

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

THE MARSHALL PROJECT
and WENDI THOMAS,

Petitioners,

v.

MEMPHIS SHELBY CRIME
COMMISSION

Respondent.

No. CH-19-0165

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by and between counsel for
Petitioners The Marshall Project and Wendi Thomas (collectively, "Petitioners"), and
Respondent Memphis Shelby Crime Commission ("MSCC"), that the claims in the above-
captioned action between the Petitioners and the MSCC, including and any all counterclaims, are
hereby dismissed without prejudice, in accordance with the Settlement Agreement executed on
January 31, 2020, and attached as Exhibit 1.

All costs assessed by the Clerk and Master shall be borne one-half by Petitioners and
one-half by Respondent.

SO ORDERED:

JoeDae L. Jenkins


FEB 06 2020

CHANCELLOR

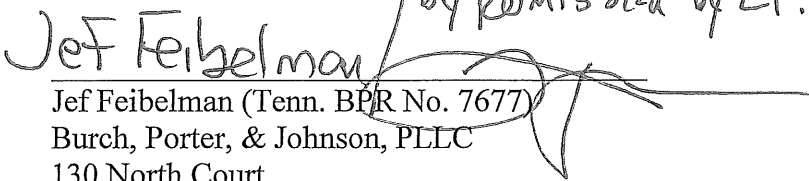
Date: A TRUE COPY-ATTEST

By W. Aaron Hall, Clerk & Master
D.C. & M.

CONSENTED TO AND APPROVED BY:



LUCIAN T. PERA (Tenn. BPR No. 11641)
J. BENNETT FOX, JR. (Tenn. BPR No. 26828)
ADAMS AND REESE LLP
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Attorneys for Petitioners

by permission by LT. Pera


Jef Feibelman (Tenn. BPR No. 7677)
Burch, Porter, & Johnson, PLLC
130 North Court
Memphis, TN 38103
Phone: (901) 524-5275
Facsimile: (901) 524-5375
Attorney for Respondent

EXHIBIT 1

**IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

THE MARSHALL PROJECT)	
and WENDI THOMAS,)	
)	
Petitioners,)	
)	
v.)	No. CH-19-0165
)	
MEMPHIS SHELBY CRIME)	
COMMISSION,)	
)	
Respondent.)	

SETTLEMENT AGREEMENT

Petitioners The Marshall Project and Wendi Thomas (“Ms. Thomas”) (collectively, “Petitioners”), and Respondent Memphis Shelby Crime Commission (“MSCC”), in consideration for and subject to the terms and conditions set out below enter into this Settlement Agreement (the “Settlement Agreement”). This Settlement Agreement is intended to fully and finally resolve any and all claims by Petitioners under the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503 and 10-7-505 (“the Act” or “PRA”), in connection with *The Marshall Project, et al. v. Memphis Shelby Crime Commission*, Chancery Court of Shelby County, Tennessee, No. CH-19-0165 (the “PRA Lawsuit”), and thereby fully and finally resolve the PRA Lawsuit. Petitioners and Respondent are sometimes referred to in this Settlement Agreement, collectively, as the “Parties.”

RECITALS

WHEREAS, on or about November 6, 2018, Ms. Thomas sent a request under the PRA on behalf of both herself and The Marshall Project, via email, to the MSCC through Bill

Gibbons, Brona Pinnolis, and Linda Russell (the “Request”), a true and correct copy of which is attached as **Exhibit A**;

WHEREAS, on or about November 28, 2018, Mr. Gibbons sent an email to Ms. Thomas, stating, *inter alia*: “In response to your request, as we have stated in response to previous similar requests, the Memphis Shelby Crime Commission is a 501(c)(3) private non-profit entity and is not subject to the TN Public Records Act”;

WHEREAS, on or about February 6, 2019, Petitioners filed a Verified Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access (the “Petition”). The Petition sought, *inter alia*, (1) a judgment that the records Petitioners sought from the MSCC were public records under Tennessee law and that the MSCC’s failure to grant access to the public records requested by Petitioners constituted a violation of the PRA, (2) an order requiring the MSCC to immediately make available to Petitioners copies of the records sought by their Request, (3) an order for the MSCC to pay Petitioners’ reasonable and discretionary costs and attorneys’ fees, and (4) for other appropriate relief;

WHEREAS, from in or about February of 2019 through in or about November of 2019, Petitioners engaged in discovery in connection with the PRA Lawsuit;

WHEREAS, the Parties have engaged in discussions in an attempt to reach an informal resolution of all outstanding issues in the PRA Lawsuit, so as to avoid the necessity for briefing and further proceedings in the PRA Lawsuit;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Parties, through their duly authorized representatives or counsel, that in consideration of the mutual obligations set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the PRA Lawsuit

will be fully and finally resolved pursuant to the terms and conditions of this Settlement Agreement as follows:

1. Respondent MSCC will respond to Petitioners' Request by **January 31, 2019, 2019**, insofar as it pertains to electronic records, and **February 28, 2020**, insofar as it pertains to non-electronic records, as follows with respect to each numbered paragraph in the Request:¹

- Category 1: MSCC will produce all responsive records to Petitioners;
- Category 2: MSCC will produce all responsive records to Petitioners;
- Category 3: MSCC will produce all responsive records to Petitioners;
- Category 4: MSCC will produce records to Petitioners sufficient to demonstrate which corporations, natural persons, or other entities donated or pledged to the MSCC in 2016, 2017, and 2018, along with the corresponding amounts donated or to be donated;
- Category 5: MSCC will produce all responsive records to Petitioners;
- Category 6: MSCC will produce all responsive records to Petitioners;
- Category 7: MSCC will produce all responsive records to Petitioners;
- Category 8: MSCC will produce all responsive records to Petitioners;
- Category 9: MSCC will produce a subset of the requested records to Petitioners, as specifically identified in the side agreement between the parties confirmed in a letter executed by the parties contemporaneously with this Settlement Agreement.
- Category 10(a): MSCC will produce all records;
- Category 10(b): MSCC will produce all records;

¹ Any reference to "staff" or "board" refers to the MSCC staff members and board members at the time of the Request (November 6, 2018).

Category 10(c) and 10(d): MSCC will produce a subset of the requested records, as specifically identified in the side agreement between the parties confirmed in a letter executed by the parties contemporaneously with this Settlement Agreement.

2. Commencing as of the date of the execution of this Settlement Agreement, The MSCC will make the following information/records available to the public upon request and/or post on its website:

- The identity of the MSCC's donors, in the following donation brackets, updated no less than once a year:
 - i. \$100,000+
\$50,000–\$99,999
 - ii. \$10,000–\$49,999
 - iii. \$1–\$9,999;
- All grants made or received by the MSCC, updated no less than quarterly; and
- MSCC board meeting and executive board meeting agendas, at least 48 hours before the meeting takes place, and MSCC board and executive board meeting minutes, no later than seven days after a meeting;

3. Within fifteen (15) days of execution of this Settlement Agreement, the Parties shall execute and file a Stipulation of Dismissal of the PRA Lawsuit with the Court in the form attached as **Exhibit B**. The Parties will bear their own costs and attorneys' fees, except that court costs assessed by the Clerk and Master will be assessed equally between Petitioners and Respondent.

4. It is agreed and understood by the Parties that Paragraph 3 of this Settlement Agreement does not constitute a release of, or otherwise affect, any rights and obligations specifically created or reserved by this Settlement Agreement.

5. Nothing in this Settlement Agreement is intended to prevent Petitioners from submitting or enforcing any new or additional requests for public records under the PRA.

6. This Settlement Agreement is the product of informed negotiations and involves compromises of the Parties' positions. It was jointly prepared by Respondent and Petitioners. Respondent enters into this Settlement Agreement voluntarily and represents that no representation, inducement, promise, offer, understanding, condition, or warranty of any kind not set forth in this Settlement Agreement has been made by Petitioners or their representatives to induce Respondent to enter into this Settlement Agreement. Petitioners enter into this Settlement Agreement voluntarily and represent that no representation, inducement, promise, offer, understanding, condition, or warranty of any kind not set forth in this Settlement Agreement has been made by Respondent or its representatives to induce Petitioners to enter into this Settlement Agreement.

7. The terms of this Settlement Agreement are the result of a compromise and shall not for any purpose be considered an admission of the truth of the allegations, claims, or contentions of the Parties or an admission of any wrongdoing by any of the Parties. This Settlement Agreement does not constitute an admission by Respondent that it is subject to the PRA or that the PRA was violated with respect to Petitioners' Request under the PRA.

8. This Settlement Agreement shall not prejudice, waive, or otherwise affect any claims, rights, or remedies of any person not a party to the PRA Lawsuit.

9. This Settlement Agreement, together with the side agreement referred to in the bullet points in Paragraph 1 above concerning Category 9(c) and Category 10(c) and 10(d), constitutes the entire agreement between the Parties and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Settlement Agreement.


10. This Settlement Agreement may not be amended except by an instrument in writing signed on behalf of all Parties to this Settlement Agreement.

11. This Settlement Agreement shall be effective and binding only when signed by all Parties or their duly authorized representatives or counsel. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

12. The Parties through their duly authorized representatives or counsel have executed and agreed to be bound by this Settlement Agreement as of the date set forth in their respective signatures.

Lucian T. Pera
Adams and Reese LLP
Counsel for Petitioners

Dated: _____



Jef Feibelman
Burch, Porter, & Johnson, PLLC
Counsel for Respondent

Dated: 2-3-20

MEMPHIS SHELBY CRIME COMMISSION

By: 

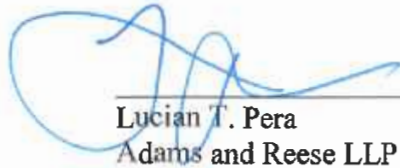
Its: President

Date: 1/31/20

10. This Settlement Agreement may not be amended except by an instrument in writing signed on behalf of all Parties to this Settlement Agreement.

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Lucian T. Pera
Adams and Reese LLP
Counsel for Petitioners

Dated: 1-31-20

Jef Feibelman
Burch, Porter, & Johnson, PLLC
Counsel for Respondent

Dated: _____

MEMPHIS SHELBY CRIME COMMISSION

By: _____

Its: _____

Date: _____

EXHIBIT A

Bill Gibbons, Brona Pinnolis, Linda Russell
Memphis Shelby Crime Commission
600 Jefferson Ave., 4th Floor
Memphis, TN 38105
wgibbons@memphis.edu
bpinnolis@memphiscrime.org
lrussell@memphiscrime.org

Nov. 6, 2018

VIA EMAIL

Re: Tennessee Public Records Act Request

Dear Mr. Gibbons, Ms. Pinnolis, and Ms. Russell:

This is a request under the Tennessee Public Records Act ("PRA"), and is submitted on behalf of both myself and The Marshall Project, a nonprofit news organization,¹ to the Memphis Shelby Crime Commission ("MSCC").

Pursuant to the PRA, I, on behalf of both myself and the Marshall Project, request access to and copies of the following records:

1. The three most recent Schedule B (Form 990 tax filing) documents, and all schedules and exhibits thereto, for the MSCC;
2. All analyses, reports, memoranda, or similar works prepared by K2 Intelligence and/or former NYPD Police Commissioner Raymond (Ray) Kelly, including but not limited to the K2 Intelligence report coauthored by Mr. Kelly containing suggested reforms for the Memphis Police Department;
3. All contracts between the MSCC or any of its employees and K2 Intelligence or Raymond Kelly, between July 1, 2016 and December 31, 2017;
4. All records that identify any corporation, natural person, or other entity that has donated to the MSCC and the amount donated, including but not limited to emails, memos, communications, contracts, financial agreements, checks, money orders, and proofs of payment. This includes, but is not limited to, records identifying the donation amounts of:
 - a. American Residential Services
 - b. AutoZone
 - c. Baker Donelson
 - d. Baptist Memorial Healthcare Corp.
 - e. Dobbs Management Service

¹ See <https://www.themarshallproject.org/about>.

- f. FedEx
 - g. First Horizon National Corp
 - h. Hyde Family Foundation
 - i. International Paper
 - j. Memphis Tomorrow
 - k. Methodist LeBonheur Healthcare
 - l. MAA
 - m. Monogram Food Solutions
 - n. Southeastern Asset Management
 - o. SunTrust Bank;
5. All emails, memos, or other forms of communication between any member of the MSCC Staff² or Board³ and any employee of the City of Memphis, between January 1, 2016 and November 2, 2018, that reference or concern grants or transfers of money from the MSCC to the City of Memphis or any of its components (e.g., the Memphis Police Department);
 6. All emails, memos, or other forms of communication between any member of the MSCC Staff or Board and Blair Taylor, President of Memphis Tomorrow, between January 1, 2016 and November 2, 2018, that reference or concern grants or transfers of money from the MSCC to the City of Memphis or any of its components;
 7. All emails, memos, or other forms of communication between any member of the MSCC Staff or Board and Mark Norris, in his capacity as state Senate Majority Leader, between January 1, 2011 and October 15, 2018, that reference or concern any proposed or potential state legislation;
 8. All emails, memos, or other forms of communication between any members of the MSCC Staff, or between any member of the Staff and any member of the MSCC Board, between March 1, 2014 and November 2, 2018, that reference or concern the Citizens Law Enforcement Review Board (CLERB);
 9. All emails, memos, or other forms of communication between any member of the MSCC Staff or Board and any employee of the following entities, between January 1, 2016 and November 2, 2018:
 - FedEx
Including but not limited to Terry Harris (harris@fedex.com)
 - AutoZone
Including but not limited to Jerry Blum (jerry.blum@autozone.com) and Lisa Kranc (Lisa.Kranc@autozone.com)

² A list of the MSCC staff is available at <https://memphiscrime.org/our-team/> (hereinafter, the “Staff”)

³ A list of the MSCC Board of Directors is available at <https://memphiscrime.org/board-of-directors/> (hereinafter, the “Board”)

- International Paper
- SunTrust Bank
Including but not limited to Johnny B. Moore (johnny.moore@suntrust.com)
- First Tennessee Bank
- Plough Foundation
Including but not limited to Rick Masson (masson@plough.org)
- Mid-America Apartment Communities, Inc.
- Memphis Light, Gas and Water Division (MLGW)
- American Residential Services
- Central Defense Security
- Baker Donelson
- The University of Memphis
Including but not limited to David M. Rudd (drudd@memphis.edu)
- Pyramid Peak Foundation
Including but not limited to Jim Boyd (jboyd@pyramidpeakfdn.org)

10. All emails, memos, or other forms of communication between any member of the MSCC Staff or Board and any of the following individuals, between January 1, 2014 and November 2, 2018:

- a. Stuart Frisch, in his role with the Memphis Police Department and the Secure Community Network
- b. Toney Armstrong, in his role as police director
- c. Mason Hawkins, both in his role with Southeastern Asset Management and the Pyramid Peak Foundation.
- d. Phil Trenary, then executive director of the chamber of commerce (ptrenary@memphischamber.com).

Please provide all responsive records in electronic format.

If this request is denied in whole or in part, please justify all such denials by reference to a specific exemption. Please also ensure that all segregable portions of otherwise exempt material are released.

If you have any questions concerning this request please do not hesitate to contact me. I look forward to receiving your response within seven days, as required by the PRA.

Sincerely,

A handwritten signature in black ink that reads "Wendi Thomas". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

Wendi Thomas
wendi.c.thomas@gmail.com

EXHIBIT B

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

THE MARSHALL PROJECT)	
and WENDI THOMAS,)	
)	
Petitioners,)	
)	
v.)	No. CH-19-0165
)	
MEMPHIS SHELBY CRIME)	
COMMISSION)	
)	
Respondent.)	

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by and between counsel for
Petitioners The Marshall Project and Wendi Thomas (collectively, “Petitioners”), and
Respondent Memphis Shelby Crime Commission (“MSCC”), that the claims in the above-
captioned action between the Petitioners and the MSCC, including and any all counterclaims, are
hereby dismissed without prejudice, in accordance with the Settlement Agreement executed on
January 31, 2020, and attached as **Exhibit 1**.

All costs assessed by the Clerk and Master shall be borne one-half by Petitioners and
one-half by Respondent.

SO ORDERED:

CHANCELLOR

Date: _____

CONSENTED TO AND APPROVED BY:

LUCIAN T. PERA (Tenn. BPR No. 11641)
J. BENNETT FOX, JR. (Tenn. BPR No. 26828)
ADAMS AND REESE LLP
Crescent Center
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Phone: (901) 524-5275
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Attorneys for Petitioners

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Phone: (901) 524-5275
Facsimile: (901) 524-5375
Attorney for Respondent