

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STACY JACOBSON,

Petitioner,

v.

TENNESSEE DEPARTMENT OF  
CHILDREN'S SERVICES,

Respondent.

No. \_\_\_\_\_

**MEMORANDUM OF LAW IN SUPPORT OF JACOBSON'S PETITION  
FOR ACCESS TO PUBLIC RECORDS  
AND TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

Petitioner Stacy Jacobson ("Petitioner" or "Ms. Jacobson") submits this Memorandum of Law in Support of her Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access (the "Petition"). For the reasons set forth in the Petition and in this Memorandum of Law, this Court should grant the Petition, order the Tennessee Department of Children's Services ("Respondent" or the "Department") to immediately produce the requested public records to Ms. Jacobson, and grant Ms. Jacobson costs, including attorneys' fees.

**INTRODUCTION**

The Tennessee Supreme Court has said that "the public has a vital interest in receiving information from public officials about the effective, or ineffective, functioning and performance of the government" because "[t]he effective functioning of a free government like ours depends largely on the force of an informed public opinion." *Jones v. State*, 426 S.W.3d 50, 54 (Tenn. 2013) (quoting

*Barr v. Matteo*, 360 U.S. 564, 577 (1959) (Black, J., concurring)). Consistent with this logic, the General Assembly enacted the Tennessee Public Records Act (“TPRA”) to provide the public with a statutory right of access to public records, and instructed courts to “broadly construe[] [the TPRA] so as to give the fullest possible public access to public records.” Tenn. Code Ann. § 10-7-505(d).

While the TPRA provides for a general right of access to public records, the General Assembly also has provided for the release of specific records by the Department in the event of a child’s death. Tenn. Code Ann. § 37-5-107(c)(4). Under Tenn. Code Ann. § 37-5-107(c)(4), the Department must “release the final disposition of the case, whether the case meets criteria for a child death review and the full case file,” and may redact the released records to “comply with the confidentiality requirements of this section.” *Id.*

The Department did not comply with these provisions when it publicly released Case File No. 2020-008 (1) with significant portions redacted based on state law outside of Tenn. Code Ann. § 37-5-107 and (2) without including records from prior investigations by the Department related to the deceased child that are part of that case file. The Department’s positions undermine the public’s ability to examine the actions—or inactions—of the Department related to this child, and are contrary to the purpose and text of the law requiring transparency when a child who has had contact with the Department dies.

## FACTUAL BACKGROUND

### Case File No. 2020-008

On the morning of January 7, 2020, a 14-year-old boy died at his home, due to what the Department's investigation would conclude was abuse and neglect by members of his family. (Petition ¶¶ 4–5.) A woman called 911 to report that he had been found unresponsive, and the first responders declared him dead when they arrived. (*Id.*) One of his siblings was taken to the hospital as well. (*Id.* ¶ 6.) The Department received a call that day, alleging that the child had died from abuse and alerting it to the fact that there were other children living in the house. (*Id.* ¶ 7.) The Department opened an investigation into these abuse allegations. (*Id.* ¶ 8.) The alleged victims were five siblings, including the deceased, ages six to sixteen. (*Id.* ¶ 10.) The alleged perpetrators listed in the Department's report were the deceased child's mother, maternal aunts, and maternal grandmother. (*Id.* ¶ 9.)

On June 29, 2021, the Department closed its investigation. (*Id.* ¶ 14.) The Department's notes from June and July 2021 stated that the adults who lived in the home had been arrested. (*Id.* ¶ 11.) The Department's investigation concluded that the allegations of an abuse death were substantiated by a preponderance of the evidence, as were allegations of physical abuse, psychological harm, environmental neglect, nutritional neglect, medical maltreatment, and educational neglect. (*Id.* ¶¶ 15–16.) The released, redacted documents briefly noted that the Department had conducted four prior investigations related to the deceased child, in 2006, 2008, 2009, and 2015. (*Id.* ¶ 17.) The 2006 note described a “Substantial Risk [of] Sexual

Abuse,” but said the Department was unable to complete the investigation, and the 2015 note mentioned a “Child with Sexual Behavior Problems.” (*Id.* ¶ 18.)

In total, the Department released 152 heavily redacted pages pertaining to the investigation on its website, numbering it Case File No. 2020-008. (*Id.* ¶¶ 19–20; Jacobson Decl. ¶ 9, Attach. 2.) These redactions conceal significantly more than just the identifying information regarding the child, his family, and individuals who made a report of harm, including, but not limited to, the Department’s notes on the initial abuse allegations, interviews with family members, assessments of the siblings, autopsy results, and the Department’s conclusions describing why the allegations were substantiated. The online version of the file also omits any records of, or further information regarding, the Department’s four prior investigations related to the deceased child.

### **Petitioner’s Public Records Request and Respondent’s Denial**

Pursuant to the TPRA, on August 23, 2021, Ms. Jacobson requested access to “the full case file for Case No. 2020-008.” (Petition ¶ 22.) The Department, via email from its General Counsel Douglas Earl Dimond, denied her request on August 26, 2021. (*Id.* ¶ 24.) When asked for the statutory bases for the denial, in a reply email sent on September 9, 2021, Mr. Dimond cited Tenn. Code Ann. §§ 37-5-124, 37-1-409, 37-1-612, 37-5-107, Tenn. R. Crim. P. 16, and this Court’s memorandum and order in *The Tennessean v. Tennessee Department of Children’s Services*, No. 12-1769-II (Davidson Cnty. Chancery Ct. filed Jan. 23, 2013). (*Id.* ¶¶ 25–26; McAdoo Decl. ¶ 7, Attach. 1.) He directed Ms. Jacobson to the heavily redacted version of

Case File No. 2020-008 posted on the Department’s website. (Petition ¶ 24.) The Department also declined Ms. Jacobson’s request, through the undersigned, to include the records from the four prior investigations related to the deceased child in the publicly available Case File No. 2020-008. (*Id.* ¶¶ 23–24; McAdoo Decl. ¶¶ 4–5, Attach. 1.) To date, the Department has not released a version of Case File No. 2020-008 with fewer redactions or records of prior investigations, nor has it provided information regarding which redactions were made pursuant to which cited statute or rule. (Petition ¶ 27.) This action followed.

## ARGUMENT

### I. **The TPRA must be interpreted broadly in favor of public access.**

“Facilitating access to governmental records promotes public awareness and knowledge of governmental actions and encourages governmental officials and agencies to remain accountable to the citizens of Tennessee.” *Schneider v. City of Jackson*, 226 S.W.3d 332, 339 (Tenn. 2007) (citing *Memphis Publ’g Co. v. Cherokee Child. & Fam. Servs., Inc.*, 87 S.W.3d 67, 74–75 (Tenn. 2002)). The purpose of the TPRA is “to apprise the public about the goings-on of its governmental bodies.” *Memphis Publ’g Co. v. City of Memphis*, 871 S.W.2d 681, 687 (Tenn. 1994); *see also Cherokee Child. & Fam. Servs.*, 87 S.W.3d at 74 (the TPRA “serves a crucial role in promoting accountability in government through public oversight of governmental activities”).

To further this important policy goal, the General Assembly has specified that the TPRA “shall be broadly construed so as to give the fullest possible public

access to public records.” Tenn. Code Ann. § 10-7-505(d). Accordingly, Tennessee’s courts have held that the TPRA is a “clear mandate in favor of disclosure.” *Tennessean v. Elec. Power Bd.*, 979 S.W.2d 297, 305 (Tenn. 1998). Consistent with this broad construction, records are presumptively public and “the burden is placed on the governmental agency to justify nondisclosure of the records.” *City of Memphis*, 871 S.W.2d at 684 (citing Tenn. Code Ann. § 10-7-505(c)); *see also* Tenn. Code Ann. § 10-7-503(a)(2)(B) (“The custodian of a public record . . . shall promptly make available for inspection any public record not specifically exempt from disclosure.”). Given “this clear legislative mandate,” the presumption of openness applies “even in the face of serious countervailing considerations.” *City of Memphis*, 871 S.W.2d at 684.

To fully effectuate the broad legislative mandate in favor of disclosure, exemptions to the TPRA should be narrowly construed. *See, e.g., Lightbourne v. McCollum*, 969 So. 2d 326, 332–33 (Fla. 2007) (holding that Florida’s public records act “is to be construed liberally in favor of openness, and all exemptions from disclosure are to be construed narrowly and limited in their designated purpose” (citation omitted));<sup>1</sup> *Ark. Dep’t of Health v. Westark Christian Action Council*, 910 S.W.2d 199, 201 (Ark. 1995) (holding that “[i]n conjunction with” Arkansas’s requirement that its public record law be “liberally construe[d] . . . to accomplish its

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<sup>1</sup> The Tennessee Supreme Court has said that Florida’s public records law is similar to the TPRA. *Cherokee Child. & Fam. Servs.*, 87 S.W.3d at 74; *see also Elec. Power Bd.*, 979 S.W.2d at 302 (citing Florida case law). Decisions cited in this Memorandum of Law that are unpublished or from outside Tennessee are attached as Exhibit A.

broad and laudable purpose,” the Arkansas Supreme Court “narrowly construe[s] exceptions to the FOIA to counterbalance the self-protective instincts of the government bureaucracy” (citations omitted); *Swickard v. Wayne Cnty. Med. Exam’r*, 475 N.W.2d 304, 307–08 (Mich. 1991) (“[W]e keep in mind that the FOIA is intended primarily as a prodisclosure statute and the exemptions to disclosure are to be narrowly construed.” (citation omitted)).

**II. The only authority for the Department to make redactions to the full case file of an investigation of a child’s death is found in Tenn. Code Ann. § 37-5-107.**

In the tragic event of a child fatality, the Department conducts an investigation and is required by Tenn. Code Ann. § 37-5-107(c)(4)(C) at the investigation’s conclusion to publicly “release the final disposition of the case, whether the case meets criteria for a child death review and the full case file.” “The case file may be redacted to comply with the confidentiality requirements of *this section*.” *Id.* (emphasis added). Here, the Department claims to have redacted the requested public records, Case File No. 2020-008, based not only on the confidentiality provisions of Tenn. Code Ann. § 37-5-107, but also pursuant to Tennessee Rule of Criminal Procedure 16 (“Rule 16”) and this Court’s decision in *The Tennessean v. Tennessee Department of Children’s Services*, No. 12-1769-II (Davidson Cnty. Chancery Ct. filed Jan. 23, 2013). (Petition ¶ 26; Jacobson Decl. Attach. 1.)<sup>2</sup> Neither is a proper basis for redaction given the limiting language in

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<sup>2</sup> The Department also cited Tenn. Code Ann. §§ 37-5-124, 37-1-409, and 37-1-612 as bases for withholding the requested records. (Petition ¶ 26.) These provisions are subsumed within Tenn. Code Ann. § 37-5-107, with the exception of Tenn. Code Ann. § 37-5-124. Tenn. Code Ann. § 37-5-124 requires the Department’s

Tenn. Code Ann. § 37-5-107(c)(4)(C), and the fact that the provision was enacted after this Court’s *Tennessean* decision in 2013. Public policy supports such a conclusion as well. As such, the Department has violated both the TPRA and the public disclosure mandate in Tenn. Code Ann. § 37-5-107(c)(4)(C).

**A. The plain text of Tenn. Code Ann. § 37-5-107 makes clear it provides the only basis for redactions to the full case file.**

The Tennessee Supreme Court has explained that “if ‘the language contained within the four corners of a statute is plain, clear, and unambiguous, the duty of the courts is simple and obvious, to say sic lex scripta, and obey it.’” *Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 803 (Tenn. 2000) (quoting *Miller v. Childress*, 21 Tenn. (2 Hum.) 320, 320–22 (1841)). “Therefore, [i]f the words of a statute plainly mean one thing they cannot be given another meaning by judicial construction.” *Id.* (quoting *Henry v. White*, 250 S.W.2d 70, 72 (Tenn. 1952)). Moreover, courts “must construe a statute so that no part will be inoperative, superfluous, void or insignificant, and the court must give effect to every word, phrase, clause and

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commissioner to report an investigated child fatality to that child’s state representatives and the House Children and Family Affairs Subcommittee and thus has no application to the Department’s redactions to the requested records. The remaining cited provisions’ confidentiality requirements align with those of Tenn. Code Ann. § 37-5-107, as they all provide for the redaction of the same information set forth in that provision. *See* Tenn. Code Ann. § 37-1-409 (preventing disclosure of the names of persons who report harm, alleged victims and perpetrators, persons receiving services from the Department, and the report itself, except to certain authorized individuals and as provided in Tenn. Code Ann. §§ 37-5-107 and 37-1-612); Tenn. Code Ann. § 37-1-612 (stating that, except as provided in Tenn. Code Ann. § 37-5-107 and elsewhere, it is unlawful to disclose information on investigations of reports of harm and child sexual abuse).

sentence.” *Young v. Frist Cardiology, PLLC*, 599 S.W.3d 568, 571 (Tenn. 2020) (citations and internal quotation marks omitted).

Tennessee’s statutes are organized into six different groupings, in descending order from broadest to most narrow: Title, Chapter, Part, Section, Subsection, and Subdivision. (McAdoo Decl. Attach. 3 at 34.) “[T]his section” and similar phrases are common legislative clauses used to limit the reach of a particular provision. (*Id.*) For example, in Tenn. Code Ann. § 67-5-2201, the phrase “in this section” is used three different times to cross-reference other provisions of that section of the Tennessee Code. The same is true of the TPRA itself, with Tenn. Code Ann. § 10-7-503 using the phrase “this section” two times when describing how that section of the code should be interpreted. According to the General Assembly’s Office of Legal Services’ current “Legislative Drafting Guide,” the phrase “this section” is the proper way to cross-reference “within the provision being drafted” when it refers to a particular section of the code, such as Tenn. Code Ann. § 37-5-107. (McAdoo Decl. Attach. 3 at 32.) Similarly, according to the Legislative Drafting Guide in effect when the General Assembly drafted and enacted the current version of Tenn. Code Ann. § 37-5-107, the phrase “this section” is the proper way to “be specific when cross-referencing” and to “reference a specific . . . section” of the code. (McAdoo Decl. Attach. 4 at 17, 29.)

Here, Tenn. Code Ann. § 37-5-107(c)(4)(C) is specific regarding the scope of possible bases for redactions: “the confidentiality requirements *of this section.*” *Id.* (emphasis added). “[T]his section” is a limiting phrase and directs the Court to only

look at Tenn. Code Ann. § 37-5-107 for permissible redactions and not to other state laws, contrary to the approach taken by the Department. In contrast, the TPRA requires that “[i]nformation made *confidential by state law* shall be redacted whenever possible,” sweeping in any state confidentiality law rather than limiting its reach to one section of the code. Tenn. Code Ann. § 10-7-503(a)(5) (emphasis added). The limiting language in Tenn. Code Ann. § 37-5-107(c)(4)(C) is controlling.

The confidentiality requirements of Tenn. Code Ann. § 37-5-107 include (1) information “that directly or indirectly identif[ies] a child or family receiving services from the department” and (2) information that “directly or indirectly . . . identif[ies] the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605.” Tenn. Code Ann. § 37-5-107(a); *see also id.* § 37-5-107(i) (“Except as provided for in subsection (c)(2), nothing in this section shall ever be construed to permit or require the department to release or disclose the identification of the person making a report of harm in accordance with § 37-1-403.”). Subsection (g) requires certain steps be taken when student records are released and subsection (h) requires that the Department “comply with federal and state laws and regulations regarding the release of [drug and alcohol] records.” *Id.* § 37-5-107(g)–(h). There are no other applicable confidentiality provisions in Tenn. Code Ann. § 37-5-107.

Tenn. Code Ann. § 37-5-107 thus does not permit redactions based on “state law” generally or Rule 16, one of the bases for redactions of Case File No. 2020-008 asserted by the Department. And while Rule 16 has been interpreted by Tennessee courts to be an exception to the TPRA that applies to records from pending or

contemplated criminal proceedings, it is not a blanket exemption covering any record ever tied to a criminal case, and it certainly is not contemplated by the limiting language set forth in Tenn. Code Ann. § 37-5-107(c)(4)(C). *E.g.*, *Appman v. Worthington*, 746 S.W.2d 165, 166 (Tenn. 1987); *Memphis Publ'g Co. v. Holt*, 710 S.W.2d 513, 517 (Tenn. 1986).<sup>3</sup>

Accordingly, the Department erred in relying on Rule 16 as a basis for redacting the requested case file because doing so directly conflicts with Tenn. Code Ann. § 37-5-107(c)(4)(C), which limits redactions of the full case file to those enumerated in that section. Even assuming, *arguendo*, that Rule 16 could apply to records made during the Department's non-criminal investigation, the conflict between Tenn. Code Ann. § 37-5-107(c)(4)(C) and Rule 16 must be resolved in favor of Tenn. Code Ann. § 37-5-107(c)(4)(C).

It is a well-settled canon of statutory interpretation that “[w]here a conflict is presented between two statutes, a more specific statutory provision takes precedence over a more general provision.” *Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010) (citing *Arnwine v. Union Cnty. Bd. of Educ.*, 120 S.W.3d 804, 809 (Tenn. 2003)). Tenn. Code Ann. § 37-5-107 is highly specific, applying only to the Department's case files on child deaths and near deaths. By contrast, Rule 16 is general, governing “all criminal proceedings conducted in all Tennessee courts of record.” Tenn. R. Crim. P. 1(a). Thus, if this Court finds that the two provisions

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<sup>3</sup> Further, as with all withholdings under the TPRA, it is the agency's burden to demonstrate that Rule 16 applies by a preponderance of the evidence. *Holt*, 710 S.W.2d at 518.

directly conflict, it is Tenn. Code Ann. § 37-5-107(c)(4)(C) that controls and should be the only basis for redactions of the full case files released by the Department in the event of a child fatality or near fatality.

It is likewise true that this Court's decision in *The Tennessean v. Tennessee Department of Children's Services*, No. 12-1769-II (Davidson Cnty. Chancery Ct. filed Jan. 23, 2013), should have no bearing on the permissible redactions to Case File No. 2020-008 because that decision predates the legislature's 2014 revision of Tenn. Code Ann. § 37-5-107, which added subdivision (c)(4)(C) to the section. Compare 2014 Tenn. Laws Pub. Ch. 771 (H.B. 1505) (adding subdivision (c)(4)(C) to Tenn. Code Ann. § 37-5-107 with an effective date of July 1, 2014), with McAdoo Decl. Attach. 2. At the time the *Tennessean* case was decided, Tenn. Code Ann. § 37-5-107(c)(4) only provided "for the public disclosure of information about any case that results in a child fatality or near fatality in compliance with 42 U.S.C. § 5106a(b)(2)(A)(x)."<sup>4</sup> By subsequently adding Tenn. Code Ann. § 37-5-107(c)(4)(C), the General Assembly vitiated any precedential value the *Tennessean* decision may have had on information that may be redacted from the Department's full case file following the closure of an investigation into the death of a child. 2014 Tenn. Laws Pub. Ch. 771 (H.B. 1505).

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<sup>4</sup> The *Tennessean* decision correctly noted that the citation in the prior version of Tenn. Code Ann. § 37-5-107(c)(4) erroneously cited to 42 U.S.C. § 5106a(b)(2)(A)(x), but instead was really a reference to 42 U.S.C. § 5106a(b)(2)(B)(x). (McAdoo Decl. Attach. 2 at 10 n.13.)

**B. Public policy also supports finding that Tenn. Code Ann. § 37-5-107 provides the only basis for redactions to the full case file.**

Public policy also supports finding that redactions to the full case files that must be released after the closure of an investigation into the death of a child by the Department should be limited to those specified in Tenn. Code Ann. § 37-5-107. When a child dies from abuse or neglect, the public has a strong interest in learning what role, if any, the Department had in the child's life preceding their death and evaluating the actions or inactions of the Department related to the child. *See In re Recs. of Dep't of Child. & Fam. Servs.*, 873 So. 2d 506, 513 (Fla. Dist. Ct. App. 2004) (discussing public interest in release of child case records in abuse matter: "the underlying public interest in understanding the causes of performance shortcomings [is] a prerequisite to correcting those shortcomings. The public interest in correcting such shortcomings coincides with the interests of all the children who may suffer as a consequence of failures in the state's efforts to protect them from abuse."). Disclosing information about child deaths, including the Department's full case file, is critical to the "effort to provide public accountability for the actions or inaction of public officials," H.R. Rep. No. 104-430, at 522 (1995) (Conf. Rep.), and to "help[] the public to gain a greater understanding of the issue," *The Child Abuse Prevention and Treatment Act: 40 Years of Safeguarding America's Children*, U.S. Dep't of Health & Hum. Servs. 19 (Apr. 2014), <https://perma.cc/8LX6-BYM2>.

Moreover, for the public to effectively exercise its oversight function, its access to information must also be timely. Delaying the disclosure of nearly all

substantive information in child-death case files pursuant to Rule 16, while any related criminal cases wend their way through the court system, significantly diminishes, if not destroys, the public's ability to meaningfully oversee the Department and promptly hold it accountable. As time passes, public interest in the tragedy and related media coverage will fade and the public's oversight role will be weakened. *See, e.g., Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) ("The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression."); *State ex rel. Miami Herald Publ'g Co. v. McIntosh*, 340 So. 2d 904, 910 (Fla. 1976) ("News delayed is news denied. To be useful to the public, news events must be reported when they occur."). Timely disclosure of child-death case files, on the other hand, ensures that such tragedies receive the public and press scrutiny needed to spark any necessary reforms and hold the Department accountable for any shortcomings.

The Department's redactions to the case file at issue pursuant to anything besides the confidentiality provisions of Tenn. Code Ann. § 37-5-107 are improper. Moreover, it is evident from the redacted records that the Department's far-reaching redactions cover not just the child's, family's, and referent's identifying information, as required by Tenn. Code Ann. § 37-5-107, but whole paragraphs and pages of text, including nearly all information on how the child died and why the Department concluded his death was caused by abuse and neglect. Many, if not most, of the extensive redactions to the requested case file are thus likely based on

Rule 16 and those redactions significantly impede the public’s ability to evaluate the Department’s performance in this case. These redactions are not only inconsistent with the provisions of Tenn. Code Ann. § 37-5-107, but also undermine the very purpose behind public disclosure of the full case file of a deceased child. For these reasons, the Court should order that the requested public records be provided to Ms. Jacobson, with redactions limited to those required by Tenn. Code Ann. § 37-5-107.

**III. The Department must release the “full case file,” including records of its prior investigations related to the deceased child.**

Tenn. Code Ann. § 37-5-107(c)(4)(C) requires that “[f]ollowing the closure of an investigation for a child abuse or neglect fatality,” the Department “shall release . . . the full case file.” Although the online version of Case File No. 2020-008 briefly notes that the Department had conducted four investigations related to the child between 2006 and 2015, the Department refused to disclose records from those investigations and their findings. (Petition ¶¶ 23–27.) With this refusal, the Department failed to disclose the “full case file” and, thus, violated the dictates of the TPRA and Tenn. Code Ann. § 37-5-107(c)(4)(C).

The phrase “full case file” must be interpreted to include all of the Department’s investigative files related to the deceased child. When construing statutes, courts

must begin with the words of the state statutes. Our goal is to ascertain and to give the fullest possible effect to the General Assembly’s intent and purpose. We must (1) give these words their natural and ordinary meaning, (2) consider them in the context of the entire statute, and (3) presume that the General Assembly intended that each

word be given full effect. When a statute’s language is clear and unambiguous, we need not look beyond the statute itself, but rather, we must simply enforce it as written.

*Green v. Green*, 293 S.W.3d 493, 507 (Tenn. 2009) (internal citations omitted). “In seeking to determine the ‘natural and ordinary meaning’ of statutory language, the usual and accepted source for such information is a dictionary.” *Eng. Mountain Spring Water Co. v. Chumley*, 196 S.W.3d 144, 148 (Tenn. Ct. App. 2005) (citation omitted); *see also State v. Williams*, 690 S.W.2d 517, 529 (Tenn. 1985) (relying on dictionary to determine ordinary and natural meaning of words of a statute).

The word “full” in Tenn. Code Ann. § 37-5-107(c)(4)(C) is used as an adjective to modify the phrase “case file.” “Full” is defined by the American Heritage Dictionary, in pertinent part, as “Complete in every particular.” *Full*, Am. Heritage Dictionary Eng. Language (5th ed. 2022), <https://perma.cc/QZX2-S4CD>. A case file on a deceased child would hardly be complete if the Department omitted all but the barest information regarding its prior contacts with the child and his family. But here, that is exactly what the Department did.

The entirety of what is available from the released case file regarding the Department’s prior investigations related to the deceased child is this:

History (not listed above):  
INV [REDACTED]/SEE/AUPU (AP: [REDACTED] [REDACTED] Child with Sexual Behavior Problems (AP: [REDACTED] [REDACTED] 09-25-2015  
INV [REDACTED]/SEE/AUPU/09-03-2009  
INV [REDACTED]/ENN/AUPU/06-18-2008  
INV [REDACTED]/Substantial Risk Sexual Abuse/Unable to Complete/04-13-2006

(Jacobson Decl. Attach. 2 at 2.) The only information the public can learn from this scant notation is that there were four prior investigations (assuming that “INV”

stands for investigation), the dates associated with the four investigations, that the first investigation related to “Substantial Risk Sexual Abuse/Unable to Complete,” and that the last investigation related to a “Child with Sexual Behavior Problems.” A file on the death of a child that omits any documentation other than this extremely limited information about prior investigations by the Department related to the deceased child is far from “full” or complete and fails to satisfy the statutory mandate of disclosing the full case file. To read the statute otherwise would be to omit “full” from its command.

This construction is buttressed by strong public policy. Tenn. Code Ann. § 37-5-107(c)(4)(A), on its face, was intended to bring Tennessee into “compliance with 42 U.S.C. § 5106a(b)(2)(B)(x).” That provision is part of the federal Child Abuse Prevention and Treatment Act (“CAPTA”), which requires states receiving federal funds to publicly disclose information regarding child fatalities and near fatalities caused by abuse and neglect—including information on the state’s prior investigations and services provided to the child. 42 U.S.C. § 5106a(b)(2)(B)(ix); *Child Welfare Policy Manual*, U.S. Dep’t of Health & Hum. Servs., § 2.1A.4, Question/Answer 8 (Sept. 2012), <https://perma.cc/R6HH-5N9Q>. Congress added these disclosure requirements to CAPTA because, previously, state agencies often refused to disclose information about child fatalities and “were doing themselves, their staffs, and the public a disservice and often lost support by not disclosing more information about these cases.” *The Child Abuse Prevention and Treatment Act: 40 Years of Safeguarding America’s Children*, *supra*, at 19. Here, the Department’s

minimalist disclosure related to its four prior investigations runs contrary to this policy, dis-serving the public by providing only a partial case file and withholding key information about the deceased child's history with the Department. Full disclosure of records relating to the deceased child is the only way the public can see the complete picture of the Department's history with this family and child, and thus be able to fully evaluate the Department's performance. *See, e.g., Anita Wadhvani, DCS Investigated 186 Child Deaths Last Year; Most Children Were Known to the Agency*, *Tennessean* (May 5, 2019), <https://bit.ly/3LKxxtM> (discussing how, in the case of one deceased child, "DCS responded at least 15 times to allegations of child abuse or neglect involving the family during a 14-year period prior to the child's death"). Without access to the prior investigations, the public is left to guess what the Department did or did not do to protect the deceased child and his siblings prior to the child's death.

Withholding records of the Department's prior investigations related to the deceased child violates the TPRA and the mandatory disclosure requirements in Tenn. Code Ann. § 37-5-107(c)(4)(C). This improper withholding leaves the public, including the press, in the dark about critical context on the child's history with the Department and his later death. Accordingly, the Department should be required to release to Ms. Jacobson and the public the records of its prior investigations of the deceased child in Case File No. 2020-008 because only in so doing will the Department comply with its statutory obligation to disclose its "full case file" on the deceased child.

#### **IV. Ms. Jacobson Should Be Awarded Attorneys' Fees and Costs in this Case.**

“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.” Tenn. Code Ann. § 10-7-505(g). The Tennessee Supreme Court has explained that “the Public Records Act does not authorize a recovery of attorneys’ fees if the withholding governmental entity acts with a good faith belief that the records are excepted from the disclosure.” *Schneider*, 226 S.W.3d at 346 (citing *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 798 (Tenn. Ct. App. 1999)). “Moreover, in assessing willfulness, Tennessee courts must not impute to a governmental entity the ‘duty to foretell an uncertain juridical future.’” *Id.* (quoting *City of Memphis*, 871 S.W.2d at 689).

The Court of Appeals has “stressed that willfulness should be measured ‘in terms of the relative worth of the legal justification cited by [an agency] to refuse access to records.’” *Clarke v. City of Memphis*, 473 S.W.3d 285, 290 (Tenn. Ct. App. 2015) (quoting *Friedmann v. Marshall Cnty.*, 471 S.W.3d 427, 439 (Tenn. Ct. App. 2015)). “In other words, the determination of willfulness ‘should focus on whether there is an absence of good faith with respect to the legal position [an agency] relies on in support of its refusal of records.’” *Id.* (quoting *Friedmann*, 471 S.W.3d at 438). If a public records defendant “denies access to records by invoking a legal position that is not supported by existing law or by a good faith argument for the

modification of existing law, the circumstances of the case will likely warrant a finding of willfulness.” *Id.*

Here, the Department attempted to justify its withholding of the requested public records by relying upon Rule 16. But, as discussed above, the Department’s application of Rule 16 is inconsistent with the plain text of controlling state law on child-death records, Tenn. Code Ann. § 37-5-107. Moreover, the Department’s withholding of records on its four prior investigations related to the child in Case File No. 2020-008 contravenes its obligation to disclose the “full case file” under Tenn. Code Ann. § 37-5-107. As such, the Department should be found to have willfully refused Ms. Jacobson’s public records request and the Court should exercise its discretion to award attorneys’ fees and costs in this matter.

### **CONCLUSION**

Respondent’s primary basis for denying access to Case File No. 2020-008, regarding a boy’s death from child abuse and neglect—Rule 16—is inapplicable given the clear mandates of Tenn. Code Ann. § 37-5-107. Respondent also failed to disclose the “full case file” as required by law, and should be required to release its records of prior investigations related to the deceased child in Case File No. 2020-008. For these reasons, the Court should find that the requested public records are not exempt from disclosure under the TPRA, conduct an *in camera* review, order

that the full case file be released, and award costs and attorneys' fees to Petitioner.

Respectfully submitted,

/s/ Paul R. McAdoo  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing will be served with the Petition and Summons upon the Respondent.

/s/ Paul R. McAdoo  
Paul R. McAdoo