IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

PART I

MEGHAN CONLEY,

Plaintiff,

v. **No. 197897-1**

KNOX COUNTY SHERIFF TOM SPANGLER,

Defendant.

MEMORANDUM OPINION

This is an open records case. The case is atypical in that the litigation encompasses a series of interactions between the party requesting the records, Meghan Conley, and the governmental party having custody of the records, the Knox County Sheriff's Department, over an extended period of time, August 16, 2017 through March 8, 2019. The matter is more in the nature of a declaratory judgment action than an open records case.

The petitioner, Professor Meghan Conley, Ph.D., is a citizen of the state of Tennessee and a professor of sociology at the University Tennessee, Knoxville. Professor Conley is an author who has been researching immigration enforcement in Knox County, Tennessee. She has been focusing upon the agreement between Knox County and the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement ("ICE"). Professor Conley has sought records from the Knox County Sheriff's

Department in furtherance of her research. However, the purpose or value of Professor Conley's research is irrelevant to this open records suit. The Tennessee Public Records Act (hereinafter referred to as the "Act") is indifferent to the purpose or intent behind a request for access to public records; there is nothing in the Act that applies to the purpose or intent for a request. See Tenn. Code Ann. § 10-7-501 *et seq.*

Professor Conley names Knox County Sheriff Tom Spangler as the respondent in her suit. However, the matters addressed in her petition began prior to Tom Spangler assuming the office of sheriff. Relatedly, at the beginning of the trial, Professor Conley's counsel clarified that Professor Conley is not seeking any relief against Tom Spangler individually.

A difficulty in analyzing this case lies in attempting to navigate all of the interactions between the parties without becoming lost in the details. The history of the case itself is likewise replete with tortuous twists and turns. The Court will first discuss the case's history. The Court will discuss next the legal background applicable to the case as a whole. The Court will follow that discussion with an adjudication of Professor Conley's specific claims.

History of the Case

On April 18, 2019, Professor Conley commenced this action by filing a document titled "PETITION FOR HEARING ON PUBLIC RECORD REQUEST DENIALS AND ACCESS TO PUBLIC RECORDS." As mentioned above, the petition covers a long history of record requests by Professor Conley upon the Knox County Sheriff's Office beginning on August 16, 2017 and continuing through March 8, 2019. The petition is 25

pages in length, exclusive of exhibits. It is divided into eight sections and contains 97 paragraphs in addition to six prayers for relief. As part of the petition, six attachments are filed consisting of approximately 200 pages. With her petition, Professor Conley filed another document titled "MEMORANDUM IN SUPPORT OF PETITION FOR HEARING ON PUBLIC RECORD REQUEST DENIALS AND ACCESS TO PUBLIC RECORDS," consisting of 22 pages.

On April 26, 2019, the respondent Knox County Sheriff Tom Spangler ("KCSO") filed two documents, one titled "MOTION FOR MORE DEFINITE STATEMENT" and the other titled "MOTION TO STRIKE." On May 9, 2019, Professor Conley submitted a proposed ORDER FOR IMMEDIATE SHOW CAUSE HEARING which the Court signed on the same day. The order directed the Clerk and Master to issue an order requiring Sheriff Spangler to appear before the Court on May 22, 2019 and show cause why Professor Conley's petition should not be granted. As directed, the clerk and master issued the order on the same day, May 9, 2019, requiring Sheriff Spangler to appear on May 28, 2019.

On May 17, 2019, KCSO filed a motion for continuance of the May 28, 2019 hearing upon grounds including Sheriff Spangler's counsel having a medical appointment with his wife on the hearing date and Sheriff Spangler having a prior appointment out of town on the hearing date. The Court heard Sheriff Spangler's motion on May 23, 2019 and entered an order on May 24, 2019 resetting the show cause hearing from May 28, 2019 to June 10, 2019. Professor Conley filed a motion on May 29, 2019 to set aside the order of May 24, 2019 but orally withdrew her motion through her counsel on June 6, 2019 as recited in the Court's order entered June 17, 2019.

On June 6, 2019, the Court heard KCSO's motion for more definite statement and motion to strike. As contained in the Court's two orders entered June 10, 2019, the Court granted KCSO's motion to strike and struck "Attachment 1" to Professor Conley's petition and granted KCSO's motion for a more definite statement to the extent of requiring Professor Conley to file "a specific list of her requests for public records that were denied by Sheriff Spangler or his office." Professor Conley filed the list on June 7, 2019.

The Court conducted hearings on the merits on June 10, June 11, December 9, December 10, 2019, January 24, and January 29, 2020. The hearings followed the structure provided by Professor Conley's List of Unfulfilled Requests filed June 7, 2019, mentioned above. Between June and December 2019, the case was continued several times, by agreement of the parties, due to a private matter of one of the participants in the case. Although not required by statute, but with the litigation having the nature of a declaratory judgment action, KCSO filed an answer or response on October 2, 2019 to Professor Conley's petition. *See* Tenn. Code Ann. § 10-7-505(b). The parties filed proposed findings of fact and conclusions of law on January 13, 2020.

The foregoing does not constitute a complete history encompassing all of the parties' skirmishes in the case. However, it accurately and sufficiently sets forth the procedural framework for the Court's adjudication of the parties' disputes and differences.

Legal Background

As previously discussed, neither the value nor the purpose of Professor Conley's research can have any bearing upon the Court's consideration of the case. Likewise, the purpose of Professor Conley's requests is of no relevance to this open records litigation. The case is similar to one under the Freedom of Information Act. *See Amerace Corp., Esna Div. v. N.L.R.B.*, 431 F. Supp. 453 (W.D. Tenn. 1976) (stating the purpose for which disclosure of records under Freedom of Information Act is sought has no bearing on the right to the disclosure.).

The Act is quite complex and convoluted. It has been amended several times over the years. However, "its intent has remained the same.... to facilitate the public's access to records." *The Tennessean v. Metro. Gov. of Nashville*, 485 S.W.3d 857, 864 (Tenn. 2016). The legal context for litigation concerning public records is as follows:

> There is a presumption of openness for government records. Custodians of the records are directed to promptly provide for inspection any public record not exempt from disclosure. The Public Records Act directs the courts to broadly construe the Act "so as to give the fullest possible access to public records." 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. The governmental entity must prove justification for nondisclosure by a preponderance of the evidence. 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 that the record was a public record and willfully refused to disclose it.

The Tennessean, 485 S.W.3d at 864-65 (citations omitted).

Within the above context, conflicts have arisen between Professor Conley and the KCSO as to the sufficiency of Professor Conley's requests for records and the adequacy

of KCSO's denials. Although not raised in Professor Conley's petition, a legal issue has arisen as to whether the KCSO can charge for redacting confidential information from public records in preparing them for inspection. Finally, after the closing of the evidence, the Court reopened the evidence to permit Professor Conley to introduce evidence suggesting that the KCSO willfully failed to disclose a document. Previously, the record did not sustain that Professor Conley had actually been denied access to any existing public record except arrest records on an ongoing basis and certain emails more than 30 (thirty) days old, discussed *infra*. Also, the parties depart as to whether Professor Conley is entitled to her attorney fees and costs. Prior to discussing Professor Conley's specific allegations against the KCSO for denying her access to public records, the Court will discuss the general legal issues. The predominant legal issue is the sufficiency of Professor Conley's requests for public records.

Sufficiency of Professor Conley's Requests

This case rests upon the Tennessee Public Records Act which exists "to facilitate the public's access to records." *The Tennessean*, 485 S.W.3d at 864. A request for public records only has "to be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying." Tenn. Code Ann. § 10-7-503(a)(4) (formerly Tenn. Code Ann. 10-7-503(a)(7)(B)).[1] On the other hand, the governmental entity is not required "to sort through files to compile information." Tenn. Code Ann. §

[1] The Court notes that the language quoted here is currently in Tenn. Code Ann. § 10-7-503(a)(4). However, this language was previously included in subsection (a)(7)(B) of the same section of the Act. The Act was amended so that the language quoted here was deleted from subsection (a)(7)(B) and incorporated into subsection (a)(4) with virtually the same language. Consequently, the opinions referenced throughout this Memorandum Opinion that were issued before this amendment reference the old section. This Court endeavors to note the difference in citations in the manner indicated above where appropriate.

10-7-503(a)(4). These two provisions in the Act have led to most of the controversy in this litigation.

The KCSO has mainly relied upon the Tennessee Court of Appeals opinion in *Jakes v. Sumner Cty. Bd. of Educ.*, No. M2015-02471-COA-R3-CV, 2017 Tenn. App. LEXIS 515 (Ct. App. July 28, 2017), for arguing that most of Professor Conley's requests were not sufficiently detailed to enable the custodian to identify the records sought. In the *Jakes* case, the Court of Appeals reviewed the following email request:

> [a]ny and all communications between you and any other party or parties concerning my first public record request for the [BOE] to provide for my inspection the [BOE's] records policy. This is to include but not be limited to the following[:] All emails sent or received, all audible recordings and voicemail by all members, all letters, all memos, all text messages [and] all text messaging.

Jakes, 2017 Tenn. App. LEXIS 515 at *21-22. The Court found that "the formatting of the email made the request unclear and overly broad" and that it was "insufficiently detailed to enable [the custodian] to identify the records." *Jakes*, 2017 Tenn. App. LEXIS 515 at *22. The court held that the "request was not a valid public records request." *Id.* The Court noted that "[a] governmental entity is not required to 'sort through files to compile information.'" *Id.* (citing Tenn. Code Ann. § 10-7-503(a)(4)). The Court of Appeals, however, does not state how the formatting of the email request made the request unclear and overly broad or how the email request was insufficiently detailed to enable Mr. Johnson to identify the records. *Id.* The KCSO has relied upon the *Jakes* case for the assertion that the use of "any and all" as a preface to a request renders the request overly broad and improperly requires the governmental entity to sort through its records. However, under the statute, the question is simply whether the request is sufficiently

specific to enable the governmental entity to identify the records sought. *See* Tenn. Code Ann. § 10-7-503(a)(4).

In conjunction with *Jakes*, the KCSO cites the case of *Reguli v Vick*, No. M2012-02709-COA-R3-CS, 2013 Tenn. App. LEXIS 733 (Ct. App. Nov. 7, 2013) in its proposed findings and conclusions. However, in *Reguli*, the issue was the applicability of state law confidentiality provisions to prevent disclosure. The KCSO cites note 4 in *Reguli* reciting the trial court's determination that a portion of the request therein was not sufficiently detailed. However, the Court of Appeals did not review the sufficiency of the request as the requestor did not appeal that matter. *Reguli*, 2013 Tenn. App. LEXIS 733 at *5 n.4.

The KCSO also argues that the requests in this case would require it to read through every email and letter of its 1100 employees and sort through them and compile the records that may be responsive to a request. The KCSO further argues that the requests would require it to look through every single record in its possession and determine if it is related to or in regards to an agreement with ICE. The KCSO relies upon the Court of Appeals' 2016 opinion in *Hodges v. DA Gen-20th Judicial Dist.*, No. M2014-00247-COA-R3-CV, 2016 Tenn. App. LEXIS 294, *14-15 (Ct. App. Apr. 27, 2016), for the proposition that it has no such obligation.

This Court notes that the KCSO's 1100 employees are responsible, under the KCSO's Retention Policy, for reviewing their own emails and determining whether they are public records. The Court also notes that the KCSO can easily inquire of its 1100 deputies as to whether they have any particular records by sending out a blanket email making such an inquiry. However, the more important issue is whether the burden of

indexing and producing records may excuse a governmental entity from the mandate of the Act that "[a]ll state, county and municipal records shall, at all times during business hours.... be open for personal inspection by any citizen of the state, and those in charge of the records shall not refuse any such right of inspection to any citizen, unless otherwise provided by state law." Tenn. Code Ann. § 10-7-503(a)(2)(A).

The scenario in the *Hodges* case, relied upon by the KCSO, was that the petitioner therein wanted the district attorney general to inspect the petitioner's own criminal case file and determine which records fell within those listed in his request. *Hodges*, 2016 Tenn. App. LEXIS 294 at *14-15. The petitioner wanted the Attorney General to furnish the petitioner with the records identified by the attorney general as within the petitioner's request. *Id.* at *10-15. The Court held that the Act did not impose any such obligation on the attorney general. *Id.* at *14-15. The main points in the *Hodges* case were that "[u]nder the statutory scheme, inspection of the records precedes copying; the statute does not impose an additional obligation on General Johnson to search the file and determine which records fell within those listed by Mr. Hodges." *Id.* at 15. The court noted that the attorney general provided the petitioner with access to the file from which the petitioner could identify the records that he wanted for copying. *Id.*

The difference between the *Hodges* case and this case is that Professor Conley was, in some instances, not provided with anything. The KCSO's explanation is that there was no way to identify the specific records without going through each and every record of approximately 1100 employees. However, by maintaining no indexing or means of access, there can be no access to the public records. That does not appear to be in accord with the legislative mandate that all public records, at all times during business hours, be

open for public inspection. *See* Tenn. Code Ann. § 10-7-503(a)(2)(A). It also appears to be contrary to the Act's "crucial role in promoting accountability in government through public oversight of governmental activities." *Taylor v. Town of Linville*, No. M2016-01393-COA-R3-CV, 2017 WL 2984194, *2 (Tenn. Ct. App. July 13, 2017) (quoting *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74 (Tenn. 2002)). If there is no reasonable way for the public to access the public records, the public cannot use them to oversee governmental activities.

The KCSO also relies upon the case of *Moncier v. Harris*, No. E2016-00209-COA-R3-CV, 2018 Tenn. App. LEXIS 176 (Ct. App. Apr. 5, 2018), for the supposition that the broad request "to inspect each case file for whether a forfeiture warrant had been received by the Knoxville office of the [Legal Division of the Department of Safety and Homeland Security] since January 1, 2015," was proper but would have been improper if limited to a specific type of vehicle. *Moncier*, 2018 Tenn. App. LEXIS 176 at *2. However, the *Moncier* case does not address this argument, one way or the other. Presumably, the KCSO's rationale is that the more specific request would require sorting through files. *See* Tenn. Code Ann. § 10-7-503(a)(4).

The dichotomy here, according to the KCSO's arguments, is that a request that is specific may require sorting and is impermissible under Tenn. Code Ann. § 10-7-503(a)(4). On the other hand, a request that is broad does not sufficiently identify the record requested and is also impermissible under the specificity requirement of Tenn. Code Ann. § 10-7-503(a)(4). Regardless, in *Moncier*, the request was for civil forfeiture documents from the Tennessee Department of Safety and Homeland Security. *Moncier*, 2018 Tenn. App. LEXIS 176 at *2. The Department notified Mr. Moncier "that there

were 1,790 files responsive to his request and that the records would be provided to him in installments." *Id.* at *5. However, in this case, in several instances, Professor Conley was presented with no records but simply a response that the request was either too broad or too specific. A reasonable alternative, as in the *Moncier* case, would have been to have given access to her, after required redaction, of all requested public records requiring sorting and permitting her to make the search.

Finally, as to the sufficiency of the request in this case, the KCSO relies upon the 2003 Court of Appeals' opinion in *Hickman v. Tenn. Bd. of Prob. & Parole*, No. M2001-02346-COA-R3-CV, 2003 Tenn. App. LEXIS 187 (Ct. App. Mar. 4, 2003) for its holding that "the Act does not require a governmental entity to manually sort through the records and compile information gained from those records." *Hickman*, 2003 Tenn. App. LEXIS 187 at*31. That holding, however, covers only a part of the discussion in *Hickman* pertinent to this case. The requestor, in *Hickman,* sought some information, not placed in the computer, that would have required the governmental entity to manually sort through files to find and compile the information for the requestor. *Id.* at *30-31. The Court of Appeals, as previously mentioned, found that the Act did not require any such manual sorting and compiling. *Id.* However, as to information otherwise contained in the governmental entity's computer system, the *Hickman* opinion is not favorable to the KCSO`s position.

First, the Court of Appeals points out that the Act "provides no basis for denying access to records because granting such access would be clearly onerous, overly burdensome, time-consuming and expensive." *Id.* at *33 n. 7. The Court quoted the Tennessee Supreme Court's quotation from a Kansas case:

> We hold that the [public records]'s act implies a duty upon the agency to delete confidential and nondisclosable information from that which may be disclosed, and thus to carry out the act's purpose of making available for public inspection all disclosable parts of the public record. Were this not so, any record which an agency is required by law to keep could be rendered inaccessible to public scrutiny by including confidential material therein.

Id. at *23, (quoting *State ex rel. Stephen v. Harder*, 230 Kan. 573,583, 641 P.2d 366, 374 (Kan. 1982)).

The *Hickman* court further recognizes that "once information is entered into a computer, a distinction between information and record becomes to a large degree impractical." *Id.* at *26-27 (quoting *The Tennessean*, 979 S.W.2d at 304). The Court goes on to discuss that if separate pieces of information are in a governmental entity's computer system "but not in the exact format requested" and "the requested information could be produced by the governmental entity by having a computer program written to extract the requested information and produce it in the requested format," the governmental entity may be required "to disclose the requested information." *Id.* at *28. The fact that a "special computer run would have to be performed" does not relieve the governmental entity of the obligation to produce the information. *Id.* at *30. The Court of Appeals made this ruling irrespective of the potential cost. *Id.* However, pertinent to the matter of charging for redacting, discussed below, the Court of Appeals, referring to the Supreme Court's opinion in *The Tennessean*, stated that the governmental entity may require the requestor to pay for the actual costs incurred in producing the information, including the cost of programming the computer to compile and produce the information. *Id.* at *30. The Court of Appeals does not define what it means by the term, "producing."

The basic problem with Professor Conley and the KCSO is the reliance upon written communications and precise wording. Contrary to the posture of Professor Conley and the KCSO, the Act does not envision a battle of words. For the purposes of the act of inspection only, the Act does not contemplate that the requestor and the governmental entity will communicate in writing. *See* Tenn. Code Ann. §10-7-503(a)(7)(A). The Act contemplates a face-to-face exchange between a cooperative requestor and a cooperative governmental entity. As stated by the Court of Appeals in *Hickman*:

> The Act envisions that the requestor will personally appear to make the request and will be given access to the public records requested. When personal appearance is not possible, a citizen may request that copies of records be sent to him or her....

Hickman, 2003 Tenn. App. LEXIS 187 at *29.

As previously mentioned, "the Act does not require a governmental entity to manually sort through the records and compile information gained from those records." *Id.* at *31. But that does not relieve the governmental entity from permitting "[a] citizen appearing in person" to "inspect the records and retrieve the information himself or herself." *Id.* Moreover, where a citizen requests particular documents maintained in voluminous files, the governmental entity may be required to go through the files and manually retrieve the documents requested, irrespective of whether copies are requested or "a citizen appeared in person and requested access to those documents." *Id.* at *32-33. "Pulling files for review in person does not differ from pulling files to make copies." *Id.* at *33.

Finally, even where the parties communicate in writing rather than face-to-face, the Court of Appeals` opinion in *Hickman* points out that making a written request for

inspection or copies "generally phrased in terms of information [sought]" does not render the request insufficient for lack of specificity or detail. *Id.* at *34. The request may be sufficient even though the requestor does not identify or request a specific document containing the information requested. *Id.*

The foregoing is instructive for this case as a whole and Professor Conley's specific charges discussed below. The *Hickman* case, cited by the KCSO, is particularly informative.

SPECIFIC CHARGES

As mentioned in the history of this case, Professor Conley filed on June 7, 2019 a document titled "LIST OF UNFULFILLED RECORD REQUESTS." That list is broken down into segments under the headings "Completely Denied Requests for Inspection of KCSO Records" and "Partially or Completely Unfilled Requests for Copies of KCSO Records." The Court will discuss each charge listed.

Professor Conley makes her first claim as follows:

On November 30, 2018, Professor Conley requested to inspect KCSO arrest reports:

> I also wanted to touch base with you about scheduling a time to inspect arrest reports. It is my understanding that arrest reports of inmates in the Knox County jail are public records and that residents of Tennessee are able to access these records without submitting a records request. Are there specific hours to be able to review arrest reports? I would appreciate your guidance on this matter.

KCSO, through its record coordinator, Hillary Martin, responded:

> Unfortunately, we don't have a system that allows the public to inspect arrest reports. The only system we have is for law enforcement use only, but we will be more than happy to provide you with copies of the reports

you would like. There is a "Records Request" button on knoxsheriff.org that allows you to submit your request online.

Professor Conley's above inquiry appears to be a request for a time for her to appear and make a request, in person, to inspect KCSO's arrest records. While a governmental entity may require a request for copies to be in writing or on a form developed by the office of open records counsel, the Act, in general, prohibits a governmental entity from requiring a written request to view a public record .*See* Tenn. Code Ann. § 10-7-503(a)(7). In anticipation of her appearing, the KCSO informed Professor Conley, in effect, that arrest records are not open for inspection. KCSO responded as to its willingness to produce copies, presumably redacted copies, but, according to the evidence at the hearing, the rate of available redacted copies is much less than the rate of arrests.

This is not in compliance with the mandate of Tenn. Code Ann. §10-7-503(a)(2)(A). These records are to "be open for inspection." *Id.* As stated by the Court of Appeals in *Hickman*, the burden on the governmental entity is not an excuse under the Act. *Hickman*, 2003 Tenn. App. LEXIS 187 at *33 n. 7. The Act places a duty upon the governmental entity "to delete confidential and nondisclosable information from that which may be disclosed, and thus, to carry out the act's purpose of making available for public inspection all disclosable parts of the public record." *Id.* at *23. The governmental entity cannot limit access to the obtaining of copies. The governmental entity has the burden of keeping the arrest records, for which there is constant public demand, open for inspection.

Under the heading "Partially or Completely Unfulfilled Requests for Copies of KCSO Records," Professor Conley lists the remainder of her multitude of claims. These claims cover the period of August 16, 2017 through March 8, 2019.

Professor Conley made requests on August 16 and 31, 2017, as follows:

Requested on August 16, 2017:

> All public records of communications between Knox County and the Department of Homeland Security-U. S. Immigration and Customs Enforcement regarding a 287 (g) program in Knoxville created on or after June1, 2017.
>
> All public records created on or after June 21, 2013 regarding any intergovernmental service agreement (IGSA) related to detention, transportation, or other services between the Knox County Sheriff's office and the Department of Homeland Security-U.S. Immigration and Customs Enforcement.

Requested on August 31, 2017:

> All public records of emails and letters between Knox County Sheriff Jimmy "JJ" Jones and the Department of Homeland Security-U. S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, TN created on or after August 25, 2017.
>
> All public records of emails and letters between Media Relations Director Martha Dooley and the Department of Homeland Security-U. S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, TN created on or after August 25, 2017.

Professor Conley's actual requests on August 16, 2017, included a request for training records. However, the KCSO provided those records and they are not in issue.

KCSO's chief counsel, Mike Ruble, responded by email on August 25, 2017, to Professor Conley's requests, as made on August 16, 2017, and stated that her requests failed to comply with the specificity requirement of the Act. Mr. Ruble further responded, however, that he would produce a letter of June 9, 2017, from Immigration and Customs Enforcement ("ICE") and confirmed that Professor Conley already had the Memorandum

of Agreement between the Sheriff's Office and ICE. Mr. Ruble did not state, however, that there were no other records covered by the request. See Trial Exhibit 3.

Mr. Ruble's response points to a lack of specificity from Professor Conley's use of the words "any and all" but the response does not explicitly state that the request is not "sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying." Tenn. Code Ann. § 10-7-503(a)(4). The request did begin with the words, "[a]ll public records" but the request would appear sufficient to enable the KCSO to find the public records sought. Mr. Ruble further states that "[e]ven if the request satisfied the specificity requirement the man-hours necessary to review every document, email, etc. would make the response prohibitively expensive." However, Mr. Ruble's reference to the burden that complying with the request would impose upon the KCSO is not a factor under the Act.

The more problematic aspect of Mr. Ruble's response of August 25, 2017, is the posture between the parties. Instead of working out, face-to-face, the facilitation and mechanics of Professor Conley's inspection, the parties embark upon a course of Professor Conley's pitching out requests and the KCSO's calling balls and strikes. However, there is no requirement under the Act that the request point out the specific document requested. To do so, the requestor would already have to have pre-existing knowledge of the documents composing the public records. As previously mentioned, the request may be "generally phrased in terms of information [sought]." *Hickman*, 2003 Tenn. App. LEXIS 187 at*34. The requestor is not required to request a specific document containing the information sought. *Id.* Moreover, for purposes of inspection, as previously mentioned, the Act generally prohibits a governmental entity from requiring

that a request be in writing to inspect a public record. See Tenn. Code Ann. § 10-7-503(a)(7)(A).

Mr. Ruble's above response of August 25, 2017, among other things, welcomes Professor Conley to her review or obtaining a copy of "a June 9, 2017 letter from ICE thanking us for our interest in the 287(g) program." Mr. Ruble's response was respecting Professor Conley's prior request of August 16, 2017, and their face-to-face meeting on August 25, 2017. By another email from Professor Conley on August 31, 2017, she appears to fold her prior request into her above request made on August 31, 2017. Mr. Ruble responds on the same day, by his email of August 31, 2017, appearing to restart the process from the beginning:

> I am in receipt of your public records requests. Be advised that the law provides that the public entity has (7) business days to respond to public records requests. I will contact you when the records are available.

No substantive response was made to Professor Conley's request of August 31, 2017 until Mr. Ruble's email of September 15, 2017 stating that he has submitted the responsive documents for review by ICE. That response greatly exceeds the seven days permitted by Tenn. Code Ann. § 10-7-503(a)(2)(B) and does not state the law permitting the delay for review by ICE. By her email dated September 19, 2017, Professor Conley requested that Mr. Ruble inform her of the basis in law for permitting the delay for review by ICE. However, the KCSO made no such further response.

By email on September 28, 2017, Professor Conley made an additional request for public records in the following format:

Mr. Ruble:

> I request access to certain public records in your possession, custody or control, pursuant to the Tennessee Public Records Act, TCA section 10-7-503 (a)....
>
> Specifically I request access to:
>
> 1. All public records of emails and letters between Knox County Sheriff Jimmy "JJ" Jones and the Department of Homeland Security-U.S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, Tennessee created on or after August 25, 2017.
>
> 2. All public records of emails and letters between Captain Terry Wilshire in the Department of Homeland Security-U.S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, Tennessee created on or after August 25, 2017.
>
> 3. All public records of emails and letters between Media Relations Director Professor Conley Martha Dooley and the Department of Homeland Security-U.S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, Tennessee created on or after August 25, 2017.

KCSO made no written response to this request from Professor Conley. However, with respect to Professor Conley's request of September 28, 2017 and her request of August 31, 2017, Mr. Ruble produced 189 pages of documents to Professor Conley. The only correspondence between Sheriff "JJ" Jones with ICE was the June 9, 2017 letter from ICE, which was, in fact, provided to Professor Conley. The KCSO also provided Professor Conley with email correspondence between Capt. Wilshire and ICE regarding the 287(g) program. Mr. Ruble investigated and determined that there was no other email or letter between Knox County Sheriff Jimmy "JJ" Jones and the Department of Homeland Security-U.S. Immigration and Custom Enforcement and no such email or letter between Media Relations Director Martha Dooley and the Department of Homeland Security-U.S. Immigration and Customs Enforcement. However, Mr. Ruble did not otherwise respond to Professor Conley's request of September 28, 2017 but assumed that she would realize that no other responsive public records existed from the absence of any other such other public records in the 189 pages of documents, including

the absence of any such emails and letters between Ms. Dooley and ICE. However, the Act requires a governmental entity to make the "information" available; to deny the request in writing or by completing a records request response form developed by the office of open records counsel; or by stating the time reasonably necessary to produce the records or information on a form developed by the open records counsel. Tenn. Code Ann. § 10-7-503(a)(2)(B). The Act requires that any written response of denial includes the basis for the denial. *Id.* The KCSO failed to deny the request in writing as to the information not provided.

On June 5, 2018, Professor Conley requested "all public records, including letters, emails and memos, related to the KCSO 287(g) Steering Committee." However, Professor Conley has discontinued any claim relating to this request.

By email dated July 20, 2019, Professor Conley informed Mr. Ruble that she was "interested in obtaining any documents that show the total yearly number of inmates in the jail and total yearly number of foreign-born inmates in the jail from 2008 through the first six months of 2018." Her email asks, "Might you be able to suggest any language that I could use to make a formal request for any public documents that contain this data?" This does not appear to be a request for public documents but to be a request for information and advice as to how to make a formal request for any public document that contains the data. Nonetheless, Mr. Ruble denied the "request" as not being sufficiently detailed. Also, as previously mentioned, it should be noted again that Tenn. Code Ann. § 10-7-503 (a)(7)(A) prohibits a governmental entity from requiring that a request be in writing to inspect public records at all. Moreover, as discussed above, the *Hickman* case holds that a public records request, phrased in terms of information, is sufficient.

By email on July 5, 2018, Professor Conley requested "access to and a copy of the following documents from the period of January 1, 2018 to present: Any and all records of communication including letters, emails, and memoranda, exchanged within and among the Knox County Sheriff, DHS agencies and the July 11, 2018 meeting, which was previously scheduled for June 26, 2018 and July 10, 2008." KCSO produced 28 documents to Professor Conley in response to the request. Mr. Ruble testified that he provided all responsive records he could find and after requesting records from the KCSO's employees who had been involved more than others with the steering committee. However, Mr. Ruble testified that he could not be certain that all responsive records were produced as the KCSO is unable and not required to review the records of all 1100 of its employees to see if any of their records relate to the steering committee. Professor Conley testified that she meant for her request to only address communications from KCSO employees who were part of the steering committee.

On November 8, 2018, Professor Conley made another request for public records renewing her request of August 31, 2017. However, at the hearing, Professor Conley discontinued any claim based upon the request of November 8, 2018.

By email dated November 19, 2018, Professor Conley submitted the following requests:

> I am a resident of Tennessee requesting access to records in your possession pursuant to the Tennessee open records act, Tenn. Code Ann. § 10-7-503.
>
> Specifically, I wish to receive copies of the following documents:

> Email communications mentioning my name (Meghan Conley, Ms. Conley, Dr. Conley, or variations) that were sent or received by Mike Ruble between the dates of August 1, 2017 until the present day.
>
> Email communications mentioning my name (Meghan Conley, Ms. Conley, Dr. Conley, or variations) that were sent or received by Jimmy "JJ" Jones between the dates of August 1, 2017 through September 2018.
>
> Email communications mentioning my name (Meghan Conley, Ms. Conley, Dr. Conley, or variations) that were sent or received by Martha Dooley between the dates of August 1, 2000 17th of September 2018.
>
> Email communications mentioning my name (Meghan Conley, Ms. Conley, Dr. Conley, or variations) that were sent or received by Terry Wilshire between the dates of August 1, 2017 through September 2018.

By Hillary Martin's email dated November 21, 2018, the KCSO granted the request as to that part dealing with "Mike Ruble's communications" but otherwise appears to have denied the request on the basis that "our system only retains emails for 30 days." However, the factual basis, putting aside any legal basis, for the denial is not correct. KCSO's General Order-1-026 constitutes its written policy for retaining emails. According to the General Order, emails, which are not public records, are deleted after "a maximum of 30 days" but any deleted email remains in a "deleted items" folder for 30 days after deletion from the user's inbox or outbox. Any email, which is a public record, is to be 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." Examples in the KCSO's General Order concerning emails that are to be retained as public records include, "[t]ransactions or information concerning criminal investigations," "[a]ctions," "[d]ecisions," "work related emails, including investigative discussions and phone records" and "arrest records." Those emails that are printed for retention as public records are known as "archived emails." According to the testimony of Ms. Martin, a request for

"emails" is regarded as limited to those emails fewer than 30 days old. In order to receive access to or copies of archived emails, the request would have to ask for "archived emails." This Court finds and concludes a public records request for "emails" is sufficient to require the KCSO to make all emails available, those less than 30 days old, those more than 30 days old and not yet deleted from the deleted items folder, and those printed or electronically stored as public records or archived emails. However, in this case, the KCSO has searched for emails, including archived emails, subject to the above requests, and located no public records responsive to Professor Conley's requests. No issue has been raised in the case as to the adequacy of the KCSO`s policy of leaving each of its employees in charge of determining whether a record is a public record and whether a record may be destroyed without going through the Public Records Commission.

On March 4, 2019, (referred to a March 6, 2019) in Professor Conley's LIST OF UNFULFILLED RECORD REQUESTS, Professor Conley requested access to and "copies of the following documents from the period of January 1, 2019 to present: Any and all records of communication including letters, emails and memoranda, exchanged and among the Knox County Sheriff's Office, DHS agencies and subagencies (including ICE)."

KCSO denied the request because it was not sufficiently detailed and because KCSO's "system only retains emails for 30 days." This Court agrees that the request, in this instance, was not sufficiently detailed but disagrees, for the reasons discussed above, that the request could be denied on the basis that the emails are only retained for 30 days. Regardless, Professor Conley folded this request into her next request.

On March 8, 2019, Professor Conley made the following request for "access to inspect the following documents from the period of January 1, 2019 to the present:

> Any and all records of communication, including letters, emails and memoranda, exchanged within and among personnel of the Knox County Sheriff's Office (Tom Spangler, Bernie Lion, Kimberly Glenn, William Purvis, Brian Bivens) DHS agencies and subagencies, including ICE (with email addresses ending @ice.dhs.gov)

KCSO responded to this request by producing records. Professor Conley was unable at the hearing to identify any unproduced record. However, unless Professor Conley already knew the identities of the public records responsive to the request, there is no way that she could identify any unproduced records. Moreover, the KCSO has the burden of proof. Tenn. Code Ann. § 10-7-505(c). Also, the KCSO's record coordinator, Ms. Hillary, did not search for any emails more than 30 days old, such as in the deleted items files or the archived email files. Thus, this request must be treated by the Court as having been denied and without adequate response.

REDACTION

An issue has arisen in the case as to whether the KCSO can assess charges for redacting public records in preparing them for a citizen's inspection. Yet, there is nothing in Professor Conley's petition concerning redaction. Professor Conley seeks no relief in her petition or proposed findings of fact and conclusions of law pertaining to redaction. Moreover, the KCSO has never assessed a charge to Professor Conley for redaction. However, the KCSO has informed Professor Conley that it could, within its discretion, charge her for redacting.

The law is clear and no issue has been raised as to a governmental entity's authority to charge for redacting copies. *See* Tenn. Code Ann. § 10-7-503(a)(7)(C)[2] & 8-4-604(a)(1). On the other hand, the Act expressly prohibits a governmental entity from assessing "a charge to view a public record unless otherwise required by law." Tenn. Code Ann. § 10-7-503(a)(7)(A).

At least one provision of the Act expressly authorizes a governmental entity to charge for redaction even where the redaction is made for the sole purpose of enabling a citizen to inspect and view a public record. *See* Tenn. Code Ann. § 10-7-504(a)(20)(C). Another provision of the Act, at Tenn. Code Ann. § 10-7-503(a)(7)(C)(i) states that "[a] records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested material ...." The KCSO argues this statutory provision means that, while the governmental entity may not charge for viewing the public record, it may charge for producing the record for inspection, which includes the costs of redacting confidential information so that it can be viewed by a citizen.

Other provisions of the Act have similar circular interplay as to whether a governmental entity may charge for redacting in preparing a record for inspection only. Tenn. Code Ann. § 8-4-604(a)(1)(A)(ii)(c) states, "that , in accordance with Tenn. Code Ann. § 10-7-503(a)(7)(A) no charge shall be assessed to view a public record unless

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[2] The Court notes that a search through Lexis would indicate that this language appears in Tenn. Code Ann. § 10-7-503(a)(7)(B) and that a search through Westlaw would indicate that the language is included in Tenn. Code Ann. § 10-7-503(a)(7)(C). The Court further notes, as indicated in the footnote above, that the subsection (a)(7)(B) was deleted and its operative language was incorporated in subsection (a)(4) by amendment. The Court can find no further amendment regarding subsection (a)(7)(B). Regardless which research tool one uses, the quoted operative language is indeed included in the statute in both iterations. Consequently, the Court will cite to Tenn. Code Ann. § 10-7-503(a)(7)(C) for the purposes of this discussion.

otherwise required by law." According to the KCSO's argument, it is "otherwise required by law" at Tenn. Code Ann. §§ 10-7-503(a)(5) and 10-7-504(a)(20)(C) that charges be assessed for preparing or producing a public record for viewing. The statutory provision, at Tenn. Code Ann. § 10-7-503(a)(5), states that "[c]osts associated with redacting records, including the costs and copies and staff time to provide redacted copies, shall be borne as provided by law." Tenn. Code Ann. § 10-7-503(a)(7)(C)(i), as previously mentioned, states that "[a] records custodian may require a requestor to pay the custodian's reasonable cost incurred in producing the requested material and to assess the reasonable costs in the manner established by the office of the open records counsel pursuant to section 8-4-604." The other statutory provision, at Tenn. Code Ann. § 10-7-504(a)(20)(C), states that "[t]he entity requesting the record shall pay all reasonable costs associated with redaction of materials."

The latter mentioned statutory provision would appear to remove any doubt that the governmental entity may charge for redaction of materials, whether for inspection or copying of the materials. However, this statutory provision is part of subdivision (a)(20) which deals with utilities. Nonetheless, the statutory provisions together provide a logical framework in the law for taking the position that the KCSO may charge for redacting materials in making them available for Professor Conley's inspection. This Court is also cognizant of the commonsense argument that excusing the requestor from paying the expenses of redaction shifts those expenses to the taxpayers. Moreover, there is arguably no rational basis for requiring the requestor to pay for redacting when requesting copies but not when requesting inspection; the same labor costs are involved.

Initially, the above statutory framework seemed persuasive for the KCSO's position that it was entitled to charge for redacting, whether for copies or for inspection only. However, irrespective of the foregoing analysis, it appears that the Tennessee Court of Appeals has held that a governmental entity may not charge for redacting where a citizen requests inspection only and not copies. *See Eldridge v. Putnam*, 86 S.W.3d 572, 574 (Tenn. Ct. App. 2002).

The Court, in *Eldridge*, noted that the requestor had not asked for the governmental entity "to make extracts, photographs or photostat of the records." *Id.* Accordingly, the court held that the governmental entity would not be "permitted to assess the expenses incurred in finding the confidential information that should be redacted" to the requestor. *Id.*

The KCSO seeks to distinguish the *Eldridge* case on the basis that it involved the redaction of confidential information under Tenn. Code Ann. § 10-7-504(f). This Court finds the KCSO's proffered distinction to be one without a difference. This Court is bound by the appellate court's *Eldridge* opinion.

More recently, in *Taylor v. Lynnville*, the town denied the requestor access to inspect records unless he paid an upfront fee of $150 to "cover the expense for copies and staff time." *Taylor*, 2017WL 2984194 at *3. The court noted, however, that the requestor only sought inspection without copies. *Id.* Since the requestor had not requested copies, the court held that it was unlawful to charge the requestor anything in making the records available for his inspection. *Id. See also Id.* at n.5 (concurring opinion "acknowledges that the plain text of the TPRA only permits labor cost to be assessed against a citizen in circumstances where the citizen has requested copies").

The KCSO has followed the Public Records Policy for Knox County, Tennessee in taking the position that it may assess redaction charges to a citizen seeking only to inspect public records, without obtaining copies. See Tr. Exh. 7. That position is directly contrary to the opinion of the Tennessee Office of Open Records Counsel. *See* Tenn. Office of Open Records Counsel Op. No. 08-14 (Nov. 13, 2008).

PROFESSOR CONLEY'S MOTION TO SUPPLEMENT THE RECORD

After the closing of the evidence but prior to closing arguments, Professor Conley filed a motion to supplement the record on January 13, 2020. The Court heard closing arguments on January 24, 2020, as scheduled. However, the Court did not hear Professor Conley's motion to supplement the record until January 30, 2020, at which time the Court granted the motion. Professor Conley's proposed findings and conclusions filed January 13, 2020, were written as if the Court had already granted her motion to supplement the record or reopen the proof.

Professor Conley's additional proof relates to her request for "[p]ublic records created on or after June 21, 2013 regarding an intergovernmental service agreement [IGSA]" between ICE and the KCSO. The KCSO disclosed the public records shown by Trial Exhibits 6 and 9. Professor Conley had acknowledged to Mr. Ruble that she already had the Memorandum of Agreement between ICE and the KCSO shown by Trial Exhibit 6 and that she did not want a second copy. In addition, the KCSO produced a 14-page contract, IGSA 74-13-0015, and a two-page 2018 procurement order, as Trial Exhibit 9. The KCSO maintained that the Memorandum of Understanding, shown by Trial Exhibit 6, was the only IGSA that existed between ICE and the KCSO until July 19, 2018. The 14-page contract dated October 18, 2013, is between the United States Marshals Service

and the KCSO. The two-page procurement order dated July 19, 2018, was issued by ICE to the KCSO on June 26, 2018 and signed by Sheriff "JJ" Jones on July 19, 2018. Mr. Ruble testified that the two-page procurement order was an attachment to the 14-page contract between the United States Marshals Service and the KCSO. He testified, in effect, that when Sheriff Jones signed the procurement order on July 19, 2018, which Mr. Ruble referred to as an addendum, the Marshals contract of October 18, 2013, became an IGSA with ICE He further testified that when Sheriff Jones signed the procurement order and the Marshals contract became an IGSA with ICE, the KCSO disclosed and produced the documents to Professor Conley.

On October 9, 2019, Professor Conley's counsel made a Freedom of Information Act ("FOIA") request to ICE for "any IGSA between ICE and the KCSO." On December 20, 2019, Professor Conley's counsel received 36 pages from ICE in response consisting of the same 16 pages produced by the KCSO and shown by trial Exhibit 9 as well as 20 additional pages. Professor Conley proffers that ICE's responding with documents to the request for any IGSA proves there was an IGSA in addition to the Memorandum of Understanding. However, ICE produced the very same 14-page contract with the Marshals Service and the procurement order as had been produced by the KCSO to Professor Conley. The signature of Sheriff Jimmy "JJ" Jones dated July 19, 2018, on the procurement order shown by Trial Exhibit 9, does not appear on ICE's copy dated September 27, 2018, but both copies show "code 02589755590000." No other IGSA agreement was produced by ICE.

Professor Conley's counsel stated that the additional (20) pages were relevant for the purpose of showing the IGSA. Those pages appear to have been covered by Professor

Conley's requests of August 3, 2018 and/or November 8, 2018. They would also be relevant to showing that the KCSO failed to maintain them as public records or failed to disclose them but that has not been raised as an issue in this case.

The additional 20 pages consist of orders for supplies or services and documents titled as amendments of solicitation/modification of contract. The remaining 16 pages refer to the documents shown by Trial Exhibit 9 consisting of the IGSA between the Marshals Service and the KCSO and the procurement order issued by ICE to the KCSO. As previously mentioned, the remaining 16 pages are the same documents already produced by the KCSO. However, the KCSO did not disclose or produce the 2013 Marshals contract until ICE's procurement order of July 19, 2018. As previously mentioned, Mr. Ruble testified that he did not consider the Marshals contract as an IGSA with ICE until ICE's order of July 19, 2018. However, the Court notes that the Marshals contract expressly shows ICE as a component.

ATTORNEY FEES

Tenn. Code Ann. § 10-7-505 provides that "[i]f the court finds that the governmental entity, or agent thereof, refusing to disclose a record, knew that such a record was public and willfully refused to disclose it, such court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the nondisclosing governmental entity...." The same statutory section provides that "the court may consider any guidance provided to the records custodian by the office of open records counsel" in determining whether the action was willful. Although Ms. Martin testified that she consults with the office of open records

counsel about twice a month, there was no evidence of any guidance from the open records counsel to the KCSO about the matters in this case.

The three main areas of concern in this case are the KCSO's specificity policy in denying requests for access to public records; its lack of means by which citizens can inspect its arrest records; and its lack of compliance with Tenn. Code § 10-7-505 in failing, in some instances, to deny requests in writing or by completing a records request response form developed by the office of open records counsel, including the basis for denial, within 7 (seven) business days of a request. On the other hand, except for the lack of access to its arrest records, the denial of Professor Conley's request of March 8, 2019, for emails, including archived emails more than 30 days old, and the additional 20 pages of copies of orders for supplies or services and the documents titled as amendments of solicitation/modification of contract, which Professor Conley's counsel obtained from ICE, the record does not sustain that the KCSO failed to produce any public record. As to the 20 pages, Professor Conley, at paragraph 3 of her motion to supplement the record, states that the 20 pages are only relevant for proving "the existence of an IGSA between ICE and KCSO" that was not produced. The KCSO, except for these 20 pages, had already produced all of the records obtained by Professor Conley's counsel pursuant to his FOIA request to ICE, including the same Detention Services Intergovernmental Agreement between the United States Marshals Service and the KCSO dated October 18, 2013 and the Solicitation/Contractor/Order for Commercial Items dated November 26, 2018. However, the lack of access to the KCSO 's arrest records, on a current basis, remains as a problem.

As noted in part above, Tenn. Code Ann. § 10-7-505(g) provides:

> If the court finds that the governmental entity, or agent thereof, refusing to disclose a record, knew that such record was public and willfully refused to disclose it, such court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the nondisclosing governmental entity. In determining whether the action was willful, the court may consider any guidance provided to the records custodian by the office of open records counsel as created in title 8, chapter 4.

Tenn. Code Ann. § 10-7-505(g).

The statute conditions an award of costs and attorney fees to those incurred in obtaining a record. *Id.* Again, excepting access to arrest records on a current basis and emails more than 30 days old, the record in this case does not sustain the existence of any record that the KCSO has refused to disclose. As stated above, the Court has treated Professor Conley's request of March 8, 2019, to have been denied as to emails, including archived emails more than 30 days old, but Professor Conley has not sought any relief for them.

There are problems with the KCSO's practices concerning public records. The KCSO's specificity policy has been especially troublesome. Yet, the record does not sustain the existence of any record not disclosed or produced because of the KCSO's specificity policy respecting requests for public records. Moreover, the *Jakes* case, discussed above, provides the KCSO with a good faith basis for arguing its specificity policy. The KCSO's redaction policy has also been problematic. On the other hand, there is no evidence that the KCSO has assessed any redaction charges to Professor Conley or that she has paid any such charges. Moreover, Professor Conley has not sought any relief concerning redaction charges.

The Court finds that Professor Conley is entitled to her reasonable costs, including attorney fees, for that part of her case concerned with obtaining access to the arrest records on an ongoing basis and for obtaining a complete written response to her request of March 8, 2019 for emails, including archived emails more than 30 days old. There is an abundance of evidence in the case that the KCSO may have frustrated Professor Conley in her obtaining access to the KCSO's public records. However, access to its arrest records on an ongoing basis as well as access to the emails, including archived emails more than 30 days old, appear to be the only access to public records withheld from her. As to the arrest records and the emails more than thirty days old, the Court finds that the criteria of Tenn. Code Ann. § 10-7-505(g) is sustained for awarding reasonable costs, including attorney's fees, to Professor Conley.

RELIEF

In her petition, Professor Conley prays for the following relief:

1. Professor Conley requests that this Court order Sheriff Spangler to "immediately appear" at a show cause hearing and carry his burden of justifying the denials of Professor Conley's PRA requests and showing why this Petition for record access should not be granted.

2. Professor Conley requests that this Court order Sheriff Spangler to promptly allow Professor Conley access to her requested records.

3. Professor Conley requests that this Court place Professor Conley's requested records under seal for the Court's review prior to the hearing, as permitted by Tennessee Code Annotated section 10-7-505(b).

4. Professor Conley requests that this Court enjoin Sheriff 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

through frivolous denials, delays or harassment.

5. Professor Conley requests that she be awarded all reasonable costs incurred in obtaining these records, including reasonable attorney's fees.

6. Professor Conley requests any other relief to which she proves herself entitled.

In her proposed findings of fact and conclusions of law, Professor Conley seeks the following relief:

1. That Professor Conley be permitted to inspect any non-exempt KCSO records as soon she desires.

2. At no cost to Professor Conley and in seven business days, KCSO is to provide her with copies of any existing documents she has previously requested and been wrongfully denied as well as:
   I. copies of all 48-hour holds issued by ICE to KCSO since the initiation of KCSO's 287(g) agreement;
   II. copies of all monthly detention invoices (described on page 11 of the 2013 IGSA) sent to ICE from KCSO since June of 2017;
   III. copies of any KCSO arrest or detention records that Professor Conley deems necessary for her work.

3. That KCSO is to pay Professor Conley all costs associated with obtaining these records, including reasonable attorney fees. A separate hearing will be held for determining these fees.

4. That KCSO is enjoined from committing further violations of Professor Conley's PRA rights.

* * *

5. That Sheriff Spangler must revise KCSO's internal public records policy to accord with existing law and these findings, especially his policies regarding compilation, specificity, even if this requires creation of new software. See Tennessean, 979 s.W.2d at 304. This policy must forbid employees from misrepresenting the records KCSO actually possesses.

6. That upon denying a record request, KCSO must issue to the requesting citizen a written statement explaining precisely why their request was denied. If no records were found, KCSO must issue to the requesting citizen a list of the steps taken in the attempt to find their records. Any written statement must be signed by the record custodian. KCSO must keep a record of how many record request denials it makes each month. This injunction shall remain in place until further notice.

7. That in ten business days, Sheriff Spangler must set up the policies and infrastructure required to allow citizen inspection of KCSO records as required by the PRA.

Initially, the court will address the relief which Professor Conley seeks in her proposed findings of fact and conclusions of law:

Proposed Relief

1. That Professor Conley be permitted to inspect any nonexempt KCSO records as soon as she desires.

This relief is not available not only due to its being open-ended as to time and volume but also due to the statutory requirement that the KCSO redact confidential information.

Proposed Relief

2. At no cost to Professor Conley and in seven business days, KCSO is to provide her with copies of any existing documents she has previously requested and been wrongfully denied as well as:

I. copies of all 48-hour holds issued by ICE to KCSO since the initiation of KCSO's 287 (g) agreement;

II. copies of all monthly detention invoices (described on page 11 of the 2013 IGSA) sent to ICE from KCSO since June of 2017;

III. copies of any KCSO arrest or detention records that Professor Conley deems necessary for her work.

The record does not contain evidence that Professor Conley has ever made a public records request for 48 hour holds or monthly detention invoices. These matters were not raised during the hearing. The parties will need to go through the procedures of the Tennessee Public Records Act. As mentioned above, the record does not sustain that Professor Conley has been denied access to any public records other than arrest or detention records and emails, including archived emails more than 30 days old in response to her request of March 8, 2019.

Currently, the KCSO has no means by which citizens can access its arrest records on a current basis. Unless that means is provided, the lack of such access runs counter to the Act's mandate that the governmental entity shall keep its records open for personal inspection by any citizen of the state. Absent such means of access, the citizens of this state are unable to monitor the activities shown by the arrest records. The Court is aware that the governmental entity is under an obligation to redact confidential information. However, that obligation cannot be used to prevent access. While the *Hickman and The Tennessee* cases support that Professor Conley would have to bear the expense for the development of a means to access the arrest records, such as software that automatically deletes the areas of an arrest record containing confidential information, the disclosure of arrest records is fundamental to a law enforcement agency's openness and accountability. The Act requires the governmental entity to fulfill its obligation to keep its public records open for inspection, not the citizens. The Court finds and concludes that the KCSO should have such a system irrespective of Professor Conley's claims.

Accordingly, the Court finds and concludes that the KCSO should be required to immediately take steps to implement a system whereby its redacted arrest records can be inspected by the citizens of Tennessee on a current basis, either manually or through a computer system maintained by the KCSO. The KCSO's current records coordinator, Ms. Martin, testified that it already has a public version of incident or arrest reports, but that matter was not developed at the hearing.

Proposed relief

3. That KCSO is to pay Professor Conley all costs associated with obtaining these records, including reasonable attorney fees. A separate hearing will be held for determining these fees.

As discussed above, Professor Conley is entitled to an award of costs, including attorney fees, incurred for obtaining access to the KCSO's arrest records on a current basis and a complete written response to her request of March, 2019 for the emails, including archived emails more than 30 days old.

Proposed Relief

Of the remaining requests for relief in Professor Conley's proposed findings and conclusions, requests numbers four, five, and seven are similar. The Court will discuss those requests together:

4. The KCSO is enjoined from committing further violations of Professor Conley's PRA rights.

5. That Sheriff Spangler must revise KCSO's internal public records policy to accord with the existing law and these findings, especially his policies regarding compilation, specificity, even if this requires creation of new software. *See Tennessee*, 979 S. W.2d 304. This policy must prevent employees from misrepresenting the records KCSO actually possesses.

7. That in 10 business days, Sheriff Spangler must set up the policies and infrastructure required to allow citizen inspection of KCSO records as required by the PRA.

All of the above proposed relief is in the nature of injunctive relief. In order for the injunctive relief requested by Professor Conley to be enforceable, the injunction must "expressly and precisely spell out the details of compliance in a way that will enable reasonable persons to know exactly what actions are required or forbidden." *Konvilinka v. Chattanooga-Hamilton County Hosp.*, 249 S.W.3d 346, 355 (Tenn. 2008). The injunction "must, therefore, be clear, specific and unambiguous." *Id.* at 355.

This Court finds and concludes that the injunction requested here ,which, in effect, adopts and incorporates the entire Act by reference, would lack the precision and

specificity required to enforce such an injunction. In that same regard, a broad injunction requiring Sheriff Spangler to revise the "KCSO's internal public records policy to accord with existing law and these findings, especially his policies regarding compilation, specificity, even if this requires creation of a new software... [and forbidding] employees from misrepresenting the records KCSO actually possesses," would lack the precision and specificity required for enforcement. Moreover, the written public records policy before the court was not adopted by the KCSO but by the Knox County Commission, Trial Exh. 7, other than the KCSO's GENERAL ORDERS N0s. 1-001 and1-026, Trial Exhs. 14 & 13, pertaining to email retention.

The proposed relief that the KCSO set up policies and infrastructure compliant with the Act within 10 days embodies an unreasonable time frame. Also, using the entire Act to define the injunctive relief would render the injunction unenforceable under the *Konvalinka* case.

The Act does not contain provisions for punitive actions against a governmental entity other than perhaps the provision for an award of costs, including attorney's fees, incurred by a citizen in obtaining access to a public record that the governmental entity knew was a public record and willfully failed to disclose. The Act does not authorize the court to issue a broad and blanket injunction for the purpose of placing the court's contempt power behind undefined, prospective, future violations of the Act. However, any failure to comply with the specific and precise orders of this court will be enforceable by the court's contempt power. This opinion may also be used on the issue of willfulness in the event of any future violations of the Act concerning the matters addressed herein.

Proposed Relief

6. That upon denying a record request, KCSO must issue to the requesting citizen a written statement explaining precisely why their request was denied. If no records were found, KCSO must issue to the requesting citizen a list of the steps taken in the attempt to find the records. Any written statement must be signed by the record custodian. KCSO must keep a record of how many record request denials it makes each month. This injunction shall remain in place until further notice.

This proposed relief goes beyond the statutory procedure. This Court finds and concludes that the statutory procedure is reasonable and satisfactory. That procedure is set out in Tenn. Code Ann. § 10-7-503(a)(2)(B). The proposed procedure was not raised during the course of the hearing. The proposal that the "KCSO must keep a record of how many record request denials it makes each month" is already addressed by the procedure in Tenn. Code Ann. § 10-7-503(a)(2)(B) that each such denial be in writing and the overall requirement of the Act that each such denial be kept as a public record and open for access to citizens.

The relief proposed in Professor Conley's proposed findings and conclusions, as written, bears little resemblance to that requested, as written, in her petition. The propriety of the injunctive relief, as reasonable, considering the expense to the taxpayers in complying with the proposed orders and the ability otherwise of the KCSO or Knox County to comply with Professor Conley's proposed relief, was minimally addressed at the hearing. The relief, as requested in the prayers contained in Professor Conley's petition, is more reasonable. The Court will address that relief as within the relief actually granted by the Court below.

This Court's Relief

This Court will enter an order with the following provisions:

(1) That the KCSO shall comply with the provisions of Tenn. Code Ann. § 10-7-503 (a)(2)(B) as follows: "by promptly [making] available for inspection any public record not specifically exempt from disclosure" or "[i]n the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days: (i) [m]ake the information available to the requestor; (ii) [d]eny the request in writing or by completing a records request response form developed by the office of open records counsel. Response shall include the basis for the denial; or (iii) [f]urnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information."

(2) That the KCSO shall produce to Professor Conley's counsel, Andrew Fels, within the next 7 (seven) business days, any and all emails, including archived emails, for the period of January 1, 2019 thru March 8, 2019, more than 30 days old as of March 8, 2019, "within and among personnel of the Knox County Sheriff's office (Tom Spangler, Bernie Lion, Kimberly Glenn, William Purvis, Brian Bivens) DHS agencies and subagencies including ICE (with email addresses ending @ice.dhs.gov)" or respond to Professor Conley's counsel, Andrew Fels, in writing, within the next seven (7) business days, that KCSO has searched and found no such public record not produced.

(3) That the KCSO is prohibited from treating any written request for inspection or copies generally phrased in terms of information sought as insufficient for lack of specificity or detail.

(4) That the KCSO, within the next 30 days, shall begin steps to implement a system, either manually or through a computer program or system, that will enable it to produce its arrest records on a current basis for inspection and viewing by citizens with the confidential information redacted and shall complete implementation of the manual system or computer program or system within a reasonable period of time;

(5) That the petitioner is entitled to an award of costs, including attorney's fees, incurred in obtaining the relief in paragraphs (2) & (4) above, with the amount of the costs to be determined at a further hearing;

(6) That the costs of this cause are taxed to the defendant is in his official capacity and not as an individual; and

(7) That the time limits in paragraph 4 or this Order are tolled and suspended for so long as any executive order of the Governor of this State or order of the Health Department of Knox County mandates the closure of nonessential business to the public.

Signed this 9th day of April, 2020.

John F. Weaver
CHANCELLOR

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was placed in the United States Mail, postage prepaid to:

Andrew C. Fels, Esq.
125 S. Central Street, Suite 203
Knoxville, TN 37902

Amanda Lynn Morse
David L. Buuck
Deputy Law Directors
400 Main Street, Suite 612
Knoxville, TN 37902

This 9th day of April, 2020.

Howard G. Hogan by:

Howard G. Hogan
Clerk and Master