

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

TENNESSEE DEMOCRATIC PARTY and)
MARQUITA BRADSHAW FOR SENATE,)

Plaintiffs,)

v.)

No. 20-1073-I

MARK GOINS, Coordinator of Elections)
and TRE HARGETT, Secretary of State for)
the State of Tennessee, each in their official)
capacity for the State of Tennessee,)

Defendants.)

**DEFENDANTS' RESPONSE IN OPPOSITION TO MOTION FOR EMERGENCY
TEMPORARY RESTRAINING ORDER**

Come the Defendants, Tre Hargett, Secretary of State for the State of Tennessee, and Mark Goins, Coordinator of Elections for the State of Tennessee, in their official capacities and through their counsel of record, the Attorney General and Reporter for the State of Tennessee, and hereby submit this Response in Opposition to Plaintiffs' Motion for Emergency Temporary Restraining Order.

INTRODUCTION AND BACKGROUND

This lawsuit – at its core – is nothing more than a lawsuit under Tennessee's Public Records Act, Tenn. Code Ann. §§ 10-7-503, *et seq.*, and one in which Plaintiffs are not entitled to any of the relief sought.

Plaintiffs initially allege that on Friday, October 30, the "Bradshaw Campaign requested from county election commission's across the State of Tennessee to be provided absentee voter information [to provide mail-in absentee voter information], specifically the Bradshaw Campaign

requested to be provided the names of individuals that have requested a mail-in ballot but have yet to return such a ballot.”¹ Compl. at ¶ 7. Plaintiffs allege that while Knox County provided this information, “virtually all other counties have denied these requests.” *Id.* at ¶ 8. However, Plaintiffs subsequently contradict themselves and allege that they only “submitted an open records request to Defendants Linda Phillips, Jeff Roberts, Maybell Stewart and Kim Buckley and requested that Defendants provide them with information concerning the information for voters who had not returned their absentee ballot to their respective election commission offices.”²

Plaintiffs then allege that the Bradshaw Campaign “contacted the offices of Defendants Tre Hargett and Mark Goins and were told that they would not provide the requested information.” *Id.* at ¶¶ 9 and 18. Plaintiffs further allege—“upon information and belief”—that the Defendants “directed other Election Administrators throughout the State of Tennessee to not provide the requested information concerning unreturned absentee ballots in direct violation of Tennessee law.” *Id.* at ¶ 19.

Despite their alleged urgent need for the requested information, Plaintiff waited until Sunday, November 1 to file this suit, asking for extraordinary relief under multiple state statutes, including the Tennessee Open Meetings Act, the Tennessee Public Records Act, and Tenn. Code Ann. § 1-3-121. But as discussed further herein, Plaintiffs have failed to state a claim for relief, much less extraordinary relief, under these statutes and such request should be denied in its entirety.

¹ It is significant to note that Plaintiffs do not include a copy of any written request that was submitted to any of the 95 county election commissions.

² Linda Phillips is the Administrator of Elections for Shelby County; Jeff Roberts is the Administrator of Elections for Davidson County; Maybell Stewart is the Administrator of Elections for Washington County; and Kim Buckley is the Administrator of Elections for Madison County. Although characterized as “Defendants”, none of these individuals have actually been named as parties to this lawsuit.

STANDARD OF REVIEW FOR INJUNCTIVE RELIEF

Tennessee courts have long recognized that a temporary injunction is an “extraordinary equitable” remedy that should be granted “with great caution.” *See, e.g., Hall v. Britton*, 292 S.W.2d 524, 531 (1953); *Galyon v. First Tennessee Bank Nat. Ass’n*, No. 03A01-9106CH00219, 1991 WL 259473, at *1 (Tenn. Ct. App. Dec. 11, 1991) (noting that “injunctive relief” is “an extraordinary equitable remedy”). For that reason, “the decision to grant an injunction should not be a perfunctory one.” *Alexandria-Williams v. Goins*, No. W2018-01024-COA-R10-CV, 2018 WL 3198799, at *2 (Tenn. Ct. App. June 26, 2018). Indeed, “there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion or is more dangerous in a doubtful case.” *Id.* (quoting *Mabry v. Ross*, 48 Tenn. 769, 774 (1870)). Moreover, the usual office of an injunction is to restrain actual or threatened acts which are injurious to a party’s rights and not to compel actions. Thus, the rule is that a mandatory injunction should not be granted except in extreme cases. *See King v. Elrod*, 268 S.W.2d 103, 106 (Tenn. 1953) (holding that the “case in which a mandatory injunction is granted by the Chancellor should be a clear one and show that the only real remedy that the party asking the mandatory injunction has is the injunction”).

In light of these principles, the Tennessee Rules of Civil Procedure permit awards of injunctive relief only where “it is clearly shown by verified complaint, affidavit or other evidence that the movant’s rights are being or will be violated by an adverse party” and that “the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.” Tenn. R. Civ. P. 65.04. When considering requests for injunctive relief under this rule, Tennessee trial courts—like their federal counterparts—consider four factors: “(1) the threat

of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.” *Moody v. Hutchison*, 247 S.W.3d 187, 199–200 (Tenn. Ct. App. 2007); *see also S. Cent. Tennessee R.R. Auth. v. Harakas*, 44 S.W.3d 912, 919 n.6 (Tenn. Ct. App. 2000) (recognizing that this “four-factor test” is “[t]he most common description of the standard for preliminary injunction in federal and state courts”). The burden is on the movant to demonstrate that these factors weigh in favor of granting injunctive relief. *See e.g. Hughes v. Tenn. Dep’t of Corr.*, No. M2016-02212-COA-R3-CV, 2017 WL 4125378, at *4 (Tenn. Ct. App. Sep. 18, 2017). Here, Plaintiffs have failed to meet that burden.

ARGUMENT

I. Plaintiffs Cannot Demonstrate Any Likelihood of Success on the Merits

A. Plaintiffs cannot state a claim for relief under the Tennessee Public Records Act or Tenn. Code Ann. § 2-6-202(c)(6).

Plaintiffs argue that, pursuant to the language of Tenn. Code Ann. § 2-6-202(c)(6), the “absentee records become subject to a prompt inspection” under the Public Records Act, Tenn. Code Ann. § 10-7-503(a)(2)(B). Compl. at ¶ 16. In making this argument, Plaintiffs have grossly mischaracterized both statutes. More importantly, however, Plaintiffs have failed to demonstrate that they are entitled to any relief under the Public Records Act as against the Defendants.

Tenn. Code Ann. § 10-7-505(a) provides that “[a]ny citizen of Tennessee who shall request the right of personal inspection of any state . . . record as provided in § 10-7-503, and whose request has been in whole or in part denied by the official and/or designee of the official . . . shall be entitled to petition for access to any such record and to obtain judicial review of the actions taken to deny the access.” Thus, a necessary predicate to filing a petition for access and judicial review under the Public Records Act is that the citizen must have first made a public records request to a

governmental entity or official and had that request denied in part or in whole. Plaintiffs have not done so. Rather, as the attached declaration of Defendant Goins reflects, no one with either the Tennessee Democratic Party or the Bradshaw for Senate campaign has submitted a public records request to his office or have otherwise contacted his office requesting information about absentee-ballot voters. *See* Declaration of Mark Goins attached as Exhibit 1 and incorporated herein. Similarly, no such public records request was submitted to the Secretary of State's Office. *See* Declaration of Mary Beth Thomas attached as Exhibit 2 and incorporated herein by this reference.

Thus, having made no request under the Public Records Act to either Defendant, Plaintiffs have no standing to bring an action for access to such records under the Act and any request for injunctive relief pursuant to the Act or Tenn. Code Ann. § 2-6-202(c)(6) should be denied.

Moreover, even assuming that Plaintiffs had made a public records request, their claims are still must fail as neither Tenn. Code Ann. § 2-6-202(c)(6) nor Tenn. Code Ann. § 10-7-503(a)(2)(B) establish that the requested records must immediately be made available for inspection. Tenn. Code Ann. § 10-7-503(a)(2)(A) provides that “[a]ll state, county and municipal records shall, at all times during business hours, . . . be open for personal inspection by any citizen of this state . . . unless otherwise provided by state law.” The language of Tenn. Code Ann. § 2-6-202(c)(6) plainly demonstrates that it is a state law that provides “otherwise” as to the openness of “absentee requests and applications.” Specifically, the statute provides that “[a]ny information regarding absentee requests and applications shall be confidential and not subject to the open records law, compiled in title 10, chapter 7, until the end of the early voting period.”

Pursuant to this statute, any information regarding *applications and requests* for absentee ballots is confidential and not subject to disclosure or inspection under the Public Records Act until the end of early voting period. But Plaintiffs did not request information about applications

and requests for absentee ballots; they requested information about voters who had not yet submitted their absentee ballots. Regardless, nothing in the language of this statute required that information about applications and requests for absentee ballots be made immediately available after the end of the early voting period.

Similarly, the Public Records Act also does not require that the information be made immediately available. Rather, Tenn. Code Ann. § 10-7-503(a)(2)(B) provides that:

The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. *In the event it is not practicable for the records to be promptly available for inspection*, the custodian shall, within seven (7) business days:

- (i) Make the information available to the requestor;
- (ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or
- (iii) Furnish the requestor in writing, or by completing a records request response form developed by the office of open records counsel, the time reasonably necessary to produce the record or information.

In construing this language, Tennessee appellate courts have recognized that, while the Act requires records custodians to make records “promptly” available for inspection upon request, it is only if it is practicable for the records custodian to do so. *See Noe v. Solid Waste Bd. of Hamblen Cty./Morristown*, No. E201700255COAR3CV, 2018 WL 4057251, at *4 (Tenn. Ct. App. Aug. 27, 2018) (“The TPRA does not require that a records custodian make a record immediately available upon receipt of a request; dropping what the custodian is doing at the time of the request to find a record may be impractical.”); *Taylor v. Town of Lynnville*, No. M2016-01393-COA-R3-CV, 2017 WL 298194, at *3 (Tenn. Ct. App. July 13, 2017) (noting that under the TPRA, the legislative mandate to make records available for inspection “is not absolute”); *Kersey v. Bratcher*, 253 S.W.3d 625, 630 (Tenn. Ct. App. 2007) (“While members of the public have the right to view a

public record, our General Assembly has not given them either the right to demand that such viewing be done strictly on their terms or the right to disrupt the functioning of a public official's office to the detriment of all other citizens of this state.”). Here, had Defendants actually received a public records request from the Plaintiffs, it would not have been practical for Defendants to make the information promptly available, given all their duties and responsibilities in preparing for the November 3rd election day. *See* Exh. 1, Goins Declr.

In short, Plaintiffs never made a public records request to either Defendant—and had such request been made, the only evidence in the record demonstrates that it would not have been practicable for Defendants to make such information promptly available. Accordingly, Plaintiffs have not met their burden of demonstrating any likelihood of success on the merits of their claim for relief under Tenn. Code Ann. § 2-6-202(c)(6) and the Tennessee Public Records Act.

B. Plaintiffs are not entitled to injunctive relief under the Tennessee Open Meetings Act.

As part of their requested relief, Plaintiffs have sought an injunction pursuant to Tenn. Code Ann. § 8-44-106(c), which authorizes a court to enjoin any person from further violations of the Tennessee Open Meetings Act. But the Tennessee Open Meetings Act, Tenn. Code Ann. §§ 8-44-101, *et seq.*, only applies to meetings of a governing body. *See* Tenn. Code Ann. § 8-44-102(a). “Governing body” is defined as the “members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration” and a “meeting” is defined as “the convening of a government body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Tenn. Code Ann. § 8-44-102(b)(1)(A) and (b)(2).

Neither Defendant Hargett nor Defendant Goins is a “governing body” as defined by the Act; they are both state officials. Defendant Hargett is the duly-elected Secretary of State for the

State of Tennessee and Defendant Goins is the duly-appointed Coordinator of Elections for the State of Tennessee. As state officials, neither Defendant is subject to the Open Meetings Act and, therefore, consequently, this Court is without jurisdiction to grant Plaintiffs any requested injunctive relief under that Act.

C. Plaintiffs' claims under Tenn. Code Ann. § 1-3-121 are barred by sovereign immunity.

Plaintiff also seek declaratory and injunctive relief against the Defendants under Tenn. Code Ann. § 1-3-121, which provides as follows:

Notwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action.

But Plaintiff's claim under this statute are barred by sovereign immunity.

Courts will interpret a statute as waiving the State's sovereign immunity only if the legislation waives sovereign immunity "in 'plain, clear, and unmistakable' terms." *Smith v. Tennessee National Guard*, 551 S.W.3d 702, 709 (Tenn. 2018) (internal citations omitted). Thus, a statute waiving sovereign immunity must "clearly and unmistakably" express the General Assembly's intent to permit claims against the State. *Id.* (internal citations omitted). In determining whether a statute meets this standard, courts should focus "on the actual words chosen and enacted by the legislature." *Mullins v. State*, 320 S.W.3d 273, 283 (Tenn. 2010). Moreover, statutes permitting suits against the State must be strictly construed, *Moreno v. City of Clarksville*, 479 S.W.3d 795, 810 (Tenn. 2015), as Courts lack authority to abrogate the State's sovereign immunity and must avoid inadvertently broadening the scope of legislation authorizing suits or claims against the State, *Hill v. Beeler*, 286 S.W.2d at 869.

Nothing in Tenn. Code Ann. § 1-3-121 “clearly and unmistakably” permits claims against the State. While Plaintiffs may point to the general language of the statute referring to “governmental” action, this language does not mention the State. And the “traditional construction” of Tennessee’s constitutional provision regarding sovereign immunity “is that suits cannot be brought against the State unless explicitly authorized by state.” *Colonial Pipeline*, 263 S.W.3d at 849. Moreover ““general statutes do not apply to, or affect, the State, unless they expressly so provide.”” *Bratcher v. Hubler*, 508 S.W.3d 206, 210 (Tenn. Ct. App. 2015) (quoting *Lynn v. City of Jackson*, 63 S.W.3d 332, 337 (Tenn. 2001)).

Section 1-3-121 does not contain an explicit waiver of sovereign immunity, because it does not “clearly and unmistakably disclos[e] an intent upon the part of the Legislature to permit” a declaratory judgment action against a State official. *Davidson v. Lewis Bros. Bakery*, 227 S.W.3d 17, 19 (Tenn. 2007). *See* TR Vol. 4 at 620 (chancery court finding that the statute “does not represent a specific waiver or a particular waiver with regard to sovereign immunity”). Accordingly, to the extent Plaintiffs seek declaratory and injunctive relief against the Defendants under § 1-3-121, such claims are barred by sovereign immunity. *See Tennessee Democratic Party v. Hamilton County Election Commission, et al.*, Hamilton County Chancery Court No. 18-0426 (opinion attached).

II. Plaintiffs Have Failed to Demonstrate Any Immediate and Irreparable Harm.

Plaintiffs assert that the Bradshaw for Senate Campaign will be immediately and irreparably harmed if the requested injunctive relief is not granted because the campaign will be “unable to learn which absentee voters need not be bothered about returning their ballots and which voters may need contact from the campaign and further information.” Plaintiffs’ Motion for PI. But such assertion does not constitute irreparable harm to the Campaign. Furthermore, as Plaintiffs

cannot demonstrate that they have standing under the Public Records Act, they similarly cannot demonstrate that they will suffer any irreparable harm if the requested injunctive relief is not granted.

III. The Requested Injunctive Relief Will Interfere With Ongoing Preparations for the November 3rd Election and is Not in the Public Interest.

It is undisputed that the November 3rd General Election is (as of the hearing in this case) less than twenty-four hours away and both State and county election commissions are fully engaged in preparing for that election. Given the myriad of duties that must be performed in order to ensure a fair election, along with the added stress of addressing the unique circumstances of the COVID-19 pandemic, the requested injunctive relief would severely interfere with their performance of those duties and potentially jeopardize the integrity of the election.

This case is ultimately a request for access to public records under the Public Records Act. And while the General Assembly has given citizens that statutory right, as the Court of Appeals has recognized, the General Assembly has not given them “the right to demand that such [access] be done strictly on their terms or the right to disrupt the functioning of a public official’s office to the detriment of all other citizens of this state.” *Kersey*, 253 S.W.3d at 630. Here, that is exactly what the requested injunctive relief would do—it would disrupt the functioning of the State Election Coordinator’s office in preparing for the November 3rd election to the detriment of all other citizens of this State. Accordingly, such request should be denied.

CONCLUSION

For these reasons, Defendants would respectfully request that this Court deny Plaintiffs' request for injunctive relief.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

/s/ Janet M. Kleinfelter
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response has been sent by electronic transmission to:

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this 1st day of November, 2020

/s/ Janet M. Kleinfelter
JANET M. KLEINFELTER

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

TENNESSEE DEMOCRATIC PARTY and)
MARQUITA BRADSHAW FOR SENATE,)

Plaintiffs,)

v.)

No.)

MARK GOINS, Coordinator of Elections)
and TRE HARGETT, Secretary of State for)
the State of Tennessee, each in their official)
capacity for the State of Tennessee,)

Defendants.)

DECLARATION OF MARK GOINS

I, Mark Goins, under penalty of perjury, do hereby declare as follows:

1. My position is Coordinator of Elections for the Division of Elections for the Tennessee Department of State, and I am competent to testify upon personal knowledge regarding the matters set forth herein.

2. I have served as the Coordinator of Elections since February 2009.


3. Plaintiffs allege in in paragraph 8 of their complaint that I and Secretary of State Tre Hargett have directed County Election Commissions across the State to deny requests for information about absentee-ballot voters, specifically, the names of individuals that have requested a mail-in ballot but have yet to return such a ballot in the November 3, 2020 election. This is a false statement. I have not given any such instructions to County Election Commissions across the state.

4. Plaintiffs also allege in paragraph 9 of their Complaint that they contacted "the offices of Defendants Tre Hargett and Mark Goins and were told that they would not provide the requested information." My office has not received a public records request for the information from either the Tennessee Democratic Party or the Bradshaw for Senate campaign requesting information about voters who have not returned their ballots since the end of the early voting period for the November 3, 2020 election. There was no public records request to deny.

5. If I had received a public records request for the information, given all the duties to prepare for the election held on Tuesday preparing the list would not be practical for my office or most county offices. This office has never compiled a list with the requested information.

6. Knox County's voter registration system is unique to Knox County and is different from the other counties. Specifically, Knox County's voter registration system is maintained by staff that include election and non-election information technology staff members who are employees of Knox County. For special requests such as the request mentioned in the complaint Knox County IT compiles the data because Knox County election officials do not have the time to do so.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 1 day of November 2020 at Nashville, Tennessee.


MARK GOINS

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AT NASHVILLE

TENNESSEE DEMOCRATIC PARTY and)
MARQUITA BRADSHAW FOR SENATE,))
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the State of Tennessee, each in their official)
capacity for the State of Tennessee,)
)
Defendants.)

DECLARATION OF MARY BETH THOMAS

1. My name is Mary Beth Thomas. I am over the age of eighteen and I make this declaration, under penalty of perjury, from my personal knowledge and for use in the above styled case.
2. I serve as the General Counsel for the Department of State. I also serve as the Public Records Request Coordinator for the Department of State.
3. The Department of State has a Public Records Policy that is published on its website at www.sos.tn.gov and is attached hereto as Exhibit A.
4. Pursuant to the Public Records Policy, requests for copies of records of the Department of State must be made to the Public Records Request Coordinator via mail or email at SOS.PRRC@tn.gov. See Public Records Policy, p. 2.

5. As of Sunday, November 1, 2020, I have not received a request to the Department of State from the Tennessee Democratic Party or from Marquita Bradshaw for U.S. Senate for records or information relating to absentee voters who have requested but not yet returned a ballot.

6. I have spoken with my office's Executive Assistant, Julie Jones, who receives all mail on my behalf, and she also confirmed on November 1, 2020 that I have not received any public record requests via mail from the Tennessee Democratic Party or from Marquita Bradshaw for U.S. Senate.

7. I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 1st day of November 2020 at Nashville, Tennessee.

A handwritten signature in black ink, appearing to read "Mary Beth Thomas", is written over a horizontal line.

Mary Beth Thomas

PUBLIC RECORDS POLICY OF THE DEPARTMENT OF STATE

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for The Department of State is hereby adopted to provide economical and efficient access to public records as provided under the Tennessee Public Records Act ("TPRA") in Tenn. Code Ann. § 10-7-501, et seq.

The TPRA provides that all state, county and municipal records shall, at all times during business hours be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any Tennessee citizen, unless otherwise provided by state law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of the Department of State are presumed to be open for inspection unless otherwise provided by law.

Personnel of the Department of State shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Policy shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Department of State, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for the Department of State or to the Tennessee Office of Open Records Counsel ("OORC").

This Policy is available online at www.sos.tn.gov, and shall be reviewed annually. This Policy shall be applied consistently throughout the various divisions of the Department of State; however it shall not apply to any entity that is administratively attached to the Department of State, including the Bureau of Ethics and Campaign Finance, the State Election Commission, or the Tennessee Sports Hall of Fame. Requestors should contact those entities directly concerning public records requests.

I. Definitions:

- A. Records Custodian: The office, official or employee lawfully responsible for the direct custody and care of a public record. See Tenn. Code Ann. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.
- B. Public Records: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. See Tenn. Code Ann. § 10-7-503(a)(1)(A).

- C. Public Records Request Coordinator: The individual, or individuals, designated in Section III, A.3 of this Policy who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. See Tenn. Code Ann. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.
- D. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

II. Requesting Access to Public Records

- A. Public record requests shall be made to the Public Records Request Coordinator ("PRRC") in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- B. Requests for inspection only cannot, by law, be required to be made in writing. The PRRC should request a mailing or email address from the requestor for providing any written communication required under the TPRA.
- C. Requests for inspection only may be made orally in person or by phone at 615-741-2819. Requests may be made in writing using the attached Form A to be submitted to the PRRC at the following address:

Office of the Secretary of State
Attn: General Counsel
State Capitol, 1st Floor
Nashville, TN 37243

Requests may also be emailed to SOS.PRRC@tn.gov.

Requests must be directed to the PRRC. Requests made on social media or as comments on websites operated by the Department of State will not be accepted.

- D. Requests for copies, or requests for inspection and copies, shall be made in writing using the attached Form A to be sent to the PRRC at the following address:

Office of the Secretary of State
Attn: General Counsel
State Capitol, 1st Floor
Nashville, TN 37243

A completed Form A may also be emailed to SOS.PPRC@tn.gov.

- E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of ID) is required as a condition to inspect or receive copies of public records.

III. Responding to Public Records Requests

A. Public Record Request Coordinator

1. The PPRC shall review public record requests and make an initial determination of the following:
 - a. If the requestor provided evidence of Tennessee citizenship, as determined by the PPRC;
 - b. If the records requested are described with sufficient specificity to identify them; and
 - c. If the Department of State is the custodian of the records.
2. The PPRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
 - a. Advise the requestor of this Policy, including:
 - i. The requirement of proof of Tennessee citizenship;
 - ii. Form(s) required for copies;
 - iii. Fees; and
 - iv. Aggregation of multiple or frequent requests.
 - b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:
 - i. The requestor is not, or has not presented evidence of being, a Tennessee citizen.
 - ii. The request lacks specificity.
 - iii. An exemption makes the record not subject to disclosure under the TPRA. The PPRC shall provide the exemption in written denial.

- iv. The Department of State is not the custodian of the requested records; and/or
 - v. The records do not exist.
 - c. If appropriate, contact the requestor to see if the request can be narrowed.
 - d. Forward the records request to the appropriate records custodian in the Department of State.
 - e. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC for that entity if known.
3. The designated PRRC is:
- General Counsel
Secretary of State's Office
State Capitol, 1st Floor
Nashville, TN 37243
(615) 741-2819
SOS.PRRC@tn.gov
4. The PRRC shall report to the governing authority on an annual basis about the Department of State's compliance with the TPRA pursuant to this Policy and shall make recommendations, if any, for improvement or changes to this Policy.

B. Records Custodian

- 1. Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC or the OORC.
- 2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then either the PRRC or the applicable records custodian shall, within seven (7) business days from the PRRC's receipt of the request, send the requestor a

completed Public Records Request Response Form which is attached as Form B based on the form developed by the OORC.

3. If a records custodian or PRRC denies a public record request, he or she shall deny the request in writing as provided in Section III.A.2.b using the Public Records Request Response Form.
4. If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian shall use the Public Records Request Response Form to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian should contact the requestor to see if the request can be narrowed.
5. If, within a time reasonably close to the original request, a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.
2. Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

IV. Inspection of Records

- A. There shall be no charge for inspection of open public records.
- B. The location for inspection of records within the offices of the Department of State should be determined by either the PRRC or the records custodian.

- C. Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

V. Copies of Records

- A. A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- B. Copies will be available for pickup at a location specified by the records custodian or PRRC. Payment will be required prior to production of the records, or prior to production of the records via email to the requestor.
- C. Upon payment for postage and for production costs, copies will be delivered to the requestor's home address by the United States Postal Service if requested.
- D. A requestor will not be allowed to make copies of records with personal equipment.

VI. Fees and Charges and Procedures for Billing and Payment

- A. Fees and charges for copies of public records should not be used to hinder access to public records.
- B. Records custodians shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.
- C. When fees for copies and labor do not exceed \$10.00 per requestor per calendar year, the fees may be waived.
- D. Unless otherwise provided by law, fees and charges for copies are as follows:
 - 1. \$0.15 per page for letter- and legal-size black and white copies.
 - 2. \$0.50 per page for letter- and legal-size color copies.
 - 3. Employee labor expense, when time exceeds 1 hour.
 - 4. If an outside vendor is used, the actual costs assessed by the vendor.
- E. Payment is to be made in cash or check payable to the Department of State, and delivered to the PRRC.

- F. Payment in advance will be required when estimated costs exceed \$10.00.
- G. Records requests in excess of four requests per month from the same requestor may be aggregated for computation of expenses.