IN THE JUVENILE COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE,)
)
v.)
)
[redacted]) No. 16-1722; 16-1723
)
and)
)
[redacted])

PETITION TO AUTHORIZE DISCLOSURE OF RECORDS

Comes the Tennessee Emergency Management Agency ("TEMA"), by and through its counsel of record, the Attorney General for the State of Tennessee, and hereby petitions this Court for a determination that TEMA is permitted to disclose certain records concerning the Chimney Top 2 and Cobbly Knox fires that occurred in November 2016 in response to public records requests. In support of this petition, TEMA would state as follows:

1. On December 7, 2016, TEMA received a letter from the law firm of Branstetter, Stranch & Jennings, PLLC, ("BSJ") requesting copies of the following public records pursuant to Tennessee's Public Records Act:

> 1. All statements made to the public about the Chimney Top 2 fire or the Cobbly Knox fire from November 1, 2016 until the date of this letter. Please include drafts of the statements and any internal communications about the substance or timing of those statements.
>
> 2. All records of all communications between any employee, agent or official from FEMA, the City of Gatlinburg, City of Sevierville, Sevier County, and federal government agencies (eg. Parks), or any other Tennessee government official regarding public warnings/evacuation notices/or other communication relating to the

Chimney Top 2 fire or the Cobbly Knox fire from November 1, 2016, until the date of this letter. Please include any communication about WEA warnings, EAS warnings, IPAWS warnings, 911 or reverse 911 notifications, media notification, Red Alert Notifications.

3. Any contracts with any third parties to provide emergency warning services.

4. Any policies or procedures regarding when emergency warnings should be sent.

5. Any policies or procedures regarding what to do when a command center is out of contact with state officials during an emergency.[1]

2. However, before TEMA could respond to this request, on December 14, 2016, this Court entered an order directing that the 4th District Attorney General's Office and their agents were prohibited from publicly disseminating information that is not a public record with the media and general public without specific permission of this Court. This Court's order further provided that failure to comply with the order may by punishable by contempt and any exceptions to the order must be specifically approved by this Court. A copy of this Order is attached hereto as Exhibit 1.

3. Thereafter, in response to this Order, on December 15, 2016, District Attorney General James B. Dunn, issued a statement to all the media outlets noting that the ongoing criminal investigation involved numerous agencies and personnel from the local, state and federal levels and that there was an incredible amount of information that has to be processed. The statement further noted that "[a]ny releases of information at this time would be extremely premature and could compromise the investigation." The statement also noted that state law specifically forbids

[1] TEMA did inform SBJ that it did not have any records responsive to Request No. 3. TEMA further informed SBJ that Request Nos. 4 and 5 were not sufficiently detailed so as to allow TEMA to identify responsive records and requested that SBJ provide more detailed requests pursuant to Tenn. Code Ann. § 10-7-503(a)(4). To date, SBJ has not provided more detailed requests. Accordingly, the only records that are issue are the records requested in Request Nos. 1 and 2.

the release of law enforcement records related to a prosecution of juveniles. Finally, the statement concluded that based on the fact that the criminal investigation is still ongoing and the state law forbidding release of information where juveniles are alleged to be responsible, "all state and local agencies involved in the response to and investigation of this fire and the resulting devastation are unable to respond to these requests at this time." A copy of this statement is attached as Exhibit 2.

4. TEMA subsequently informed BSJ that, in light of this statement from the 4th District Attorney General, it was denying their request pursuant to Rule 16 of the Tennessee Rules of Criminal Procedure and Tenn. Code Ann. § 37-1-154. TEMA further informed BSJ that their request would be reconsidered after a determination "that the public release of such information will no longer compromise the investigation and potential prosecution of the individuals charged with criminal actions that allegedly led to the destructive fires in Gatlinburg." A copy of this letter is attached as Exhibit 3.

5. BSJ immediately responded that it considered its request to be "very limited in scope" and not at "all related to the criminal prosecution at issue." BSJ subsequently informed TEMA that if it did not receive access to the requested records by February 24, 2017, it would "pursue all legal remedies" to obtain access to the records.

6. BSJ then submitted a second public records request to TEMA on February 6, 2017, requesting copies of the following records:

> 1. All records of all communications related to and including statements about the Chimney Top 2 fire or the Cobbly Knobb fire from November 1, 2016 until the date of this letter.
>
> 2. All records of all communications between any employee, agent or official from FEMA, the City of Gatlinburg, City of Sevierville, Sevier County, and federal government agencies (eg. Parks), or any other Tennessee government official regarding public

warnings/evacuation notices/or other communication relating to the Chimney Top 2 fire or the Cobbly Knox fire from November 1, 2016, until the date of this letter. Please include any communication about WEA warnings, EAS warnings, IPAWS warnings, 911 or reverse 911 notifications, media notification, Red Alert Notifications.

3. Any contracts with any third parties to provide emergency warning services.[2]

7. In the recent case of *The Tennessean v. Metropolitan Government of Nashville and Davidson County*, 485 S.W.3d 857 (Tenn. 2016) (copy attached), the Tennessee Supreme Court found that Rule 16 of the Rules of Criminal Procedure provides for the release of certain information to the defendant in a criminal case, but does not authorize the release of any information to a nonparty to the case. Accordingly, the Court held that during the pendency of a criminal case and any collateral challenges to any conviction, Rule 16 governs the disclosure of information and only the defendant has the right to receive certain information. *Id.* at 859.

8. The Supreme Court further held that because Rule 16 deals specifically with the discovery and disclosure of criminal investigative materials during a pending criminal proceeding; whereas the Public Records Act deals with access to public records, as the more specific provision, Rule 16 controls "the disclosure of materials in a criminal case to the exclusion of the Public Records Act." *Id.* at 872-73. And, because Rule 16 does not provide for disclosure of materials to a third party during the pendency of a criminal case or any collateral challenges to the criminal conviction, the Court held that a third party may not gain access to materials under the Public Records Act, "even though the materials may fall outside the substantive scope of Rule 16(a)(2)." *Id.* at 873.

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[2] *See* n. 1, *supra.*

9. In light of the Supreme Court's holdings with respect to Rule 16 of the Rules of Criminal Procedure, as well as that Court's recognition of the "harmful and irreversible consequences [that] could potentially result from disclosing files that are involved in a pending criminal investigation," *id.* at 871 (quoting *Schneider v. City of Jackson*, 226 S.W.3d 322, 345-46 (Tenn. 2007)), and in light of this Court's Order of December 14, 2016, TEMA informed BSJ that it was hesitant to disclose any information concerning the Chimney Top 2 and Cobbly Knox fires in response to a public records request without the specific permission of this Court. TEMA further informed BSJ that it intended to file a petition with this Court seeking a determination as to whether the records requested in Request Nos. 1 and 2 in both letters may be disclosed to the media and general public. A copy of this letter is attached as Exhibit 4.

Accordingly, TEMA respectfully petitions this Court for a determination as to whether it is authorized to disclose the records requested in Request Nos. 1 and 2 in response to public records requests, including the requests submitted by BSJ and that such disclosure would not be in violation of this Court's order of December 14, 2016. In the event this Court determines that TEMA is authorized to disclosure such records, TEMA respectfully requests that BSJ be required to pay the costs of producing such records in accordance with the rules adopted by the Military Department of Tennessee, Chapter 0930-03-01.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General

JANET M. KLEINFELTER (BPR 13889)
Deputy Attorney General
Public Interest Division
Office of Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 741-7403

Counsel for Tennessee Emergency Management Agency

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing petition has been sent by U.S. Mail, postage prepaid, to:

James B. Dunn
District Attorney General
Fourth Judicial District
Sevier County Courthouse
125 Court Avenue, Suite 301E
Sevierville, TN 37862

Greg Isaacs
The Isaacs Law Firm
618 S. Gay St. # 300
Knoxville, TN 37902

Tricia Herzfeld
Branstetter, Stranch & Jennings, PLLC
The Freedom Center
223 Rosa L. Parks Avenue
Suite 200
Nashville, TN 37203

Ed Miller
Becca Lee
District Public Defender
4th Judicial District
P.O. Box 416
Dandridge, TN 37725-0416

Jerry H. McCarter
P.O. Box 14
Gatlinburg, TN 37738

Ron Sharp
City of Gatlinburg
P.O. Box 4630
Sevierville, TN 37864

this 20th day of March, 2017.

JANET M. KLEINFELTER
Deputy Attorney General

IN THE JUVENILE COURT FOR SEVIER COUNTY

STATE OF TENNESSEE,	)	
	)	
v.	)	No. 16-1722; 16-1723
[redacted]	)	
	)	
and	)	
[redacted]	)	

ORDER PROHIBITING DISCLOSURE OF INFORMATION

Based upon the serious and unprecedented nature of this matter, the possibility of harm to the juvenile defendants and the nature of juvenile court generally, the Court hereby ORDERS that any and all communications to the public regarding this case, including scheduling, shall originate from the Sevier County Juvenile Court.

Counsel for the Defense and their agents, as well as the 4th District Attorney Generals' Office and their agents, are prohibited from publicly disseminating information that is not a public record with media and general public without the specific permission of the Court, with the exception that Defense Counsel may (1) confirm representation to the media and / or public and (2) request the media and/or public not contact or otherwise bother or harass their respective clients.

The District Attorney's Office is not prohibited from discussing the case as necessary with law enforcement, necessary experts or other persons in the course of

EXHIBIT
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investigation and preparation for litigation, nor are they prohibited from reaching out to the general public for purposes of identifying potential witnesses and victims. Likewise, the Defense is not prohibited from discussing the case as necessary with law enforcement, necessary experts or other persons in the course of investigation and preparation for litigation.

PSI probation shall also be bound by this order. All staff members at PSI involved with this case shall not discuss the case with the public or media and shall only report to the Juvenile Court.

Failure to comply with this order may be punishable by contempt. Any exceptions to this order must be specifically approved by the Court. This Order is subject to modification by the Court as the case progresses.

ENTER this the 14 day of December, 2016

Juvenile Court Judge

FILED
Sevier Co. Juvenile Court
Connie E. Holt, Clerk
DEC 14 2016
Deputy Clerk
JC 9:11 AM/PM

Approved for Entry:

James B. Dunn, BPR 12059
District Attorney General

Ed Miller, BPR 013347 by permission
Becca Lee, BPR 032221
Attorneys for Jacob Ball

Greg Isaacs, BPR 013282 by permission
Attorney for Steven Waggoner

ASSISTANT DISTRICT ATTORNEYS
CHARLES L. MURPHY
JEREMY D. BALL
TONYA D. THORNTON
GEORGE C. IOANNIDES
TIMOTHY C. NORRIS
RON C. NEWCOMB
S. JOANNE SHELDON
R. PATRICK HARRELL
ROLFE A. STRAUSSFOGEL
KEITH E. COLE
BRAD R. JONES
MARK B. STRANGE

CRIMINAL INVESTIGATORS
H. DAVID HUTCHISON
TRACY C. IVY

VICTIM WITNESS COORDINATOR
KIM D. HUDSON

ASSISTANT VICTIM WITNESS COORDINATOR
ROBIN M. HUGHES
TAMI C. BAILEY

OFFICE OF THE
District Attorney General
FOURTH JUDICIAL DISTRICT
SERVING COCKE, GRAINGER, JEFFERSON, & SEVIER COUNTIES
James B. Dunn
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COCKE (423) 623-1285
FAX (423) 623-2012

SEVIER (865) 429-7021
FAX (865) 429-7025

JEFFERSON (865) 397-2367
FAX (865) 397-4807

December 15, 2016

TO: VARIOUS MEDIA OUTLETS

FROM: JAMES B. DUNN, DISTRICT ATTORNEY GENERAL

Re: Requests for Information, Records and Documents

To Whom it May Concern:

Numerous requests for information have been sent to Sevier County, the City of Gatlinburg, TEMA and to many of the other agencies involved in responding to the fires that afflicted the Gatlinburg area. Please be advised that the investigation of the fire's origin and the death and destruction that resulted is ongoing and could take several weeks, if not longer. The initial response involved a large number of agencies and personnel and the criminal investigation also involves numerous agencies and personnel from the local, state and federal levels. There is an incredible amount of information that has to be processed. Any releases of information at this time would be extremely premature and could compromise the investigation.

Further, there are also confidentiality issues, particularly with regard to the release of law enforcement records, due to the fact that two juveniles have been charged in this matter. *Tennessee Code Annotated* §37-1-154 specifically forbids the release of law enforcement records related to a prosecution of juveniles.

Therefore, based upon the fact that the investigation into this event is ongoing and that state law limits or forbids the release of information where juveniles are alleged to be responsible, all state and local agencies involved in the response to and investigation of this fire and the resulting devastation are unable to respond to these requests at this time. All of the information regarding this case that can legally be shared has already been made available. Your patience and understanding are appreciated.

Any information regarding the status of the case currently pending in the Sevier County Juvenile Court will be provided by the Sevier County Juvenile Court as allowed by state law. *Tennessee Code Annotated* 37-1-153 governs the release of information by juvenile courts.

JBD/ras

TN Department of Military

January 5, 2017

Via Certified Mail and
Electronic Mail: triciah@bsjfirm.com

Tricia Herzfeld
Branstetter, Stranch & Jennings
223 Rosa L. Parks Avenue – Ste 200
Nashville, TN 37203

RE: Records Request

Dear Ms. Herzfeld,

This letter is a follow-up to our correspondence to you dated December 19, 2016, a response to your open records request dated December 7, 2016. Both documents are attached.

At the written request of the District Attorney General for the Fourth Judicial District, James B. Dunn, and after coordination with the Tennessee Attorney General's Office, your attached open records request dated December 7, 2016 is being denied pursuant to Rule 16 of the Tennessee Rules of Criminal Procedure.

General Dunn's request to withhold TEMA records relevant to the Gatlinburg fires is also attached. Specifically, General Dunn states that any release of information at this time would be "extremely premature" and could compromise an ongoing criminal investigation. In addition, two juveniles have been charged in this matter, further implicating confidentiality issues protected by T.C.A. § 37-1-154.

TEMA does not contract with third parties to provide emergency warning services. Items four and five on your request lack specificity for a response.

Fred Denson, General Counsel • Tennessee Military Department, 3041 Sidco Drive • Nashville, TN 37204
Tel: 615-313-0658 • Fax: 615-313-0677 • http://www.tnmilitary.org/

EXHIBIT 3

A request for records relevant to this matter will be reconsidered at such time that General Dunn determines that the public release of such information will no longer compromise the investigation and potential prosecution of the individuals charged with criminal actions that allegedly led to the destructive fires in Gatlinburg.

Sincerely,

Fred Denson

Fred Denson
General Counsel
Department of Military

Encls: December 7, 2016 Open Records Request
December 19, 2016 Response
December 15, 2016 Request from District Attorney General

cc: MG Terry M. Haston, The Adjutant General
Patrick Sheehan, Director, TEMA
Dean Flener, Executive Officer for External Relations
Janet Kleinfelter, Assistant Attorney General
James B. Dunn, District Attorney General, Fourth Judicial District
Randy Harris, Director of Joint Public Affairs

STATE OF TENNESSEE

Office of the Attorney General

HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

February 17, 2017

Tricia Herzfeld
Branstetter, Stranch & Jennings, PLLC
The Freedom Center
223 Rosa L. Parks Avenue
Suite 200
Nashville, TN 37203

RE: Public Records Request

Dear Ms. Herzfeld:

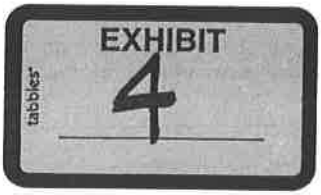
This letter is in response to your original letter dated December 7, 2016, to the Tennessee Emergency Management Agency (TEMA), as well as your letter dated February 6, 2017, to TEMA requesting copies of public records. In your December 7, 2016 letter, you requested copies of the following documents:

1. All statements made to the public about the Chimney Top 2 fire or the Cobbly Knox fire from November 1, 2016 until the date of this letter. Please include drafts of the statements and any internal communications about the substance or timing of those statements.

2. All records of all communications between any employee, agent or official from FEMA, the City of Gatlinburg, City of Sevierville, Sevier County, and federal government agencies (eg. Parks), or any other Tennessee government official regarding public warnings/evacuation notices/or other communication relating to the Chimney Top 2 fire or the Cobbly Knox fire from November 1, 2016, until the date of this letter. Please include any communication about WEA warnings, EAS warnings, IPAWS warnings, 911 or reverse 911 notifications, media notification, Red Alert Notifications.

3. Any contracts with any third parties to provide emergency warning services.

4. Any policies or procedures regarding when emergency warnings should be sent.



5. Any policies or procedures regarding what to do when a command center is out of contact with state officials during an emergency.

As TEMA indicated in its previous letter of January 5, 2017, TEMA does not have any documents responsive to your third request and, therefore, must respectfully deny that request. Similarly, as stated in the January 5 letter, requests four and five are not sufficiently detailed so as to enable TEMA to identify responsive documents and, therefore, must also respectfully be denied. *See* Tenn. Code Ann. § 10-7-503(a)(4). Finally, with respect to your remaining requests, TEMA denied the request on the basis that the records are relevant to an on-going criminal investigation and prosecution and are, therefore, not subject to disclosure pursuant to Rule 16 of the Rules of Criminal Procedure. You have indicated in subsequent correspondence that you do not agree with this determination and that you intend to pursue all legal remedies if TEMA does not provide access to the requested records by February 24, 2017.

Your February 6, 2017 letter on behalf of your client, Mr. James Vance, requests copies of the following documents:

1. All records of all communications related to and including statements about the Chimney Top 2 fire or the Cobbly Knobb fire from November 1, 2016 until the date of this letter..

2. All records of all communications between any employee, agent or official from FEMA, the City of Gatlinburg, City of Sevierville, Sevier County, and federal government agencies (eg. Parks), or any other Tennessee government official regarding public warnings/evacuation notices/or other communication relating to the Chimney Top 2 fire or the Cobbly Knox fire from November 1, 2016, until the date of this letter. Please include any communication about WEA warnings, EAS warnings, IPAWS warnings, 911 or reverse 911 notifications, media notification, Red Alert Notifications.

3. Any contracts with any third parties to provide emergency warning services.

I will again reiterate that TEMA does not have any documents responsive to your third request and, therefore, must respectfully deny this request. With respect to your remaining requests, it would appear that Request No. 2 is subsumed within the scope of Request No. 1, as that request seeks copies of all communications related to the Chimney Top 2 fire and the Cobbly Knobb fire for the same time period.

The Sevier County Juvenile Court has issued an order in the ongoing criminal prosecution, *State of Tennessee v.* [redacted] Nos. 16-1722; 16-1723, prohibiting the 4th District Attorney General's Office and their agents, from publicly disseminating information that is not a public record with media and the general public without specific permission of the Court. The Order further provides that failure to comply may be punishable by contempt and any exceptions to the Order must be specifically approved by the Court. A copy of this Order is attached. As an agent of the 4th District Attorney General for purposes of this criminal prosecution, TEMA is bound by this Order and, therefore, in order to avoid being held in contempt, TEMA intends to file a petition with the Court requesting that the Court make a determination as to whether the records you have requested in Request Nos. 1 and 2 in both letters may be disclosed

to the media and general public. We will provide notice to you of the filing of this petition, as well as all other interested parties.

In the event the Court determines that release of the requested records is not in violation of the Court's Order, please be advised that due to the breadth and scope of your request, production will have to be in installments. Because your request asks for copies of "all communications" and is not limited to written communication, a significant portion of the records responsive to your request are contained in TEMA's 24-hour operation center radio traffic recordings. Unfortunately, these radio traffic recordings are statewide and will involve issues from every part of the State during the requested time period. Accordingly, someone will have to listen to every recording for each 8-hour shift during each 24-hour period for the approximate three-month time period (November 1, 2016 – February 6, 2017) to identify communications relating to the two fires and then extract those relevant communications and transfer them to a portable medium. Additionally, all phone calls into TEMA's 24-hour Watch Point operation are recorded. These voice recordings will need to be reviewed by IT staff to identify records responsive to your request and any responsive records will also need to be extracted and copied to a portable medium.

With respect to paper and electronic communications, TEMA operates a cloud based operations log entry system at the Agency's 24-hour operations center, the "WEB EOC". TEMA has already identified 800 pages of documents in that system, excluding attachments (of which there are hundreds of pages) that will need to be reviewed to determine if they are responsive to your requests. There may be additional communications responsive to your request at TEMA's regional office in Knoxville that were not recorded in the WEB EOC notes and, accordingly, a search of the records of that office will need to be conducted in order to determine if there are any responsive records.

TEMA has also identified 12 electronic file folders on TEMA's network drive that will need to be searched to identify and retrieve any responsive records. These electronic folders do not, however, include any email correspondence, which will also need to be searched for any responsive records. Finally, because your request has asked for copies of *all* communications relating to the two fires, all records will need to be reviewed prior to production to determine if they contain any confidential information. If so, such confidential information will need to be redacted prior to any production.

In the event the Sevier County Juvenile Court determines that release of these records is not in violation of the Court's Order, we will provide you an estimate of when the first installment of records will be available, along with an estimate of the labor and copy fees consistent with the Rules adopted by the Military Department of Tennessee, Chapter 0930-03-01, and will expect payment in advance of any production.

Sincerely,

JANET M. KLEINFELTER
Deputy Attorney General

cc: Fred Denson
Todd Skelton

Attachment

485 S.W.3d 857
Supreme Court of Tennessee,
AT NASHVILLE.

The Tennessean et al.
v.
Metropolitan Government of
Nashville and Davidson County et al.

May 28, 2015 Session [1]
|
Filed March 17, 2016

Synopsis
Background: Media outlets filed request under the Tennessee Public Records Act for access to records accumulated and maintained by police department in the course of its investigation and prosecution of an alleged rape in a campus dormitory by university football players. The Chancery Court, Davidson County, Russell T. Perkins, Chancellor, granted the request in part. On appeal, the Court of Appeals, 2014 WL 4923162, reversed, holding that all of the requested materials were relevant to a pending or contemplated criminal action and were therefore exempt from public disclosure. Media outlets appealed.

[Holding:] The Supreme Court, Sharon G. Lee, J., held that requested records fell within state law exception of Public Records Act, as Rule of Criminal Procedure prohibited the release of information to a nonparty in a criminal case.

Affirmed on other grounds.

Holly Kirby, J., concurred with opinion.

Gary R. Wade, J., dissented with opinion.

West Headnotes (13)

[1] **Evidence**
Proceedings in other courts

Supreme Court may take judicial notice of the records of the courts of the state. Tenn. R. Evid. 201.

Cases that cite this headnote

[2] **Records**
Judicial enforcement in general

Interpretation of the Tennessee Public Records Act and rule of criminal procedure prohibiting the release of any information to a nonparty to the case, and the application of the laws to the facts of the case, were questions of law which Supreme Court would review de novo without affording a presumption of correctness to the trial court's decision. Tenn. Code Ann. § 10-7-501; Tenn. R. Crim. P. 16.

1 Cases that cite this headnote

[3] **Statutes**
Intent

When interpreting statutes, Court must determine and give effect to the Legislature's intent in adopting the statute without adding or taking away from its intended meaning or application.

1 Cases that cite this headnote

[4] **Equity**
Exclusive or concurrent jurisdiction

Chancery Court had subject matter jurisdiction to rule on media outlets' request under the Tennessee Public Records Act for access to records accumulated and maintained by police department in the course of its investigation and prosecution of an alleged rape in a campus dormitory by university football players, although Criminal Court was already exercising jurisdiction and ruling on records requests. Tenn. Code Ann. § 10-7-505(b); Tenn. R. Crim. P. 16(d).

Cases that cite this headnote

[5] **Courts**
Jurisdiction of Cause of Action

Subject matter jurisdiction is conferred on a court by statute or by the state or federal constitution.

Cases that cite this headnote

[6] **Courts**
Jurisdiction of Cause of Action

The subject matter jurisdiction of a court refers to a court's authority to adjudicate a particular case or controversy and depends on the nature of the cause of action and the relief sought.

Cases that cite this headnote

[7] **Criminal Law**
Publicity, media coverage, and occurrences extraneous to trial

Records
Court records

Public Records Act does not limit a criminal court's authority to issue protective orders or use other means to protect the rights of a defendant to a fair trial; citizen or media organization may still intervene in a criminal action to challenge the terms of a protective order blocking access to court records or proceedings. Tenn. Code Ann. § 10-7-505(b); Tenn. R. Crim. P. 16(d).

Cases that cite this headnote

[8] **Records**
In general;freedom of information laws in general

Intent of the Public Records Act is to facilitate the public's access to government records. Tenn. Code Ann. § 10-7-501 et seq.

Cases that cite this headnote

[9] **Records**
Access to records or files in general

There is a presumption of openness for government records. Tenn. Code Ann. § 10-7-503(a)(2)(A).

Cases that cite this headnote

[10] **Records**
Exemptions or prohibitions under other laws

"State law," under Public Records Act provision stating that the right of inspection shall not be denied "unless otherwise provided by state law," includes statutes, the Tennessee Constitution, the common law, rules of court, and administrative rules and regulations; it also includes the Tennessee Rules of Criminal Procedure. Tenn. Code Ann. § 10-7-503(a)(2)(A).

Cases that cite this headnote

[11] **Records**
Exemptions or prohibitions under other laws

Records accumulated and maintained by police department in the course of its investigation and prosecution of an alleged rape in a campus dormitory by university football players fell within state law exception of Public Records Act, as Rule of Criminal Procedure prohibited the release of information to a nonparty in a criminal case, and thus records were not subject to disclosure to media outlets which requested them. Tenn. Code Ann. § 10-7-503(a)(2)(A); Tenn. R. Crim. P. 16(a)(2).

Cases that cite this headnote

[12] **Statutes**
General and specific statutes

The more specific of two conflicting statutory provisions controls.

Cases that cite this headnote

[13] **Statutes**
Unintended or unreasonable results; absurdity

Courts are to avoid a statutory construction that leads to absurd results.

2 Cases that cite this headnote

***858 Appeal by Permission from the Court of Appeals, Middle Section, Chancery Court for Davidson County, No. 14156IV, Russell T. Perkins, Chancellor**

Attorneys and Law Firms

Robb S. Harvey and Lauran M. Sturm, Nashville, Tennessee, for the appellants, The Tennessean, Associated Press, Chattanooga Times Free Press, Knoxville News Sentinel, Tennessee Associated Press Broadcasters, Tennessee Coalition for Open Government, Inc., The Commercial Appeal, WBIR–TV Channel Ten, WSMV–TV Channel Four, WTVF–TV, News Channel 5 Network, LLC, and WZTV Fox 17.

Saul Solomon, James L. Charles, Lora Barkenbus Fox, R. Alex Dickerson, Jennifer Cavanaugh, and Jennifer Bonilla Moreno, Nashville, Tennessee, for the appellee, Metropolitan Government of Nashville and Davidson County.

Edward M. Yarbrough and J. Alex Little, Nashville, Tennessee, for the intervenor/appellee, Jane Doe.

Herbert H. Slatery III, Attorney General and Reporter; Andrée S. Blumstein, Solicitor General; and Janet M. Kleinfelter, Deputy Attorney General, for the intervenors/appellees, District Attorney General Glenn R. Funk and the State of Tennessee.

***859** Richard L. Hollow, Knoxville, Tennessee, for the Amicus Curiae, Tennessee Press Association.

Douglas R. Pierce, Nashville, Tennessee, for the Amici Curiae, The Reporters Committee for Freedom of the Press, Tennessee Association of Broadcasters, Thomas Jefferson Center for the Protection of Free Expression, and The University of Virginia School of Law First Amendment Clinic.

Devin P. Lyon, Knoxville, Tennessee, for the Amici Curiae, Tennessee Municipal Attorneys Association and International Municipal Lawyers Association.

Edmund S. Sauer, Kristi W. Arth, Connor M. Blair, and Jessica Jernigan–Johnson, Nashville, Tennessee, for the Amici Curiae, National Sexual Violence Resource Center, The Tennessee Coalition to End Domestic and Sexual Violence, The National Crime Victim Law Institute, and the Sexual Assault Center.

Daniel A. Horwitz, Nashville, Tennessee, for the Amicus Curiae, Domestic and Sexual Violence Prevention Advocates.

Opinion

Unpublished Text Follows
End of Unpublished Text

Sharon G. Lee, C.J., delivered the opinion of the Court, in which Cornelia A. Clark, Jeffrey S. Bivins, and Holly Kirby, JJ., joined. Holly Kirby, J., filed a separate concurring opinion. Gary R. Wade, J., filed a dissenting opinion.

OPINION

Sharon G. Lee, C.J.

The issue in this case is whether a coalition of media groups and a citizens organization, relying on the Tennessee Public Records Act, have the right to inspect a police department's criminal investigative file while the criminal cases arising out of the investigation are ongoing. Four Vanderbilt University football players were indicted for aggravated rape and other criminal charges arising out of the alleged rape of a university student in a campus dormitory. Following the indictments, the Petitioners, a group of media organizations and a citizens group, made a Public Records Act request to inspect the police department's files regarding its investigation of the alleged criminal conduct by the football players. The request was denied. We hold that the Public Records Act allows access to government records, but there are numerous statutory exceptions, including a state law exception in Tennessee Code Annotated section 10–7–503(a)(2), that shield some records from disclosure. Rule 16 of the Tennessee Rules of Criminal Procedure falls within the state law exception. Rule 16 provides for the release of certain information to the defendant in a criminal case, but does not authorize the release of any information to a nonparty to the case. Therefore, during the pendency of the criminal case and any collateral challenges to any conviction, Rule 16 governs the disclosure of information and only the defendant has the right to receive certain information. We hold that, based on Rule 16, the Petitioners have no

right to the requested information during the pendency of the criminal cases and any collateral challenges. Jane Doe, the victim of the alleged criminal acts, intervened in this action to prevent disclosure of the investigative file, and particularly photographs and video images of the alleged assault. Based on our ruling today, these records are protected from disclosure until the conclusion of the criminal cases and all collateral challenges. At the conclusion of the criminal cases and following any guilty plea or conviction and sentencing, Tennessee Code Annotated section 10–7–504(q)(1) applies to block the release of Ms. Doe's personal information and any photographic or video depiction of her. This requires no action on the part of Ms. Doe and no further court proceedings.

*860 I. Factual and Procedural Background

Beginning in late June of 2013, the Metropolitan Government of Nashville and Davidson County Police Department ("Metro" or "Metro Police") investigated the rape of a university student that allegedly occurred in a Vanderbilt University dormitory during the early morning hours of June 23, 2013. In August of 2013, the Davidson County Grand Jury indicted Brandon Banks, Cory Batey, Jaborian McKenzie, and Brandon Vandenburg—all members of the Vanderbilt University football team—with five counts each of aggravated rape and two counts of aggravated sexual battery. Vandenburg was also charged with unlawful photography and tampering with evidence. The four men pleaded not guilty. In August of 2013, another Vanderbilt University football player, Chris Boyd, pleaded guilty to a related charge of accessory after the fact. On October 2, 2013, the Criminal Court for Davidson County issued an agreed protective order, providing that all photographs and videos provided in discovery by the State would be disseminated only to counsel for the defendants.

On October 17, 2013, Brian Haas, a reporter for Nashville newspaper *The Tennessean,* made a public records request to the Metro Police, asking to inspect any records regarding the alleged rape on the Vanderbilt University campus in which Vandenburg, Banks, Batey, McKenzie, and Boyd were charged. The request specifically included any text messages received or sent and videos provided and/or prepared by any third party sources. On October 23, 2013, Metro denied the request, contending that the records sought were part of an open criminal investigation or pending prosecution pertaining to the rape cases and, therefore, were exempt from public disclosure under Tennessee Rule of Criminal Procedure 16(a)(2). *The Tennessean* later clarified its request to state that it had no intention of publishing before trial the alleged victim's name without her permission and was not requesting any photographs or videos taken by any of the defendants during the alleged assault. Meanwhile, the Associated Press, the *Chattanooga Times Free Press,* the *Knoxville News Sentinel,* the Tennessee Associated Press Broadcasters, *The Commercial Appeal,* WBIR–TV Channel Ten, WSMV–TV Channel Four, WTVF–TV, News Channel 5 Network, LLC, WZTV Fox 17, and the Tennessee Coalition for Open Government, Inc. joined *The Tennessean* in its request for the records.

On February 5, 2014, *The Tennessean,* the other requesting news organizations, and the Tennessee Coalition for Open Government, Inc. ("the Petitioners") filed a petition against Metro in the Chancery Court for Davidson County seeking access to the requested records under the Tennessee Public Records Act, Tennessee Code Annotated sections 10–7–501 through 10–7–516 (2014). The Chancery Court granted the motions to intervene filed by the victim of the alleged rape, identified as "Jane Doe," and the Tennessee Attorney General, on behalf of both the State and the District Attorney General for Davidson County (collectively, the "State").

The State and Metro argued that all of the requested records were exempt from disclosure under Rule 16(a)(2); that many of the records were covered by the Criminal Court's October 2, 2013 protective order; and that disclosure of the records would adversely affect the Criminal Court's ability to ensure a fair trial. In addition, Metro challenged the jurisdiction of the Chancery Court, contending that exclusive jurisdiction rested with the Criminal Court. Ms. Doe argued that public disclosure of the records would contravene ***861** her rights guaranteed by article I, section 35 of the Tennessee Constitution [2] and by the Victims' Bill of Rights, Tennessee Code Annotated sections 40–38–101 through 40–38–117 (2014). [3]

By an order entered on March 12, 2014, the Chancery Court reaffirmed its previous ruling that it had jurisdiction to decide the case. After an *in camera* inspection of the requested records, the Chancery Court categorized the requested records:

1. Building surveillance tapes, with the victim's image redacted, from three locations on the Vanderbilt University campus, including the dormitory where the alleged rapes occurred;

2. Videos and photographs, except for photographs or videotapes of the alleged rapes or any photos or videotapes of the victim;

3. Text messages and e-mails received from third parties by Metro Police in the course of its investigation;

4. Written statements of the defendants and witnesses provided by Vanderbilt University to Metro Police;

5. Vanderbilt University access card information;

6. Reports and e-mails provided by Vanderbilt University to Metro Police;

7. Forensic tests performed on telephones and computers by Metro Police;

8. Tennessee Bureau of Investigation DNA reports;

9. Forensic reports prepared by private laboratories hired by Metro Police; and

10. These items made or collected by Metro Police:

a) police reports and supplements;

b) search warrants;

c) crime scene photographs;

d) Pano-scan data relating to Vanderbilt University premises;[4]

e) background checks and other personal information regarding the victim, defendants, and witnesses;

f) cell phone information obtained through several search warrants;

g) photographic images and text messages recovered from the cell phones of the five individuals charged with criminal offenses, except any photographs or video depicting the victim or the alleged sexual assault;

h) statements of the victim, defendants, and witnesses; and

*862 i) video recovered from a student witness's computer, except any photographs or videotapes depicting the victim or the alleged sexual assault.

Following a hearing, the Chancery Court ruled that records not developed internally and not constituting statements or other documents reflecting the reconstructive and investigative efforts of Metro Police, but submitted to Metro Police, were public records and not protected from disclosure by Rule 16(a)(2). The Chancery Court allowed the Petitioners to inspect the text messages sent by third parties to Metro Police, except for any photographic or videographic images of the victim, her name, or any identifying information; the Vanderbilt University access card information; the Pano-scan data relating to Vanderbilt University premises; and e-mails recovered from potential witnesses and the criminal defendants not addressed to officials related to Metro Police or the District Attorney General's Office. The Chancery Court declined to allow all other records to be disclosed based on Rule 16(a)(2). The Chancery Court deferred to the Criminal Court as to the application of the October 2, 2013 agreed protective order, the protection of the constitutional rights of the defendants in the criminal case, and the protection of the privacy and dignity of Ms. Doe under the Victims' Bill of Rights. The trial court stayed its order allowing disclosure pending appeal.

In a divided opinion, the Court of Appeals reversed, holding that all of the requested materials were relevant to a pending or contemplated criminal action and were therefore exempt from public disclosure under Rule 16(a)(2). *Tennessean v. Metro. Gov't of Nashville & Davidson Cnty.*, No. M2014–00524–COA–R3–CV, 2014 WL 4923162, at *4 (Tenn.Ct.App. Sept. 30, 2014). We granted the Petitioners' application for permission to appeal.

[1] While this appeal has been pending, the criminal prosecutions of the Vanderbilt University football players have proceeded. On June 24, 2014, the Criminal Court issued an order placing the following information under seal: (1) personal identifying information of the victim, including her name, contact details, and photographs; (2) the medical records of all witnesses, including the victim; and (3) other confidential records, such as

records pertaining to any witness's education, finances, or employment. On July 7, 2014, the Criminal Court entered a protective order directing that all future filings be sealed pending court review for a determination of release. On January 27, 2015, a jury convicted Batey and Vandenburg on all charges. The next day, the Criminal Court entered a protective order placing under seal all evidence introduced at trial. Upon motion by the State, these protective orders were made a part of the record in this appeal as post-judgment facts. *See* Tenn. R.App. P. 14(b). On June 23, 2015, the Criminal Court granted a new trial to Batey and Vandenburg based on a finding of juror misconduct. [5]

II. Analysis

[2] [3] Because there are no factual disputes, the outcome of this case depends on our interpretation of the Tennessee Public Records Act and Tennessee Rule of Criminal Procedure 16 and the application of these laws to the facts of this case. The issues before us are questions of law which ***863** we review de novo without affording a presumption of correctness to the trial court's decision. *State v. Hatcher*, 310 S.W.3d 788, 799 (Tenn.2010) (citing *State v. Ferrante*, 269 S.W.3d 908, 911 (Tenn.2008)); *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74 (Tenn.2002) (citing *Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 802–03 (Tenn.2000); *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn.1996)). When interpreting statutes, we must determine and give effect to the Legislature's intent in adopting the statute without adding or taking away from its intended meaning or application. *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn.2003) (citing *Parks v. Tenn. Mun. League Risk Mgmt. Pool*, 974 S.W.2d 677, 679 (Tenn.1998)).

A. Subject Matter Jurisdiction

[4] First, we must decide whether the Chancery Court had subject matter jurisdiction to decide the case. *See In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn.2012) ("[I]ssues regarding a court's subject matter jurisdiction should be considered as a threshold inquiry ... and should be resolved at the earliest possible opportunity." (internal citation omitted)). Metro contends that the Chancery Court cannot exercise jurisdiction in this case because by the time this public records case was filed in Chancery Court, the Criminal Court was already exercising its jurisdiction and ruling on Rule 16 discovery issues. The Petitioners respond that the Chancery Court properly exercised subject matter jurisdiction.

[5] [6] Subject matter jurisdiction is conferred on a court by statute or by the state or federal constitution. *Id.* (citing *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn.2004); *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn.1996); *Walker v. White*, 89 S.W.3d 573, 577 (Tenn.Ct.App.2002)). The subject matter jurisdiction of a court "refers to a court's authority to adjudicate a particular case or controversy and 'depends on the nature of the cause of action and the relief sought.' " *In re Baby*, 447 S.W.3d 807, 837 (Tenn.2014) (quoting *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712 (Tenn.2012)). The Petitioners, as the parties who filed this action, must prove that the Chancery Court has jurisdiction to adjudicate the claim. *Redwing v. Catholic Bishop for the Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn.2012).

The following language of the Public Records Act confers jurisdiction on the Chancery Court: "[A petition for judicial review of a public records request] shall be filed in the *chancery court* or circuit court for the county *in which the county or municipal records sought are situated*, or in any other court of that county having equity jurisdiction." Tenn.Code Ann. § 10–7–505(b) (emphasis added).

[7] The plain language of this statute confers jurisdiction on the Chancery Court to adjudicate requests under the Public Records Act and does not condition its jurisdiction on whether a criminal court may also consider issues regarding the requested records. Moreover, the Public Records Act does not limit a criminal court's authority under Rule 16(d) to issue protective orders or use other means to protect the rights of a defendant to a fair trial. A citizens or media organization may still intervene in a criminal action to challenge the terms of a protective order blocking access to court records or proceedings. *See Knoxville News–Sentinel v. Huskey*, 982 S.W.2d 359, 362 (Tenn.Crim.App.1998). Metro cites several cases in support of its position, but we find none of these cases to be on point or helpful to Metro's position. We conclude that the ***864** Chancery Court properly exercised jurisdiction in this matter.

B. Public Records Act

[8] For more than a century, Tennessee courts have recognized the public's right to inspect governmental records. *See, e.g., State ex rel. Wellford v. Williams,* 110 Tenn. 549, 75 S.W. 948, 959 (1903) (holding that Memphis residents concerned about the city's financial condition had the right to inspect the city's records). In 1957, the General Assembly codified this right of public access by enacting the state's first public records statutes. *See Swift v. Campbell,* 159 S.W.3d 565, 571 (Tenn.Ct.App.2004) (citing *Ballard v. Herzke,* 924 S.W.2d 652, 661 (Tenn.1996)). The Public Records Act has been amended over the years, but its intent has remained the same—to facilitate the public's access to government records. *Swift,* 159 S.W.3d at 571 (citing *Cherokee Children & Family Servs., Inc.,* 87 S.W.3d at 74; *Memphis Publ'g Co. v. City of Memphis,* 871 S.W.2d 681, 687–88 (Tenn.1994)); *see also Cole v. Campbell,* 968 S.W.2d 274, 275 (Tenn.1998) (noting that "[t]his Court has upheld this legislative mandate on numerous occasions"). The Public Records Act has a noble and worthwhile purpose by providing a tool to hold government officials and agencies accountable to the citizens of Tennessee through oversight in government activities.

Public records under the Act are defined broadly to include "all 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 any governmental agency." [6]

To facilitate access to the records, the Public Records Act requires that "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.*" [7]

[9] There is a presumption of openness for government records. *Memphis Publ'g Co.,* 871 S.W.2d at 684. Custodians of the records are directed to promptly provide for inspection any public record not exempt from disclosure. [8] The Public Records Act directs the courts to broadly construe the Act "so as to give the fullest possible access to public records." [9] The Act allows a person whose request for public records is denied to file suit and seek judicial review of the governmental entity's denial. [10] The governmental entity must prove justification for nondisclosure by a preponderance of the evidence. [11] The trial court has the discretion to award costs and attorney fees when the court determines that the governmental entity that denied access to a public record knew ***865** that the record was a public record and willfully refused to disclose it. [12]

The Public Records Act, however, is not absolute, as there are numerous statutory exceptions to disclosure. [13] When the Act was adopted in 1957, only two categories of records were excepted from disclosure—medical records of patients in state hospitals and military records involving the security of the nation and state. [14] However, over the years, the General Assembly has added over forty categories of records specifically excepted from the Act. [15] The once all-encompassing Public Records Act is now more narrow. Some exceptions specifically added to the Act include investigative records of the Tennessee Bureau of Investigation; records of students at public educational institutions; materials in the possession of the office of Attorney General and Reporter that relate to any pending or contemplated legal or administrative matter; state agency records containing opinions of real and personal property values intended to be acquired for a public purpose until the finalization of the acquisition; proposals received under personal service, professional service, and consultant service contract regulations until the completion of evaluation of same by the state; sealed bids for the purchase of goods and services, leases of real property, and individual purchase records until after the completion of their evaluation of the state; investigative records and reports of the internal affairs division of the department of correction or of the department of children's services; official health certificates collected and maintained by the state veterinarian; records provided to or collected by the department of agriculture under the implementation and operation of premise identification or animal tracking programs; records of historical research value given or sold to public archival institutions, public libraries, or libraries within the Tennessee Board of Regents or the University of Tennessee, when the owner or donor of such records wishes to place restrictions on access to the records; personal information in motor vehicle records; and all riot, escape, and emergency transport

plans of county jails and workhouses or prisons.[16] In the criminal arena, where a defendant has pleaded guilty to, or has been convicted of, and has been sentenced for a sexual offense or violent sexual offense specified in Tennessee Code Annotated section 40–39–202, the victim's name, identifying information and any photographic or video depiction of the victim shall remain confidential unless waived by the victim.[17]

[10] In addition, the Legislature provided for a general exception to the Public Records Act, based on state law. Tennessee Code Annotated section 10–7–503(a)(2)(A) provides that governmental records shall be open for inspection and that the right of inspection shall not be denied "unless otherwise provided by state law." "State law" includes statutes, the Tennessee Constitution, the common law, rules of court, and administrative rules and ***866** regulations. *Swift,* 159 S.W.3d at 571–72 (citing *Tenn. Small Sch. Sys. v. McWherter,* 851 S.W.2d 139, 148 (Tenn.1993); *Frye v. Blue Ridge Neuroscience Ctr., P.C.,* 70 S.W.3d 710, 713 (Tenn.2002); *Emery v. S. Ry.,* 866 S.W.2d 557, 561 (Tenn.Ct.App.1993); *Kogan v. Tenn. Bd. of Dentistry,* No. M2003–00291–COA–R3–CV, 2003 WL 23093863, at *5–6 (Tenn.Ct.App. Dec. 30, 2003)). The Tennessee Rules of Criminal Procedure, including Rule 16, are "state law" and are encompassed within this exception. *Ballard,* 924 S.W.2d at 662.

Petitioners assert that Rule 16(a)(2) exempts from disclosure only materials that were " '*made by* ... law enforcement officers in connection with investigating or prosecuting the case' or constitute 'statements made by state witness or prospective state witnesses.' " According to the Petitioners, Rule 16(a)(2) does not protect records created by third parties and then provided to or gathered by law enforcement officials, as these records do not come within the work product exception. Petitioners argue that interpreting Rule 16(a)(2) as a blanket exception to disclosure under the Public Records Act for public records that are "relevant to a pending or contemplated criminal action," is in effect, the adoption of a common law law enforcement privilege that this Court rejected in *Schneider v. City of Jackson.* 226 S.W.3d 332, 348 (Tenn.2007).

The State and Metro assert that none of the requested materials are subject to disclosure under the Public Records Act because Rule 16(a)(2) functions as an exception to disclosure for all public records that are "relevant to a pending or contemplated criminal action," regardless of whether the requested materials were "made by ... law enforcement officers in connection with investigating or prosecuting the case," amount to statements of "state witnesses or prospective state witnesses" or were collected by law enforcement officials from third parties. Metro further argues that Rule 16 limits the disclosure of discovery materials in a criminal proceeding to the parties in the proceeding and provides third parties no right to disclosure of discovery materials during an open criminal proceeding.

C. Tennessee Rule of Criminal Procedure 16

Since 1978, the Tennessee Rules of Criminal Procedure have governed the procedure in all trial court criminal proceedings.[18] Rule 16 provides for the disclosure of information by the State or the defendant. Rule 16 does not provide for the release of any information to anyone not a party to the criminal proceeding.

Rule 16(a)(1) lists the materials that the State must disclose to a defendant who requests discovery.[19] These items generally ***867** include the defendant's oral statements; the defendant's written or recorded statements; the defendant's prior criminal record; any books, papers, documents, photographs, tangible objects, buildings, or places, if within the state's possession, custody, or control that are material to preparing the defense, that the state intends to use in its case-in-chief at trial, or if obtained from or belongs to the defendant; and any reports of physical or mental examinations and scientific tests or experiments if they are within the state's possession or control, the state intends to use them in its case-in-chief at trial, or if material to preparing the defense.

Rule 16(a)(2) provides that these materials are not subject to disclosure:

> Except as provided in paragraphs (A), (B), (E), and (G) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection

> with investigating or prosecuting the case. Nor does this rule authorize discovery of statements made by state witnesses or prospective state witnesses.

Tenn. R.Crim. P. 16(a)(2).

Rule 16(b) specifies the information that ***868** the defendant must disclose to the State.[20] It generally includes documents, items, and reports of examinations and tests within the defendant's possession or control that the defendant plans to introduce at trial.

Prior decisions interpreting Rule 16 and the Public Records Act have focused either on records not subject to disclosure to a defendant or the defendant's attorneys or the temporal scope of this provision as it relates to disclosure to nonparties.

In *Memphis Publishing Co. v. Holt,* 710 S.W.2d 513, 515 (Tenn.1986), this Court considered whether a closed investigative file of the Memphis Police Department was available for inspection by the media and the public under the Public Records Act. The Police Department argued, in part, that Rule 16 protected the records from disclosure. *Id.* at 517. We held that because the police department's investigative file was a closed file and was not relevant to any pending or contemplated criminal action, Rule 16 was not applicable and the investigative file was subject to disclosure. *Id.*

The following year, in *Appman v. Worthington,* 746 S.W.2d 165, 165 (Tenn.1987), we were presented with the issue of whether the investigative records regarding the death of an inmate at a state correctional facility were available for inspection under the Public Records Act to the defendants charged with the inmate's murder. Several defendants, including Nicholas Todd Sutton, were indicted for the inmate's murder. *Id.* David W. Stufflestreet was indicted as an accessory after the fact. *Id.* Counsel for defendants Sutton and Stufflestreet had a subpoena issued directing that all records in the possession of the correctional facility regarding the inmate's death be produced under the Public Records Act. ***869** *Id.* at 165–66. After the State refused the request, the defendants and their counsel filed a chancery court public records action to obtain the investigative records. *Id.* at 166. The chancery court held that Rule 16 excepted the documents from disclosure. *Id.* The Court of Appeals disagreed and reversed the trial court. In reversing the Court of Appeals, we held that the Tennessee Rules of Criminal Procedure carry the force of law and therefore constituted an exception to the Public Records Act. *Id.* at 166. Further, we held that the requested records were the product of the investigation by the Internal Affairs of the Department of Corrections and related to the prosecution of the murder cases against Sutton and Stufflestreet and the other defendants in the criminal cases arising out of the inmate's murder. *Id.* at 167. The criminal cases were ongoing; therefore, the records, under Rule 16(a)(2), were not subject to inspection by counsel for the defendants in the murder cases. *Id.* at 167.[21]

Subsequently in *Ballard,* we addressed the issue of whether a protective order shields from disclosure under the Public Records Act discovery responses filed with the clerk of a court in a civil proceeding. 924 S.W.2d at 662. *The Tennessean* and the Society of Professional Journalists intervened in a civil suit between residents and owners and operators of a life care center. *Id.* at 656. The intervenors requested that the trial court rescind a blanket protective order that sealed discovery documents filed in the case because the documents were public records. *Id.* Noting this Court's holding in *Appman* that the Tennessee Rules of Criminal Procedure are encompassed within the "state law" exception to the Public Records Act, this Court held the same reasoning applied to the Tennessee Rules of Civil Procedure. *Id.* at 662.[22] We held that the Public Records Act did not require disclosure of records sealed by a protective order entered under Tennessee Rule of Civil Procedure 26.03. *Id.*

Following the holdings of *Appman* and *Ballard,* the Court of Appeals in *Swift* considered a public records request by counsel for convicted murderer Phillip Workman. 159 S.W.3d at 568. Workman, who had been convicted of murder in Shelby County Criminal Court, filed a petition for a writ of habeas corpus in federal district court, collaterally attacking the result of his unsuccessful state court writ of error coram nobis proceeding. *Id.* at 569. His attorney made a Public Records Act request to the Assistant District Attorney General to inspect all documents in the possession of the District Attorney General regarding the State's defense of Workman's petition for writ of error coram nobis. *Id.* The request was denied. *Id.* Workman's attorney sued seeking disclosure of the records. *Id.* Noting that the Tennessee Post–

Conviction Procedure Act and Tennessee Supreme Court Rule 28 provide that Rule 16 governs discovery in *870 post-conviction proceedings, the Court of Appeals held that documents covered by Rule 16(a)(2) in the possession of the District Attorney General were not public records because they are among the class of records excepted from disclosure by state law. *Id.* at 575–76.[23] Thus, the *Swift* court held that documents enumerated in Rule 16(a)(2) are not subject to a Public Records Act request when the requested documents relate to a criminal conviction that is being collaterally attacked. 159 S.W.3d at 576. The court noted that the General Assembly, in adopting the Public Records Act, did not intend to allow litigants to avoid the requirements and limitation of the Rules of Criminal Procedure and the Rules of Civil Procedure by invoking the Public Records Act to obtain information not otherwise available to them through discovery. *Id.* The fact that Workman's attorney, not Workman himself, made the request did not affect the outcome, as the court noted that the question at issue was whether the requested documents constituted "a public record that must be disclosed to Mr. Workman's lawyers *or to any other interested citizen.*" *Id.* at 575 (emphasis added).

In 2007, in *Schneider,* news outlets sought access to police officers' field interview cards. 226 S.W.3d at 334–35. We were presented with the issue of whether the common law provided a law enforcement investigative privilege, which operated to exempt from disclosure governmental records that would otherwise be accessible under the Public Records Act. *Id.* at 334. We held there was no law enforcement privilege in Tennessee but remanded the case to the trial court to determine whether any of the police department records were part of a pending, open, or ongoing criminal investigation and therefore exempt from disclosure. *Id.* We noted that the governmental entity had failed to show whether any of the field interview cards were exempt from disclosure under Rule 16(a)(2) because the cards were part of an ongoing criminal investigation. *Id.* at 345. As we pointed out, "the City's failure even to review the field interview cards for the purpose of identifying those cards or portions of cards containing information relevant to an ongoing criminal investigation [was] inexplicable, given that these cards would clearly have been exempt from disclosure under Rule 16(a)(2) and this Court's decision in *Appman.*" *Id.* We noted that "harmful and irreversible consequences could potentially result from disclosing files that are involved in a pending criminal investigation." *Id.* at 345–46.

[11] In this case, we must determine whether the Public Records Act applies to allow public access to investigative records that arise out of and are part of a criminal investigation resulting in a pending prosecution, are not the work product of law enforcement under Rule 16(a)(2), were gathered by law enforcement from other sources in their investigation of the case, and are requested by entities that are not parties to the pending criminal case.

We hold that Metro is not required to disclose the requested investigative records because the records come within the Public Records Act state law exception. As we held in *Appman* and again noted in *Ballard,* the Rules of Criminal Procedure constitute state law exceptions to the Public Records Act. Rule 16, as state law, *871 controls the release of these records and provides for access to these records only to the parties to the criminal case—the State and the defendant. There is no provision in Rule 16 for release of discovery materials to the public. This case raises the same concerns that counseled in favor of our remand to the trial court in *Schneider*—the "harmful and irreversible consequences [that] could potentially result from disclosing files that are involved in a pending criminal investigation." *Schneider,* 226 S.W.3d at 345–46. As one recent article notes:

> The pretrial criminal discovery process involves the reciprocal exchange of materials that the prosecution will use in attempting to secure a conviction and the information the defense will use in attempting to achieve an acquittal. The material exchanged includes information that may or may not eventually be submitted as evidence at trial or as part of some other adjudicative action.
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> ...
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> Because of their inflammatory and sensitive nature, many of the records made available to the public as a result of the criminal discovery process would likely implicate the fair trial rights of a defendant as protected by the Sixth Amendment to the Constitution and the common law, statutory, and constitutional privacy interests of any third parties involved. When made available to a prospective jury pool, discovery materials could impair a defendant's ability to receive a fair trial. Discovery records also often contain personal information, such as physical descriptions, addresses, phone numbers, birthdates and social

> security numbers of witnesses, investigators, and victims, potentially implicating the privacy interests of numerous individuals both directly and indirectly involved in a criminal case.

Brian Pafundi, *Public Access to Criminal Discovery Records: A Look Behind the Curtain of the Criminal Justice System,* 21 U. Fla. J.L. & Pub. Pol'y 227, 232–33 (2010) (footnotes omitted).

Rule 16 of the Tennessee Rules of Criminal Procedure minimizes these risks by limiting access to discovery materials to the State and the defendant. If Rule 16 did not function as an exception to the Act, a defendant would have no reason to seek discovery under Rule 16, but would file a public records request and obtain the *entire* police investigative file, which could include more information than the defendant could obtain under Rule 16. Or if the media could make a public records request and obtain the investigative files, then the defendant and potential jurors could learn about the State's case against the defendant by reading a newspaper or watching a television news broadcast. This absurd result was not intended by the Legislature and would have a negative impact on a police department's ability to investigate criminal activity and a defendant's ability to obtain a fair trial.

Our holding finds support in a decision of the Supreme Court of North Carolina and in our own analogous rules of statutory construction. In *Piedmont Publishing Co. v. City of Winston–Salem,* 334 N.C. 595, 434 S.E.2d 176, 176–77 (1993), a newspaper sought, under the North Carolina Public Records Act, to inspect, examine, and obtain copies of recorded communications between two police officers and the police communications center during an investigation into the shooting of one of the officers. The Supreme Court of North Carolina affirmed the trial court's denial of the newspaper's request. *Id.* at 178. The majority opinion noted that the records sought "were unquestionably gathered by the Winston–Salem Police Department in the course of a criminal investigation and ***872** are part of the State's file in a pending criminal action." *Id.* at 177. The majority next noted that the North Carolina criminal discovery statute, like Tennessee Rule of Criminal Procedure 16, "provides for discovery, only by the defendant, of materials in the possession of the State for use in a criminal action." *Id.* The majority next acknowledged the newspaper's reliance on the North Carolina Public Records Act and agreed that "with nothing else appearing," the recordings the newspaper sought would be "public records" and "subject to inspection and copying by the [newspaper]." *Id.* The majority of the court concluded, however, that "[i]n this case something else does appear," namely the criminal discovery statute. *Id.* The majority of the court explained:

> Article 48 of Chapter 15A of the General Statutes provides for discovery in criminal actions. If the Public Records Act applies to information the State procures for use in a criminal action, there would be no need for Article 48. A criminal defendant could obtain much more extensive discovery under the Public Records Act. It is illogical to assume that the General Assembly would preclude a criminal defendant from obtaining certain investigatory information pursuant to the criminal discovery statutes while at the same time mandating the release of this information to the defendant, as well as the media and general public, under the Public Records Act.
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> If we were to adopt the position advocated by the plaintiffs, that Chapter 132 applies in this case, the files of every district attorney in the state could be subject to release to the public. Among the matters that would have to be released would be the names of confidential informants, the names of undercover agents, and the names of people who had been investigated for the crime but were not charged. We do not believe the General Assembly intended this result.

Id. at 177. The majority of the court then concluded:

> One canon of construction is that when one statute deals with a particular subject matter in detail, and another statute deals with the same subject matter in general and comprehensive terms, the more specific statute will be construed as controlling. Article 48 deals specifically with the disclosure of criminal investigative files as opposed to the more general provisions of Chapter 132. We hold that it governs in this case and there is no provision in it for discovery by anyone other than the State or the defendant.

Id. at 177–78.

In *Piedmont*, the three dissenting justices opined that the North Carolina Public Records Act controlled because no other statute excepted records maintained by the city police departments from its mandate. *Id.* at 179. However, this criticism is not applicable to our holding. In contrast to the North Carolina Public Records Act, our Act includes a general catch-all exception from disclosure where provided by other state laws, and Rule 16 constitutes such other state law.

[12] [13] Like North Carolina law, Tennessee law regarding statutory construction provides that the more specific of two conflicting statutory provisions controls, *see Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn.2010), and that courts are to avoid a construction that leads to absurd results, *see Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn.2010). And, like North Carolina, Tennessee has a specific rule that deals with discovery and disclosure in ongoing criminal proceedings. Rule 16 deals specifically with the discovery and ***873** disclosure of criminal investigative materials during a pending criminal proceeding; whereas the Public Records Act deals with access to public records. Rule 16 is the more specific provision and controls the discovery and disclosure of materials in a criminal case to the exclusion of the Public Records Act. Because Rule 16 does not provide for disclosure to a third party of materials subject to discovery between the State and a defendant during the pendency of the criminal case or any collateral challenges to the criminal conviction, the Petitioners cannot gain access to these materials under the Public Records Act, even though the materials may fall outside the substantive scope of Rule 16(a)(2).

The dissenting justice disagrees with the Court's interpretation of Rule 16 and incorrectly states that the basis for the Court's holding is Rule 16(a)(2). However, a fair reading of the Court's opinion clearly indicates that the Court based its decision on the state law provision of the Public Records Act, Tennessee Code Annotated section 10–7–503(a)(2)(A), Tennessee Rules of Criminal Procedure 16(a)(1) and 16(b)(1), and previous court decisions. The dissenting justice, in a thinly disguised effort to stir up controversy and garner public attention, argues that the Court has created a "public policy exception" to the Public Records Act that only the General Assembly is authorized to enact. This is pure fabrication—there is no factual or legal basis for this assertion. Even a cursory review shows that the Court's decision is based on the legislatively-created state law exception to the Public Records Act, Tennessee Code Annotated section 10–7–503(a)(2)(A). The dissenting justice concedes that exceptions to disclosure may be found in the rules of court, including Rule 16 of the Tennessee Rules of Criminal Procedure, pursuant to this statutory provision. The ill-conceived result advocated by the dissent would have profound adverse consequences for the criminal justice system. It would potentially compromise criminal investigations, prevent defendants from having fair trials, and further victimize crime victims. The Court's decision, unlike the dissent, applies the law enacted by the Legislature and protects the integrity of the criminal justice system.

D. Protection of the Victim's Rights

Ms. Doe intervened in this action to prevent the release of the police investigative file and expressed a specific concern over the Petitioners' request to obtain the video of the alleged assault, a surveillance video that includes her image, and any photographs of her taken during and immediately after the alleged assault. Our ruling today protects Ms. Doe's privacy concerns by shielding all of the investigative records from disclosure during the pendency of the criminal proceedings and any collateral challenges to any convictions.[24] At the conclusion of the criminal proceedings, Tennessee Code Annotated section 10–7–504(q)(1) grants protection to Ms. Doe by providing that when a defendant has pleaded guilty or been convicted of and sentenced for a sexual offense or violent sexual offense specified in Tennessee Code Annotated section 40–39–202, the following information is confidential and shall not be disclosed: the victim's name; home, work and email addresses; telephone numbers; social security number; and any photographic or video depiction of the victim. Ms. Doe may waive these protections, but otherwise is not required to take any affirmative action. The General Assembly ***874** wisely enacted this exception to the Public Records Act to protect the release of a victim's private information and any photographic or video depictions without the necessity of a court proceeding.

III. Conclusion

The media plays an important and necessary role in holding government officials accountable. Yet, the

General Assembly has rightly recognized that there must be exceptions to the public's right to obtain government records and, in doing so, has provided that the media's role must yield to the need to protect the rights of defendants accused of crimes and the integrity of the criminal justice system during the pendency of criminal cases and any collateral challenges to criminal convictions. Under the facts of this case, Rule 16 governs the disclosure of information, and only the defendants, not the public, may receive information contained in the police investigative files. We hold that, based on Rule 16, the Petitioners have no right to the requested information during the pendency of the criminal cases and any collateral challenges to any convictions. Our decision today and the provisions of Tennessee Code Annotated section 10–7–504(q)(1) protects Ms. Doe's privacy concerns.

The judgment of the Court of Appeals is affirmed on other grounds. Costs are taxed to the Petitioners, *The Tennessean,* Associated Press, *Chattanooga Times Free Press, Knoxville News Sentinel,* Tennessee Associated Press Broadcasters, Tennessee Coalition for Open Government, Inc., *The Commercial Appeal,* WBIR–TV Channel Ten, WSMV–TV Channel Four, WTVF–TV, News Channel 5 Network, LLC, and WZTV Fox 17, and their surety, for which execution may issue if necessary.

HOLLY KIRBY, J., filed a separate concurring opinion.

GARY R. WADE, J., filed a dissenting opinion.

Holly Kirby, J., concurring.
I fully concur in the majority opinion in this case but write separately to respond to the dissent.

One of this Court's foremost obligations is to preserve and protect the integrity of our State's criminal justice system. The dissent in this case advocates a position that would amount to an abdication of this responsibility and would undermine the justice system we are charged to protect.

The dissent in this case would throw open police files on pending investigations and criminal prosecutions, not only to responsible media sources, but also to suspected perpetrators under investigation and their allies, gang members, voyeurs, pornographers, anyone. As outlined in the majority opinion, such a ruling could have catastrophic consequences for all involved in the criminal justice system. Citizens who report crimes privately could be outed. Confidential police information sources could be revealed. Police efforts to keep the details of a crime and its investigation secret until the perpetrator is apprehended would be for naught. The identity of persons suspected of a crime but later exonerated could be made public. Victims of sexual crimes could find their personal information, as well as videos and photos of their ordeal, readily available to those who would post the information online or otherwise further torment them. Inflammatory and inadmissible information about criminal defendants could taint the jury pool and compromise defendants' right to a fair trial. It is hard to overstate the damage to our justice system that could result from adoption of the dissent's position.

***875** Contrary to the representations in the dissent, the holding of the majority in this case is not a departure from the Court's prior decisions, including one decision in which the dissenting justice concurred. With the concurrence of the dissenting justice, this Court has recognized that current Court rules prevent the release of criminal investigative files relevant to pending criminal proceedings. In *Schneider v. City of Jackson,* 226 S.W.3d 332 (Tenn.2007), the Court (including the dissenting justice) described a 1987 Tennessee Supreme Court decision as holding "that Rule 16(a)(2) exempted from disclosure under the Public Records Act all 'open' criminal investigative files that 'are relevant to pending or contemplated criminal action.' " *Schneider,* 226 S.W.3d at 341 (describing *Appman v. Worthington,* 746 S.W.2d 165, 166 (Tenn.1987)). With the concurrence of the dissenting justice, the *Schneider* Court held: "[I]nformation relevant to ongoing criminal investigations ... would clearly have been exempt from disclosure under Rule 16(a)(2) and this Court's decision in *Appman.*" *Id.* at 345. And again with the concurrence of the dissenting justice, the Court in *Schneider* pointed out the harm that could result from the very position now advocated by the dissent in this case. The *Schneider* Court "recognize[d] that harmful and irreversible consequences could potentially result from disclosing files that are involved in a pending criminal investigation." *Id.* at 345–46.

The only justification the dissent offers for its extreme position is purported deference to the legislature. This is, in the words of the late Justice Antonin Scalia, "pure applesauce." [1] After proclaiming in the dissent in *Rye v. Women's Care Ctr. of Memphis, MPLLC* [2] that the

"fundamental responsibility of an independent judiciary is to protect against the unwarranted intrusion of the legislative branch," the dissent now pivots to meekly cede the Court's most precious responsibility, preservation of the integrity of our system of justice. "Jiggery-pokery," indeed. [3]

Our legislature recognizes and respects that, while criminal proceedings are pending, current law prevents the release of criminal investigative files to the public. In 2014, the legislature enacted Tennessee Code Annotated section 10–7–504(q), [4] which governs the release of information ***876** regarding the victim of a sexual crime *after* conviction and sentencing of the perpetrator. This statute dovetails with current law that exempts from public disclosure files that are involved in a pending criminal investigation. It would have no purpose if open criminal investigative files were available to the public *prior* to conviction and sentencing. [5]

The dissent's professed concern for the rights of the victim in this case can only be described as high irony. The ruling urged by the dissent would leave witnesses and crime victims—including children, the mentally incompetent, the financially destitute—to fend for themselves in the wake of public records requests seeking their personal information, agonizing photos and videos, and other sensitive information. These requests could be made by anyone, including perpetrators and their consorts, or others who might seek to exploit or threaten them. And this is presuming that victims would even learn of any records requests when they are made. [6]

The integrity of our criminal justice system depends on the Court setting the parameters for the flow of information in pending criminal matters. The majority in this case shoulders the Court's solemn responsibility to our State. For this reason, I concur.

Gary R. Wade, J., dissenting.

In the past, this Court has consistently refrained from creating public policy exceptions ***877** to the Tennessee Public Records Act (TPRA), Tenn.Code Ann. §§ 10–7–101 to –702 (2012 & Supp.2014), because the authority to enact such exceptions rests solely with the General Assembly. *See, e.g., Schneider v. City of Jackson,* 226 S.W.3d 332, 344 (Tenn.2007) ("[T]he General Assembly, not this Court, establishes the public policy of Tennessee."). Departing from this principle, the majority has concluded that Tennessee Rule of Criminal Procedure 16 exempts **all** police records from public disclosure during the course of a criminal prosecution. The plain language of the rule, however, protects from disclosure only work product and witness statements. Moreover, I believe that the victim of the alleged rape is entitled to an adjudication of her claim that public disclosure of the police records would violate her statutory and constitutional rights. I must, therefore, respectfully dissent.

I. Facts and Procedural History

In August of 2013, four Vanderbilt football players were indicted on charges of aggravated rape. The indictments marked the beginning of a high-profile prosecution, which, following the grant of a new trial in June of 2015, remains ongoing.

After the indictments, a coalition of media organizations (the "Petitioners") made a public records request asking the Metropolitan Government of Nashville and Davidson County ("Metro") to disclose "[a]ny records ... regarding the alleged rape," although they later modified the request to exclude any images or video recordings of the victim of the alleged rape. When Metro denied the request, the Petitioners sought judicial review in chancery court. After allowing the State and the victim of the alleged rape to intervene, the Chancellor reviewed the records *in camera* and held that some, but not all, were exempt from disclosure pursuant to Tennessee Rule of Criminal Procedure 16(a)(2), which provides for the confidentiality of the work product of police, prosecutors, and other state agents. In particular, the Chancellor ruled as follows:

> [R]ecords submitted to [Metro Police] that were not developed internally and that do not constitute statements or other documents reflecting the reconstructive and investigative efforts of [Metro Police] are outside the expansive reach of [Tennessee Rule of Criminal Procedure] 16(a)(2)....[The Petitioners] are entitled to the text messages [sent by third parties to Metro Police], minus

> any photographic or videographic images.... The Court directs that these text messages be redacted to delete [the victim's] name or any of her identifying information.... [The Petitioners] are also entitled to inspect the Vanderbilt access card information, Pano-scan data[1] relating to Vanderbilt University premises, [and emails] recovered from potential witnesses and the criminal defendants which were not addressed to officials related to [Metro Police] or the District Attorney General's Office. All of the produced material has to have all videos and photos redacted from them, along with [the victim's] name and any other personal information about her.... All of the other materials will be preserved and not disclosed....

The Chancellor declined to address a claim by the victim that public disclosure of the records would contravene her rights guaranteed by article I, section 35 of the Tennessee Constitution and by Tennessee Code Annotated section 40–38–102(a)(1) (2014) (commonly known as "the Victims' Bill of Rights"). Likewise, the Chancellor declined to address an argument by the ***878** State that the public disclosure of the records would impede a fair trial in the criminal action against those charged with the rape. The Chancellor determined that the court presiding over the criminal trial (the "Criminal Court") was better suited to resolve both of these issues.

A majority of a Court of Appeals panel reversed, holding that all of the requested materials were relevant to a pending or contemplated criminal action and were, therefore, protected from public disclosure by Rule 16(a)(2). *Tennessean v. Metro. Gov't of Nashville & Davidson Cnty.*, No. M2014–00524–COA–R3–CV, 2014 WL 4923162, at *3 (Tenn.Ct.App. Sept. 30, 2014). Judge W. Neal McBrayer dissented, concluding that the ruling was "inconsistent with a fair reading of Rule 16(a)(2)" and that the Chancellor had properly applied Rule 16(a)(2). *Id.* at *4 (McBrayer, J., dissenting).

During the pendency of this appeal, first to the Court of Appeals and then to this Court, the prosecution has proceeded in the Criminal Court. As is relevant here, the Criminal Court issued a series of protective orders placing under seal all portions of the record containing images, video recordings, personal identifying information, medical records, and other confidential records of the victim and other witnesses. The Criminal Court also placed under seal all evidence introduced at the trial of two of the defendants. After the conclusion of the trial, the Criminal Court judge granted the two defendants a new trial based upon a finding of juror misconduct. The second trial has not yet taken place. Other defendants, not involved in the first proceeding, are to be tried separately.

II. Analysis

The general rule under the TPRA is that any citizen is entitled to inspect the records of any governmental agency in the state. *See* Tenn.Code Ann. § 10–7–503(a)(2)(A)–(B). There are specific statutory exceptions to the general rule of public disclosure, *see* Tenn.Code Ann. § 10–7–504(a)–(r), none of which apply here. There is also a catch-all exception which provides that records are protected from disclosure as "otherwise provided by state law." *Id.* § 10–7–503(a)(2)(A). Based on this "state law" exception, records may be exempt from public disclosure as provided for in our state's constitution, our statutes, the common law, the rules of court, and administrative rules and regulations. *Swift v. Campbell*, 159 S.W.3d 565, 572 (Tenn.Ct.App.2004).

In this instance, the determinative question is whether the records at issue are exempt from disclosure based upon the following provisions of state law: (1) Tennessee Rule of Criminal Procedure 16(a)(2)—which, as noted, provides for the confidentiality of investigative and prosecutorial work product; (2) Tennessee's statutes and constitutional provisions pertaining to victims' rights, *see* Tenn. Const. art. I, § 35 ("[V]ictims shall be entitled to ... [t]he right to be free from intimidation, harassment and abuse throughout the criminal justice system."); Tenn.Code Ann. § 40–38–102(a)(1) ("All victims of crime ... have the right to ... [b]e treated with dignity and compassion[.]"); and (3) article I, section 9 of the Tennessee Constitution, which guarantees criminal defendants and the State the right to a fair trial by an impartial jury.

A. Tennessee Rule of Criminal Procedure 16(a)(2)

Rule 16 defines the limits of discovery in criminal cases. Subsection (a)(1) identifies the information the State must disclose upon request by a defendant. Subsection *879 (a)(2), which is at issue here, provides as follows:

> *Information Not Subject to Disclosure.* Except as provided in paragraphs (A), (B), (E), and (G) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with investigating or prosecuting the case. Nor does this rule authorize discovery of statements made by state witnesses or prospective state witnesses.

This rule embodies the work product doctrine, which "is based on an attorney's right to conduct his or her client's case with a certain degree of privacy, preventing the discovery of materials prepared by opposing counsel in anticipation of litigation and protecting from disclosure an adversary's 'mental impressions, conclusions, and legal theories of the case.' " *Wilson v. State*, 367 S.W.3d 229, 235 (Tenn.2012) (quoting *Memphis Publ'g Co. v. City of Memphis*, 871 S.W.2d 681, 689 (Tenn.1994)); *see also Swift*, 159 S.W.3d at 572 ("The central purpose of the work product doctrine is to protect an attorney's preparation for trial under the adversary system.").

This Court first addressed Rule 16(a)(2) as a possible exception to the TPRA in *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn.1986). In that case, which involved a request for access to an investigative file pertaining to a shoot-out in Memphis, "the police investigation had been completed and the file closed, and ... no proceedings relative to the 'incident' were pending in any criminal court, and none were contemplated." *Id.* This Court ruled that Rule 16(a)(2) did not protect the investigatory documents from public disclosure: "[The] limitation on access to records applies only to discovery in criminal cases. The investigative file sought to be examined ... is a closed file, and is not relevant to any pending or contemplated criminal action. Rule 16, therefore, does not come into play...." *Id.* at 517.

This Court again addressed Rule 16(a)(2) in the context of a TPRA petition in *Appman v. Worthington*, 746 S.W.2d 165, 165 (Tenn.1987). Defense attorneys who represented inmates charged with the murder of another inmate filed the petition in an effort to gain access to the investigative file at the correctional facility where the murders had taken place. *Id.* While not challenging the classification of the records as investigative "work product," the defense attorneys contended that Rule 16(a)(2) should not serve as an exception to the duty to disclose under the TPRA. Citing *Holt*, this Court held that Rule 16(a)(2) applies as an exception to the obligation to disclose work product under the TPRA when "the files are open and are relevant to pending or contemplated criminal action." *Id.* at 166. Because the murder charges against the inmates were ongoing, the Court did not permit an inspection of the investigative work product. *Id.* at 167.

A similar issue arose in *Schneider*, 226 S.W.3d at 335. In that case, the petitioners sought "field interview cards generated by police officers" who had interviewed several individuals, photographed them, and prepared "cards containing both the photographs and the officers' handwritten notes about the information obtained during the field interviews." *Id.* After declining to create a "law enforcement privilege," this Court remanded to the trial court for a determination of whether any of the field interview cards were protected by Rule 16(a)(2). *Id.* at 345–46. Notably, this Court observed that "[a]n entire field interview card should not be deemed exempt *880 simply because it contains some exempt information," pointing out that a "redaction ... is appropriate" when only a portion of the information in a record is protected. *Id.* at 346 (citing *Eldridge v. Putnam Cnty.*, 86 S.W.3d 572, 574 (Tenn.Ct.App.2001)). [2]

In summary, *Holt*, *Appman*, and *Schneider* have established Rule 16(a)(2) as an exception to disclose under the TPRA—but only when the records sought relate to a contemplated or ongoing criminal prosecution. Nothing in any of our prior rulings, however, supersedes the plain language of Rule 16(a)(2), which indicates that a record is protected only under one of the following conditions: (1) it qualifies as work product, defined as records "**made by** the district attorney general or other state agents or law enforcement officers in connection with investigating or prosecuting the case"; or (2) it consists of a "statement[ ] made by [a] state witness[ ] or prospective state witness[ ]." (Emphasis added.) In my view, the Chancellor correctly interpreted Rule 16(a)(2) by declining to exempt from disclosure those "records submitted to [Metro Police] that were not developed

internally and that d[id] not constitute statements or other documents reflecting the reconstructive and investigative efforts of [Metro Police]." As indicated, this interpretation is not only consistent with the plain language of Rule 16(a)(2), but it is also consistent with the traditional parameters of the work product doctrine. *Wilson,* 367 S.W.3d at 235.

Notwithstanding the textual limitations of Rule 16(a)(2), the majority has broadly held that all records related to the criminal prosecution are exempt from disclosure. In particular, the majority has concluded that so long as a criminal action is pending, Rule 16 "limit[s] access to discovery materials to the State and the defendant" because "[t]here is no provision in Rule 16 for release of discovery materials to the public." In my view, the majority's conclusion rests upon a misinterpretation of Rule 16 and a failure to accord proper weight to the public nature of criminal proceedings. *See* U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ...."); Tenn. Const. art. I, § 9 ("[I]n all criminal prosecutions, the accused hath the right to ... a speedy public trial....").

As noted, Tennessee Rule of Criminal Procedure 16(a)(2) exempts from discovery only work product and witness statements. The rule is silent as to the dissemination of discovery information to the public. According to our traditional canons of construction, "silence in a [rule] is not affirmative law" and is "ordinarily irrelevant to the interpretation of [the rule]." *State v. Collier,* 411 S.W.3d 886, 897 (Tenn.2013) (quoting *House v. Estate of Edmondson,* 245 S.W.3d 372, 387 (Tenn.2008)); *see also Harrison v. PPG Indus., Inc.,* 446 U.S. 578, 592, 100 S.Ct. 1889, 64 L.Ed.2d 525 (1980) ("In ascertaining the meaning of a [rule], a court cannot, in the manner of Sherlock Holmes, pursue the theory of the dog that did not bark."). Because Rule 16(a)(2) does not address whether discovery material may be disseminated to the public, the central premise of the majority's holding—that the rule prohibits the ***881** public disclosure of discovery materials—is flawed. [3]

Moreover, the majority relies upon the canon of construction that "the more specific of two **conflicting** statutory provisions controls." (Emphasis added.) That canon should not apply in this instance because, as indicated, the TPRA requires public access unless "otherwise provided by state law," and Rule 16 does not prohibit public access to discoverable materials. Thus, the two provisions in question—the TPRA and Rule 16—are simply not in conflict.

The majority further indicates that interpreting Rule 16 as allowing public access under these circumstances "would have profound adverse consequences for the criminal justice system." Although this is a valid policy concern, our previous holdings preclude courts from creating public policy exceptions to the TPRA—a prerogative within the exclusive authority of the General Assembly. *See, e.g., Schneider,* 226 S.W.3d at 344. "[U]nless an exception [to the TPRA] is established, we must require disclosure 'even in the face of serious countervailing considerations.' " *Id.* at 340 (quoting *City of Memphis,* 871 S.W.2d at 684). While I understand my colleagues' desire to "protect [ ] the integrity of the criminal justice system," that policy objective does not justify deviating from the plain language of the rule. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 9–10 (2012) (emphasizing that judges should remain faithful to the plain meaning of texts to avoid reading their own values into rules and statutes).

In summary, the Chancellor properly interpreted Rule 16(a)(2) by holding that it applies only to records that either contain witness statements or qualify as state work product. The ruling of the Chancellor should be affirmed.

B. Victims' Rights

The victim has intervened in this action to assert her statutory and constitutional protections against disclosure under the TPRA. As the victim of a crime, she entitled to "[b]e treated with dignity and compassion," Tenn.Code Ann. § 40–38–102(a)(1), and "to be free from intimidation, harassment and abuse throughout the criminal justice system," Tenn. Const. art. I, § 35. The victim contends that these rights provide a basis for exempting records from disclosure under the "state law" exception of the TPRA.

In light of its holding that Rule 16 exempts the requested records from disclosure for the time being, the majority has not addressed this issue. In my assessment, the victim's claim warrants consideration regardless of whether the records are temporarily exempt from disclosure pursuant to the rule. Both article I, section 35 and section 40–38–102(a)(1), which are designed to insure protections to victims, qualify as "state law" for purposes of the catch-

all exception to disclosure under the TPRA. *See Swift*, 159 S.W.3d at 571–72. Exceptions must be recognized pursuant to the catch-all provision when, as here, there is a significant risk that the disclosure of documents will contravene rights guaranteed by provisions in the Tennessee Code and the Tennessee Constitution. *See id.*

*882 Furthermore, the constitutional and statutory rights afforded to victims are broader in scope than the work-product exception of Rule 16(a)(2). When the criminal prosecution concludes, the protections of Rule 16 expire. At that point, absent any other exception, the public records pertaining to the rape will be subject to public disclosure, including data from the victim's cell phone and video recordings of the alleged rape. In contrast, the victim's statutory and constitutional rights remain in effect after the prosecutions come to an end. In my view, the victim deserves an adjudication of her rights.

The majority attempts to dispel these concerns by pointing to Tennessee Code Annotated section 10–7–504(q)(1), an exception within the TPRA which provides as follows:

> Where a defendant has plead guilty to, or has been convicted of, and has been sentenced for a sexual offense or violent sexual offense specified in § 40–39–202, the following information regarding the victim of the offense shall be treated as confidential and shall not be open for inspection by members of the public:
>
> (A) Name, unless waived pursuant to subdivision (q)(2);
>
> (B) Home, work and electronic mail addresses;
>
> (C) Telephone numbers;
>
> (D) Social security number; and
>
> (E) Any photographic or video depiction of the victim.

The majority indicates that this provision will protect the victim following the conclusion of the criminal action such that she will not be required to assert her constitutional and statutory rights. I am not convinced. First, this provision applies only if the defendants either plead guilty or are convicted at trial. Second, the materials exempt from disclosure are limited. For example, the statute would not protect statements by or about the victim; written descriptions of photographs and videos of the victim; or most content of the victim's cell phone. These materials qualify for protection under the victims' rights provisions—which, as indicated, apply both during and after the prosecution.

Under these circumstances, I would remand the matter to the Chancellor for an adjudication of the victim's claims of protection.

C. Right to a Fair Trial

The final issue is whether the disclosure of any of the requested records would infringe upon the right to a fair trial in a criminal proceeding, as guaranteed by article I, section 9 of the Tennessee Constitution. Of course, there are instances when the right to public disclosure must give way to the right to a fair trial. Here, however, the Criminal Court balanced these interests in the formulation of its protective orders. Protective orders characteristically strike a balance between the public's right to access and the right of an accused to a fair trial. *See Gannett Co. v. DePasquale*, 443 U.S. 368, 398, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979); *Huskey*, 982 S.W.2d at 363. Nothing in the record suggests that the Criminal Court's protective orders are inadequate in this regard. Under these circumstances, the right to a fair trial is adequately protected.

III. Conclusion

In summary, because I disagree with the majority's interpretation of Rule 16(a)(2) and the majority's failure to address the claim asserted by the victim, I respectfully dissent. I would affirm the Chancellor's ruling as to Rule 16(a)(2) and *883 remand the case for the Chancellor to consider the merits of the victim's claim.

All Citations

485 S.W.3d 857, 44 Media L. Rep. 1622

Footnotes

1 Oral argument was heard on the campus of Lipscomb University in Nashville, Tennessee, as part of the American Legion Auxiliary's Volunteer Girls State S.C.A.L.E.S. (**S**upreme **C**ourt **A**dvancing **L**egal **E**ducation) project.

2 In 1998, the Tennessee Constitution was amended to guarantee that victims of crime have the right to confer with the prosecution; the right to be free from intimidation, harassment, and abuse throughout the criminal justice system; the right to be present at all proceedings where the defendant has the right to be present; the right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly; the right to be informed of all proceedings, and of the release, transfer, or escape of the accused or convicted person; the right to a speedy trial or disposition and a prompt and final conclusion of the case after the conviction or sentence; the right to restitution from the offender; and the right to be informed of each of the rights established for victims. *See* Tenn. Const. art. I, § 35.

3 The Victims' Bill of Rights, Tennessee Code Annotated section 40–38–102, provides that the rights of victims of crimes include the right to be treated with dignity and compassion; have protection and support with prompt action in the case of intimidation or retaliation from the defendant and the defendant's agents or friends; and collect court-ordered restitution in the same manner as a civil judgment, as authorized pursuant to Tennessee Code Annotated sections 37–1–131(b)(2) or 40–35–304(h).

4 "Pano-scan" is a type of panoramic photographic surveillance.

5 Information pertaining to the conviction and grant of a new trial is not included in the appellate record; however, this Court may take judicial notice of the records of the courts of this state. *See* 29 Am.Jur.2d *Evidence* § 150 (2015); *see also* Tenn. R. Evid. 201; *State v. Lawson*, 291 S.W.3d 864, 868–69 (Tenn.2009).

6 Tenn.Code Ann. § 10–7–503(a)(1)(A); *see also Griffin v. City of Knoxville*, 821 S.W.2d 921, 923 (Tenn.1991) (characterizing the Public Records Act as "an all[-]encompassing legislative attempt to cover all printed matter created or received by government in its official capacity" (quoting *Bd. of Educ. v. Memphis Publ'g Co.*, 585 S.W.2d 629, 630 (Tenn.Ct.App.1979))).

7 Tenn.Code Ann. § 10–7–503(a)(2)(A) (emphasis added).

8 *Id.* § 10–7–503(2)(B).

9 *Id.* § 10–7–505(d).

10 Tenn.Code Ann. § 10–7–505(b).

11 *Id.* § 10–7–505(c).

12 *Id.* § 10–7–505(g); *see also Patterson v. Convention Ctr. Auth. of Metro. Gov't of Nashville & Davidson Cnty.*, 421 S.W.3d 597, 616 (Tenn.Ct.App.2013); *Allen v. Day*, 213 S.W.3d 244, 262 (Tenn.Ct.App.2006) (citing *Cherokee Children & Family Servs., Inc.*, 87 S.W.3d at 80).

13 Tenn.Code Ann. §§ 10–7–503(a)(2)(A), –503(d)–(e), –504.

14 Act of Mar. 18, 1957, ch. 285, 1957 Tenn. Pub. Acts 932.

15 Tenn.Code Ann. §§ 10–7–503(d)–(e), –504.

16 *Id.* § 10–7–504(a)(2)(A), (a)(4)(A), (a)(5)(A), (a)(6)-(8), (a)(9)(A)-(B), (a)(11)-(12), (a)(14).

17 *Id.* § 10–7–504(q).

18 Before 1963, criminal defendants had no right to discovery because discovery did not exist at common law, and Tennessee had no discovery procedures. *State v. Dougherty*, 483 S.W.2d 90, 92 (Tenn.1972); *Witham v. State*, 191 Tenn. 115, 232 S.W.2d 3, 4 (1950); *Bass v. State*, 191 Tenn. 259, 231 S.W.2d 707, 712 (1950); *see generally* 9 Tenn. Prac.Crim. Prac. & Procedure § 13:1. In 1963, a criminal defendant was afforded a statutory right to see his own confession. Act of Feb. 27, 1963, ch. 96 §§ 1–2, 1963 Tenn. Pub. Acts 579, repealed by Act of May 17, 1979, ch. 399 § 1, 1979 Tenn. Pub. Acts 1002. In 1968, another statute was enacted affording a criminal defendant discovery of certain physical evidence held by the prosecution. Act of Feb. 29, 1968, ch. 415 § 1, 1968 Tenn. Pub. Acts 29, repealed by Act of May 17, 1979, ch. 399 § 1, 1979 Tenn. Pub. Acts 1002. The Tennessee Rules of Criminal Procedure became effective on July 13, 1978. *See* Tenn. R.Crim. P. 59, Advisory Comm'n Comments. Tennessee Rule of Criminal Procedure 1(a) provides that the rules apply to criminal proceedings in all courts of record.

19 Rule 16(a)(1) provides:

> (a) Disclosure of Evidence by the State.
>
> (1) *Information Subject to Disclosure*.
>
> (A) Defendant's Oral Statement. Upon a defendant's request, the state shall disclose to the defendant the substance of any of the defendant's oral statements made before or after arrest in response to interrogation by any person the defendant knew was a law-enforcement officer if the state intends to offer the statement in evidence at the trial;

(B) Defendant's Written or Recorded Statement. Upon a defendant's request, the state shall disclose to the defendant, and make available for inspection, copying, or photographing, all of the following:
(i) the defendant's relevant written or recorded statements, or copies thereof, if:
(I) the statement is within the state's possession, custody, or control; and
(II) the district attorney general knows—or through due diligence could know—that the statement exists; and
(ii) the defendant's recorded grand jury testimony which relates to the offense charged.
....
(D) Codefendants. Upon a defendant's request, when the state decides to place codefendants on trial jointly, the state shall promptly furnish each defendant who has moved for discovery under this subdivision with all information discoverable under Rule 16(a)(1)(A), (B), and (C) as to each codefendant.
(E) Defendant's Prior Record. Upon a defendant's request, the state shall furnish the defendant with a copy of the defendant's prior criminal record, if any, that is within the state's possession, custody, or control if the district attorney general knows—or through due diligence could know—that the record exists.
(F) Documents and Objects. Upon a defendant's request, the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, if the item is within the state's possession, custody, or control and:
(i) the item is material to preparing the defense;
(ii) the government intends to use the item in its case-in-chief at trial; or
(iii) the item was obtained from or belongs to the defendant.
(G) Reports of Examinations and Tests. Upon a defendant's request, the state shall permit the defendant to inspect and copy or photograph the results or reports of physical or mental examinations, and of scientific tests or experiments if:
(i) the item is within the state's possession, custody, or control;
(ii) the district attorney general knows—or through due diligence could know—that the item exists; and
(iii) the item is material to preparing the defense or the state intends to use the item in its case-in-chief at trial.

20 Rule 16(b) provides:

(b) Disclosure of Evidence by the Defendant.
(1) *Information Subject to Disclosure.*
(A) Documents and Tangible Objects. If a defendant requests disclosure under subdivision (a)(1)(F) or (G) of this rule and the state complies, then the defendant shall permit the state, on request, to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions of these items if:
(i) the item is within the defendant's possession, custody, or control; and
(ii) the defendant intends to introduce the item as evidence in the defendant's case-in-chief at trial.
(B) Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (a)(1)(F) or (G) of this rule and the state complies, the defendant shall permit the state, on request, to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, if:
(i) the item is within the defendant's possession, custody, or control; and
(ii) the defendant intends to introduce the item as evidence in the defendant's case-in-chief at trial; or
(iii) the defendant intends to call as a witness at trial the person who prepared the report, and the results or reports relate to the witness's testimony.
(2) *Information Not Subject to Disclosure.* Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of:
(A) reports, memoranda, or other internal defense documents made by the defendant or the defendant's attorneys or agents in connection with the investigation or defense of the case; or
(B) a statement made by the defendant to the defendant's agents or attorneys or statements by actual or prospective state or defense witnesses made to the defendant or the defendant's agents or attorneys.
....

21 Effective December 11, 1985, the General Assembly amended Tennessee Code Annotated section 10–7–504(a) to provide an exception for internal investigative records and reports of the Tennessee Department of Corrections. Act of Dec. 5, 1985, ch. 5 § 29, 1985 (1st Ex.Sess.) Tenn. Pub. Acts 34. The public records request in *Appman* was made on June 2, 1985, so it predated the effective date of the exception.

22 *See also Tennessean v. Tenn. Dep't of Pers.*, No. M2005–02578–COA–R3–CV, 2007 WL 1241337, at *10 (Tenn.Ct.App. Apr. 27, 2007) ("The Rules of Civil Procedure are state law that may exempt documents from the disclosure requirements of the [Public Records] Act."); *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 786 (Tenn.Ct.App.1999) (holding that the work product doctrine contained in the Tennessee Rules of Civil Procedure constitutes an exception to the Public Records Act).

23 *See also Waller v. Bryan*, 16 S.W.3d 770, 776–77 (Tenn.Ct.App.1999) (holding that Rule 16, as incorporated by the Tennessee Post–Conviction Procedure Act and Tennessee Supreme Court Rule 28, constitutes a "state law" exception to Public Records Act requests when the requested records relate to a pending post-conviction proceeding).

24 The dissenting justice expresses concern for Ms. Doe and her right to be treated with "dignity and compassion," Tenn.Code Ann. § 40–38–102a)(1), yet would throw open the police department's investigative records for all to see.

1 *King v. Burwell*, —— U.S. ——, 135 S.Ct. 2480, 2501, 192 L.Ed.2d 483 (2015) (Scalia, J., dissenting) (regarding Affordable Care Act).

2 *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 292–93 (Tenn.2015) (Wade, J., dissenting).

3 *King*, 135 S.Ct. at 2500 (Scalia, J., dissenting).

4 Tennessee Code Annotated section10–7–504(q) provides:

> (q)(1) Where a defendant has plead guilty to, or has been convicted of, and has been sentenced for a sexual offense or violent sexual offense specified in 40–39–202, the following information regarding the victim of the offense shall be treated as confidential and shall not be open for inspection by members of the public:
>
> (A) Name, unless waived pursuant to subdivision (q)(2);
>
> (B) Home, work and electronic mail addresses;
>
> (C) Telephone numbers;
>
> (D) Social security number; and
>
> (E) Any photographic or video depiction of the victim.
>
> (2)(A) At any time after the defendant or defendants in a case have been sentenced for an offense specified in subdivision (q)(1), the victim of such offense whose name is made confidential pursuant to subdivision (q)(1)(A) may waive such provision and allow the victim's name to be obtained in the same manner as other public records.
>
> (B) The district attorney general prosecuting the case shall notify the victim that the victim has the right to waive the confidentiality of the information set forth in subdivision (q)(1)(A).
>
> (C) If the victim executes a written waiver provided by the district attorney general's office to waive confidentiality pursuant to subdivision (q)(2)(A), the waiver shall be filed in the defendant's case file in the office of the court of competent jurisdiction.
>
> (3) Nothing in this subsection (q) shall prevent the district attorney general or attorney general and reporter and counsel for a defendant from providing to each other in a pending criminal case or appeal, where the constitutional rights of the defendant require it, information which otherwise may be held confidential under this subsection (q).
>
> (4) Nothing in this subsection (q) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains some information made confidential by subdivision (q)(1); provided, that confidential information shall be redacted before any access is granted to a member of the public.
>
> (5) Nothing in this subsection (q) shall be construed to limit access to records by law enforcement agencies, courts, or other governmental agencies performing official functions.

5 The legislative history of Tennessee Code Annotated section 10–7–504(q) shows that the remarks by all interested parties, either for or against the proposed legislation, presupposed that the law at that time prevented the disclosure of victims' personal information and video or photographic depiction of victims while the criminal proceedings are pending. Based on that premise, media groups opposed the legislation, arguing that, if it were enacted, the media would never have a way to contact a sex crime victim who chose not to execute a waiver of the statute's protection. Representative Curry Todd supported the legislation; he spoke passionately about being a police officer in the sex crimes unit and seeing perpetrators or their allies access a criminal file after conviction and sentencing and then use the information to humiliate or harass the victim. House State Gov't Comm. 3/25/14, discussion of HB 2361.

6 Tennessee Code Annotated section 10–7–504(q), as set forth in footnote 4 of this concurring opinion, provides for the district attorney general to notify the victim of a records request and of the victim's option to waive the protection of the statute. As noted above, this statute applies only *after* the perpetrator has been convicted and sentenced. Under the ruling urged by the dissent, while the criminal investigation and proceedings are pending, there is no one who would be responsible for notifying a witness or victim when a records request is made, and the district attorney general would have no authority to represent the witness or victim in any ensuing records request litigation.

1 "Pano-scan" is a type of panoramic photographic surveillance.

2 The concurrence emphasizes the Court's statement in *Schneider* that field interview cards related to ongoing criminal investigations "would clearly have been exempt from disclosure under Rule 16(a)(2)." *Id.* at 345. Notably, in *Schneider,* unlike in this case, all records at issue constituted police work product. In consequence, *Schneider* does not support a claim that all police records, including non-work product, are exempt from public disclosure under Rule 16(a)(2).

3 A separate provision of Rule 16 authorizes the trial court to issue protective orders placing discoverable materials under seal when necessary to ensure a fair trial, to protect the rights of the victim, or to safeguard other legally cognizable interests. *See* Tenn. R.Crim. P. 16(d); *Huskey,* 982 S.W.2d at 362. The records included in the Criminal Court's protective orders are, of course, exempt from disclosure. *See Huskey,* 982 S.W.2d at 362.

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