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

MEGHAN CONLEY,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 197897-1**
	)	
KNOX COUNTY SHERIFF TOM SPANGLER,	)	
	)	
Respondent.	)	

Response to Sheriff Spangler's Rule 59 Motion to Alter or Amend

Sheriff Spangler's motion should not be granted. This Court's order is comprehensible and accords with the Tennessee Public Record Act. Sheriff Spangler would have this Court alter its order so as to violate the constitutional tenets of justiciability twice, first by ruling on a hypothetical dispute on redaction fees and then by issuing an advisory opinion on future record requests. The Office of Open Record Counsel can provide Sheriff Spangler with any further clarification he requires. This Court had ample evidence to make a finding of willfulness and to award attorney fees. The newly discovered documents in Attachment A provide further support for this conclusion.

I. No court in the state of Tennessee can rule on Sheriff Spangler's fictional dispute over redaction fees.

The only inspection issue presented in this case is that the KCSO, under Sheriff Spangler's leadership, bars all citizen inspection of arrest reports under any circumstances whatsoever. *See Attachment 3* (November 30, 2018 email from Hillary Martin to Meghan Conley) ("Unfortunately, we don't have a system that allows the public to inspect arrest report."); *see also* Transcript of December 10, 2019, page 58 (Hillary Martin is unable to recall seeing a single record inspection during her fourteen years as a KCSO employee).

Sheriff Spangler now asks this Court to alter its judgement to address what *might* have happened had Professor Conley's inspection request been granted on the condition that she pay redaction fees and if she then refused to pay those redaction fees.

This case has nothing to do with redaction fees. As this Court observed in its opinion, "there is nothing in Professor Conley's petition concerning redaction," she "seeks no relief . . . pertaining to redaction," and KCSO "has never assessed a charge to Professor Conley for redaction." Memorandum Opinion, page 24. Indeed, the PRA requires that a record custodian provide a written explanation for denying a record request, *see* Tenn. Code Ann. section 10-7-503(a)(2)(B)(ii), but when Hillary Martin denied Professor Conley's inspection request in a November 30, 2018 email, she made no mention of redaction fees. *See also* Petitioner's Proposed Findings of Fact, ¶¶ 69-70. Sheriff Spangler even agrees that KCSO "did not inform [Professor] Conley she would be able to inspect all arrest reports if she was willing to pay the fee for redacting the reports prior to inspection (page 21).

Like its federal counterpart, our state constitution's justiciability doctrine requires courts to address only "real and existing" legal controversies between adverse parties and prohibits advisory opinions on "theoretical or abstract" disputes not presented by a case's facts. *See Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cty.*, 301 S.W.3d 196, 203, 206 (Tenn. 2009) (describing justiciability doctrine and separation of powers justification); *see also State v. Walls*, 537 S.W.3d 892, 906-07 (Tenn. 2017) (delineating boundary between justiciable and non-justiciable issues) (Lee, J. concurring); *State ex rel. Lewis v. State*, 347 S.W.2d 47, 48 (1961) (expounding on the limits of justiciability). A justiciable issue requires an actual controversy with legally protectable interests at stake. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000) (citing *Cummings v. Beeler*, 189 Tenn. 151, 223 S.W.2d 913, 915 (1949)).

By asking for resolution of a controversy that has not arisen, Sheriff Spangler requests this Court "to determine an abstract question which does not rest on existing facts or rights" and thus falls outside the boundaries of justiciability. *Id.*

Even if the constitution were retroactively amended, Sheriff Spangler is wrong on the merits because even under prior law, no redaction fees can be charged for inspections. As previously discussed in other filings, any PRA fees charged to citizens seeking records must be based on the schedule of fees set by the Office of Open Records Counsel. That schedule only applies to "copies," not inspections. *See* Tenn. Code Ann. § 8-4-604 (a)(1)(A) (authorizing the OORC to create a "schedule of reasonable charges that a records custodian may use as a guideline to charge a citizen ***requesting copies*** of public records").

II. Paragraph 3 of this Court's order accords with section 10-7-503(a)(4)'s requirement that citizen requests need only include enough information to permit identification of responsive records.

Similar to many responses to Professor Conley's record requests, Sheriff's Spangler's motion to amend attacks this Court's order by simultaneously claiming that paragraph 3 must be clarified because it cannot be understood yet, at the same, it would impermissibly "force the KCSO to ignore the plain language of the statute" and "exclude the KCSO from ever informing a citizen that a request lacks the detail required by the [PRA]." (Resp. Mo. To Amend, p. 1-3).

The order does no such thing.

Paragraph 3 reads in full: "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."

This imposes no special burden on Sheriff Spangler but instead clarifies that a request is not automatically "insufficient for lack of specificity or detail" merely because it is "generally phrased in terms of information sought." If Sheriff Spangler's custodians can identify some records responsive to a categorical request, that request is sufficiently detailed.

A. Categorical requests are clearly permissible.

As a threshold matter, the need and relevance of a convoluted discussion of case law or unrelated federal statutory schemes (like FOIA), is foreclosed by the statute's plain language. When statutory language clearly expresses the legislature's intent, the statute's plain language is applied as it is commonly understood without reference to legislative history, case law, or other sources. *See State v. Perrier*, 536 S.W.3d 388, 397 (Tenn. 2017) (quoting *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009) ("When statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would extend the meaning of the language[,] and . . . enforce the language without reference to the broader statutory intent, legislative history, or other sources.").

Section 10-7-503(a)(4) clearly divides the burdens borne by a requesting citizen and a governmental entity: a citizen's record "request . . . shall be sufficiently detailed to enable *the governmental entity to identify the specific records."* The citizen is not required to "identify the specific records." That task is for the governmental entity. The statute only requires the citizen's request to be sufficiently detailed so as to permit the governmental entity to find the responsive records. Requests "*generally phrased in terms of information [a citizen] seeks* rather than [naming] specific documents" are permissible and routinely granted. *Hickman v. Tennessee Bd. of Probation and Parole*, M200102346-COA-R3-CV, 2003 WL 724474, at *11 (Tenn. App. Mar. 4, 2003); s*ee, e.g.*, *Memphis Publg. Co. v. Cherokee*, 87 S.W.3d 67, 72 (Tenn. 2002) (requesting "[r]ecords documenting any and all payments to officers and directors of Cherokee since January 1, 1997").

Sheriff Spangler's record custodians routinely denied categorical requests solely on the grounds that they contained the words "any" or "all." To borrow the words of the statute and the order, they were

effectively *treating* the categorical requests as insufficiently specific regardless of whether responsive records could be identified. This is precisely the kind of behavior that section 10-7-503(a)(4) forbids and paragraph 3 will prevent. As shown below, there were many instances in which Professor Conley's categorical requests should have been more than sufficient to enable identification of her requested documents.

Without support or clarification, Sheriff Spangler claims that *Hickman* was effectively eviscerated by the 2008 amendment adding the specificity clause to section 10-7-503(a)(4). No court has recognized *Hickman* as overruled. The specificity clause stands only for only the common-sense proposition that no one can disclose records they cannot identify. This presents no conflict with *Hickman*.

III. Contrary to Sheriff Spangler's repeated assertions, the PRA does not contain an "all or nothing" provision.

Like the governmental entity in *Hickman*, Sheriff Spangler "has not told us . . . that [he] is unable to identify the records requested," but instead yet again claims that answering Professor Conley's requests would require sorting through "every single record" of the 1,100 KCSO employees. *See Hickman v. Tennessee Bd. of Probation and Parole*, M200102346COAR3CV, 2003 WL 724474, at *11 (Tenn. App. Mar. 4, 2003); Resp. Mo. to Alter, p. 2.

Sheriff Spangler has not and cannot point to any provision of the PRA allowing him to avoid disclosing any records at all simply because he cannot guarantee disclosure of all responsive records. No one can guarantee that they have supplied all responsive records. This is not what the PRA requires. The PRA requires only that "a citizen can sufficiently identify the documents which he wishes to obtain copies of so as to enable the custodian of the records to know which documents are to be copied." *Waller v.*

Bryan, 16 S.W.3d 770, 774 (Tenn. App. 1999). As discussed below, the requirement for disclosure is being able to identify the responsive documents.

IV. The newly discovered ICE and KCSO records in Attachment A contain documents that should have bene disclosed to Professor Conley, supporting this Court's finding that Sheriff Spangler engaged in willful violations of the PRA.

As a preliminary matter, the documents in Attachment A were disclosed by KCSO's own record custodians in response to a May 2020 public record request that was not made by or at the behest of Professor Conley or her counsel. Judicial notice of public records is appropriate, should it be required. *See State v. Lawson*, 291 S.W.3d 864, 870 (Tenn. 2009).

The records contained in attachment A provide sharp perspective on the close working relationship between ICE and KCSO (and Knox County), including invoices for KCSOs detention services, tens of thousands of dollars in transactions, emails, shared records, and the IGSA negotiations, all spanning from June of 2018 up until May of 2020. These are the kinds of documents Professor Conley sought.

With the exception of the 2013 IGSA, KCSO disclosed none of the Attachment A records responsive to Professor Conley's August 3 and November 8, 2018 requests: for "public records created on or after June 21, 2013 regarding an intergovernmental service agreement (IGSA) related to detention, transportation, or other services that currently exists or is currently being considered between" KCSO and ICE.

A. Mike Ruble and KCSO were negotiating the signing of an IGSA with ICE while denying Professor Conley's requests for IGSA records.

KCSO should, at minimum, have divulged the email correspondence between ICE and KCSO, including Mike Ruble, over IGSA 74-13-0015. Those emails include those sent on June 28, 2018, (p. 85) that were made on September 28, 2018 (p. 79), October 1, 2018 (p. 124) and November 7 and 9, 2018 (p. 94-95). "74-13-0015" is the contract number for both the 2013 and 2018 ICE IGSAs presented at trial. This correspondence seems to show that between July and November of 2018, ICE never had an IGSA with KCSO (p. 94). Attachment A also shows that Ruble a major contact point and dealt directly with ICE and would have had actual and constructive notice of the ICE-KCSO IGSA negotiations.

B. Ruble and KCSO were still negotiating an IGSA with ICE even after the 2018 Jones IGSA was supposedly in effect.

Attachment A raises many factual questions about Sheriff Spangler's case, such as whether the 2018 ICE IGSA signed by JJ Jones on July 19, 2018, was ever actually in effect. The answer seems to be no, as Ruble and ICE were still negotiating an IGSA well into November of 2018, and ICE never turned over the 2018 Jones IGSA in its FOIA response.

The Jones IGSA grew out of the 2013 U.S. Marshalls Service Agreement 74-13-0015—which was itself an IGSA to which ICE was an authorized user—and was supposed to flesh out the terms under which KCSO would receive money from ICE for holding immigrant detainees.

The meaning of IGSA is explained on Page 2 of the KCSO's 287(g) agreement:

> ICE and the KCSO may enter into an Inter-Governmental Service Agreement (IGSA) pursuant to which the KCSO will continue to detain, for a reimbursable fee, aliens for immigration purposes, if ICE so requests, following completion of the alien's criminal incarceration. If ICE and the KCSO enter into an IGSA, the KCSO must meet applicable detention standards.

Page 2 also states that:

> The parties understand that the KCSO will not continue to detain an alien after that alien is eligible for release from the KCSO's custody in accordance with applicable law and KCSO policy . . . absent an IGSA in place as described above.

Yet KCSO received its first payment from ICE for its detention services well before any IGSA was in place.

Ruble had denied the existence of an IGSA with ICE, claiming that the 2013 IGSA was only with the Marshall's Service. *See* Transcript of December 9, 2019, p.70, lines 3-4 ("Did we have an IGSA with ICE?" "No, ma'am. We did not."). He later clarified that he believed an IGSA came into effect July the 19th that "and we gave [Professor Conley] a copy." *Id.* p 80, lines 10-12 (that 2018 Jones IGSA contract went into effect in July of 2018); p. 81, lines 4-7 (that 2018 Jones IGSA the went into effect in July).

The first recorded ICE communication with KCSO was on June 28, 2018, when ICE employee Michelle Britton sent KCSO employee Terry Wilshire an email containing an "executed Task Order for Detention Beds with Knox County Sheriff under Marshall Service Agreement 74-13-0015."[1] ICE's FOIA response contains this task order, dated June 28, 2018. It pays KCSO $10,050.00 for detention services. *See* ICE FOIA 2020-ICFO-02220, p. 1-8.

If this were true, the task order seems to show that KCSO was being paid for their detention services *before* an IGSA was in place.

Professor Conley did receive a copy of the Jones IGSA from Ruble in August of 2018. (Attachment 3). However, even after the 2018 Jones IGSA supposedly went into effect, ICE and KCSO, including Ruble, continued to negotiate the signing of an IGSA.

[1] In a September 21, 2018 email to Ruble, Professor Conley requested task orders associated with ICE detentions under "Marshall Service Agreement 74-13-0015 that were signed on or after June 28, 2018."Rather than disclose the June 28, 2018 task order, Ruble's reply email claimed that "[t]he Sheriff's office has no document, policy, or procedure that is entitled "task order." Attachment 3.

On September 28, 2018, ICE employee Michelle Britton sent KCSO employee Hugh Holt an email entitled "Knox County Agreement 74-13-0015," and stating that "the attached document requires a signature to authorize ICE as a rider on U.S. Marshall Service Agreement 74-13-0015 for detention beds space at Knox County." (p. 95) Hugh Holt later emails Mike Ruble and Mitzi Evans, saying that KCSO would be in "jeopardy of not being reimbursed for the services we have already rendered to ICE unless they receive the original signed agreement attached to this email by close of business day." (p. 95) Ruble responds by email to Britton the same day, acknowledging receipt of the "contract to authorize ICE as a rider," that it was being reviewed by the Knox County Law Director's Office, and KCSO would "be in touch with your office as soon as the contract is executed." (p. 95).

On November 7, 2018, Britton emailed Ruble directly to ask for a "status update on ICE receiving the signed Agreement by COB Friday November 9, 2018" and that "ICE has been funding this agreement without a signed order." KCSO employee Hugh Holt responded that he "spoke with Chief Ruble and he has informed me that your agreement is still under review by our Law Department. "

C. *ICE's FOIA response did not include the 2018 Jones IGSA.*

Unless KCSO had no effective agreement with ICE as late as November of 2018, it is unclear why ICE would urgently seek an agreement fulfilling the same function as the 2018 Jones IGSA. Yet this may be the case; when asked for its IGSAs with KCSO, ICE did not supply the 2018 Jones IGSA. Instead, it sent a redacted IGSA stamped as approved by the Knox County Law Director's Office and signed on November 19, 2018 by someone with an address matching that of the Knox County Mayor. *See* 2020-ICFO-02220, p. 13-14. This IGSA matches the description of the document sent to KCSO in September of 2018. Attachment A, p.131 (describing the ICE IGSA as two pages out of sixteen). Attachment A also contains a 2019 ICE IGSA signed by Mayor Glenn Jacobs. (p. 15)

Attachment A raises other factual issues, although they need not be addressed here. *See* Transcript of December 9, 2019, p.84, lines 12-16 (that "[c]onversations that she asked,for [IGSA] negotiations, if there are any, would be between Captain Wilshire."; p.86 (denying KCSO's ability to have its employees disgorge responsive records); January 30, 2020, p.43 (that KCSO received no payments from ICE before the signing of a 2018 IGSA).

Whatever the nature of the ICE-KCSO/Knox County arrangement, Ruble was engaged in regular communication with ICE in order to negotiate the signing of the November 19, 2018 Jacobs IGSA. Professor Conley's categorical request for IGSA documents should have alerted him to the fact that she wanted KCSO's email correspondence with ICE regarding the IGSA. That he understood what she requested satisfies the PRA's specificity requirement. The June 28, 2018 email and task order should have been divulged to in response to Professor Conley's August 2018 request. The documents passed between Ruble and Britton in September of 2018 should have been divulged in response to Professor Conley's November 8, 2018 request for IGSA contracts "currently being considered," as should the responsive KCSO and ICE correspondence.

These facts support the Court's finding that Sheriff Spangler engaged in the willful denial of public records requests.

V. Sheriff Spangler's request for "clarification" invites this Court to issue a constitutionally prohibited advisory opinion.

By "asking this Court to clarify what requests it *would* deem as lacking sufficient detail," Resp. Mo. To Alter, p. 2, Sheriff Spangler once again invites this Court to breach the constitutional limits of justiciability, this time by "project[ing] [itself] into the limitless field of advisory opinions." *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000) (quoting *Story v. Walker*, 218 Tenn. 605, 404 S.W.2d 803, 804 (1966)). Yet another form of justiciability violation, an advisory opinion

is one attempting to adjudicate issues that are "abstract, theoretical or based on a contingency which may or may not arise." *State ex rel. Lewis v. State*, 208 Tenn. 534, 538 (1961). "[T]he province of a court is to decide, not advise, and to settle rights, not to give abstract opinions. *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam County*, 301 S.W.3d 196, 203 (Tenn. 2009) (citing *State v. Wilson*, 70 Tenn. 204, 210 (1879)). Explaining to Sheriff Spangler how this Court would rule on "future requests," Resp. Mo. to Alter, p. 2, would be an advisory opinion.

VI. The statutorily created Office of Open Records exists to clarify the Public Records Act for elected officials like Sheriff Spangler.

A proper institution already exists for clarifying Sheriff Spangler's questions regarding public record policy. The state legislature "created the office of open records counsel ["OORC"] to answer questions and provide information to public officials and the public regarding public records." Tenn. Code Ann. § 8-4-601(a). The OORC "shall answer questions and issue informal advisory opinions as expeditiously as possible to any person, including local government officials" like Sheriff Spangler. Tenn. Code Ann. § 8-4-601(b). As ordered by statute, the OORC has developed "model best practices and public records policy for use by a records custodian in compliance with § 10-7-503" that are "available on the Internet."[2] Tenn. Code Ann. § 8-4-604(a)(4), (b).

The OORC's website features provides PRA clarification in the form of advisory opinions, model forms and policies, mediation services, and contact information for securing further advice.

Sheriff Spangler is well-aware of the existence of the OORC, even going so far as to claim that "[a]ll guidance from the Open Records Counsel's Office supports the KCSO position on "specificity." Resp. Mo. to Alter, p. 4.

[2] https://comptroller.tn.gov/office-functions/open-records-counsel.html

Because Sheriff Spangler is aware that the OORC exists and provides advice on implementing the PRA, no further clarification is required from this Court.

VII. Paragraph 4 does not require Sheriff Spangler to make all arrest reports immediately available.

Sheriff Spangler repeatedly claims that this Court's order requires him to immediately grant citizen requests to inspect arrest records. (page 12, 18).

The order does no such thing.

VIII. Satisfying Order Paragraph 2 Requires a Written Denial from Sheriff Spangler or his record custodian.

Order paragraph 2 requires KCSO to disclose certain requested records. If those records do not exist, Professor Conley's counsel must be provided a written response stating "that KCSO has searched and found no such public record not produced."

Through counsel, Sheriff Spangler claims to possess no documents responsive to paragraph 2. A written response from Sheriff Spangler's counsel cannot satisfy paragraph 2. As the sole respondent, precedent seems to indicate that it is Sheriff Spangler, not his counsel or employees, who should provide the written denial of Professor Conley's request. *See Moody v. Hutchison*, 159 S.W.3d 15, 18 (Tenn. Ct. App. 2004). However, the statute also contemplates that a written denial may be given by an elected official's record custodian, which would accord with the orders specification that the writing come from KCSO.

IX. Conclusion

The issues contested here have already been the subject of a lengthy hearing and careful deliberation. Sheriff Spangler has presented no reason for this Court to revise its order. His motion should be denied.

Respectfully submitted, this 24th day of June, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on David Buuck, Chief Deputy Law Director and Respondent's attorney, or Amanda Morse, 400 Main Street, Suite 612, Knoxville, TN, 37902, this the 24th day of June, 2020.

( ) Hand
( ) Mail
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_____
ANDREW FELS