**IN THE CHANCERY COURT OF KNOX COUNTY, TENNESSEE, AT KNOXVILLE**

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| **MEGHAN CONLEY,** | ) | |
| | ) | |
| **Petitioner,** | ) | |
| | ) | |
| **v.** | ) | **No._____** |
| | ) | |
| **KNOX COUNTY SHERIFF TOM SPANGLER,** | ) | |
| | ) | |
| **Respondent.** | ) | |

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**MEMORANDUM IN SUPPORT OF PETITION FOR HEARING ON PUBLIC RECORD REQUEST DENIALS AND ACCESS TO PUBLIC RECORDS**

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Petitioner Professor Meghan Conley, Ph.D., hereby submits this Memorandum in Support of her Petition for Hearing on Public Record Request Denials and Access to Public Records. For the reasons given here, this Court should grant Professor Conley's Petition; the Knox County Sheriff's Office ("KCSO")[1] will be unable to bear its burden of proving that its numerous denials of Professor Conley's valid record requests were justified.

## Introduction

For all its length, this case presents no true legal or factual controversies; KCSO openly and routinely violates the Public Records Act ("PRA") as a matter of policy and has repeatedly violated Professor Conley's PRA rights on numerous occasions over the past two years.

[1] As noted in the Petition, the statute requires that Sheriff Spangler, not his agency, be named as defendant in his official capacity. *See* Tenn. Code Ann. § 10-7-505(a); *Kersey v. Jones*, M2006-01321-COA-R3CV, 2007 WL 2198329, at *6 (Tenn. App. July 23, 2007) (affirming propriety of naming official as defendant and listing supporting cases). Although the actions of Sheriff Spangler and his employees, Mike Ruble and Hillary Martin, may be collectively attributed to KCSO to avoid linguistic ambiguity, Sheriff Spangler remains the responsible defendant.

Professor Conley is a sociology professor at the University of Tennessee in Knoxville and needs access to KCSO's records in order to complete her research. Her general academic attention centers on immigration enforcement and policing with a particular focus on the American South and 287(g) agreements.[2] 287(g) agreements are unusual partnership between local law enforcement and Immigrations and Customs Enforcement ("ICE") that shift the burden and liability of enforcing immigration laws from ICE and onto a cooperating local law enforcement agency. Professor Conley's research has documented the threats 287(g) agreements pose to local communities and law enforcement agencies. *See* **Attachment 1** (a chapter from Professor Conley's forthcoming book). Given their hazards, 287(g) agreements are uncommon and difficult to study first-hand. Only one Tennessee law enforcement agency has a 287(g) agreement: the Knox County Sheriff's Office. *See* **Attachment 2.**

For whatever reason, KCSO does not want Professor Conley to access its 287(g) records. For almost two years, Professor Conley has sought to complete her research by filing valid PRA requests with KCSO. For almost two years, KCSO, through its chief counsel Mike Ruble and employee Hillary Martin, has flagrantly abused its authority by effectively stonewalling Professor Conley's requests in increasingly bizarre and Kafkaesque ways seemingly designed to frustrate her into stopping her requests, such as:

- denying requests for including particular words;
- threatening to deny requests for including particular words and then granting those requests;
- claiming demonstrably false technical limitations as preventing a request's completion;
- denying requests as impossible to complete while simultaneously completing the request;

[2] 287(g) agreements take their name from section 287(g) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. section 1357(g).

- denying the same request twice on multiple grounds;
- claiming demonstrably false technical limitations as preventing a request and then still supplying the requested records, and;
- denying all inspection requests without any legal justification.

All of KCSO's denials lack sufficient legal justification; many of these denials fail even to provide a legal justification and are indefensible PRA violations. What meager justifications KCSO provides are specious and unsupported by the statute or existing case law

Perhaps more disturbing than persistently and flagrantly violating a state-employed academic's PRA rights are KCSO's admissions that these kinds of violations are merely the enforcement of existing KCSO policies. To remedy these obvious PRA violations and allow her research to continue, Professor Conley has requested that KCSO be placed under a general injunction requiring it to obey the PRA's clear mandate. As discussed below, this Court can grant that relief.

No matter how bitter KCSO's resistance, this Court has always enforced the PRA. Sixteen years ago, this Court even held the Knox County Sheriff in criminal contempt of court for repeatedly and deliberately refusing to provide record access. *Moody v. Hutchison*, 159 S.W.3d 15, 22 (Tenn. App. 2004). Without the approval of the county commission, the Sheriff had been using KCSO funds and inmate labor to covertly build an airport and other structures. *Id.* at 21. When a county commissioner filed a PRA request for records of the secret building project, the Sheriff repeatedly and vehemently denied the building project's existence or possession of any relevant documents, and, before this very Court, continued to violate the PRA through deceit and denial. *Id.* at 18. This Court ultimately found "that twenty three out of twenty six of the Sheriff's [PRA] responses were either false or misleading"

and that the "willfully false statements [were intended] to obstruct and interfere with the processes of the Court." *Id.* at 24.

Overseeing the secret inmate-built airport project was one "Captain Spangler;" serving as the Sheriff's legal counsel was "Chief Ruble." *Id.* at 21, 24.

Though Professor Conley bears no burden of proof, she is anxious to avoid the year of motions, depositions, deceit, and denial recorded in *Moody*. To that end, this memorandum briefly touches on all of the heavy burdens KCSO will struggle to carry should it attempt to justify its actions. This description of KCSO's legal challenges is not an exhaustive exploration of all favorable case law and waives no future arguments.

## ***I. Tennessee's Public Record Act: Requirements and Procedure***

### *A. To facilitate citizen oversight of elected officials, all Tennessee government records are open to public inspection unless expressly exempted by statute.*

The PRA is likely the clearest and most plaintiff-friendly set of statutes in the entire Tennessee Code Annotated. *See* Tenn. Code Ann. § 10-7-301 *et seq*. By default, "[a]ll state, county and municipal records . . . [are] 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." Tenn. Code Ann. § 10-7-503(a)(2)(A). If any record is "made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency" the PRA grants a citizen access to that record regardless of its physical or electronic form. *See* Tenn. Code Ann. § 10-7-503(a)(1)(A)(i). "[U]nless an exception is established, [a court] must require disclosure 'even in the face of serious countervailing considerations.'" *Schneider v. City of Jackson*, 226 S.W.3d 332, 340 (Tenn. 2007) (quoting *Memphis Publ'g Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994)). Should any

statutory ambiguity exist, the legislature's unwavering command requires that the PRA be "broadly construed so as to give the fullest possible public access to public records." Tenn. Code. Ann. § 10–7–505(d). This "presumption of openness . . . express[es] a clear legislative mandate favoring disclosure of governmental records." *Schneider*, 226 S.W.3d at 340 (citing *State v. Cawood,* 134 S.W.3d 159, 165 (Tenn. 2004); *Tennessean v. Elec. Power Bd.,* 979 S.W.2d 297, 305 (Tenn. 1998); *Arnold v. City of Chattanooga,* 19 S.W.3d 779, 785 (Tenn. Ct. App. 1999).

The PRA is a tool for uncovering "knowledge of governmental actions" and exists to "encourage governmental officials and agencies to remain accountable to the citizens of Tennessee." *Schneider*, 226 S.W.3d at 339 (citing *Cherokee Children & Family Servs., Inc.*, 87 S.W.3d at 74–75. PRA rights predate the current statutory scheme and arose as a common law power given to any Tennessean so as to instill "a greater carefulness in the discharge of the trusts imposed upon" elected officials "by their fellow citizens." *State v. Williams*, 75 S.W. 948, 959 (1903). While complying with the PRA is troublesome, the statute "provides no basis for denying access to records because granting such access would be 'clearly onerous, overly burdensome, time-consuming and expensive.'" *Hickman v. Tennessee Bd. of Prob. & Parole*, No. M2001-02346-COA-R3-CV, 2003 WL 724474, at *11 n.7 (Tenn. Ct. App. Mar. 4, 2003).

*B. PRA inspection and petition: citizens denied inspection are entitled to petition for judicial review.*

The PRA permits two different forms of acquiring records: record inspection and receiving record copies made by the record keeper. Inspection is the statute's default means of access but a citizen is entitled to copies of any records they are permitted to inspect. Tenn. Code Ann. § 10-7-506 (a).

By default, citizens are entitled to immediate access to a desired records: all non-exempt public records must be open for citizen inspection "all times during business hours" and a record custodian "shall promptly make [records] available for inspection." Tenn. Code. Ann. § 10-7-503(a)(2)(A), (B).

Government inconvenience cannot limit the right of immediate inspection; a government official is even barred from requiring a scheduled appointment or written request as a prerequisite. *See* Tenn. Op. Att'y Gen. No. 01-021 (Feb. 8, 2001).

Only in the event that "it is not practicable for the record to be promptly available" may a government official postpone fulfilling their statutory duty and delay the release of records. In such circumstances the government official has up to seven business days to respond to either:

> (1) provide the requested records;
> (2) "Deny the request in writing . . . . [and] *include the basis for the denial*;" or;
> (3) provide a form stating when the reasonable time necessary to produce the records requested.

Tenn. Code. Ann. § 10-7-503(a)(2)(B)(i)-(iii).

Should the government official or their representative deny the request "in whole or in part" through "any act or regulation," an aggrieved citizen may petition for a hearing seeking judicial review of the record denial and access to their desired records. Tenn. Code. Ann. § 10-7-505(a).

### *C. A denying government official must immediately appear before a chancery court for a show cause hearing and carry their burden of justifying their PRA denials.*

After the filing of the PRA hearing petition, the reviewing court orders the defendant government official "*immediately appear* and show cause, if they have any, why the petition should not be granted." Tenn. Code Ann. § 10-7-505(b) (emphasis added). The extraordinary nature of the proceedings obviate the need for a "formal written response to the petition" and suspend "the generally applicable periods of filing such response" in "the interest of expeditious hearings." *Id.* "The court may direct that the records being sought be submitted under seal for review by the court" *Id.*

The petitioning citizen bears no burden of proof at any point in the proceedings. It is the government official who must prove, by a preponderance of the evidence, that they were justified in denying the petitioner's request. Tenn. Code Ann. § 10-7-505(c). Should they fail to carry their burden, the court is empowered to grant the citizen "full injunctive remedies and relief to secure the purposes and intentions of this section . . . broadly construed so as to give the fullest possible public access to public records." Tenn. Code Ann. § 10-7-505(d). Furthermore, the court may award a citizen all the reasonable costs of obtaining the records, including reasonable attorney's fees, should they find that the government official "knew that such record was public and willfully refused to disclose it." Tenn. Code Ann. § 10-7-505(g).

***II. KCSO cannot carry its burden of justifying years of habitually and groundlessly denying Professor Conley's valid PRA requests.***

As previously stated, in order to carry its burden, KCSO faces the task of justifying by a preponderance of evidence each of its diverse and numerous record request denials. *See* Tenn. Code. Ann. § 10-7-503(a)(2)(B)(ii). In denying Professor Conley's requests, KCSO was required to provide a written justification for why the records sought are exempt from the PRA's presumption of openness, a requirement it occasionally honored. KCSO will be limited to arguing those justifications provided to Professor Conley in this statutorily-required written denials. *See* Tenn. Code. Ann. § 10-7-503(a)(2)(B)(ii) (requiring agency to "provide the justification for the denial" in writing). In those instances where no justification was supplied, KCSO will be unable to defend its denials before this Court.

The range and number of denials defy easy categorization but can be roughly divided into five general categories; only the third and fourth contain any argued legal justification. The categories are:

(1) categorically denying inspection requests;

(2) false claims that KCSO emails are deleted after thirty days;

(3) specificity denials;

(4) compilation denials, and;

(5) denial by delay and no response.

**1. KCSO denies all arrest record inspection requests as a matter of policy.**

*A. The PRA requires citizen inspection of public records; KCSO "[doesn't] have a system that allows the public to inspect arrest reports" and other public records.*

Without citing any legal justification, KCSO denied both of Professor Conley's requests to personally inspect arrest records, first on August 25, 2017, and again on November 30, 2018.

In the first instance, during an August 25, 2017 meeting, Ruble denied Professor Conley access to inspect physical arrest records on the grounds that KCSO had no designated public access point where she could inspect the records. Similarly, in a November 30, 2018 email Martin rejected Professor Conley's request to inspect arrest records on the grounds that KCSO simply "[doesn't] have a system that allows the public to inspect arrest reports. The only system we have is for law enforcement use only . . . ."

Prohibiting all inspection requests plainly violates the PRA's inspection requirements. Prohibiting all inspection requests without providing legal justification both violates the PRA and renders the denial indefensible; a denying government entity is limited to those written justifications given at the time of denial. KCSO's fact-based justifications—no dedicated physical space and no system designed for citizen use—are not legal justifications and are meaningless under the PRA. If KCSO does not have a physical space, it are required to make it. If its system is not designed for citizen use, the PRA requires that it be changed. However, KCSO apparently does have space sufficient for citizen record inspection; in *Moody*, the court noted that KCSO provided a requesting citizen "a space approximately 5 feet by 5 feet in which to inspect 15 banker's boxes filled with various records." S.W.3d at 19.

Similarly unavailing is KCSO's denial of citizen access to its existing electronic arrest record system. Once data is stored electronically a government entity must make every effort to allow citizen access and is even required to write custom software designed solely to retrieve the information the citizen requests. *See Tennessean*, 979 S.W.2d at 304. KCSO has advanced no legal cognizable argument for denying citizen access to its database.

As a matter of policy, KCSO also limits citizens to requesting only a few arrest reports every day. This is impermissible under the PRA and, given its policy barring record inspection, effectively denies researcher access to any meaningful quantity of arrest reports.

2. **KCSO denied Professor Conley's requests for emails by claiming that KCSO emails are automatically deleted after thirty days yet KCSO has demonstrated its ability to produced emails more than thirty days old.**

In what may be its most remarkable excuse, KCSO, through Martin, denied requests for emails by claiming that KCSO servers automatically deletes emails after thirty days. This claim is contradicted by: (1) KCSO's prior retrieval of emails over thirty days old; (2) KCSO's internal email policy and; (3) Martin's ability to retrieve emails more than thirty days old even after her express denial of such ability.

KCSO first denied a request based on automatic email deletion in November of 2018. On November 19, 2018, Professor Conley requested certain emails written or received by Mike Ruble between August 1, 2017, and November 19, 2018. She also requested emails from other KCSO employees that were written between August 1, 2017, and September 1, 2018. In her November 21, 2018 response, Martin claimed that she could not complete the entire request because "our system only retains emails for 30 days" but said that she would get to work on the Ruble emails falling within that time frame.

This is demonstrably false; KCSO can retrieve emails more than thirty days old. On September 28, 2017, Professor Conley had requested certain emails from and to KCSO Captain Wilshire. In a rare instance of obeying the PRA, KCSO provided the Wilshire emails the following day, September 29, 2017. One of the Wilshire emails provided had been written on July 6, 2017. If KCSO's servers automatically deleted emails after thirty days, this email would not exist; July 6, 2017 is more than eighty days *before* September 29, 2017.

KCSO again produced emails older than thirty days in response to a March 4, 2019 request. Ironically, Martin had initially denied the request in part for seeking emails older than thirty days because KCSO's "system also only retains emails for 30 days, so the time frame of your request would also need to be amended." Professor Conley duly submitted an amended request on March 8, 2019. On March 19, 2019, Martin supplied Professor Conley with some of her requested emails, one of which had been written more than thirty days previously on February 10, 2019. *See* **Attachment 6.**

KCSO's internal email policy contains no automatic email deletion policy. *See* **Attachment 5.** In fact, the policy requires individual KCSO employees to ensure that "his/her email (including both sent and received emails) are retained by the user in printed format or electronically stored in accordance with the records management requirements under T.C.A. 10-7-301 through 10-7-308, and also in accordance with the rules of the Public Records Commission."

Therefore, even if the emails were automatically deleted, they remain available for retrieval because KCSO can—and under the PRA, must—retrieve the requested emails from the possession of the individual employee.

### 3. KCSO's specificity denials contradict existing precedent, unlawfully undermine citizen access to public records, and contradict KCSO's stated policies.

#### *A. Contrary to KCSO's claims, PRA requests using the words "any and all" are permitted, routine, and do not violate the PRA's specificity requirements.*

KCSO has spuriously denied many of Professor Conley's requests as being insufficiently specific. KCSO's first major specificity objection is that Professor Conley's requests failed to adequately specify which records she sought because she asked for "any" and "all" of a certain record. Second, KCSO applies a heightened specificity requirement not found within the PRA as explained by Martin in her November 30, 2018 email. There, Martin explained that KCSO defined a sufficiently specific request as one that "that tells us exactly what you're asking for so that we don't have to sort through files and guess what you're needing. . . . Providing the name of a document rather than asking for 'any' would be more specific."

The PRA and its case law support neither of these KCSO policies. The inclusion of the words "any," "all," or "any and all" do not render a request invalid and there is no bar on categorical requests for records. The PRA only requires that "(a)ny request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection." Tenn. Code Ann. § 10-7-503(a)(4). While asking for a known document by name is undoubtable more specific than a categorical request, requiring requests to identify by name the records sought defeats the PRA's animating principle of granting "the fullest possible public access to public records," Tenn. Code. Ann. § 10–7–505(d), by effectively limiting requests to those records whose names are already known. That a request identifies "exactly what you're asking for so that we don't have to sort through files" destroys any possibility of uncovering potentially critical documents with unknown titles by limiting a requestor to the narrow range of records whose names are already known.

Copious precedent records instances of courts granting broad PRA requests that include the words "any," "all," or "any and all." In *Schneider*, our Supreme Court found in favor of journalists requesting "*all* photographic or digital images and/or copies of *any* documents in the possession of the City of Jackson . . . of *any and all* persons photographed or interviewed by the Jackson Police officers as part of *all* 'field interviews," and "access to *all* financial statements between the West Tennessee Diamond Jaxx and the City of Jackson, or *any* financial documentation relating to the financial agreement between the two parties." 226 S.W.3d at 335 (emphasis added).

In *Cherokee Children & Family Servs., Inc.*, the Supreme Court permitted another series of extremely broad PRA requests that sought eight separate categories of records. 87 S.W.3d at 72, 80. Each request included the words "any" or "all," and some of the more expansive requests covered over a decade of records.

> 1. *All* rental agreements, leases, receipts of payments and other records related to *any* rental agreements . . .
> 4. *All* records . . . without limitation . . . documenting expenses for travel, conferences, conventions, meetings and meals since January 1, 1995, . . .
> 8. *All* contracts, consulting agreements, leases, retainers or other binding agreements entered into . . . from January 1, 1990, to the present.

*Id.* at 72 (emphasis added).

Expansive categorical record requests are routinely granted as a matter of course. *See e.g.*, *Moncier v. Harris*, No. E-2016-00209-COA-R3-CV, 2018 WL 1640072, at *2 (Tenn. Ct. App. Apr. 5, 2018) (Tennessee state agency agrees to provide 1,790 responsive files), *appeal denied* (Aug. 10, 2018); *Patterson v. Convention Ctr. Auth. of Metro. Gov't of Nashville & Davidson Cty.*, 421 S.W.3d 597, 604, 613 (Tenn. Ct. App. 2013) (granting public record request for inspection of "the certified payroll of all municipal contractors and subcontractors"); *Hickman*, 2003 WL 724474, at *11 (Tenn. Ct. App. Mar. 4,

2003) (granting inmate record request "generally phrased in terms of information he seeks rather than specific documents"). If the PRA permits such voluminous requests then there is no basis for denying Professor Conley's modest petitions for emails, contracts, and records.

*B. KCSO routinely denied Professor Conley's requests that met its specificity requirements.*

KCSO routinely denied requests identifying the desired document with the pin-point accuracy required to satisfy its unreasonable specificity requirement. For example, Professor Conley sent an email on August 3, 2018, requesting "access to and a copy of any intergovernmental service agreement (IGSA), signed after January 1, 2018," between KCSO and ICE. Ruble replied on August 16, 2018, (well outside the seven day response window) by providing only the first two pages of a contract. Forcing KCSO to disclose the remainder of the contract required further requests.

In another instance of KCSO denying a very specific request, on September 21, 2018, Professor Conley requested any "funded task orders associated with detention services for ICE detainees under contract 74-13-0015" because the IGSA she had been previously provided by KCSO was labeled "Contract No. 74-13-0015" and mentions "tasks orders." Ruble denied this request on logically incompatible grounds, claiming that the request was both too vague for him to identify the requested document and also that KCSO possessed no documents entitled "task order." If Professor Conley's request was so vague as to not allow KCSO to identify which document she sought, then it would be impossible for KCSO to then conduct a search proving that it does not possess her requested document.

Finally, KCSO denied Professor Conley's request even for documents publically identified by the Sheriff himself. At a public forum, Sheriff Jones and Captain Wilshire publically discussed the existence of records relating to foreign born inmates. On July 20, 2018, Professor Conley requested copies of these records. Despite the Sheriff's public acknowledgement of the record's existence, Ruble yet again denied

Professor Conley's request as lacking specificity and for using the word "any." In an August 3 follow-up email, he asked her to be more specific because he "was not at the meeting and did not heat[sic] the" Sheriff's comments regarding the records.

### 4. KCSO's compilation denials willfully misconstrue the dictionary and case law definitions of "compile"

Routinely intertwined with its specificity denials were KCSO denials claiming that Professor Conley's requests would require them to engage in the prohibited activity of "sort[ing] through files to compile information." *See* Tenn. Code Ann. § 10-7-503(a)(4).

Professor Conley's requests do not requires KCSO to compile records and KCSO has willfully misinterpreted the established definition of compile. The PRA forbids requests requiring a government entity to "to compile or collect statistics" or provide "an explanation, interpretation, or analysis of information." *Tennessean*, 979 S.W.2d at 304 (Tenn. 1998). The dictionary definition of compilation is "a work formed by collecting and assembling preexisting materials or data that are selected, coordinated, or arranged in such a way that the resulting product constitutes an original work of authorship." COMPILATION, *Black's Law Dictionary* (10th ed. 2014). Professor Conley's later requests even included a citation to the *Tennessean* standard in an unsuccessful attempt to preempt these denials. *See, e.g.*, October 8, 2018 email.

Under *Tennessean*, KCSO cannot assert compilation denials as to any of Professor Conley's requests for digital records. *Tennessean* examined whether the PRA can compel a government entity to compile disparate pieces of digital data into a single document. 979 S.W.2d at 302. The Court drew a distinction between physical and digital records: "once information is entered into a computer," inspecting the data becomes a matter of "format and access." *Id.* at 304. Digitized "information could be

produced by the governmental agency by having a computer program written," at the requesting citizen's expense, "to extract the requested information and produce it in the requested format." *Id.*, *interpreted in Hickman*, 2003 WL 724474, at *10; *see also* Tenn. Op. Att'y Gen. No. 06-069 (Apr. 12, 2006). The Court reasoned that it would "frustrate the purpose of the Public Records Act at nearly every turn" to permit government officials to "design [computer] systems with access in mind, only to claim later that information is unavailable because 'our computers can't do that.'" *Id.* at 304 (quoting Matthew D. Bunker, *Access to Government–Held Information in the Computer Age: Applying Legal Doctrine to Emerging Technology*, 20 Fla. St. U. L. Rev. 543, 594 (1993)).

KCSO is now doing exactly what the *Tennessean* court feared: denying PRA requests of available digital information by claiming impossibility. There is no doubt that KCSO possesses Professor Conley's requested information. And, unlike in *Tennessean*, the requested records here are readily accessible through KCSO's pre-existing system without the need for additional software. Even if the requested emails or arrest records contained exempt information, such as medical or investigative records, that information must be redacted by KCSO. *See* Tenn. Code Ann. § 10-7-504(a)(20)(C). And in the event that any of Professor Conley's requested digital records were not readily accessible, KCSO would be required to give her the option of paying for the creation of a program capable of harvesting her data.

*Hickman* illustrates PRA-forbidden compilation requests. There, an inmate filed a PRA request asking for twenty different pieces of data, such as "[a]ll class A, class B, and class C felonies where the inmate has been 'certified eligible' for parole from 1-1-92 through the present time," and the number, type, and parole outcomes for the various classes of inmates. *Hickman* 2003 WL 724474, at *6. The court denied those requests that would require the Board to "go through every parole eligible inmate's file and retrieve the Risk Factor for each" and all other similar requests requiring the "governmental

entity to manually sort through records and compile information gained from those records." *Id.* at *10. The court reasoned that these tasks can be accomplished by filing an inspection request, inspecting the records, and personally performing any required additional labor. *Id.*

Professor Conley would gladly personally inspect and collect information from KCSO's records were she permitted to exercise her PRA rights. As a professional academic researcher, her daily tasks involve carefully and meticulously collecting and compiling statistics and preexisting materials in order to produce original works. *See* **Attachment 3.** Professor Conley has not requested that KCSO attempt to perform her specialized professional tasks in her stead but has only asked for access to her required records. If KCSO followed the PRA and permitted citizen inspection, Professor Conley would gladly conduct her own physical searches.

### 5. KCSO denied Professor Conley's lawful records requests by impermissibly delaying its responses or altogether failing to respond.

Despite Ruble's acknowledgement in his August, 31, 2017 email that the PRA "provides that the public entity has seven (7) business days to respond to public records requests," KCSO has routinely delayed its responses or failed to respond entirely. *See* Tenn. Code Ann. § 10-7-503(a)(2)(B). A response outside of the permitted time frame is equivalent to a denial. After acknowledging his obligation, Ruble immediately ignored it, next replying on September 15, 2017, and finally providing the requested records on September 29, 2017. Professor Conley had requested them on August 31, 2017.

A non-exhaustive list of KCSO's other denials by delay include:

1. A September 15, 2017 reply to an August 31, 2017 request.
2. A December 7, 2017 reply, in part, to Professor Conley's August 31, 2017 request for "records of any IGSA that currently exists or is currently being considered." That request was renewed on November 1, 2017, and again on December 4, 2017.
3. A March 12, 2018 response, in part, to Professor Conley's August 31, 2017 request for records pertaining to a contemplated IGSA.

This request had been renewed on December 14, 2017, and again on March 6, 2018.

4. An August 8, 2018 reply to a July 20, 2018 request.
5. An August 16, 2018 response to a August 3, 2018 request.

KCSO also simply ignored some of Professor Conley's request. On September 28, 2017, she requested for "[a]ll pubic records of emails and letters between" ICE and Captain Wilshire, ICE and Sheriff Jones, and ICE. KCSO only provided Captain Wilshire's emails. Similarly, when asked repeatedly for documents related to any contemplated or proposed IGSA, Ruble responded only that there was no IGSA then in force, an answer ignoring the request's clear specification.

## III. ***Granting Professor Conley's record requests serves the Public Record Act's purpose of promoting public awareness and government accountability.***

Remedying KCSO's violations of Professor Conley's PRA rights will ultimately serve the PRA's "noble and worthwhile purpose . . . to hold government officials and agencies accountable to the citizens of Tennessee through oversight in government activities." *Tennessean*, 485 S.W.3d at 864. "Providing access to public records promotes governmental accountability by enabling citizens to keep track of what the government is up to." *Konvalinka v. Chattanooga-Hamilton Cty. Hosp. Auth.*, 249 S.W.3d 346, 360 (Tenn. 2008) (citing *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171–72 (2004); *Cherokee Children & Family Servs., Inc.*, 87 S.W.3d at 74–75). Citizen access to government records "promotes public awareness and knowledge of governmental actions and encourages governmental officials and agencies to remain accountable to the citizens of Tennessee." *Schneider*, 226 S.W.3d at 339 (citing *Cherokee Children & Family Servs., Inc.*, 87 S.W.3d at 74–75).

Knox County citizens deserve to understand the local impact of KCSO's 287(g) agreement. These agreements can be extremely expensive to implement and can lead to wide-spread civil rights violations and expensive legal liability. *See* **Attachment 1**. To illustrate, as a matter of policy ICE invites LLEA to routinely violate immigrant Fourth Amendment rights by holding them for 48 hours without probable

cause. *See* 8 C.F.R. § 287.7(a), (d) (describing the 48 hour immigration detainer requests). When ICE fails to provide probable cause, local law enforcement can be held liable for a seizing an immigration without probable cause and violating their Fourth Amendment rights. *See Miranda-Olivares v. Clackamas Cty.*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *11 (D. Or. Apr. 11, 2014). This constitutional violation is so clear that individual officers and their supervisors may be stripped of qualified immunity and held personally liable. *See Morales v. Chadbourne,* 793 F.3d 208, 216-18, 222 (1st Cir. 2015).

Further 287(g) liability traps for municipalities include: 10th Amendment violations, *see, e.g., Galarza*, 745 F.3d at 634; due process claims, *see, e.g., Uroza v. Salt Lake Cty.*, No. 2:11CV713DAK, 2013 WL 653968, at *1 (D. Utah Feb. 21, 2013); civil rights discrimination, *see, e.g., Torres-Lopez v. Scott*, No. 2:13-CV-061-J, 2013 WL 2479707, at *1 (N.D. Tex. June 10, 2013); false imprisonment claims, *see, e.g., Ramos-Macario v. Jones*, No. 3:10-00813, 2011 WL 831678, at *1 (M.D. Tenn. Mar. 2, 2011); and liability created by imprisoning a U.S. citizen pursuant to an ICE hold, a mistake happening "not infrequently." *Morales*, 793 F.3d at 222.

Although liability is incurred on behalf of the federal government, "the federal government has made clear that local [law enforcement agencies] have to foot the bill, providing that '[n]o detainer issued as a result of a determination made under this chapter . . . shall incur any fiscal obligation on the part of the Department.'" *Galarza v. Szalczyk*, 745 F.3d 634, 644 (3d Cir. 2014) (quoting 8 C.F.R. § 287.7(e)).

By barring access to public records, KCSO infringes on the citizen right to scrutinize law enforcement actions and outcomes as related to immigration policy or any other pressing concern. If KCSO's 287(g) agreement places Knox County at substantial risk of liability, interested citizens and

deputies alike are entitled to understand those risks. Contrarily, if KCSO has found a way to avoid the liability pitfalls that have plagued past 287(g) agreements, granting record access will allow the electorate to grasp the full scope of KCSO's laudable dedication to balancing civil rights and innovative law enforcement strategies. Furthermore, as Professor Conley's research reaches a national audience, KCSO's successful implementation of a 287(g) would serve as a model for law enforcement throughout the country.

## IV. ***The PRA empowers this Court to grant broad relief against KCSO and end its systematic PRA violations.***

By its own admissions, KCSO routinely enforces policies clearly forbidden by the PRA. Remedying the systematic violations lies within this Court's power thanks to the special authority provided by the PRA itself. This Court is empowered to "exercise full injunctive remedies and relief to secure the purposes and intentions of this section." *See* Tenn. Code Ann. § 10-7-505(d). Prior courts have employed this grant of extraordinary remedies to tailor expansive and creative relief matching a case's needs. In *Schneider*, the Tennessee Supreme Court reinstated a trial court's permanent PRA injunction "requiring the City prospectively to respond in writing to all future written public records requests from *The Jackson Sun* or its agents and to explain whether the record sought would be produced and, if not, the basis for nondisclosure." 226 S.W.3d at 348. Citing the expansive powers granted by Tennessee Code Annotated section 10-7-505(d), the Court confirmed that the injunction appropriately addressed "the City's failure to respond to Petitioners' multiple requests for public records." *Id.* Remedies under the statute also transcend mundane procedural boundaries, such as allowing an injunction to be granted without a showing of irreparable harm or meeting any other requirements under Tennessee Rule of Civil Procedure 65. *See Hickman*, 2003 WL 724474, at *5.

Given this broad grant of authority, this Court is fully empowered to provide whatever remedy is required to restore the PRA in Knox County and vindicate Professor Conley's PRA rights. Both tasks could be accomplished by an injunction ordering Sherriff Spangler to: (1) adopt policies for citizen inspection and copying of KCSO records consistent with the PRA, including halting KCSO's policy of providing only a limited number of arrest report copies each day; (2) establish and maintain the required administrative, physical, or technological infrastructure necessary to facilitate record inspection and; (3) cease violating Professor Conley's PRA rights on frivolous grounds.

## V. ***KCSO's willful refusal to release known public records entitles Professor Conley to seek all reasonable associated costs, including attorney fees.***

The PRA allows this Court the discretion to grant Professor Conley the reasonable cost of obtaining these records, including reasonable attorney's fees, upon finding that KCSO knew the requested records were public yet willfully refused to disclose them. Tenn. Code Ann. § 10-7-505(g).

As a threshold matter, KCSO knew the records requested were public; all of its denials attack the form of Professor Conley's requests or claim factual impossibility, tacitly admitting to knowledge that Professor Conley requested public record. Furthermore, KCSO never based its denials on a claims that the records were not public.

"'[W]illfulness' is not to be measured in terms of 'moral obliquity' or 'dishonest purposes,' but rather, in terms of the relative worth of the legal justification cited by a municipality to refuse access to records." *Friedmann v. Marshall Cty.*, 471 S.W.3d 427, 439 (Tenn. Ct. App. 2015) (citing *Schneider*, 226 S.W.3d at 346-47).

Though the reasons vary, all of KCSO's denials were willful. Most of the PRA denials in the present case are categorically willful because they were made without providing *any* proposed legal justification. *Friedmann* limits the willfulness analysis to the "relative worth of the legal justification cited." As such, all PRA denials made by KCSO without providing a legal justification are necessarily willful. This conclusion is bolstered by the statute's requirement that a denial include a written justification, presumably to allow a court to review the strength of an agency's argument. Here, this includes KCSO's categorically denying all citizen inspection requests, falsely claiming that all KCSO emails are deleted after thirty days, and all of its denials through delay and no response. Many of these denials were even committed in full knowledge that they violated the PRA. For example, Ruble repeatedly ignored § 10-7-503(a)(2)(B)'s seven-day time limit for answering responses despite acknowledging its requirements to Professor Conley in his August 31, 2017 email.

Only KCSO's statutory specificity and statutory compilation denials present any justification related to the PRA's actual text. Yet, as discussed above, precedent clearly establishes that Professor Conley's requests were sufficiently specific and did not require compilation. Ignoring clear precedent in order to deny a PRA request satisfies the willfulness requirement.

The final piece of evidence proving willfulness is that the majority of denials were directly committed, not by a lower-ranking employee ignorant of legal requirements, but by KCSO's own chief legal counsel, Mike Ruble. While not all attorneys are familiar with the PRA's requirement, Ruble surely is, having served as KCSO's record keeper and as Sheriff Hutchison's counsel during KCSO's last major PRA case, *Moody*, 159 S.W.3d at 24.

Based on KCSO's knowledge that the requested records were public and its willful denial of their release, this Court should award Professor Conley her reasonable costs, to be determined at a future hearing.

**VI. *Professor Conley requests that the Court issue a show cause order for an immediate hearing.***

Professor Conley requests that this Court exercise its statutory authority to provide the relief requested in her Petition: ordering Sheriff Spangler to "immediately appear and show cause" at a hearing consistent with Tennessee Code Annotated section 10-7-505(a)-(e), placing her requested records immediately under seal for the Court's review, granting her access to her requested records as well as the previously described injunction, all reasonable costs, and any other relief to which she is entitled.

Respectfully submitted,

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