

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV

BRIAN MANOOKIAN,)
)
 Petitioner,)
)
 vs.)
)
 OFFICE OF LEGISLATIVE)
 ADMINISTRATION and CONNIE)
 RIDLEY, in her official capacity,)
)
 Respondents.)

F07TT
CASE NO. 23-0637-IV

CLERK & MASTER
DAVIDSON CO. CHANCERY CT
D.C. & M.

2024 JAN -2 PM 3:12

FILED

MEMORANDUM AND FINAL ORDER

A citizen sued the Office of Legislative Administration seeking access to records made or received in the course of a recent sexual harassment investigation involving a former member of the Tennessee House of Representatives (“House”). Petitioner is primarily seeking, records memorializing the state funds spent to relocate a legislative intern as a result of a sexual harassment complaint lodged against a member of the House of Representatives. Respondents did not produce the requested records or respond to Petitioner’s public records requests.

In brief terms, Petitioner urges in part, that the records are public records within the meaning of the Tennessee Public Records Act (“Public Records Act”), that no statutory exemption applies given that the rules and policies of the House of do not constitute “state law” under the Public Records Act’s catchall exception, and that any contention that the Public Records Act does not apply to all of his requests is without merit. Respondents counter, urging that: 1) the Public Records Act does not apply to the Tennessee General Assembly; 2) the records sought are not disclosable under state law, that is to say, the rules and policies of the House and, accordingly, fall within the catchall “unless otherwise provided by law” exception of the Public Records Act; 3) Petitioner’s requests do not fully comply with the Public Records Act; and 4) compelling access to

records that the House has designated as confidential would violate the separation of powers, the political question doctrine, and the doctrine of legislative immunity. The Court held a show cause hearing on June 30, 2023.

Factual and Procedural Background

On May 18, 2023, Petitioner Brian Manookian (“Petitioner” or “Mr. Manookian”), representing himself, filed his Petition for Access to Public Records and to Obtain Judicial Review of Denial (“Petition”) for access to certain public records against Respondents, the Office of Legislation Administration and its Director Connie Ridley (“Ms. Ridley”), in her official capacity. On May 19, 2023, the Court issued an Order setting a telephonic scheduling and status conference on May 23, 2023 at 8:30 a.m. As a result of this conference, the Court entered its Order to Show Cause setting a Show Cause Hearing for June 30, 2023. On June 13, 2023, the Court entered a supplemental Show Cause Order setting the briefing schedule, a deadline for Respondents to submit records to the Court for *in camera* inspection by the Court, and clarifying that the June 30, 2023 Show Cause Hearing would not include live witnesses or testimony, but that at this hearing the Court would consider oral argument and written material submitted before the hearing.

The body of the Petition is divided into six parts designated by Roman numerals:

- I. Introduction
- II. The Parties
- III. Jurisdiction and Venue
- IV. Facts
- V. Claim
- VI. Prayer for Relief

Additionally, Petitioner’s Petition includes four exhibits. Exhibits 1-3 are Petitioner’s requests under the Public Records Act directed to Ms. Ridley dated April 1, 2023 at 9:31 p.m., April 22, 2023 at 12:45 p.m., and April 22, 2023 at 8:11 p.m., respectively. Exhibit 4 is Petitioner’s May 9, 2023 letter to Ms. Ridley giving notice that he intended to sue

because Respondents had not afforded him access to the requested records and because Respondents had not responded to his three requests for access to certain records under the Public Records Act.

Although Petitioner's original public records requests could be characterized as broad, Petitioner narrowed the scope of his request as reflected in Petitioner's Response to Respondents' Initial Brief ("Petitioner's Brief") as follows:

- a. Any and all records reflecting or relating to hotel or moving expenses paid by the legislature in relation to a legislative intern in 2021, 2022, or 2023.
- b. Any and all records reflecting or relating to hotel or moving expenses paid by the legislative budget office in relation to a legislative intern in 2021, 2022, or 2023.
- c. Any and all records reflecting or relating to hotel or moving expenses in relation to a legislative intern received by the legislature, your office, any legislative committee or subcommittee, or the legislative budget office in 2021, 2022, or 2023.
- d. Any and all records reflecting or related to any state funds spent to relocate a legislative intern to a hotel in Nashville in 2021, 2022, or 2023.
- e. Any and all records reflecting or related to any state funds spent to for a legislative intern to reside in a hotel in Nashville in 2021, 2022, or 2023.
- f. Any and all records reflecting or related to any state funds spent to move any furnishings for a legislative intern in 2021, 2022, or 2023.
- g. Any and all records reflecting any funds spent by the state, legislature, legislative budget office, any internship program, or any agency of the State of Tennessee as a result of conduct by Rep. Scotty Campbell toward a legislative intern.

Petitioner's Response, pp. 3-4. Additionally, Petitioner is seeking:

- a. Any and all (including emails, text messages, and other communications) of expenses paid by, reviewed by, or approved by the Office of Legislative Administration or any of its employees, agents, or others acting on its behalf, reflecting any sum of money paid to TownPlace Suites from 2020 to the present.
- b. Any and all (including emails, text messages, and other communications) of expenses paid by, reviewed by, or approved by the Office of Legislative Administration or any of its employees, agents, or others acting on its behalf, reflecting any sum of money paid to Two Men and a Truck from 2020 to the present.
- c. Any and all records (including emails, text messages, and other communications) of expenses paid by, reviewed by, or approved by the Office of Legislative Administration or any of its employees, agents, or others acting on its behalf, reflecting \$935 in cash paid to any legislative intern from 2020 to the present.
- d. Any and all records (including emails, text messages, and other communication) or expenses paid by, reviewed by, or approved by the Office of Legislative Administration or any of its employees, agents, or others acting on its behalf, reflecting any sum of money used to compensate a legislative intern for moving out of the Capitol Towers from 2020 to present.
- e. Any and all records (including emails, text messages, and other communications) reflecting any of the expenses referenced in the attached NewsChannel5 Article by Phil Williams which ere approved, reviewed, paid for, or communicated about by the Office of Legislative Administration or any of its employees, agents or other individuals acting on its behalf.

Petitioner's Response, pp. 6-7.

Records Submitted for In Camera Inspection

On June 22, 2023, Respondents hand-delivered a mailing envelope to the Court's chambers for in camera inspection which contained: 1) a four-page cover letter, marked "HIGHLY CONFIDENTIAL" from counsel for Respondents cataloguing the contents of the envelope; 2) Director Ridley's blue letter-sized file folder labeled "COMPLAINT 3/17/23" containing materials prepared in the course of receiving, investigating, and

resolving the file complaint made against former Representative Campbell; legal materials relied upon Director Ridley related to her official duties relevant to the complaint; and 3) documentation regarding media inquiries and Director Ridley's further engagement with an alleged victim; 3) a second blue letter-sized file folder dated 4/5/23, with an alleged victim's first name containing two pages of notes pertaining to a complaint against Representative Faison; and 4) the redacted and non-redacted personnel files of Representative Faison.

Discussion and Rulings

The Tennessee Public Records Act ("Public Records Act") requires public officials to provide access to public records. In Tennessee, public records are defined broadly to include records made or received by a governmental entity in an official capacity. The definition of "records" itself is exhaustive. The Public Records Act itself contains specific exceptions, which do not apply here, as well as a broad, catch-all exception which provides that "[a]ll state, county, and municipal records shall . . . be open for personal inspection by any citizen of this state, . . . unless otherwise provided by state law." Tenn. Code Ann. § 10-7-503(a)(2)(A). (Emphasis Added). This catch-all exception is not limited to statutory non-disclosure provisions which are codified apart from the Public Records Act, but includes, for example, records that are not disclosable under Tennessee's common law, administrative law or constitutional law. Despite the specific exceptions and the breadth of the catch-all exception, the courts have consistently held that there is a presumption in favor of access to public records. *See Schneider v. City of Jackson*, 226 S.W.3d 332, 340 (Tenn. 2007).

The Act has two basic features. First, the Act has what might be called a status feature. If the requestor enjoys the status of being a "citizen" of Tennessee and he or she requests records that are public records not falling within any exception, the Act

mandates that the requesting party be afforded access to those records. Although questions related to expenses and redaction might arise in this context, access is generally mandatory without any inquiry into the requesting party's reasons for seeking the records in question.

Next, there is the "conduct" feature of the Public Records Act which addresses whether a requesting party can recover reasonable attorney's fees. The public custodian of the records will be liable for the requesting party's reasonable fees if the public custodian's conduct is adjudged to be "willful" in withholding access to documents later determined to be disclosable under the Public Records Act. Consequently, if the custodian did not withhold the documents willfully, this would not excuse the custodian from the duty to produce those records, but a mere mistake, not committed willfully, would relieve the custodian from any potential liability for the requesting party's attorney's fees.

Here, it is undisputed that Petitioner is a citizen who has properly invoked the Public Records Act by requesting the records at issue from the Respondents. It appears to be undisputed that at least some of the records sought are public records made or received by the Office of Legislative Administration in its official capacity. It is also undisputed that none of the records sought fall under one of the Public Records Act's specifically enumerated exceptions. It is clear, therefore, Respondents are required to make available for Petitioner's to inspect records falling within the scope of the Public Records Act unless Respondents can demonstrate by a preponderance of the evidence that the records fall within the catch-all "unless otherwise provided by state law" exception. Tenn. Code Ann. § 10-7-503(a)(2)(A).

Application of the Public Record Act to the Legislature

Although the Court gives some weight to the persuasive authority of *Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001) and its holding that the Open Meetings Act does not apply to the Tennessee General Assembly, this Court is reluctant to make such a sweeping ruling in the context of the Public Records Act. The Court is not aware of any Tennessee appellate court decision which has adopted this position. The broad language of the Public Records Act does not indicate that the legislature is exempt from by its provisions.

Impact of House Rules in Public Records Act Context

Contrary to the thoughtful, carefully crafted argument of Petitioner, the Court concludes that the House Rules ensuring the confidentiality of interval sexual harassment allegations meet the “otherwise provided by state law” exception in the Public Records Act. *See* Tenn. Code Ann. § 10-7-503(a)(2). All records pertaining to complaints of sexual harassment, including protective measures used for legislative employees are confidential under Rule 82 of the House’s Permanent Rules of Order and the Policy Ex. 5, Permanent Rules of Order, Rule 82, Art. Iv, §2(c)(4) B; Ex 4, Policy at 3.

“State law” includes the Tennessee Constitution and, rules of court. Under the Constitution of Tennessee, the House has express constitutional authority to determine its own internal rules. Tenn. Cons. Art II, §2. Given the Rule 82 incorporates the Policy, it follows that the Policy amounts to “state law” within the meaning of the Public Records Act. It is noteworthy that the Policy is statutorily mandated under Tenn. Code Ann. §3-13-101(12). The Court concludes that the Policy rises to the level of the state law. The House has spoken on this sensitive public policy issue by adopting rules which provide that these records are outside the purview of public access. The requested records, accordingly, are exempt under the catch-all exception of the Public Records Act.

Separation of Powers, Political Question Doctrine and Legislative Immunity

Given that the Court has decided this case on other grounds, it respectfully declines to reach the Respondents' arguments on separation of powers, the political question doctrine, and legislative immunity. Certain of these arguments, although arguably threshold considerations, raise constitutional issues. As a general proposition, constitutional questions should not be reached unless it is necessary to reach them to decide the case. *See Waters v. Farr*, 291 S.W.3d 873 (Tenn. 2009).

Conclusion¹

Based on the foregoing, the Court respectfully DISMISSES, with prejudice, Petitioner's Petition for Access to Public Records and to Obtain Judicial Review of Denial filed in this Court on May 18, 2023. The sealed material submitted to the Court on June 22, 2023 for *in camera* review will be placed under seal as part of the technical record in this case. Court costs, for which execution may issue, are taxed against Petitioner.

IT IS SO ORDERED.



RUSSELL T. PERKINS, CHANCELLOR

cc: Mr. Brian Manookian
(brian@tntriallawyers.com)

Mark Alexander Carver, Esq.
(acarver@srvhlaw.com)

Eric G. Osborne, Esq.
(eosborne@srvhlaw.com)

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.


Deputy Clerk and Master
Chancery Court

1/2/24
Date

¹ As far as the Court can determine, Petitioner's requests comply with the Public Records Act.