hodge for her opinion whether the TPRA required the Board to accept Jakes' inspection records requests via email. Hodge advised Fuqua that, in her opinion, the Board was "not required to accept email requests." *Id.* at 231–32.

Based on his own independent research and the Open Records Counsel's opinion, Fuqua advised the Board's Chairman, the Director of Schools, and Johnson that the Board did not have to comply with Jakes' email request and that the Board could continue to apply its policy of requiring citizens to submit inspection requests in person or via the U.S. Mail. *Id.* at 232.

D. Jakes Sends A Second Email Request to The Board.

On Friday, March 28 at 4:45 p.m., again after business hours, Jakes forwarded an email to Johnson that he had previously sent to an incorrect email address. Trial Ex. 8. This email again threatened litigation: "As I am a conservative and hold conservative values and principals [sic], I am sending this follow up email as a final attempt to resolve this issue before you force me to have to take legal actions. . . . I will (cc) my attorney on this email also." *Id.*

On the following business day, Monday, March 31, Jakes sent another records request to Johnson via email. Trial Ex. 9. This second request sought inspection of "[a]ny and all

communications between you and any other party or parties concerning [his] first public record request." *Id.* Once again, the Board relied on its attorney's advice and the Open Record Counsel's opinion and did not fulfill the email request pursuant to its public-records policy. Jakes then instituted this lawsuit against the Board in Sumner County Chancery Court on April 9, 2014. R., Vol. I, at 1.

SUMMARY OF THE ARGUMENT

The TPRA generally grants Tennessee citizens access to public records. Although the TPRA imposes some restrictions on how governmental entities must implement the TPRA, it does *not* require entities to accept electronic requests to inspect public records. Instead, as the Tennessee Office of Open Records Counsel has opined, the TPRA allows entities to decide for themselves whether to accept inspection requests submitted via email. Like many other governmental entities across the state, the Board has adopted a public-records policy allowing citizens to submit inspection requests in person or via U.S. Mail, but not via email.

The chancery court held that the Board's policy violated the TPRA because—in the court's own view—submitting requests in person or via the U.S. mail "should not be the only option[s] available for a request for viewing/inspection" in "an instant communication world." But whether governmental entities *should* be required to accept electronic inspection requests is a policy question for the General Assembly, not the judiciary. And the General Assembly has decided to allow individual local governmental entities to determine whether to accept electronic requests. The Board has lawfully exercised this discretion in allowing citizens to submit inspection requests in person or via U.S. Mail, but not via email. The chancery court erred in second-guessing that policy determination instead of applying the TPRA's plain and unambiguous language. Because the TPRA does not require governmental entities to accept email inspection requests, the Court should reverse the chancery court's judgment.

Alternatively, the Court should reverse the chancery court's judgment because Jakes' public-records request is moot. The requested record has been publicly available online since 2011 and the Board gave Jakes a hardcopy of the record early in this litigation. At that time, Jakes' request for access to that record became moot and the court should have granted the Board's summary-judgment motion.

ARGUMENT

I. THE BOARD'S PUBLIC-RECORDS POLICY DOES NOT VIOLATE THE TENNESSEE PUBLIC RECORDS ACT.

The chancery court mistakenly held that the Board's public-records policy requiring citizens to make inspection requests in person or via the U.S. Mail violated the TPRA. This Court should reverse the chancery court's judgment and reaffirm that the TPRA does not categorically require all state and local governmental entities to accept electronic requests to inspect public records. This Court reviews the chancery court's interpretation of the TPRA "under a pure *de novo* standard of review, according no deference to the [chancery court's] conclusions of law." *Friedmann v. Corr. Corp. of Am.*, 310 S.W.3d 366, 374 (Tenn. Ct. App. 2009).

A. The Tennessee Public Records Act Establishes A Broad Statutory Framework Providing Access To Public Records.

The TPRA, Tenn. Code Ann. §§ 10-7-101–516, establishes a statutory framework generally providing Tennessee citizens access to state and local governmental records. Public records subject to disclosure under the TPRA include records, regardless of form, that are "made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency." Tenn. Code Ann. § 10-7-503. The TPRA also provides access to records of private entities that are the "functional equivalent" of a governmental agency. *Gautreaux v. Internal Med. Educ. Found., Inc.*, 336 S.W.3d 526, 529 (Tenn. 2011).

Under the TPRA, "[a]ll state, county and municipal records shall, at all times during business hours, . . . be open for personal inspection by any citizen of this state." Tenn. Code Ann. § 10-7-503(a)(2)(A). The TPRA generally requires governmental entities to make available for inspection any non-exempt public record within seven business days. *Id.* § 10-7-503(a)(2)(B). The TPRA does not, however, require custodians "to sort through files to compile

information," *id.* § 10-7-503(a)(4), or to "create a record that does not exist." *Id.* § 10-7-503(a)(5).

Although a governmental entity generally "may not require a written request or assess a charge to view a public record," it may require a written request and assess a charge for copies of public records. *Id.* § 10-7-503(a)(7)(A), (C). The TPRA authorizes entities to require citizens making an inspection or copy request "to present a photo identification" or another "form[] of identification acceptable to the records custodian." *Id.* § 10-7-503(a)(7)(A). And "[a]ny request for inspection or copying of a public record shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied." *Id.* § 10-7-503(a)(7)(B).

If an entity denies a proper request for inspection or copies of public records, the person making the request can bring a cause of action to obtain access to the record. Tenn. Code Ann. § 10-7-505(a). Courts can award costs and attorneys' fees under the TPRA, but only if the court finds that the entity "knew that such record was public and willfully refused to disclose it." *Id.* § 10-7-505(g). "In determining whether the action was willful, the court may consider any guidance provided to the records custodian by the office of open records counsel . . . ." *Id.*

B. The General Assembly Directs Individual Governmental Entities To Adopt Policies Setting Forth The Process To Make Public-records Requests.

The TPRA does not dictate a "one-size-fits-all" policy for the many diverse state and local governmental entities subject to the TPRA. Instead, entities are largely responsible for adopting their own policies, consistent with the TPRA's express requirements, to implement the TPRA given each entity's individual needs and resources. These individual policies include the process for making requests to inspect records. *See* Tenn. Office of Open Records Counsel Best Practice Guidelines, Trial Ex. 12 (providing that "a governmental entity should have a written

public records policy" that addresses "the process for making requests to inspect public records").

Earlier this year, the Tennessee General Assembly enacted legislation reaffirming an entity's responsibility to implement the TPRA by establishing policies governing the process for making records requests. House Bill 2082, which Governor Haslam signed on April 8, 2016, amends the TPRA to require that "every governmental entity subject to [the TPRA to] establish a written public records policy properly adopted by the appropriate governing authority." TPRA, 2016 Tenn. Laws Pub. ch. 722, § 4 (amending Tenn. Code Ann. § 10-7-503). Importantly, the entity's policy must specifically set forth "*[t]he process for making requests to inspect public records.*" *Id.* (emphasis added). The policy must also establish "[t]he process for responding to requests" and "[a] statement of any fees charged for copies of public records." *Id.*

Consistent with longstanding practice and House Bill 2082, the Board has adopted a public-records policy to implement the TPRA. Trial Ex. 4 (Appx. C). The Board's policy sets forth the process for making requests to inspect public records, and authorizes citizens to submit inspection requests (1) in person or (2) via U.S. mail. *Id.* § III. As explained below, the chancery court mistakenly held that this aspect of the Board's public-records policy violates the TPRA.[1]

C. The TPRA Does Not Require The Board To Accept Electronic Requests To Inspect Public Records.

The TPRA does not require governmental entities to accept electronic requests to inspect public records, either through email or, as the chancery court suggested at several hearings,

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[1] At the time of Jakes' requests, the Board's policy inaccurately stated on its face that inspection requests must be submitted in writing. The Board's actual practicing policy at the time, however, was to allow requests to be made (1) in person (without a writing) or (2) via U.S. Mail. Tr., Vol. X–VI, at 45–50, 227–28. The Board applied this policy—now accurately reflected in the Board's written policy (Trial Ex. 4)—in not fulfilling Jakes' requests to inspect the Board's public-records policy. Trial Ex. 7; Tr., Vol. X, at 63–64.

through an electronic website portal. There is nothing in the TPRA requiring custodians to accept electronic requests of any type, and the state official chiefly responsible for interpreting and administering the Act has issued an advisory opinion that custodians are not required to accept electronic requests. Additionally, this Court has previously stated in an opinion that custodians may—as the Board and numerous other local governmental entities have done—require inspection requests to be submitted in person or via U.S. Mail. For all of these reasons, explained in detail below, the chancery court's judgment should be reversed.

1. The TPRA Does Not Require Entities To Accept Electronic Requests.

First, the TPRA does not expressly require custodians to accept electronic requests to inspect public records. The Court should apply the TPRA's plain language and "decline to 'read in'" language that is not in the statute. *Howell v. State*, 151 S.W.3d 450, 458 (Tenn. 2004) (refusing to "read in" language into a statute to extend statute's coverage).

Not only does the TPRA lack any language requiring entities to accept electronic requests, the TPRA *does* contain *other* express restrictions on the types of policies that entities can adopt under the TPRA. For example, entities cannot require a written request or a fee to inspect a public record, Tenn. Code. Ann. § 10-7-503(a)(7)(A); entities cannot contractually delegate its disclosure obligations to a private entity to avoid the TPRA, *id.* § 10-7-503(a)(b); entities generally must provide the requested records within seven business days, *id.* § 10-7-503(a)(2)(B); and custodians must give a requestor a cost estimate for providing the requested copies, *id.* § 10-7-503(a)(7)(C)(ii). As these express provisions illustrate, when the legislature wanted to restrict an entity's procedures under the TPRA, it knew exactly how to do so.

The fact that the General Assembly has expressly enumerated some restrictions on inspection requests, but has chosen *not* to expressly require custodians to accept electronic requests, is strong evidence that it did not intend to impose any such blanket restriction. As

Tennessee courts have repeatedly explained, "[t]he mention of one subject in a statute signifies the exclusion of other unmentioned subjects, and '[o]missions are significant when statutes are express in certain categories but not others.'" *Harman v. Univ. of Tenn.*, 353 S.W.3d 734, 738–39 (Tenn. 2011) (quoting *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997)); *accord Rich v. Tenn. Bd. of Med. Exam'rs*, 350 S.W.3d 919, 927 (Tenn. 2011) (applying *expressio unius est exclusio alterius* cannon, holding "that the expression of one thing implies the exclusion of others").

If the General Assembly wanted to categorically require all entities to accept electronic requests, "it would have included specific language to that effect," *Rich*, 350 S.W.3d at 927, just as it did in restricting other governmental entity practices under the TPRA. Critically, however, the General Assembly did not impose an electronic-request requirement, opting instead to leave that matter to be determined by individual governmental entities responsible for implementing the TPRA. For this reason alone, the Court should hold that the TPRA's plain and unambiguous language does not categorically require governmental entities to accept electronic inspection requests.

2. The Office Of Open Records Counsel Has Opined That The TPRA Does Not Require Custodians To Accept Electronic Requests.

Second, the Tennessee Office of Open Records Counsel—the state office primarily responsible for administering, interpreting, and advising local governmental entities about the TPRA—has opined that the TPRA does not require custodians to accept electronic requests. This interpretation is entitled to considerable deference and supports the Board's view that the TPRA does not require agencies to accept email requests to inspect public records.

Tennessee courts give "great weight" to a state agency's interpretation of a statute that it is charged with administering. *Consumer Advocate Div. v. Greer*, 967 S.W.2d 759, 761 (Tenn.

1998). Such agency interpretations are "given respect and accorded deference," *Riggs v. Burson*, 941 S.W.2d 44, 50–51 (Tenn. 1997), because of the agency's expertise and specialized knowledge in matters falling within its jurisdiction. *See Consumer Advocate Div. v. Tenn. Regulatory Auth.*, No. M1999-01699-COA-R2-CV, 2000 WL 1514324, at *3 (Tenn. Ct. App. Oct. 12, 2000) ("[T]he construction of a statute by the agency charged with the enforcement or administration of that statute is afforded great weight."). Moreover, "considerable deference" is given to a state official's interpretation if she is charged with assisting governmental officials comply with the law and "government officials rely upon [her] for guidance" in carrying out their public duties. *State v. Black*, 897 S.W.2d 680, 683 (Tenn. 1995).

The Tennessee General Assembly created the Office of Open Records Counsel "to answer questions and provide information to public officials and the public regarding public records." Tenn. Code Ann. § 8-4-601(a). Among other duties, the Office of Open Records Counsel is statutorily directed to "answer questions and issue informal advisory opinions as expeditiously as possible to any person, including local government officials." *Id.* § 601(b). The Office of Open Records Counsel is also authorized to "provid[e] educational outreach on the open records laws," *id.* § 601(a), and to "mediate and assist with the resolution of issues concerning open records laws." *Id.* § 601(c). The recently enacted House Bill 2082 further directs the Office of Open Records Counsel to prepare "[a] model best practices and public records policy for use by a records custodian in compliance with [the TPRA]." TPRA, 2016 Tenn. Laws Pub. ch. 722, § 7.

Upon receiving Jakes' email requests, Board attorney Jim Fuqua called the Tennessee Office of Open Records Counsel and spoke with Open Records Counsel Elisha Hodge. Fuqua asked Hodge for an opinion whether the TPRA required the Board to accept inspection requests via email. Hodge specifically advised Fuqua that the Board was "not required to accept email

requests." Tr., Vol. XI, at 231–32. This opinion was consistent with the TPRA's plain language, as well as the Office of Open Records Counsel's Best Practice Guidelines, which states that entities can "adopt reasonable rules governing the manner in which records request[s] are to be made." Trial Ex. 12. It was also consistent with the Office's "Frequently Asked Questions" website, which notes that neither the TPRA nor Tennessee case law requires entities to accept email requests for copies of public records. Trial Ex. 15, no. 25.

Given the Office of Open Records Counsel's statutory authority and extensive expertise in administering, interpreting, and advising local governmental entities about the TPRA, its interpretation that the TPRA does not require governmental entities to accept electronic inspection requests should be given considerable deference.

3. This Court Has Expressly Endorsed A Public-records Policy Requiring Requests To Be Made In Person or Via U.S. Mail.

Third, this Court has expressly recognized that custodians can lawfully adopt policies substantively identical to the Board's public-records policy requiring citizens to submit inspection requests in person or by U.S. Mail. In *Hickman v. Tennessee Board of Probation & Parole*, No. M2001-02346, 2003 WL 724474 (Tenn. Ct. App. Mar. 4, 2003), the Court considered an inmate's claims that the Board of Probation and Parole had violated the TPRA by denying him access to certain public records. In doing so, the Court stated in unmistakable terms:

> In order to access public records, a citizen must either [1] appear in person during normal business hours at the location where the public records are housed or [2] if unable to appear in person, the citizen may identify those documents sought by mail to the records custodian so that the records custodian can copy and produce those documents without requiring an extensive search.

Id. at *3.

This is precisely the policy that the Sumner County Board of Education has adopted and that is challenged in this case. The Board can hardly be faulted for adopting and applying a public-records policy that this Court expressly endorsed in *Hickman*.

4. Numerous Other Governmental Entities And School Boards Disallow Electronic Requests.

Finally, consistent with the Office of Open Records Counsel's opinion and this Court's decision in *Hickman*, numerous state and local governmental entities have longstanding policies—like the Board's—that do not permit electronic records requests. This is certainly true among school boards. The Board has identified at least 11 school boards that expressly prohibit email requests. *See* Appx. D. In fact, *none* of the 72 Tennessee school boards with published public-records policies expressly permits email requests. *See* Appx. E.

* * *

In sum, the chancery court erred in holding that Board's public-records policy violates the TPRA. Although the TPRA imposes some express restrictions on an entity's public record policies, it does *not* require governmental entities to accept electronic requests to inspect public records. The Court should reverse the chancery court's judgment and hold that the Board's public-records policy is consistent with the TPRA.

II. THE CHANCERY COURT MISTAKENLY IMPOSED ITS OWN PUBLIC-POLICY JUDGMENTS IN HOLDING THAT THE BOARD'S PUBLIC-RECORDS POLICY VIOLATES THE TPRA.

Instead of applying the TPRA's express language, and without affording any deference to the Office of Open Records Counsel's informed interpretation of that language, the chancery court held that the Board's policy was invalid based on the court's own policy judgments. In the court's view, submitting inspection requests in person or via the U.S. mail "should not be the only option[s] available for a request for viewing/inspection." R., Vol. IV, at 473; *accord* R.,

Vol. VII, at 947–49 (holding that the Board's policy is "inconsistent with the policy of the Open Records Act"). According to the court, citizens should not have to make a "forced election" between those two options "in an instant communication world." R., Vol. VII, at 948.

Tennessee courts, however, may not "alter or amend a statute" or "substitute [their] policy judgments for those of the legislature." *Draper v. Westerfield*, 181 S.W.3d 283, 290 (Tenn. 2005). Under separation-of-powers principles (*see* Tenn. Const. art. 2, § 1), whether the TPRA *should* require governmental entities to accept electronic or voicemail requests to inspect public records "in an instant communication world," R., Vol. VII, at 948, is a policy-laden question for the legislative branch of government. As the Tennessee Supreme Court has emphasized on numerous occasions, Tennessee courts do not "function as a forum for resolution of public policy issues when interpreting statutes." *State v. Mateyko*, 53 S.W.3d 666, 677 (Tenn. 2001) (quoting *Lavin v. Jordon*, 16 S.W.3d 362, 369 (Tenn. 2000)).[2]

Although the TPRA dictates some aspects of how entities must accept and process public-records requests, the General Assembly has left other implementation matters to the entities themselves. House Bill 2082's recent amendments to the TPRA reaffirm the legislature's explicit policy determination that "the process for making requests to inspect public records" should be made on an individualized basis by "every governmental entity subject to [the TPRA]." TPRA, 2016 Tenn. Laws Pub. ch. 722, §4 (amending Tenn. Code Ann. § 503). "In no case," including this one, "is the judiciary empowered to substitute its own policy judgments for those of the General Assembly." *State v. Mallard*, 40 S.W.3d 473, 480 (Tenn. 2001).

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[2] The chancery court recognized this point at the summary-judgment stage, stating: "Now, I'm not going to be here telling the Board of Education what they've got to do, but all I know is that they may not require a written request. They can do *anything* other than require a written request." Tr., Vol. VIII, at 63 (emphasis added).

Reasonable people may disagree as to whether governmental entities *should* accept electronic requests to inspect public records. But that policy determination is for the General Assembly to make. And, so far, the General Assembly has determined that state law should not categorically require all governmental entities to accept such requests. If Jakes is displeased with this policy determination, his "recourse lies not with the judiciary, but with the legislature." *Home Builders Ass'n of Middle Tenn. v. Williamson County*, 304 S.W.3d 812, 822 (Tenn. 2010).

In this case, the eleven elected members of the Sumner County Board of Education exercised their discretion under the TPRA and determined that citizens should request to inspect Board records in person or via the U.S. Mail. This policy fully complies with the TPRA's text, this Court's *Hickman* opinion, and the Office of Open Records Counsel's interpretive guidance. It is up to the General Assembly, the elected members of the Board, and their constituents—not the judiciary—to determine whether that policy is the right one. Because there is nothing explicit or implicit in the TPRA that prohibits the Board's policy, this Court should reverse the chancery court's judgment.

The Board fully recognizes that the TPRA "express[es] a clear legislative mandate favoring disclosure of governmental records," *Schneider v. City of Jackson*, 226 S.W.3d 332, 340 (Tenn. 2007), and governmental entities cannot adopt policies that would "substantially inhibit disclosure of records." *Tennessean v. Elec. Power Bd. of Nashville*, 979 S.W.2d 297, 305 (Tenn. 1998). For example, custodians cannot categorically prohibit inmates from requesting records by classifying them as "noncitizens." *Cole v. Campbell*, 968 S.W.2d 274, 277 (Tenn. 1998). Nor can custodians prevent citizens from obtaining copies of records simply because they are not physically able to personally appear before the custodian. *Waller v. Bryan*, 16 S.W.3d 770, 773–74 (Tenn. 1999). Nor can custodians adopt blanket policies shielding certain types of

records from public review, such as closed investigative files. *Memphis Pub. Co. v. Holt*, 710 S.W.2d 513, 515–16 (Tenn. 1986).

But the Board's policy challenged in this case does not raise such concerns. The Board's policy does not deny access to public records. Nor is it tantamount to a denial of access to public records. Jakes, like any other citizen, can easily request to inspect a record under the Board's policy. Jakes' only complaint is that "it would be an inconvenience on [him] to send [a request] by US Postal Service" instead of by email or voicemail. Tr., Vol. XII, at 384. That mere "inconvenience" is not enough to justify engrafting on the TPRA new requirements that have no textual or other legal basis.

The Court's decision in *Allen v. Day*, 213 S.W.3d 244 (Tenn. Ct. App. 2006), which Jakes has relied on throughout this litigation, is not to the contrary. Nothing in the *Allen* opinion addresses whether state and local governmental entities can require citizens to submit inspection requests in person or via U.S. Mail. In *Allen*, the Court only considered whether a newspaper reporter had complied with the TPRA's jurisdictional requirements that a citizen first seek access to records by submitting a request to the official records custodian during normal business hours before initiating litigation. *Id.* at 247–49. The Court held that the reporter satisfied the TPRA's jurisdictional requirements by asking the custodian's spokesperson for a copy of the record and being told that it was confidential, after the newspaper's attorney had submitted a written request and had that request denied. *Id.* The Court's decision turned on the proper construction of the TPRA's express jurisdictional requirements, which are not at issue in this case.

Like other reasonable rules implementing the TPRA, the Board's policy (shared by many other governmental entities) requiring citizens to submit inspection requests in person or via U.S. Mail is fully consistent with the TPRA's text and spirit, and this Court should uphold it. *See, e.g.*, *Lance v. York*, 359 S.W.3d 197, 203–04 (Tenn. Ct. App. 2011) (holding that TPRA did not

require custodian to convert requested paper records into electronic format); *Hickman*, 2003 WL 724474, at *10 (holding that TPRA did not require custodian to prepare compilation because there was "no language in the Act" requiring it to do so); *Shabazz v. Campbell*, 63 S.W.3d 776, 782 (Tenn. Ct. App. 2001) (upholding agency's "reasonable rules regarding access to public records for inspection," which required payment of fees in advance). Again, only the General Assembly has the authority to adopt a policy requiring all state and local governmental entities to accept email requests to inspect public records.[3]

III. THE BOARD'S PUBLIC-RECORDS POLICY FURTHERS RATIONAL POLICY INTERESTS.

As explained above, this Court should not second-guess the basis for the Board's policy requiring citizens to submit inspection requests in person or via U.S. Mail. Instead, the Court should apply the plain language of the TPRA, give deference to the Office of Open Records Counsel's informed interpretation of that language, and hold that the board's policy does not violate the TPRA. But even if the Court were to consider the policy basis for the Board's procedural requirements, a variety of legitimate policy interests and concerns support the Board's conclusion that electronic requests should not be utilized in requesting access to the Board's public records.

First, emails are less secure than mailed or in-person requests. Publishing and using an email address for public-records requests poses a significant risk of computer viruses and

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[3] In a footnote at the end of its order, the court stated that it was not "legislat[ing]" or "dictat[ing]" what policy the Board had to adopt, but "only suggest[ing]" and "recommend[ing]" that the Board consider allowing requests submitted by "methods of modern communication" such as "website and telephone." R., Vol. VII, at 956 n.6. But legislating is exactly what the court did. By holding that Jakes' email was a valid public-records request, and by declaring that the Board's policy did not comply with the TPRA, the court necessarily required the Board to adopt a new policy (by March 1, 2016) allowing electronic requests, even though the TPRA contains no such restrictions. This ultimate decision was contrary to the chancery court's statement in its summary-judgment ruling that it was "not going to be here telling the Board of Education what they've got to do." *See supra* note 2.

malware that could infect or compromise the Board's computer system, which handles approximately 4,500 email accounts and stores substantial amounts of electronic information. At trial, the Board's Assistant Director for Information Services, Chris Brown, testified that—in the past year alone—the Board had roughly 250 to 300 tickets that either directly involved a virus or referenced virus-related symptoms. Tr., Vol. XI, at 267. Computer hackers also often use "social engineering" or "spoofing" to hijack a seemingly trustworthy email address to fraudulently obtain confidential information from or electronic access to computer networks. *Id.* at 267–68.

In fact, approximately three years ago, Board staff members were receiving so much suspicious spam and "cold call" emails that the Board delisted virtually all of the school's email addresses from the internet. *Id.* at 260–61. In one situation, the Board received so many emails regarding a Board lawsuit that its email system "was completely locked up with requests and comments and things" for "probably three or four days." *Id.* at 205.

The Board finds these risks to be especially concerning given the type of electronic information that the Board keeps, much of which is protected confidential information under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and state law. For example, the Board maintains custody of important student and educational records, such as grades, test scores, attendance, disciplinary, counseling, and special-education records. Tr., Vol. X, at 65–69. Board records also include school security and safety plans, school financial records, and personnel records and reviews. *Id.* The TPRA itself protects much (if not all) of this school information from disclosure. *See* Tenn. Code Ann. § 10-7-504(a)(4), (f)(1), (p). The Board has reasonably concluded that these real and documented security risks favor requiring citizens to submit inspection requests in person or via U.S. Mail.

Second, the Board made a discretionary policy decision that email is a less reliable method of communication than paper correspondence or in-person communication. In the Board's experience, emails tend to get lost or overlooked more easily than paper copies. Johnson himself receives "upwards of 300 emails a day." Tr., Vol. XI, at 261. Even the most careful custodian might understandably lose track of email requests coming in among hundreds of other emails. Paper copies, on the other hand, are physical objects that officials can hold and more easily track. Tr., Vol. X, at 68. The Board logically prefers to keep all requests and Board responses in a "logbook" of hardcopy documents for quick access and review to ensure that the Board properly responds within the seven-day statutory timeframe. Tr., Vol. XI, at 179–82.

Moreover, the Board's email system has spam filters and "message rules" that can capture emails (particularly from unrecognized email addresses) and store them in separate folders, thus preventing officials from ever reading them, let alone timely responding to them. *Id.* at 256–59. Additionally, to conserve limited resources, the Board's email program automatically and permanently deletes emails in the system's spam or junk folders after two weeks if they are not filed or saved in an inbox. *Id.* at 256.

There is also no way to guarantee that an email will actually be delivered to or received by the proper person. *Id.* at 257. The email might be sent to a person who is out of town or otherwise unavailable or to a person not responsible for compliance with the TPRA. Moreover, the email might be sent to the wrong email address. The facts of this very case illustrate this concern. Jakes himself sent an email intended for Johnson regarding his public-records request on March 28, 2014, but Jakes mistyped Johnson's email address. As a result, the email did not get to Johnson until Jakes subsequently resent it after realizing the error. Trial Ex. 8. All of these reliability considerations reasonably support the Board's policy decision that citizens submit inspection requests in person or via U.S. Mail.

Third, the Board considers email correspondence less stable and official than written or in-person communication. At trial, Brown testified that the Board experienced approximately 30 email outages in the last year. Tr., Vol. XI, at 264–65. And although emails are great for quick and temporary communications, the Board prefers to have "a more formal process" that helps ensure ongoing compliance with the TPRA and the many privacy restrictions that the Board must navigate. Tr., Vol. X, at 56. Moreover, requiring citizens to submit inspection requests via U.S. Mail or in person makes it easier for the Board to verify that the requester is a "citizen of this state," as the Board is required to do under the TPRA, before allowing access to public records. Tenn. Code Ann. § 10-7-503(a)(2)(A).

Finally, accepting email requests would be costly, particularly in the long term. At trial, Brown testified that licensing and equipment upgrades needed to treat all emails as potential public-records requests would cost the Board approximately $40,000. Tr., Vol. XI, at 269–70. Although the chancery court discredited this testimony given the relatively small number of requests that the Board has historically received, purchasing the infrastructure and administering an email request system to minimize all of the risks outlined above would under any circumstance require significant public effort, funds, and time. Given all of these risks of electronic communication, the Board reasonably believes that citizens should submit inspection requests in person or via the U.S. Mail.

* * *

Whether to require all governmental entities to accept electronic requests to inspect public records is a policy determination for the General Assembly to make under the TPRA. The Court should not, on public-policy grounds, second-guess the Board's policy—fully consistent with the TPRA's text—requiring citizens to submit inspection requests in person or via email. But even if the Court were to do so, the record demonstrates that the Board has reasonably relied

on a variety of legitimate policy factors in deciding not to authorize electronic inspection requests. Because the TPRA does not require the Board to accept electronic requests, this Court should reverse the chancery court's judgment.

IV. JAKES' CLAIMS SEEKING A COPY OF THE BOARD'S PUBLIC-RECORDS POLICY BECAME MOOT WHEN THE BOARD PROVIDED HIM WITH A COPY OF THE POLICY.

Alternatively, this Court should reverse the chancery court's judgment on mootness grounds. Not only has the Board's public-records policy been readily available on the internet since August 2011, the Board provided Jakes with a personal hardcopy of the requested record early in this litigation. At that time, Jakes' claims seeking a copy of that record became moot. The chancery court should have granted summary judgment to the Board on that ground, instead of conducting a trial and issuing an advisory opinion on whether the Board was required to fulfill electronic requests that the Board had already satisfied. The Court "review[s] the denial of a motion for summary judgment *de novo* without a presumption of correctness." *Jones v. Vasu*, 326 S.W.3d 577, 579 (Tenn. Ct. App. 2010).

Under Tennessee law, a "case must remain justiciable (remain a legal controversy) from the time it is filed until the moment of final appellate disposition." *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County*, 301 S.W.3d 196, 203–04 (Tenn. 2009). A claim "that does not involve presently existing rights, 'live issues that are within a court's power to resolve, and parties who have a legally cognizable interest in the resolution of these issues,' is no longer justiciable." *Lukfin v. Bd. of Prof'l Responsibility*, 336 S.W.3d 223, 226 (Tenn. 2011) (quoting *State ex rel. DeSelm v. Jordan*, 296 S.W.3d 530, 534 (Tenn. Ct. App. 2009)). Accordingly, if a claim "no longer serves as a means to provide some sort of judicial relief to the prevailing party," it is moot and should be dismissed. *Lufkin*, 336 S.W.3d at 226. This includes claims seeking a declaratory judgment. *See, e.g.*, *Hatcher v. Chairman*, 341 S.W.3d 258, 261 (Tenn. Ct. App.

2009) (holding that declaratory-judgment claim was moot because it "lost its character as a present, live controversy").

The TPRA authorizes a cause of action for only one form of substantive relief: recovery of the requested public record. *See* Tenn. Code Ann. § 10-7-505(a) (authorizing a cause of action "for obtaining access to public records"); Op. Tenn. Att'y Gen. 06-069 (Apr. 12, 2006) (explaining that "the Act does not provide any penalties, *per se*, for failure to comply with the Act," only access to the requested record and attorneys' fees for willful noncompliance). Consequently, as this Court has explained before, once a public entity provides a requested record to the plaintiff, the public-records claims seeking access to the record become moot.

This Court's decision in *Lance*, 359 S.W.3d 197 (Tenn. Ct. App. 2011), is illustrative. In *Lance*, a plaintiff filed a claim under the TPRA alleging that a district attorney had denied him access to certain public records. *Id.* at 200–01. The district attorney subsequently provided the records and the chancery court dismissed the claim on mootness grounds. *Id.* at 201. The Court of Appeals affirmed, reiterating that "a case is not justiciable if it does not involve a genuine, continuing controversy requiring the adjudication of presently existing rights." *Id.* at 204. Applying that standard, this Court held that the plaintiff's claims were moot because he "ultimately received the[] [requested] documents," and, at that point, "there was no further relief the court could have granted." *Id.*

Courts applying public-records statutes in other states follow the same mootness rule. As these courts have explained, it would make little sense to continue litigating a claim seeking access to a public record when that record has already been produced to the plaintiff. *See, e.g.*, *Sloan v. S.C. Dep't of Rev.*, 762 S.E.2d 687, 689 (S.C. 2014) (holding that plaintiff's public-records claim was mooted when the government provided records after plaintiff commenced litigation); *State ex rel. Cincinnati Enquirer v. Ronan*, 918 N.E.2d 515, 516 (Ohio 2009) (same);

Clapper v. Or. State Police, 206 P.3d 1135, 1138–39 (Or. Ct. App. 2009) (same); *Thibodeaux v. Field*, No. 2007CA1418, 2008 WL 2065236, at *2 (La. Ct. App. May 2, 2008) (same); *Racine Ed. Ass'n v. Bd. of Educ. for Racine Unified Sch. Dist.*, 385 N.W.2d 510, 511–12 (Wis. Ct. App. 1986) (same).

Federal courts applying the federal Freedom of Information Act ("FOIA") have also held that "once the government produces all the documents a plaintiff requests, her claim for relief under the FOIA becomes moot." *Walsh v. U.S. Dep't of Veterans Affairs*, 400 F.3d 535, 536–37 (7th Cir. 2005) (collecting cases); *accord Anderson v. U.S. Dep't of Health & Human Servs.*, 3 F.3d 1383, 1384 (10th Cir. 1993) ("Once the government produces all the documents a plaintiff requests, her claim for relief under the FOIA becomes moot."); *Voinche v. Fed. Bureau of Invest.*, 999 F.2d 962, 963 (5th Cir. 1993) (holding that FOIA claim "was rendered moot by the FBI's response to his request"); *Carson v. U.S. Merit Sys. Prot. Bd.*, No. 3:11-cv-399, 2012 WL 2562370, at *2 (E.D. Tenn. June 29, 2012) (holding that FOIA "claim was rendered moot by the [agency's] response"); *Crews v. Revenue*, No. CV 99-8388, 2000 WL 900800, at *5 (C.D. Cal. Apr. 26, 2000) ("An action to compel the production of documents under the FOIA is mooted when the agency in control of the requested documents delivers them to the plaintiff.").

In fact, some courts have held that the availability of a public record on the internet is alone sufficient to moot a public-records request. *See, e.g.*, *Meyer v. Comm'r of Internal Revenue Serv.*, No. 10-767, 2010 WL 4157173, at *5 (D. Minn. Sept. 27, 2010) ("The IRS makes this information available on the IRS website or in the public library. Because this material is already publicly available, the IRS need not disclose it to Plaintiff via his FOIA request."); *Crews*, 2000 WL 900800, at *6 (holding that documents publicly available on the internet are "not subject to production via FOIA requests"); *State ex rel. Patton v. Rhodes*, No.

C-100258, 2011 WL 192749, at *1 (Ohio Ct. App. Jan. 21, 2011) (holding that official's posting of material on internet rendered action moot).

Here, Jakes' claims seeking to inspect the Board's public-records policy are moot. The requested public-records policy has been readily available online since August 2011. R., Vol. I, at 29–30; Tr., Vol. X, at 50–53. Moreover, the Board provided Jakes with a personal hardcopy of the policy on August 22, 2014, when the Board moved for summary judgment. R., Vol. I, at 23, 26–28. At that time, Jakes' request for access became moot because "there was no further relief the court could have granted." *Lance*, 359 S.W.3d at 204. The chancery court should have granted summary judgment to the Board on this ground, instead of requiring the litigation to proceed, conducting a trial, and issuing an advisory opinion on whether governmental entities can require citizens to submit inspection requests in person or via U.S. Mail. For this alternative reason, this Court should reverse the chancery court's judgment.

CONCLUSION

The Board respectfully requests that the Court reverse the chancery court's judgment. The Court should either hold that the Board's public-records policy complies with the TPRA or hold that Jakes' claims seeking a copy of the Board's public-records policy are moot.

Respectfully submitted,

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May 27, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document is being forwarded, via U.S. Mail, first class postage prepaid, this 27th day of May, 2016, to:

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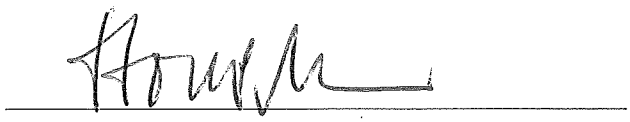

APPENDIX

TAB A

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

KENNETH L. JAKES, Plaintiff, vs. #2014-CV-53 SUMNER COUNTY BOARD OF EDUCATION, Defendant.	)	MINUTES JAN 23 2015 CHANCERY COURT

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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 FACT[3]

The parties stipulated to the following evidence and facts for the basis for the Motion for Summary Judgment[4]: (1) an email request from the Plaintiff to Jeremy Johnson at the Sumner County Board of Education on March 21, 2014[5]; (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 email[6]; (3) an email message from Jeremy Johnson to Plaintiff on 3/24/14[7]; (4) Sumner County Board of Education Policy for handling public records requests from 1997[8].

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

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[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 denied[9].

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.

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[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

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[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)].

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[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

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[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

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[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

TAB B

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

KENNETH L. JAKES,
Plaintiff,

vs. #2014-CV-53

SUMNER COUNTY BOARD OF EDUCATION,
Defendant.

C

FILED ____ REC ____
SUMNER CO. CHANCERY COURT
NOV 13 2015
DARLENE D. DAUGHTRY
CLERK & MASTER
BY: AT 11:30
DEPUTY CLERK & MASTER

MINUTES
NOV 13 2015
CHANCERY COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW and ORDER

FINDINGS OF FACT

I. Plaintiff's Request for the Public Records Policy of the Defendant, and the Defendant's Response

Kenneth Jakes, a resident of Joelton, Tennessee, testified that he had been a "public records expert" and a "professional" in making public records requests in Tennessee since 2006. During that time, he had made many public records requests from numerous municipalities and "most counties". In March of 2014, Jakes had been alerted by a friend, Kurt Riley, that he could not understand why public records requests could not be made by email or telephone at the Sumner County Board of Education, when Riley had no trouble with other government agencies responding to his public records requests by email or telephone. Jakes decided to contact the Sumner County Board of Education for their public records requests for inspection policy.

On Friday, March 21, 2014, at 4:34 p.m., after working hours, Jakes sent the following email to Jeremy Johnson at the Sumner County Board of Education:

> **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.**
> **Thank you,**
> **Ken Jakes 615-347-3379 [Trial Exhibit #5]**

Jakes immediately followed up this email with a phone message that was left for Mr. Johnson. The message was as follows:

> **Jeremy, This is Ken Jakes. I'm just calling to verify that you did receive, according to where my email went, on my public record request. (sic) I'm just verifying that. My cell phone number is 615-347-3379. It was for a public record request for the records policy the Board of Education. So if you will, just give me a call confirming that you did receive my email.**

On Monday, March 24, 2014, at 10:14 a.m., Mr. Jakes sent the following email to Jeremy Johnson at the Sumner County Board of Education before Mr. Johnson had had an opportunity to respond to his after-hours email from Friday:

> **Mr. Johnson, please provide me the name and contact information for your Legal Council (sic) for the Board of Education. Thank you, Ken Jakes. [Trial Exhibit #6]**

On Monday, March 24, 2014, at 2:40 p.m., Jeremy Johnson made the following email response for the Sumner County School Board:

> **Mr. Jakes,**
> **In keeping with our practice regarding open records requests, you'll need either to submit your request in person or via the postal service. Thanks, Jeremy [Trial Exhibit #7]**

On Monday, March 24, 2014, at 6:57 p.m., after hours, Mr. Jakes sent an email to Mr. Johnson:

> **Mr. Johnson, I request to simply review the Records Policy and this is the response I get from you. Let me give you a response as well, never say your practices have gone unchallenged.**
>
> **You, are about to find out the true meaning of being challenged on an issue. There's no way on earth the Court will rule on your behalf. Opinions are one thing and established legal precedence (sic) is another. Are you ready to make history? I am.**
>
> **Ken [Trial Exhibit #7]**

On Tuesday, March 25, 2014, at 7:32 a.m., Mr. Jakes sent the following email to Mr. Johnson:

> **Mr. Johnson, you left out another way I could obtain your records policy. That method is called DISCOVERY.**
>
> **Ken [Trial Exhibit #7]**

On Friday, March 28, 2014, at 4:39 p.m., after working hours Ken Jakes sent the following email to Mr. Johnson:

> **Mr. Jeremy Johnson, I made a request to inspect and review the Public Records policy of the Board of Education to you by email on March 21, 2014. Furthermore, I followed up the request by phone to your voicemail just shortly after because I did not know which method you would receive first. Monday will be the final day of seven working days to either Provide (sic) my request or inform me of the status of my request when the request will be ready.**
>
> **As of now, I have only received a denial response from you by email informing me that I would have to make my Public Record request in one of two methods. I could request in person or I could request by U.S. Mail. As I am conservative and hold conservative values and principles, I am sending this followup email as a final attempt to resolve this issue before you force me to have to take legal action. Does the School Board have such a surplus of funds to waste because you refuse to provide me the Records Policy for my review? It would appear providing for the children of the schools would be a much better use of public records. Good grief you could have sent it to me online or provided a time for physical inspection much faster then (sic) sending to me the denial response.**
>
> **Please understand where I believe it is a waste of time and money to take legal action I am prepared to do so. I am prepared because I feel sure the law will prevail on my behalf. You have placed me in a position where should you hold firm to the**

denial to provide by email, I have no choice but proceed. I have to protect my right to review should I request in the future, I will (cc) my attorney on this email also.

Please contact me any way you need to.
Home 615-876-6220 Cell 615-347-3379
Work 615-227-1993
Fax 615-227-1863
Email ken.jakes@comcast.net
Thank you, Ken Jakes [Trial Exhibit #8]

On Monday, March 31, 2014, at 9:29 a.m., Mr. Jakes sent the following email to Jeremy Johnson:

Mr. Johnson, as a Public Record request to inspect and review please provide me the following

Any and all communications between you and any other party or parties concerning my first Public Record request for the Board of Education to provide for my inspection the BOE Records Policy.

This is to include but not to be limited to following. All emails SENT or RECEIVED. All audible recordings and voicemail by all parties.
All letters.
All memos.
All text messages.
All text messaging.
Should for any reason you not understand this request please contact me.
Ken Jakes
Cell 615-347-3379
Home 615-876-6220

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" of the Sumner County Board of Education. The complaint was filed under the provisions of T.C.A. §10-7-505 of the Tennessee Public Records Act.

II. The Evolving Policy by the Defendant Involving Public Open Records Requests for Inspection

The Court finds that the Defendant's policy for accepting open records requests until March 24, 2014, the date Defendant responded by email, was unclear, inconsistent, and at one time, required all open record requests for inspection to be in writing - a clear violation of the law. On March 24, 2014, the Defendant's website revealed that a records request for inspection required the request to be in writing – a violation of the law. [Trial Exhibit #2] The website revealed that the "School Board Records Policy Manual" was adopted on February 5, 1991, and was last revised on April 22, 1997. This is the website link that Jeremy Johnson neglected to mention to the Plaintiff in his original email request when Plaintiff asked Defendant to provide a link to any website.

On March 24, 2014, Jeremy Johnson specifically advised Plaintiff by email that "[i]n keeping with our practice regarding open record requests, you will need to either submit your request in person or via the postal service." Therefore, on March 24, 2014, the Defendant's policy had been changed to add that an inspection request could also be made "in person". Specifically, the Defendant was advised on March 24, 2014, that he "needed" (emphasis added) to submit his request for inspection in one of two ways: (1) in person, or (2) via the postal service.

Additionally, on February 19, 2015, after this lawsuit was filed, the Defendant "retired" the policy for School Board Records which had been in effect since April 22, 1997. This retired policy was the same policy for open records requests inspections that had been posted on the Defendant's website, the day the Plaintiff made his inspection request: "any citizen of Tennessee, state official, or other authorized person shall be permitted, upon written request (emphasis added) at a reasonable time to inspect all records" [Trial Exhibit #1] – again, a clear violation of the law. Finally, on February 19, 2015, the Defendant officially revised its Public Records Request Policy as to

"Requests to Inspect Public Records" [Trial Exhibit #4]. The specific policy is now set out in Section III of the Revised Policy:

> A. Unless otherwise required by law, SCS does not require a written request to personally inspect a public record and does not assess a charge to view a public record in person unless otherwise required by law. Citizens electing to make an inspection of public requests without a written request should appear in person at the office of the Board and Community Relations Supervisor, Sumner County Schools, 695 East Main Street, Gallatin, Tennessee 37066 in order to make the request.
>
> B. If a citizen elects to make a written request to inspect records, so that the SCS will prepare the records in advance of the citizen actually appearing in person to inspect the records, then the citizen must make the advanced written request on the form developed by the Tennessee State Comptroller's Office of Open Records Counsel and either hand deliver or send completed via the U. S. Mail to the Board and Community Relations Supervisor, Sumner County Schools, 695 East Main Street, Gallatin, Tennessee 37066. This form is available for retrieval at the Office of the Board and Community Relations Supervisor or SCS, or on SCS's website. SCS will not accept advanced request forms for personal inspection of records via email, text message, facsimile, telephone, or other method of communication.

The Court specifically notes that the Defendant's Policy for Request of Inspection of Public Records did not prohibit records request for inspection by email, text message, facsimile, telephone, or other method of communication until February 19, 2015, and that Policy appears to remain in effect at this date, and that it will be followed by the Defendant in the future. Although the Defendant's policy does not now "require a written request", – one can "elect to make a written request to inspect", but it specifically will not accept any other form of communication, except for the requestor to come in person. All of this results in a "forced" election of a written request or a "forced" election to appear in person. There are still two options in the present policy: the same two options emailed to the Plaintiff on March 24, 2014.

The testimony at trial revealed that the Defendant had not been consistent with the processing of open records requests for inspection up until March 24, 2014. As late as the first part of March, 2014, there had been no forms available to make inspection requests. Also, certain members of the media could make requests by email, and one witness was advised that all that was needed to make a request was "to shoot an email" to Jeremy Johnson.

III. The Volume of Public Records Requests Received by the Sumner County Board of Education

On March 24, 2014, Jeremy Johnson was responsible for the processing of all public records requests for the Defendant. Mr. Johnson testified that he was the Community Relations Supervisor at the Sumner County Board of Education and that he had been employed by the Defendant since 2008. He testified about his numerous duties with the Defendant, but his main responsibility was as the spokesperson for the Sumner County Board of Education and liaison for the Director of Schools and the professional staff for the Board of Education. In his capacity as the Community Relations Supervisor, he had been involved with Open Government initiatives through online website communications and online requests for transcripts.

This Court had been concerned about the possible volume of open records requests received by the Board and the possible burden of handling numerous requests before hearing any evidence in this case. Was the volume of requests a burden on the daily routine of operating the schools in Sumner County? Was more "manpower" needed to process open records requests? Was there a legitimate administrative reason to require requests only to be made in person or in writing? Did the

policy balance the government's need to function efficiently and maintain the integrity of the records with the public's right to access records pursuant to the TPRA? The evidence at trial revealed that the answers to these questions were clear and unequivocal "noes".

Mr. Johnson stated that the volume of public records requests was only twelve to fifteen per year (emphasis added) and that he was able to handle all public records requests along with all his other duties with the Defendant. The Court does not find that the cost estimates to changing the school board policy requests as to inspection of public records, as testified to by Chris Brown, to be a credible estimate of the costs to have to change the methods of receiving inspection requests to include email or telephone, the two specific methods that he had researched for costs.

CONCLUSIONS OF LAW

The Tennessee Public Records Act (hereinafter referred to as TPRA) begins with the following requirements concerning public records request for inspection:

- 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. T.C.A. §10-7-503(2)(A).
- 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. T.C.A. §10-7-503(2)(B).

The TPRA clearly sets out time limitations for the custodian of the records:

- In the event it is not practical for the records to be promptly available for inspection, the custodian shall within seven business days:

  (i) Make the information available to the requester;
  (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 requester 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(2)(B).

The consequences for a failure to respond to a request are as follows:

- Failure to respond to the request as described in subsection (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(3).

The only limitations on requests for inspection are as follows:

- Any request for inspection or copy of a public record shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied. T.C.A.§10-7-503(7)(B).

- The records custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by government 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. T.C.A. §10-7-503(7)(A).

- A records custodian may not require a written request or assess a charge to view a public record (emphasis added) unless otherwise required by law; however, a records custodian may require a request for copies (emphasis added) of the public records to be in writing or that the request be made on a form developed by the Office of Open Records Counsel. T.C.A. §10-7-503(7)(A). [Note: In this section dealing with requests for records, a distinction is made between requests for inspection and requests for copies.]

The Court finds that the "Best Practice Guidelines for Records Custodians Responding to

Requests for Public Records" [Trial Exhibit #12] (hereinafter referred to as BPG) provides some assistance in the application of the Tennessee Public Records Act.

- To the extent possible, a governmental entity should have a written public records policy properly adopted by the appropriate governing authority. The policy should be applied consistently...the policy should include: (a) the process for making requests to inspect public records and/or to receive copies of public records; (b) the process for responding to requests (including the use of required forms); and (c) whether and when fees will be charged for copies of public records. Guideline Number 1, BPG.

- The 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 records pursuant to the TPRA. Guideline Number 1, BPG.

- Whenever possible one person within each governmental office, department or division should be designated as a public records request coordinator. This person will insure that requests made pursuant to the TPRA are routed to the appropriate records custodian and that requests are fulfilled in a timely manner...Guideline Number 2, BPG.

- A records custodian should make requested records available as promptly as possible in accordance with T.C.A. §10-7-503. Guideline Number 3, BPG.

- A records custodian should strive to respond to all records requests in the most economical and efficient manner possible. For example, when labor charges are going to be assessed, qualified staff persons with the lowest hourly wage should be utilized to produce the requested records. Guideline Number 4, BPG.

- 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 method of producing" records. Guideline Number 5, BPG.

- 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 the 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. Guideline Number 6, BPG.

- When the records custodian is unclear as to the records that are being requested, it is suggested that the custodian contact the requester in an effort to clarify and/or

narrow the request. If, after attempting to clarify the request, the records custodian is still unable to determine what is being requested, the request should be denied based upon the requester's failure to sufficiently identify the requested records in accordance with the requirements of the TPRA. Guideline Number 14, BPG.

When a public records request has been denied, the law is very clear as to the procedure to follow and the accompanying burden imposed upon the government entity:

- Any citizen of Tennessee who shall request the right of a personal inspection of any state, county, or municipal record as provided in §10-7-503, and whose request has been in whole or in part denied by the official and/or designee of the official or through any act or regulation of any official or designee of any official, shall be entitled to petition for access to any such record and to obtain judicial review of the actions taken to deny the access. T.C.A.§10-7-505(a).

- The burden of proof for justification of non-disclosure of records sought shall be upon the official and/or designee of the official of those records and the justification for the non-disclosure must be shown by the preponderance of the evidence. T.C.A.§10-7-505(c).

- The Court, in ruling upon the petition of any party proceeding hereunder, shall render written findings of fact and conclusions of law and shall be empowered to exercise full injunctive remedies and relief to secure the purposes and intentions of this section...T.C.A.§10-7-505(d).

- 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).

From the TPRA and the BPG, it is very clear to this Court that in the application of the TPRA that openness and the accessibility of non-exempt records are favored. It is also very clear that the law has placed no restriction on the form or the format of a request for inspection of public records other than: (1) a request for inspection or viewing cannot be required to be initiated by a written request; (2) any request for inspection of a public record shall be sufficiently detailed to enable the

record custodian to identify the specific records. [1]

I. THE FIRST REQUEST BY EMAIL AND PHONE BY THE PLAINTIFF

The Plaintiff's first email request was:

> **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.**

The Plaintiff followed immediately by leaving a voicemail to Mr. Johnson.

> **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)**

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[1] This Court has also reviewed the report of the Tennessee Comptroller of the Treasury Office Open Records Counsel Frequently Asked Questions. [Trial Exhibit #15]

Question #9: May a records custodian require a request to inspect public records be in writing? (emphasis added)

Generally, the answer is No. T.C.A. §10-7-503(a)(7)(A) states that a records custodian may not "require a written request...to view a public record unless otherwise specified by law." Given that a requester is not required to make a request in person and given that a request for inspection is not required to be made in writing, a governmental entity should accept a request for inspection by telephone, if the requester does not want to make a request in person or in writing.

Question #16: Is a citizen required to make a request to inspect or receive copies of a record in person? (emphasis added)

No, as long as the request is sufficiently detailed for the records custodian to know what records are being requested, the request does not have to be in person.

Question #25: Is a governmental entity required to accept public records requests for copies (emphasis added) (different from the request in this case for inspection) via email or fax?

The case law in Tennessee only addresses the fact that a governmental entity is required to accept requests for copies (emphasis added) in person or through the mail. However, if the governmental entity decides to requests for copies via email or texts, the law doesn't prohibit the entity from doing so. If a governmental entity is going to limit the method in which it accepts requests for copies (emphasis added), that information should be reflected in the entity's rule or policy.

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.

The Court finds that these two public record requests for inspection from the Plaintiff complied with the TPRA as "(a)ny request for inspection or copying of a public record shall be specifically detailed to enable the records custodian to identify the specific records to be located or copied." T.C.A. §10-7-503(7)(B). Both the email and the phone message were "sufficiently detailed to enable the custodian to identify the specific records requested" - a request for the records policy for the Board of Education. Under the TPRA, that is all that is required to make a request to inspect public records.[2]

Also the Court notes the opinion of the Court of Appeals in Allen v. Day, 213 S.W.3d 244 (Tenn.Ct.App., 2006). The Court specifically held that "furthermore, it is undisputed that Ms. Burke sufficiently identified the requested document. We therefore find that Ms. Burke's request was sufficient to meet the statutory subject matter jurisdictional requirements and that the trial court properly exercised jurisdiction." Allen at 250 (Tenn.Ct.App., 2006)[3]

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[2] The Court of Appeals in Waller v. Bryan, 16 S.W.3d 770,774(Tenn.Ct.App 1999) was concerned that limiting the format for requests for inspection "would place form over substance and not be consistent with the clear intent of the Legislature." In Waller, the Court was concerned with a requirement that a person must appear in person to request a copy of documents, and the Court reiterated, "(i)f the citizen requesting inspection and copying the documents can sufficiently identify those documents so that the appellees know which documents to copy, a requirement that a person must appear in person to request a copy of those documents would place form over substance and not be consistent with the clear intent of the Legislature." (Emphasis added)

[3] Mrs. Burke was a reporter for The Tennessean who attempted to gain access to the settlement agreement "by initiating direct contact with the trial judge of the civil case in the courthouse hallway." Allen at 247.

The specific wording of the TPRA states that requests for inspection should not be required to be in writing, T.C.A. §10-7-503(7)(A): In the opinion of this Court, the policy stated in response to Plaintiff on March 24, 2014 required a writing and the specific wording of Defendant's entire present policy is a clever arrangement of words which results in a "forced election" to make a request in writing – making the "writing election" a requirement. Also, the specific wording of the present policy, and the policy stated in Defendant's email response on March 24, 2014, allow one other option – to come in person. Under these circumstances, a requirement for the requester to come in person is a violation of TPRA as stated in this opinion below. The request for inspection in this email and phone call was "sufficiently detailed to enable the records custodian to identify the specific record". Therefore, the Court finds that the request for inspection was sufficient under the TPRA as a valid public records request for inspection triggering the other requirements under the TPRA.

The Court finds that the email response from Jeremy Johnson constituted a denial under T.C.A. §10-7-503(a)(3). The response from the Defendant stated that "in keeping with our practice regarding open records requests (no distinction was made between a request for inspection versus a request for copies) you will need (emphasis added) either to submit your request in person or via the postal service." That was the last response to the Plaintiff regarding this request to inspect public records, and the 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 under T.C.A. §10-7-505.

Therefore, the Court must determine whether the denial and the Defendant's policy for the inspection of public records on March 24, 2014, was lawful. In addition, the Board of Education

revised their Public Records Request for Inspection Policy on February 19, 2015, a policy that generally reflects the same requirements for requests for inspection as stated in Mr. Johnson's email on March 24, 2014, with the exception of clarification that nothing else would be accepted as a public records request for inspection.[4]

The open records inspection policy expressed to the Plaintiff via return email to the Plaintiff on March 24, 2014, was clear - he needed (emphasis added) to: (1) Submit his request in person, or (2) via postal service. The present policy "does not require a written request", but allows a citizen to "elect" "to make a written request for inspection," and if a written request is "not elected" by the citizen, then the citizen should appear in person to make a public record request for inspection. As stated above, the "election" wording is a forced election to make a request for inspection in writing – i.e., a requirement to make a request for inspection in writing contrary to the law. The present policy also specifically states that the Defendant will not accept any other form of a request for public inspection. The Court sees no real difference between the new policy and the policy emailed to the Plaintiff on March 24, 2014.

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[4] The present policy for request to inspect public records states (also fully set out on page 6 of this Opinion):

A. Unless otherwise required by law, SCS does not require a written request to personally inspect the public record and does not assess a charge to view a public record in person unless otherwise required by law. Citizens electing to make inspection of public records without a written request should appear in person...

B. If a citizen elects to make a written request to inspect records so that the SCS will prepare the records in advance of the citizen actually appearing in person to inspect the records, then the citizen must make the advance written request on the form developed by the Tennessee State Comptroller's Office of Open Records Counsel and either hand-deliver or send the completed form via the U.S. Mail (to the above address)...SCS will not accept (emphasis added) advanced request forms for personal inspection of records via email, text message, facsimile, telephone, or other method of communication.[Trial Exhibit #4]

The two options given to the public to make public records requests of the Defendant do not "give the fullest possible access to public records". T.C.A.§10-7-505(d). It is a policy that is most convenient to the Defendant to process without concern to the accessibility and convenience to the public. Further, when the individual options are analyzed under the law individually, they present options that are not favored by statute or caselaw.

This second option, requiring a personal appearance, clearly violates the intent of the Open Records Act "to give the fullest possible access to public records", T.C.A. §10-7-505(d), and to "promptly make available for inspection any public record", T.C.A. §10-7-503(a)(1)(B). The case law determining the requirement of a personal appearance also rejects that requirement to appear in person. In Waller (supra) the Court specifically held, as stated above, that a requirement that a person must appear in person to request a copy of those documents "would place form over substance and not be consistent with the clear intent of the Legislature". Further, Waller at 774 and 775, stated,

> This restriction would prohibit all Tennessee citizens who are unavailable, because of health issues or other physical limitations, to appear before the records custodian ... this Court will not interpret this statute in such a way as to prohibit those citizens, or those citizens incarcerated from the rights provided by the Public Records Act.

In Allen, 250 (supra) the Court stated the only reason to request personal appearances:

> As the Court alluded in Waller, the purpose of a personal appearance requirement is to prevent wasted governmental time and money caused by the endless search through voluminous records for a document which was insufficiently identified by petitioner.

There has been no evidence that personal appearances at the Sumner County Board of Education "prevent wasted governmental time and money caused by the endless search of

voluminous records for a document insufficiently identified" – to the contrary: no pressing justification for a personal appearance has been presented by the Defendant for this request that was sufficiently identified.

As recently as June 24, 2015, the Court of Appeals has reiterated that "(i)n construing the TPRA we have previously held that a citizen does not need to make a physical appearance in order to make a records request, citing Waller, and noting that "if a citizen can sufficiently identify the documents which he wishes to obtain copies of so as to enable the custodian of the records to know which documents are to be copied, the citizen's personal presence before the records custodian is not required". Friedmann v. Marshall County, Tennessee, 2015 WL 4772825, (Tn.Court.App., 2015) citing Jones v. Crumley, 2004 WL 2086370 (Tenn.Ct.App., 2004)

The first option, a forced "election" resulting in a requirement (as stated above) to send a request via the postal service, a request in writing, and then wait to receive a reply, is also time consuming. Mail delivery time varies depending on the distance involved, and time is consumed by waiting on the postal service to make a delivery to the defendant and then for the defendant to make a response and then wait for a delivery to the requester.

We no longer live in a Pony Express world. Since the 1830's, we have lived in a telegraph world. Now we have telephones, facsimiles, websites, and forms of internet communication. We live in an instant communication world - communication that used to require days now requires only seconds.

The Best Practice Guidelines state that "records custodian should make requested records available as promptly as possible"; that a records custodian "should strive to respond to all records requests in the most economical and efficient manner possible"; and that "(i)f a governmental agency

maintains a website, records custodian 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".

Further, the argument that a requester has "choices" or can "elect" to make a request in writing is a very hollow argument when one "choice" or "election" is expressly prohibited under the TPRA - a request to inspect public records in writing, "via postal service". The other "choice" or "election" can be extremely inconvenient by having to come in person to the School Board.

The School Board's Policies allow two forced "choices/elections" that contravene or are inconsistent with the policy of the Open Records Act which requires the TPRA to be "broadly construed so as to give the fullest possible access to public records," T.C.A. §10-7-505(d) and present case law. The policies are only for the convenience of the Defendant - an entity which processes only twelve to fifteen requests for public records each year.

Therefore, this Court finds that the policies of the Defendant for accepting requests for public records for inspection by writing or in person, and the new policy specifically prohibiting all other forms for requests for inspection, are in violation of the TPRA.

This opinion is unique as to the facts of this case only – where the Defendant only accepted/s two forms of making a public records request for inspection: only by mail or in person.

II. PLAINTIFF'S SECOND REQUEST ON MARCH 31, 2014

On Monday, March 31, 2014, at 9:29 a.m., the Plaintiff made a second form of a public records request for inspection:

Mr. Johnson, as a public records request to inspect and review, please provide

me the following

Any and all communications between you and any other parties concerning my first public records request for the Board of Education to provide for my inspection the BOE record's policy.

This is to include but not be limited to the following
All emails SENT or RECEIVED.
All audible recording and voice mail by all parties.
All letters.
All memos.
All text messaging.
Should for any reason you not understand this request please contact me.
Ken Jakes cell 615-347-3379
home 615-876-6220 [Trial Exhibit #9]

The Defendant never sent a response to this request. The Defendant responded to the Plaintiff's first request of March 21, 2014, at 4:30 p.m., by setting out the Defendant's policy for request for inspection on March 24, 2014, at 2:40 p.m.

This Court has noted, and will note again, the unprofessional, rude, and arrogant tone of the Plaintiff's emails that were sent to the Defendant after making the original request. Plaintiff never met Jeremy Johnson. They had never conducted any business together. Plaintiff had never contacted the Sumner County Board of Education before for any purpose. Plaintiff threatened, challenged, intimidated, and made fun of the Defendant through various emails. He specifically asked Mr. Johnson to "provide the name and contact information" for their legal counsel. This was before (emphasis added) Mr. Johnson had had a chance to respond to Plaintiff's original after hours request. [Trial Exhibit #6]

In his next chronological response to the Defendant, the Plaintiff stated:

> ... "and this is the response I get from you. Let me give you a response as well, never say your practices have gone unchallenged. You, are about to find out the true meaning of being challenged on an issue. There is no way on earth the court will rule on your behalf. Opinions are one thing and established legal precedence (sic) is another. Are you ready to make history? I am." [Trial Exhibit #7]

The next message sent by Plaintiff specifically stated:

"Mr. Johnson, you left out another way I could obtain your records policy. That method is called DISCOVERY. [Trial Exhibit #7]

On March 28, 2014, Plaintiff sent the following message:

... does the School Board have such a surplus of funds to waste because you refuse to provide me the records policy for my review? It would appear providing for the children of the schools would be a much better use of public funds..." [Trial Exhibit #8]

Plaintiff's second request is a manifestation of his completely unprofessional, rude, and intimidating attitude by wanting "any and all communications between you and any other party or parties concerning my first public records request for the Board of Education to provide for my inspection of the BOE records policy"; by requesting all emails, all audible recordings, and voice mails by all parties, all letters, all memos, and all text messaging, he demonstrated this unprofessional and bullying attitude.

This second request is in line with Plaintiff's other communications from one who has tried to intimidate, has threatened a lawsuit, and has challenged the policy of the Defendant. Although the Defendant did not respond to the request, and "failure to respond to request shall constitute a denial", T.C.A.§10-7-503(3), the Defendant had explained the Defendant's policy (right or wrong) by email to the Plaintiff before he made this second request.

This Court finds that this second request by the Plaintiff was too broad and was not "sufficiently detailed to enable the records custodian to identify the specific records to be located", and also, the Court finds that a request of this type does not fall within the meaning of the TPRA. Further, Plaintiff cannot use the TPRA to conduct discovery. Waller, supra.

Therefore, the Court finds, for the reasons set out above, that the second request made by the Plaintiff on March 31, 2014, after being informed of the Board's policy on March 24, 2014, was not

valid and was not specific enough to comply with the TPRA. The Court finds that there is no basis for relief on this claim.

III. ATTORNEYS FEES

The Defendant has argued that he is entitled to attorney's fees because the Defendant's refusal to provide the records was "willful". The law concerning this issue is set out in T.C.A. §10-7-505(g):

> 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 attorney's fees, against the non-disclosing governmental entity. In determining whether the action was willful, the Court may consider any guidance provided to the records custodian by the Office of Open Records Counsel as created in Title Eight, Chapter Four.

The Court notes that the Defendant sought the advice of the Open Records Counsel concerning the public records request for inspection in this case. The advice requested was whether the Defendant should accept the request for inspection of public records by email. Further,

> The element of 'willfully' required by the statute has been described as synonymous to a bad faith requirement...stated differently, the Public Records Act does not authorize the recovery of attorney's fees if the withholding government entity acts with a good faith belief that the records are excepted from disclosure...moreover, in assessing willfulness, Tennessee Courts must not impute to a governmental entity 'duty to foretell an uncertain judicial future'. Schneider v. The City of Jackson, 226 S.W.3d 332 at 345 (Tenn.2007)

"(T)he majority of the cases discussing willfulness under the Act have analyzed the issue in terms of the law's clarity at the time when the records request is made, even in spite of references that the willfulness standard is one synonymous to a bad faith". Friedmann v. Marshall County, Tennessee 2015 WL 4772825 (Tn.Ct.App.2015) referring to The Tennessean v. City of Lebanon

2004 WL 290705 (Tn.Ct.App.2004).

The Court finds that there was no showing of an unwillingness to produce a particular record, but rather involved a question or concern of the proper procedure to follow by the Defendant in accepting a request for inspection. As this Court has stated, the Court finds that Jeremy Johnson has been a good employee of the Defendant and that he wore "many hats" concerning his responsibilities and duties with the Sumner County Board of Education. He pursued this records request in good faith. The policy for responding to Open Records requests for inspection by the Defendant had evolved over a period of time but had actually been put into practice before the Plaintiff's request through the Kurt Riley request for open records. The Court finds that the records custodian, Jeremy Johnson, relied upon the advice of staff attorney, Jim Fuqua. Fuqua was the staff attorney for the Board of Education and had been in that position since 2005. Mr. Fuqua relied upon advice from the Open Records Counsel. The Court finds that the clarity of the law as to these particular issues was not clear and that those issues are being resolved by this particular lawsuit. Further, as stated above, both parties had never talked to each other or conducted any business together before this series of events.

It is a tremendous stretch of imagination for the Plaintiff to pursue a bad faith/conspiracy argument. The Court notes again that before Jeremy Johnson had the opportunity to answer Plaintiff's email and voicemail message, Plaintiff wanted to know the name and contact information of Defendant's legal counsel. Plaintiff's further communications reveal that he was prepared to go to court and file a lawsuit as soon as he got out of the starting blocks.

Further, Plaintiff's testimony regarding this particular issue of bad faith and conspiracy is not credible - testimony that is pure speculation and pure conjecture that results in no accountability

when stated outside a courtroom on blogs, Facebook, or other social media. Also, most importantly, it is testimony that does not pass the scrutiny for admissible evidence required in a court of law where truth and justice are the ultimate goals.

Therefore, the Court finds that there was no bad faith or unwillingness in denying Plaintiff's request on March 21, 2014, and attorney's fees are not awarded to the Plaintiff.

CONCLUSION

The Court finds that the Defendant has not shown by a preponderance of the evidence the justification for the nondisclosure of Plaintiff's request for the inspection of public records on March 21, 2014, and that the response to the Plaintiff regarding their policy on that date was a violation of the law, as stated in this opinion above. The Court also finds that the revised policy from February 19, 2015, which is now in effect, is in violation of the TPRA.

The Court finds that the Defendant has shown by a preponderance of the evidence the justification for the nondisclosure of Plaintiff's second request on March 31, 2014, a request that was not subject to disclosure under the TPRA, as stated in the opinion above.

The Court also finds that there was no "bad faith" on the part of the Defendant in this matter as stated in the opinion above. Therefore, this Court denies the awarding of attorneys fees to the Plaintiff.

Finally, as stated in the opinion above, this Court finds that the present policy for the requests for inspection of public records violates the provisions of the TPRA. Therefore, this Court enjoins the Defendant from the future use of this policy.

This Court gives the Defendant until March 1, 2016, to revise the open records request for inspection policy to be in compliance with the TPRA. Until a new policy is adopted that complies with the TPRA, all requests for the inspection of public records shall be processed in a manner consistent with this opinion:

- That the two options given by the Defendant for an inspection request, consisting of a written request or an appearance in person as they evolved through the various policies of the Defendant, violate the provisions of the TPRA;
- That the specific language of the TPRA only requires:
  1. The request be "sufficiently detailed to enable the records custodian to identify the specific records to be located or copied". T.C.A. §10-7-503(7)(B);
  2. That a "records custodian may not require a written request" for the viewing of public records. T.C.A. §10-7-503(7)(A).[5]
- That non-exempt records should be "open" not "closed" so that anyone requiring public records would not be thwarted by policies that are only (emphasis added) convenient for the government entity – but with policies that are consistent with openness, efficiency, and promptness that effectively balance the needs of each citizen by giving the "fullest possible access to public records", T.C.A. §10-7-505(d),

[5] Because these are the only statutory limitations on the format of a request for inspection, this Court encourages the Defendant to adopt a policy in compliance with the TPRA as soon as possible in order to avoid further problems.

without compromising the need of the government to operate.[6]

Costs are assessed to the Defendant for which execution may issue.

SO ORDERED and **ENTERED** this the 13th day of November, 2015.

DEE DAVID GAY, JUDGE BY INTERCHANGE

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing Order has been mailed postage pre-paid or hand delivered to the following, on this the 13th day of November, 2015.

Mr. Kirk Clement
Attorney for Plaintiff
140 North Main Street
P. O. Box 527
Goodlettsville, Tennessee 37072

Mr. Todd Presnell
Attorney for Defendant
Roundabout Plaza
1600 Division Street, Suite 700
Nashville, Tennessee 37203

Rhonda A. Martin, Judicial Assistant

[6] Each government entity operates differently and utilizes their personnel to meet the demands upon the entity. The Sumner County Board of Education operates uniquely and differently from all other government entities to meet the specific needs and demands of the public school system in Sumner County. This Court will not legislate or dictate what methods/formats should be adopted to process public records requests for inspection; however, the Court only recommends that any policy be expanded to accommodate the methods of modern communication – beyond a writing or an appearance in person, and the Court only suggests the consideration of the two methods specifically sanctioned by the BPG and the Comptroller's office: website and telephone.

TAB C

Book	Board Policy Manual
Section	B - School Board Operations
Title	Public Records Request Policy
Number	BE
Status	Active
Legal	
Adopted	February 5, 1991
Last Revised	February 19, 2015

I. General Policy Statement

A. It is the policy of the Board of Education of the Sumner County Schools (SCS) to:
1) Comply with the Tennessee Public Records Act ("TPRA"), Tenn. Code Ann. § 10-7-101, *et seq.*, by permitting the inspection and copying of SCS's public records in accordance with Tennessee law;
2) Provide Tennessee citizens the opportunity to inspect SCS records that are not confidential, exempt from disclosure under the TPRA, or otherwise protected from disclosure by law; and
3) Provide Tennessee citizens the opportunity to request and obtain a copy of SCS records that are not confidential, exempt from disclosure under the TPRA, or otherwise protected from disclosure by law, for a fee in compliance with Tennessee law.

B. It is the intent of this policy to comply with all state laws, including Tenn. Code Ann. § 10-7-503, *et seq.*, and to follow the Schedule of Reasonable Charges and the Frequent and Multiple Requests guidelines established by the Tennessee State Comptroller's Office of Open Records Counsel, as may be modified herein.

II. Definitions

A. In the interpretation and application of this policy, the following terms mean:
1) "Confidential Record" is any record, or part of a record, which is defined by the Tennessee Public Records Act, or other state or federal law, as being exempt from public inspection, including, but not limited to, those records listed in Tenn. Code Ann. § 10-7-504.
2) "Labor" means the time reasonably necessary to produce the requested records and includes, but is not necessarily limited to, the time spent locating, retrieving, reviewing, redacting, and reproducing records.
3) "Public Official" means federal, state, and local government officials who seek records in their official capacity.
4) "Public Records" or "Records" means all written or electronically created or stored 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 SCS or as may further be defined in Tenn. Code Ann. § 10-7-301(6). Public records do not include the device or equipment, including, but not limited to, a cell phone, computer or other electronic or mechanical device or equipment, that may have been used to create or store a public record.
5) "Requestor" means any Tennessee citizen who submits a valid public records request consistent with this policy and applicable law.

III. Requests to Inspect Public Records

A. Unless otherwise required by law, SCS does not require a written request to personally inspect a public record and does not assess a charge to view a public record in person unless otherwise required by law. Citizens electing to make an inspection of public records without a written request should appear in person at the Office of the Board and Community Relations Supervisor, Sumner County Schools, 695 E Main St, Gallatin, TN 37066 in order to make the request.

B. If a citizen elects to make a written request to inspect records, so that the SCS will prepare the records in advance of the citizen actually appearing in person to inspect the records, then the citizen must make the advanced written request on the form developed by the Tennessee State Comptroller's Office of Open Records Counsel and either hand deliver or send the completed form via the U.S. Mail to the Board and Community Relations Supervisor, Sumner County Schools, 695 E Main St, Gallatin, TN 37066. This form is available for retrieval at the Office of the Board and Community Relations Supervisor for SCS, or on SCS's website. SCS will not accept advanced request forms for personal inspection of records via email, text message, facsimile, telephone, or other method of communication.

C. When a citizen appears in person to make the request to inspect (or, in the case of an advanced request, when a citizen appears in person for the actual inspection), SCS will require the Requestor to present photo identification, if the Requestor possesses photo identification, issued by a governmental entity, which includes the Requestor's address. If the Requestor does not possess such photo identification, SCS will require another form of valid identification that includes the Requestor's address.

D. All requests for inspection of a public record shall be sufficiently detailed to enable SCS to identify the specific records to be located.

IV. Requests for Copies of Public Records

A. Requests for copies of public records shall be made in writing on the form developed by the Tennessee State Comptroller's Office of Open Records Counsel and either delivered in person or via the U.S. Mail to the Board and Community Relations Supervisor, Sumner County Schools, 695 E Main St, Gallatin, TN 37066. This form is available for retrieval at the Office of the Board and Community Relations Supervisor for SCS, or on SCS's website. SCS will not accept request forms for copies of records via email, text message, facsimile, telephone, or other method of communication.

B. Any citizen making a request for copies of records must include a copy of his or her photo identification along with the request form, if the Requestor possesses photo identification, issued by a governmental entity, which includes the Requestor's address. If a Requestor does not possess such photo identification, SCS requires the submission of another form of valid identification that includes the Requestor's address.

C. All requests for copying of a public record shall be sufficiently detailed to enable SCS to identify the specific records to be located or copied.

D. Copies shall be made on the copying equipment owned or leased by SCS. No personal cameras, cell phones, or other recording devices shall be utilized to copy records.

E. Requestors shall be charged for copies, according to the following policies:

1) Requestors shall be charged $0.15 per page (8 ½" x 11" or 8 ½" x 14" paper) for black and white copies. For documents requested in color, Requestors shall be charged $0.50 per page (8 ½" x 11" or 8 ½" x 14" paper).

2) Duplex copies (copies on both sides of a page of paper) are charged as two (2) separate copies. These charges are designed to cover the cost to SCS for copies of records maintained and provided to Requestors. This is a reasonable amount that reflects the cost to SCS based upon the average cost for the copy machine, paper and supplies, and overhead costs and is also an amount equal to or less than the amount adopted by the Office of Open Records Counsel of the State of Tennessee as a reasonable cost for producing a copy of a public record.

3) The custodian can charge the Requestor for employee Labor that is reasonably necessary to produce the requested records. However, no charge shall accrue for the first one (1) hour incurred by personnel in producing the requested material. Costs are charged based on the hourly wage of the employee(s) (not including benefits). For salaried employees, the hourly wage is determined by dividing the employee's annual salary by the required hours to be worked per year (salary / [52 weeks per year x hours worked per week]). The custodian shall determine the number of hours each employee spent producing a request and then subtract one (1) hour from the highest paid employee. The custodian will then multiply each employee's hourly wage by the total number of Labor hours worked by that employee. Finally, the total Labor hours for all employees will be added together to determine the total Labor amount to charge.

4) Requestors may retrieve requested records by hand delivery when they return to the custodian's office at no additional charge. If the Requestor requests delivery by means of the United

States Postal Service, or through any other delivery means agreed to by the custodian, costs incurred in delivering the copies will be assessed in addition to other permitted charges. The Requestor shall pay the costs before the copies are provided to the Requestor.

5) The custodian shall calculate and inform the Requestor of the estimated cost of providing copies. The Requestor shall agree in writing to make the payment as set out in this section and as explained to the Requestor before the copies are made. Should a Requestor cancel the public records request, to the extent costs have already been incurred by the custodian, the Requestor shall be responsible for paying the costs incurred.

6) The custodian has discretion to reduce or waive payment of costs if the Requestor is indigent or if the administrative cost of collecting the payment is greater than the cost of providing the copies. A decision to reduce or waive costs shall be made in such manner so as to be in the best interests of SCS, shall be in compliance with all federal, state, and local laws, shall be made with complete impartiality and shall not be made in a way to give the appearance of preferential treatment.

7) The custodian shall notify the Requestor when it is not practical or possible for the custodian's copying equipment to prepare the requested copies. The Requestor may then request the custodian to determine and advise the Requestor of the estimated cost to commercially reproduce a copy of the records. After the Requestor pays the estimated commercial reproduction costs, the custodian shall arrange the commercial reproduction of the documents for the Requestor. The Requestor shall pay any costs exceeding the estimated cost before the copies are provided to the Requestor.

8) The custodian shall notify the Requestor when it is not reasonably possible for the custodian's staff to prepare the copies within the time frame the Requestor needs. The Requestor may then request the custodian to determine and advise the Requestor of the estimated cost to commercially reproduce a copy of the records. After the Requestor pays the estimated commercial reproduction costs, the custodian shall arrange the commercial reproduction of the documents for the Requestor. The Requestor shall pay any costs exceeding the estimated cost before the copies are provided to the Requestor.

9) Where the custodian will be assessed a charge to retrieve requested records from archives, or any other entity having possession of the requested records, the custodian shall immediately notify the Requestor. After the Requestor pays the estimated retrieval costs, the custodian shall arrange for the retrieval and reproduction of the documents for the Requestor. The Requestor shall pay any costs exceeding the estimated cost before the copies are provided to the Requestor.

10) The custodian may elect the format in which the records are provided to the Requestor.

11) ,In the case of frequent and/or multiple requests for copies, the custodian shall utilize the Frequent and Multiple Requests policy, and the Notice of Aggregation of Multiple Requests Form prepared by the Tennessee State Comptroller's Office of Open Records Counsel. For purposes of the Frequent and Multiple Requests policy, when the total number of requests made by a Requestor or aggregated Requestors within a calendar month exceeds 4, a records custodian shall begin to charge the Requestor aggregated Requestors a fee for any and all Labor that is reasonably necessary to produce the copies of the requested records after informing the Requestor or the aggregated Requestors that the aggregation limit has been met.

12) Public Officials shall not be charged for copies of records where the total cost prescribed for copies of public records does not exceed twenty-five ($25.00) dollars. The custodian may waive any or all payment by Public Officials where the waiver is in the best interest of SCS.

V. Requests for Records Available on the Internet

A. SCS makes many records publicly available on its website(s). SCS will not consider a request to inspect or copy a document that is publicly available on its website(s) or on the Internet to be a request for inspection or for copying of records under the TPRA, and any such request will not trigger the response requirements specified under the TPRA or this policy.

B. A person may make a request to inspect or copy a document that has already been made publicly available, so long as the request is sufficiently detailed to enable SCS to respond. SCS will respond within a reasonable time by informing the person where public access to the record may be found. SCS has discretion to respond to the person making such a request in any manner SCS deems reasonable, and SCS's methods of responding under this section shall not in any way alter, affect, or constitute a waiver of the policies for making or responding to a public records request as otherwise stated herein.

VI. Procedure for Inspecting or Copying Public Records

A. A Tennessee citizen shall first submit a valid public records request in accordance with this policy and applicable law. Any Tennessee citizen who has made a valid request to access SCS public records may inspect and/or receive copies the public record(s) if such record(s) exist and are not exempt from disclosure. The custodian shall redact any part of a public record that contains information exempt from disclosure.

B. Within seven (7) business days of SCS's receipt of a valid public records request, the custodian shall:

1) Make the information available; or

2) Deny the request in writing and include the basis for the denial; or

3) Furnish the Requestor with the estimated time that will be reasonably necessary to produce the record or information if it will not be produced within seven (7) business days.

C. SCS will complete applicable sections of the "Inspection/Duplication of Records Request" Form developed by the Tennessee State Comptroller's Office of Open Records Counsel. SCS will complete the "Records Production Letter" Form developed by the Tennessee State Comptroller's Office of Open Records Counsel if it is unable to fill the request within seven (7) business days. On the "Records Production Letter" Form, the custodian will indicate the estimated time necessary to produce the record(s). If the request is denied, then the custodian will complete the "Records Request Denial Letter" Form developed by by the Tennessee State Comptroller's Office of Open Records Counsel, detailing the basis for the denial.

E. SCS is not responsible for searching through files to compile information or for creating records that do not exist.

VII. Document Retention

A. The director of schools and/or his/her designee(s) shall retain and dispose of school district records in accordance with the following guidelines:

1) The director of schools and/or his/her designee(s) will determine if a particular record is of permanent or temporary value in accordance with regulations promulgated by County Public Records Commission and the Tennessee Institute for Public Services records manual;

2) Temporary value records which have been kept beyond the required time may be recommended to the Public Records Commission for destruction;

3) The records that the State Librarian and Archivist desire to preserve in their facilities will be transferred to the State Library and Archives. The temporary value records rejected by the State Library and Archives may be transferred to another institution or destroyed;

4) Permanent records will be kept in some usable form. If the director of schools desires to destroy the original permanent record, these records may be reproduced by microfilming or some other permanent, un-amendable, reproduction method. Permission to destroy any original permanent record after microfilming shall be the same procedure noted above for temporary records; and

5) The director of schools may establish procedures to safeguard against the unlawful destruction, removal or loss of records.

InspectionDuplicationOfRecordsRequestForm.pdf (112 KB)

TAB D

Tennessee County School Systems Prohibiting E-mailed Public-Records Requests as of May 23, 2016

Blount:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_10.pdf, ("E-mailed requests will not be accepted as valid open records requests.").

Bradley:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_12.pdf, ("E-mailed requests will not be accepted as valid open records requests.").

Crockett:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_24.pdf, ("E-mailed requests will not be accepted as valid open records requests.").

Greene:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407-Greene.pdf ("E-mailed requests will not be accepted as valid open records requests.")

Henry:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_94.pdf, ("E-mailed requests will not be accepted as valid open records requests.").

Lawrence:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_56.pdf, ("E-mailed requests will not be accepted as valid open records requests.").

Marshall:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_65.pdf, ("E-mailed requests will not be accepted as valid open records requests.").

Obion:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_78.pdf, ("E-mailed requests will not be accepted as valid open records requests.").

Overton:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_82.pdf, ("E-mailed requests will not be accepted as valid open records requests.").

Rutherford:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_96.pdf, ("E-mailed requests will not be accepted as valid open records requests.").

Sumner:
http://www.boarddocs.com/tn/scstn/Board.nsf/goto?open&id=9TZTF65B18FA#, scroll to "School Board Operations" and then click on "Public Records Request Policy" ("SCS will not accept request forms for copies of records via email, text message, facsimile, telephone, or other method of communication.").

TAB E

Other Tennessee County School Systems With Publicly Accessible Public-Records Policies That Do Not Expressly Authorize Email Or Phone Requests

Anderson:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_2.pdf

Bedford:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_6.pdf

Benton:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_7.pdf

Bledsoe:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_8.pdf

Campbell:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_13.pdf

Cannon:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_14.pdf

Carroll:
http://www.carrollschools.com/, (Link on right of page for "Board Policies" will open up a zip file, school board policies, school board operations, 1.407 School Board Records.doc)

Carter:
https://docs.google.com/viewer?a=v&pid=sites&srcid=Y2FydGVyazEyLm5ldHxjYXJ0ZXItY291bnR5LXNjaG9vbHN8Z3g6MmQ5NDg2YzU3ZTBmNGZjYw

Cheatham:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_15.pdf

Claiborne:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_17.pdf

Clay:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_18.pdf

Cocke:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_21.pdf

Coffee:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_22.pdf

Cumberland:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_25.pdf

Davidson:
http://www.mnps.org/files/_6HBhQ_/a5d57090d14d80753745a49013852ec4/SSp_3101.pdf,
http://www.mnps.org/files/_6EAHr_/926a9714aac7033a3745a49013852ec4/SS_3102.pdf

Decatur:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_26.pdf

Fayette:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_46.pdf

Fentress:
http://www.fentress.k12tn.net/FCBOEPolicyManual/Section1/school%20board%20records.pdf

Franklin:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_59.pdf

Gibson:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_33.pdf

Grundy:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_40.pdf

Hamblen:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_41.pdf

Hamilton:
http://images.pcmac.org/Uploads/HamiltonCountyDE/HamiltonCountyDE/Departments/DocumentsSubCategories/Documents/1.407%20School%20Board%20Records.pdf

Hardeman:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_49.pdf

Hardin:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_80.pdf

Hawkins:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_85.pdf

Haywood:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_89.pdf

Henderson:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_92.pdf

Hickman:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_97.pdf

Jackson:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_43.pdf

Jefferson:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_45.pdf

Johnson:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_73.pdf

Knox:
http://kcs.schoolwires.net/cms/lib7/TN01917079/Centricity/domain/974/boardpolicies/boe_operations/BE.pdf

Lake:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_52.pdf

Lauderdale:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_55.pdf

Lewis:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407-Lewis.pdf

Lincoln:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_62.pdf

Loudon:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_63.pdf

Macon:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_64.pdf

Madison:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_44.pdf

Marion:
http://images.pcmac.org/Uploads/MarionCounty/MarionCounty/Divisions/DocumentsCategories/Documents/1407.pdf

Maury:
http://www.mauryk12.org/UserFiles/Servers/Server_225794/File/School%20Board/Policy%20Manual.pdf , Policy No. 1.606

McMinn:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_71.pdf

McNairy:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_70.pdf

Meigs:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_72.pdf

Morgan:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_75.pdf

Perry:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_86.pdf

Putnam:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_90.pdf.

Rhea:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_91.pdf

Roane:
http://images.pcmac.org/Uploads/RoaneCountySchools/RoaneCountySchools/Departments/DocumentsCategories/Documents/1.22.pdf

Shelby:
http://www.scsk12.org/uf/webadmin/foundation/policy/files/files/1000%20Administrative/1012%20Public%20Records(1).pdf

Smith:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_93.pdf

Sullivan:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_61.pdf

Tipton:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_57.pdf

Trousdale:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_47.pdf

Unicoi:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/1407_36.pdf

Van Buren:
http://images.pcmac.org/Uploads/TennesseeSBA/TennesseeSBA/Departments/DocumentsCategories/Documents/vanburen1407.pdf

Washington:
http://www.wcde.org/education/components/docmgr/default.php?sectiondetailid=25239&fileitem=14730&catfilter=2139

Wayne:
http://images.pcmac.org/Uploads/WayneCountySchools/WayneCountySchools/Divisions/DocumentsCategories/Documents/Section%201%20School%20Board%20Operations.pdf, Policy No. 1.407

Weakley:
http://www.weakleycountyschools.com/policy%20manuals/1.407%20-%20School%20Board%20Records%20PDF.pdf

Wilson:
https://sites.google.com/a/wilsonk12tn.us/board-policies/1-000-board-operations, Policy No. 1.407.