

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

STACY JACOBSON,

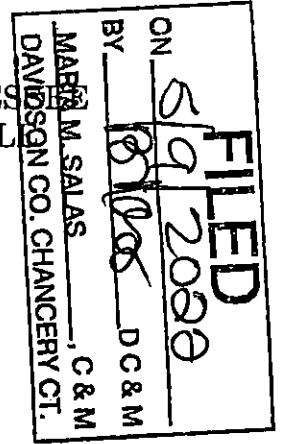
Petitioner,

v.

TENNESSEE DEPARTMENT OF
CHILDREN'S SERVICES,

Respondent.

No. 22-0668-T



**PETITION FOR ACCESS TO PUBLIC RECORDS AND
TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

Pursuant to the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501 *et seq.* (the "TPRA"), Petitioner Stacy Jacobson ("Petitioner" or "Ms. Jacobson") hereby petitions this Court for access to specific public records maintained by the Tennessee Department of Children's Services ("Respondent" or the "Department"), for judicial review of the Department's denial of access to those public records, and for attorneys' fees and costs. Petitioner also seeks declaratory relief pursuant to the TPRA and Tenn. Code Ann. § 1-3-121. A memorandum of law in support of this Petition is being filed contemporaneously.

PARTIES

1. Petitioner is Stacy Jacobson, a resident of Shelby County, Tennessee and a citizen of Tennessee. She has been a journalist since 2010. Since 2016, Ms. Jacobson has worked as a reporter for WREG, a television station in Memphis,

Tennessee affiliated with CBS and owned by Nexstar Media Inc., where she covers local news and investigations. (Jacobson Decl. ¶¶ 4–5 (attached as Exhibit A).)

2. Respondent is the Tennessee Department of Children’s Services. Service of process upon Respondent will be made by emailing a cover letter, a copy of the summons, this petition, the accompanying memorandum of law, and the declarations in support of this petition to tnattygen@ag.tn.gov, pursuant to Tennessee Rule of Civil Procedure 4.04(6) and the Office of the Attorney General’s advisory on service of process during the COVID-19 pandemic.¹

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this petition and venue is proper in this Court under Tenn. Code Ann. § 10-7-505(b). This Court also has subject matter jurisdiction over this petition pursuant to Tenn. Code Ann. § 1-3-121.

FACTUAL ALLEGATIONS

Case File No. 2020-008

4. On the morning of January 7, 2020, a woman called 911 to report that a fourteen-year-old boy had been found unresponsive at home, on the couch.

(Jacobson Decl. Attach. 2 at 4, 8, 105–08, 115–16, 128.)²

5. First responders pronounced the boy dead when they arrived on the scene. (*Id.*)

¹ Available at <https://perma.cc/5V88-NNVW>.

² Pincites to Attachment 2 of the Jacobson Declaration correspond to the PDF pagination of the document.

6. One of his siblings living in the house was taken to the hospital. (*Id.* at 81, 87.)

7. That same day, the Department received a call alerting it to the child's death and alleging that it was the result of abuse. (*Id.* at 8, 128.) The caller also informed the Department that there were other children and family members living in the house. (*Id.* at 115–16.)

8. The Department then opened an investigation into the abuse allegations. (*Id.* at 8.)

9. The alleged abusers listed in the Department's report were the child's mother, maternal aunts, and maternal grandmother. (*Id.* at 8, 130.)

10. Of the seventeen family members, the Department considered five to be alleged child abuse victims, including the deceased. (*Id.* at 113–14.) The alleged victims' ages ranged from six to sixteen. (*Id.* at 130.)

11. The adults who lived in the home during the time of the alleged abuse were subsequently arrested, according to the Department's notes from June and July 2021. (*Id.* at 7, 13.)

12. The Department gave each alleged child victim a "trauma score," based on factors such as history of sexual, physical, and emotional abuse, grief, neglect, physical and mental health, education, and high-risk behavior. The deceased's score was listed as eight, his twelve-year-old sister's score was listed as eleven, and their other three siblings' scores were listed as zero or one. (*Id.* at 139.)

13. The Department visited the family's home, noting "concerns regarding the condition of the garage," but not the main house. (*Id.* at 131.)

14. On June 29, 2021, the Department closed its investigation. (*Id.* at 7.)

15. The investigation concluded that the allegations of an abuse death were substantiated by a preponderance of the evidence. (*Id.* at 10.)

16. The Department also classified the case as involving substantiated allegations of psychological harm, environmental neglect, nutritional neglect, medical maltreatment, educational neglect, and physical abuse. (*Id.* at 10, 129.)

17. The investigation report noted that the Department had conducted prior investigations related to the deceased child in 2006, 2008, 2009, and 2015. (*Id.* at 2.)

18. The note regarding the 2006 investigation describes a "Substantial Risk [of] Sexual Abuse," but states the Department was unable to complete the investigation, and the note regarding the 2015 investigation refers to a "Child with Sexual Behavior Problems." (*Id.*)

19. The Department then released the redacted case file of its investigation on its website, labeling it Case File No. 2020-008. The file is available at <https://files.dcs.tn.gov/childsafety/2020/Deaths/2020.008.pdf> and <https://perma.cc/HRW4-VNPL>. (Jacobson Decl. ¶¶ 8–9, Attach. 2.)

20. The online version of Case File No. 2020-008 contains substantial redactions throughout, including to the notes on the initial abuse allegations, the Department's interviews with family members, its assessments of the siblings—

particularly those of the sister considered more traumatized than her deceased brother—the autopsy results, and the Department’s ultimate conclusions. (Jacobson Decl. Attach. 2 at 2, 8–13, 16–17, 22–23, 25, 86–97, 104–05, 107, 109–11, 116–30, 145–46.)

21. Additionally, the online version of Case File No. 2020-008 does not contain any records related to the Department’s prior history with the deceased child, other than the notations discussed above. (*Id.* at 2.)

The Public Records Request at Issue

22. On August 23, 2021, Ms. Jacobson asked the Department, through its General Counsel Douglas Dimond, for “the full case file for Case No. 2020-008. I realize it is available on DCS’s website, but I would like to receive DCS’s formal response so I am fully informed as to the legal bases for the redactions.” (Jacobson Decl. ¶ 6, Attach. 1.)

23. Also on August 23, the undersigned counsel for Ms. Jacobson asked Mr. Dimond whether “DCS has reconsidered whether to include the prior investigations in the released case file for Case No. 2020-008.” (McAdoo Decl. ¶ 4, Attach. 1 (attached as Exhibit B).)

24. Mr. Dimond replied via email on August 26 that he believed the online redacted version of Case File No. 2020-008 was “in accordance with the guidelines we have followed since 2013” and said he “d[id] not anticipate adding to that file.” (*Id.* ¶ 5, Attach. 1; Jacobson Decl. ¶ 8, Attach. 1.)

25. In response, the undersigned asked the Department to specify its statutory bases for redacting the case file. (McAdoo Decl. ¶ 6, Attach. 1.)

26. On September 9, 2021, Mr. Dimond replied that the statutory bases for denial of the August 23 request were “in addition to Tenn. Code Ann. § 37-5-124 . . . Tenn. Code Ann. §§ 37-1-409 and 612; Tenn. Code Ann. § 37-5-107, Tenn. R. Crim. [P.] 16, and the 2013 Davidson County Chancery Court order requiring that we redact all such records to eliminate information made confidential under state law.” (*Id.* ¶ 7, Attach. 1.)

27. To date, the Department has not posted additional records related to Case File No. 2020-008, nor removed any redactions from the online version of the file. (Jacobson Decl. ¶ 10.)

28. Upon information and belief, many of the Department’s redactions were made pursuant to Tenn. R. Crim. P. 16, but that Rule is not a proper basis for non-disclosure in this case.

29. Pursuant to Tenn. Code Ann. § 37-5-107(c)(4)(C), redactions to the case file are permitted only if they “comply with the confidentiality requirements of this section.” The records are otherwise public and subject to disclosure under the TPRA.

30. The redactions permitted pursuant to Tenn. Code Ann. § 37-5-107(c)(4)(C) are limited to information “that directly or indirectly identif[ies] a child or family receiving services from the department or that identif[ies] the person who made a report of harm,” Tenn. Code Ann. § 37-5-107(a), and possibly certain student

records, Tenn. Code Ann. § 37-5-107(g), and drug and alcohol records, Tenn. Code Ann. § 37-5-107(h).

31. Any redactions in Case File No. 2020-008 that are not based on the language of Tenn. Code Ann. § 37-5-107 are improper, including redactions made pursuant to Tenn. R. Crim. P. 16.

32. The Department has not provided any documentation specifying which redactions in the online version of Case File No. 2020-008 are made pursuant to which statute or rule.

33. Tenn. Code Ann. § 37-5-107(c)(4)(C) also requires that “the full case file” be released.

34. By refusing to include in the released and redacted Case File No. 2020-008 the records from the referenced prior investigations by the Department related to the same child from 2006, 2008, 2009, and 2015, the Department failed to disclose the full case file for the deceased child as required by Tenn. Code Ann. § 37-5-107(c)(4)(C).

35. There is significant public interest in the requested public records, which would shed light on the abuse-related death of a child who had past contact with the Department. Without the timely and complete disclosure of the full case file, the public cannot fully evaluate this tragic death or the actions of the Department that failed to prevent it.

36. Indeed, there has been strong public interest in the deaths of children in foster care, children who had contact with the Department, and children whose

deaths the Department investigated. *See, e.g.,* Peter White, *Another Child Dies in DCS Foster Care*, Tenn. Trib. (Dec. 22, 2021), <https://tntribune.com/another-child-dies-in-dcs-foster-care>; Sabrina Maggiore, *'Falling Through Cracks:' Chattanooga Child's Foster Death Highlights Workers Under Strain*, News Channel 9 (Nov. 17, 2021), <https://newschannel9.com/news/local/kids-are-falling-through-the-cracks-audit-shows-tns-foster-care-system-under-strain>; Ben Hall, *DCS Calls Employees In Child Death Case 'Incompetent'*, WTVF (Feb. 27, 2019), <https://www.newschannel5.com/news/newschannel-5-investigates/dcs-calls-employees-in-child-death-case-incompetent>.

37. Reporting on child deaths and the Department's subsequent investigations has sparked policy reforms within the Department. *See Lessons Learned from Child Welfare Class Action Litigation: A Case Study of Tennessee's Reform*, Ctr. for Study Soc. Pol'y 25 (Feb. 2019), <https://cssp.org/wp-content/uploads/2019/02/Tennessee-Case-Study-FINAL.pdf> (describing how the Department "develop[ed] a child death review process that has become a model for other states . . . prompted in part from the intense media scrutiny to child deaths").

38. Case files such as the one sought in the instant case inform that critical public-interest reporting on individual children's cases and aggregate patterns. *See, e.g.,* Anita Wadhvani, *DCS Investigated 186 Child Deaths Last Year; Most Children Were Known to the Agency*, Tennessean (May 5, 2019), <https://www.tennessean.com/story/news/2019/05/05/tennessee-childrens-services-death-investigations-2018/3055436002>.

39. In sum, disclosure of the Department's case files on child deaths and near deaths is critical to facilitating public oversight of how the state protects, or fails to sufficiently protect, its most vulnerable children. When the Department refuses to disclose records of its related past investigations and denies or delays the release of information in child-death case files pursuant to Tennessee Rule of Criminal Procedure 16, the Department violates state law and frustrates the public's ability to timely and effectively exercise its oversight function.

CLAIMS FOR RELIEF

Count I – Improper Redactions of the Requested Public Records

40. Petitioner incorporates the allegations in paragraphs 1 through 39.

41. As set forth above, pursuant to the TPRA and Tenn. Code Ann. § 37-5-107(c)(4)(C), Petitioner requested Case File No. 2020-008, in its entirety, from the Department.

42. The records sought by Ms. Jacobson are “public records” within the meaning of Tenn. Code Ann. § 10-7-503(a)(1).

43. Under Tenn. Code Ann. § 10-7-503(a)(2)(B), “[t]he custodian of a public record . . . shall promptly make available for inspection any public record not specifically exempt from disclosure.”

44. A denial of a public records request must state the specific legal bases for that denial in writing. Tenn. Code Ann. § 10-7-503(a)(2)(B)(ii).

45. The records custodian bears the burden to prove a claimed exemption applies. Tenn. Code Ann. § 10-7-505(c).

46. The Department denied Petitioner's public records request for access to Case File No. 2020-008, by refusing to provide access beyond the heavily redacted case file available online, citing Tenn. Code Ann. §§ 37-5-107, 37-1-409, 37-1-612, Tennessee Rule of Criminal Procedure 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), as the bases for those redactions.

47. With the exception of Tenn. Code Ann. § 37-5-107, the written bases proffered by the Department for withholding the public records requested by Ms. Jacobson are inapplicable and do not justify the denial.

48. Before disclosure of the Department's case file related to a child's death, "[t]he case file may be redacted to comply with the confidentiality requirements of this section." Tenn. Code Ann. § 37-5-107(c)(4)(C).

49. "This section"—that is, Tenn. Code Ann. § 37-5-107—does not provide for redaction of case files based on unrelated state-law grounds, such as Tennessee Rule of Criminal Procedure 16.

50. Rather, "this section" allows the Department to keep confidential only information "that directly or indirectly identif[ies] a child or family receiving services from the department or that identif[ies] the person who made a report of harm," Tenn. Code Ann. § 37-5-107(a), as well as certain student records, Tenn. Code Ann. § 37-5-107(g), and drug and alcohol records, Tenn. Code Ann. § 37-5-107(h).

51. Despite this narrow confidentiality provision, the Department unlawfully based its redactions to Case File No. 2020-008 on Tennessee Rule of Criminal Procedure 16 and other state law provisions. Moreover, the Department improperly redacted information from Case File No. 2020-008 going far beyond information that would identify the child, family, or person making the report of abuse.

52. Therefore, the Department should be required to produce Case File No. 2020-008, in full, with redactions limited to those required by Tenn. Code Ann. § 37-5-107.

53. Additionally, Tenn. Code Ann. § 10-7-505(g) provides that the Court may award “all reasonable costs involved in obtaining the record, including reasonable attorneys’ fees” if the government “knew that such record was public and willfully refused to disclose it.”

54. The Department knew that the records sought by Petitioner were public and willfully refused to disclose them to her.

55. Therefore, Petitioner should be awarded reasonable costs, including reasonable attorneys’ fees in this case.

Count II – Failure to Provide the Full Case File

56. Petitioner incorporates the allegations in paragraphs 1 through 55.

57. As set forth above, pursuant to the TPRA and Tenn. Code Ann. § 37-5-107, Petitioner requested Case File No. 2020-008 from the Department, including,

through the undersigned, the undisclosed prior investigation files involving the same child.

58. The records sought by Ms. Jacobson are “public records” within the meaning of Tenn. Code Ann. § 10-7-503(a)(1).

59. Under Tenn. Code Ann. § 10-7-503(a)(2)(B), “[t]he custodian of a public record . . . shall promptly make available for inspection any public record not specifically exempt from disclosure.”

60. A denial of a public records request must state the specific legal bases for that denial in writing. Tenn. Code Ann. § 10-7-503(a)(2)(B)(ii).

61. The records custodian bears the burden of proving a claimed exemption applies. Tenn. Code Ann. § 10-7-505(c).

62. The Department denied Petitioner’s public records request for access to the entirety of Case File No. 2020-008 by refusing to include its records of the prior investigations related to the deceased child, which are referenced in the 2020 investigation and constitute part of the Department’s full case file.

63. Tenn. Code Ann. § 37-5-107(c)(4)(C) requires the Department to release a child’s “full case file” “[f]ollowing the closure of an investigation for a child abuse or neglect fatality.”

64. Despite this statutory directive to release the “full case file” after its investigation concludes, the Department improperly denied Ms. Jacobson’s request for records of its prior investigations of the deceased child

and family in Case File No. 2020-008, which are part of the child's "full case file."

65. Because the Department's denial of Petitioner's request for the entirety of Case File No. 2020-008 does not comport with state law, she is entitled to receive the public records she requested under the TPRA and Tenn. Code Ann. § 37-5-107(c)(4)(C).

66. The Department should be required to produce the records of prior investigations related to the child in Case File No. 2020-008, in full, with redactions limited to those required by Tenn. Code Ann. § 37-5-107.

67. Additionally, Tenn. Code Ann. § 10-7-505(g) provides that the Court may award "all reasonable costs involved in obtaining the record, including reasonable attorneys' fees" if the government "knew that such record was public and willfully refused to disclose it."

68. The Department knew that the records sought by Petitioner were public and willfully refused to disclose them to her.

69. Therefore, Petitioner should be awarded reasonable costs, including reasonable attorneys' fees in this case.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Stacy Jacobson prays that this Court:

1) Immediately issue an order, pursuant to Tenn. Code Ann. § 10-7-505(b), requiring the Department to appear before this Court and show cause, if any, why this petition should not be granted;

2) Grant Petitioner a declaratory judgment that all records sought in this case are public records under Tennessee law and that the Department's failure to grant Petitioner access to these public records constitutes a violation of the TPRA, which was knowing and willful;

3) Order the Department to provide the Court with the requested public records for *in camera* review, including the records of prior investigations referenced in Case File No. 2020-008;

4) Order the Department to immediately make available to Petitioner copies of the public records she requested;

5) Grant Petitioner reasonable costs and attorneys' fees pursuant to Tenn. Code Ann. § 10-7-505(g);

6) Grant Petitioner discretionary costs under Tenn. R. Civ. P. 54;

7) Grant Petitioner such equitable relief as may be necessary to secure the purposes and intentions of the TPRA and specifically Tenn. Code Ann. § 10-7-505, including, if necessary, the exercise of the full injunctive remedies and relief available to the Court; and

- 8) Grant Petitioner all such further relief to which she may be entitled.

Respectfully submitted,

/s/ Paul R. McAdoo
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