

Exhibit B



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
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John G. Morgan
Comptroller

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Mr. Byrd:

You have requested an opinion from this Office that addresses the following issue:

Does Tenn. Code Ann. Section 10-7-504(i), and specifically Tenn. Code Ann. Section 10-7-504(i)(1)(B), provide an exception to the Tennessee Public Records Act (hereinafter referred to as "TPRA") that authorizes a governmental entity to maintain as confidential courtroom surveillance video?

I. Analysis

For purposes of this opinion, the relevant part of Tenn. Code Ann. Section 10-7-504(i) reads as follows:

- (i)(1) Information that would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. For the purpose of this section, "government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. For the purpose of this section, "governmental entity" means the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee. Such records include:
 - (A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property;

- (B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and
- (C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

Id.

According to the Tennessee Supreme Court, “Courts are restricted to the natural and ordinary meaning of the language used by the legislature in the statute, unless an ambiguity requires resort elsewhere to ascertain legislative intent.” *Austin v. Memphis Publishing Co.*, 655 S.W. 2d 146, 148 (Tenn. 1983).

An argument can be made that Tenn. Code Ann. Section 10-7-504(i)(1)(B) creates an exception to the TPRA and grants governmental entities the authority to maintain as confidential video taken of a courtroom for surveillance purposes only, when the surveillance footage would identify any structural or operational vulnerability that would allow for the disruption or interference with court proceedings. However, an argument can also be made that the language does not provide an exception for court room surveillance footage. Because it is possible to interpret the provisions in multiple ways, an ambiguity exists.

Upon reviewing the legislative history, it is clear that the General Assembly’s sole intent in enacting this provision was protecting “the technical infrastructure security coding of the state’s computer system ...[and the] personal credit and debit and personal identification numbers” of anyone doing business with the state or a political subdivision of the state.” *Public Records: Hearing on H.B. 867 Before the House of Representatives*, 102nd Sess. (May 14, 2001)(statement of Representative Matthew Kisber, Member, Tennessee General Assembly).

In Representative Kisber’s explanation of the bill on the House floor, he introduces the bill by saying that it was brought to him by the Information Systems Council. He goes on to say:

What this bill proposes to do is to place the technical infrastructure security coding of the state’s computer systems under confidential status. The reason this is necessary is to protect the state’s information from computer hackers and reduce the possibility the computer system and network can be compromised...[the bill also] moves personal credit and debit card numbers and person identification numbers, PIN numbers to protected items.

Id. Later he explains that “these same provisions apply to local governments to provide them the same security as state government.” *Id.*

Likewise, Senator Douglas Henry, in explaining the companion bill on the Senate floor, said that the bill was brought to him by the Information Systems Council and provided the same explanation of the bill as Representative Kisber. *Public Records: Hearing on S.B. 1473 Before the Senate*, 102nd Sess. (May 16, 2001)(statement of Senator Douglas Henry, Member, Tennessee General Assembly).

Conclusion

For the abovementioned reasons, it is this Office's opinion that while Tenn. Code Ann. Section 10-7-504(i) provides an exception to the TPRA relative to information regarding the infrastructure of a governmental entity's computer system, it does not provide a governmental entity the authority necessary to support the denial of a request for courtroom video surveillance. Additionally, this Office is unaware of an existing legal basis upon which a governmental entity would be allowed to deny a request to either inspect or receive a copy of courtroom surveillance footage, when the request is made by a citizen of Tennessee and it is not part of a contemplated or pending criminal matter.

Please feel free to call either myself or Ann V. Butterworth at (615) 401-7891 if you have any further questions.

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