

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

STACY JACOBSON,)	
)	
Petitioner,)	
)	
v.)	No. 22-0662-I
)	
TENNESSEE DEPARTMENT OF)	
CHILDREN’S SERVICES,)	
)	
Respondents.)	

MEMORANDUM AND FINAL ORDER ON SHOW CAUSE HEARING

Petitioner Stacy Jacobson filed a *Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access* (“Petition”) on May 9, 2022, against Respondent Tennessee Department of Children’s Services (“DCS”), pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503 *et seq.* Petitioner seeks access to DCS’s “Case File No. 2020-008, in its entirety,” and other relief. Respondent has made available on its website a redacted version of its investigative file in Case No. 2020-008, which concerns the fatality of a child, pursuant to Tenn. Code Ann. § 37-5-107. Petitioner requested the “full case file” for Case No. 2020-008, including the unredacted portions, but Respondent has withheld access to the unredacted case file, citing several legal bases.

Pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-505(b), and upon Petitioner’s request, the Court ordered Respondent to appear for a hearing and show cause why the Petition should not be granted on May 27, 2022, rescheduled by agreement for June 3, 2022. The hearing was conducted based on affidavits and declarations. Respondent was not required to, but filed a written response prior to the hearing with one affidavit. Respondent also submitted to

the Court under seal for *in camera* review, the records being sought by Petitioner pursuant to Tenn. Code Ann. § 10-7-505(b). For the reasons discussed below, the Court denies the Petition.

I. BACKGROUND

In January 2020, a 911 emergency call reported an unresponsive 14-year old boy at a residence in Shelby County. First responders arrived and pronounced the child dead. A sibling of the deceased child was transported to the hospital. DCS received a call reporting abuse of the deceased child, and advising that other children and family members resided at the house. DCS opened an investigation of child abuse. The alleged abusers were adult members of the deceased's family, including the child's mother, aunts, and grandmother. Five other children in the family, ages 6 to 16, were considered victims of child abuse. The alleged abusers were arrested in June and July 2021. *See* Petition. They are being criminally prosecuted, and those prosecutions are ongoing. *See* Def.'s Response, Ex. 1, Beacham Aff. DCS closed its investigation file on June 29, 2021, concluding that allegations of death by abuse were substantiated.

After DCS closed its investigation, it released a redacted version of its case file on the DCS website regarding the fatality of the 14 year-old boy, pursuant to Tenn. Code Ann. § 37-5-124. The redactions relate to and include the initial report and identity of the reporter of the allegations of abuse, DCS's investigative interviews of various family members and potential victims, DCS's assessment of the deceased child's siblings, autopsy results of the deceased child, and DCS's conclusions. DCS declined to release records of its prior investigations involving the deceased child, conducted in 2006, 2008, 2009, and 2015.

Petitioner is a journalist and citizen and resident of Shelby County, Tennessee. On August 23, 2021, Petitioner requested from DCS the "full case file for Case No. 2020-008." She noted in her request that although the redacted file was available on DCS's website, she requested "DCS's formal response . . . as to the legal bases for its redactions." Petitioner also asked DCS if it had

“reconsidered whether to include the prior investigations in the released case file for Case No. 2020-008.”

DCS replied on August 26, 2021, through its general counsel, that the redacted version of Case File No. 2020-008 was in accordance with DCS guidelines, and he did not anticipate adding to the file. Petitioner’s counsel requested DCS to specify its statutory bases for redacting the case file. On September 9, 2021, DCS responded that, in addition to Tenn. Code Ann. § 37-5-124, it relied on Tenn. Code Ann. §§ 37-5-107, 37-1-409, 37-1-612, Tenn. R. Crim. P. 16, and the 2013 order entered in a Davidson County Chancery Court case, “requiring the redaction of all such records to eliminate information made confidential under state law.” In response to Petitioner’s request, DCS has not made available its prior investigative records pertaining to the child and has not removed any of the redactions on its investigative file in Case No. 2020-008 as posted on DCS’s website.

II. APPLICABLE STATUTES, COURT RULES AND PRIOR DECISION

A. Tennessee Public Records Act

The Tennessee Public Records Act (“TPRA”) requires all state records to 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 citizen, unless otherwise provided by state law.” Tenn. Code Ann. § 10-7-503(a)(2)(A). There is no dispute that the DCS records requested by Petitioner are “public records” as defined by the TPRA, and Petitioner is a citizen of Tennessee who may request inspection. Denial of a request to inspect, in whole or in part, entitles the citizen making the request to petition for access to such records and to obtain judicial review of the denial of access and request a show cause hearing. *Id.*, § 10-7-505(a) and (b). The official denying access bears the burden of proof to justify the nondisclosure by a preponderance of the evidence. *Id.*, § 10-7-505(c).

B. The Department of Children’s Services Legal Bases for Nondisclosure

DCS relies on the following statutes, rule of criminal procedure, and case law as its legal bases supporting the denial of access to the redacted portions of Case File No. 2020-008 and the additional investigative files relating to the deceased child.

Tenn. Code Ann. § 37-5-124 specifically pertains to circumstances involving the fatality or near fatality of a child. The statute requires the Commissioner of DCS to provide a report where “[a]ny child whose fatality or near fatality resulted in the investigation of the safety and well-being of another child in the home” The report is provided only to members of the state senate and house of representatives representing the child and the district attorney for the judicial district in which the child resided.

Tenn. Code Ann. § 37-5-107 provides for the general confidentiality of DCS records and reports regarding children or families receiving DCS services. Disclosure of those records is prohibited except under limited circumstances. In cases resulting in a child fatality or near fatality, § 37-5-107(c)(4)(A) provides for public disclosure of information about the case in compliance with 42 U.S.C. § 5106a(b)(2)(B)(x).¹ In cases where DCS investigates a child fatality for abuse or neglect, § 37-5-107(c)(4)(B) provides for release of the child’s age, gender, and whether DCS had history with the child within 5 days of the fatality; and, following closure of the investigation, § 37-5-107(c)(4)(C) provides for release of the final disposition of the case and the full case file, which may be redacted to comply with the confidentiality requirements of § 37-5-107.

Tenn. Code Ann. § 37-1-409 protects the confidentiality of reports to DCS of child abuse harm, the identity of the person reporting child abuse, and the alleged perpetrator, with limited exceptions for disclosure not applicable here.

¹ The federal statute referenced is the Child Abuse Prevention and Treatment Act (“CAPTA”).

Tenn. Code Ann. § 37-1-612 protects the confidentiality of all records of DCS concerning child sexual abuse, with limited exceptions, such as those provided under Tenn. Code Ann. § 37-5-107, medical professionals, department employees, and agency employees providing services, court officials, and law enforcement agencies and prosecutors.

Tenn. R. Crim. P. 16 provides for and limits disclosure of information by the State or defendants during criminal proceedings. Rule 16(a)(2) specifically limits the release of any information related to a criminal proceeding as follows:

Except as provided in paragraphs (A), (B), (E), and (G) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with investigating or prosecuting this case. Nor does this rule authorize discovery of statements made by state witnesses or prospective state witnesses.

Tenn. R. Crim P. 16.

The Davidson County Chancery Court's memorandum and order in the case styled *The Tennessean, et al. v. Tenn. Dep't of Children's Services*, Case No. 12-1769-II, which required DCS to "redact DCS records to eliminate information made confidential under state law," under statutes in effect at that time.

III. ANALYSIS

Petitioner seeks access to an unredacted version of DCS records relating to the fatality of a child for which a report of abuse was received and investigated by DCS and the file is closed. Petitioner also seeks prior investigative files relating to the same child. DCS denied access on the multiple legal grounds discussed above.

The TPRA recognizes the public's right to inspect governmental records. The purpose of the TPRA is to provide a vehicle for holding governmental officials and agencies accountable through public access and oversight of governmental activities. *Tennessean v. Metro. Gov't of*

Nashville & Davidson Cnty., 485 S.W. 3d 857, 864 (Tenn. 2016). Public records are broadly defined under the TPRA. There is no dispute that the records Petitioner requests in this case come within that definition, and Petitioner has standing to make the request as a Tennessee citizen.

While the public's right to access governmental records is broad and there is a presumption in favor of openness of government records, the right is not "absolute" and there are numerous statutory exceptions. *Id.* In addition to specific exceptions, the General Assembly has enacted a general exception to the TPRA based on "state law." Tenn. Code Ann. § 10-7-503(a)(2)(A). "State law" is construed to include Tennessee's statutes, constitution, common law, rules of court, and administrative rules and regulations. *Tennessean*, 485 S.W.3d at 865-66 (citing *Swift v. Campbell*, 159 S.W.3d 565, 571-72 (Tenn. Ct. App. 2004)). Rule 16 of the Tennessee Rules of Criminal Procedure comes within the general "state law" exception. *Id.* at 866.

The issue presented in this case is whether an unredacted version of DCS's Case File No. 2020-008, and the related prior investigation files, are excepted from disclosure under the TPRA. The Court has reviewed *in camera* the redacted portions of the DCS file in Case File No. 2020-008 and the unredacted prior investigative files relating to the same child from 2006, 2008, 2009, and 2015.

Tennessee law recognizes that information in investigative files related to a pending criminal prosecution is excepted from disclosure under Rule 16. *Id.* at 875. This exception extends not only to information that is the work product of the law enforcement agency, but also to the investigative records gathered by law enforcement from other state agents (such as DCS). *Id.* at 870.

The Court is informed in this case that the State is criminally prosecuting certain family members of the deceased child and those criminal proceedings are ongoing. *See* Def.'s Response, Ex. 1, Beacham Aff. Based on the Court's *in camera* review of the DCS files, the Court finds that

the redacted information, such as witness interviews and other investigative information, relates to the criminal prosecutions of the family members of the deceased child as the alleged perpetrators of abuse. The Tennessee Supreme Court has held the rights of the public, including the media, to access certain governmental information “must yield to the need to protect the rights of defendants accused of crimes in criminal proceedings and the integrity of the criminal justice system.” *Id.* at 874. As the Court explained,

[i]f Rule 16 did not function as an exception to the [TPRA], a defendant would have no reason to seek discovery under Rule 16, but would file a public records request and obtain the entire police investigative file, which could include more information than the defendant could obtain under Rule 16. Or if the media could make a public records request and obtain the investigative files, then the defendant and potential jurors could learn about the State’s case against the defendant by reading a newspaper or watching a television news broadcast. This absurd result was not intended by the Legislature and would have a negative impact on a police department’s ability to investigate criminal activity and a defendant’s ability to obtain a fair trial.

Tennessean, 485 S.W.3d at 871.

Accordingly, Petitioner in this matter is not permitted access to the unredacted Case File No. 2020-008, or the related investigative files, under Rule 16 during the pendency of the criminal proceedings against certain family members of the deceased child, and any collateral challenges to the results of those proceedings. The interests of the public and the media must yield to the rights of criminal defendants and the integrity of the criminal justice system. *Id.*

IV. CONCLUSION

The TPRA provides for broad disclosure of governmental records, but the General Assembly has recognized certain state law exceptions, including Rule 16 of the Tennessee Rules of Criminal Procedure. The Court concludes Petitioner does not have the right of access to the requested information during the pendency of the criminal prosecutions relating to the child’s death and any collateral challenges to the results of those criminal proceedings. The Court does

not reach the issue of the scope of the information that may otherwise be subject to disclosure under the TPRA, the inclusion of the related records, or the construction of the DCS statutes after all criminal proceedings are concluded.

It is, accordingly ORDERED, ADJUDGED and DECREED that Petitioner's petition to access public records is hereby DENIED due to the pendency of the criminal proceedings related to this matter and the state law exception to the TPRA under Tenn. R. Crim. P. 16.

It is further ORDERED, ADJUDGED and DECREED that Petitioner's request for attorneys' fees or other relief is hereby DENIED.

It is further ORDERED, ADJUDGED and DECREED that this order is deemed a final judgment pursuant to Rule 58 of the Tennessee Rules of Civil Procedure. Court costs are hereby TAXED to Petitioner, for which execution may issue.

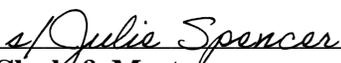

PATRICIA HEAD MOSKAL
CHANCELLOR, PART I

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded via U.S. Mail, first-class, postage pre-paid, to the parties or their counsel named below.

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Deputy Clerk & Master

6/23/22
Date