

IN THE CHANCERY COURT OF PUTNAM COUNTY, TENNESSEE
FOR THE THIRTEENTH JUDICIAL DISTRICT AT COOKEVILLE

LINDSAY PRIDE,

Petitioner,

v.

COOKEVILLE REGIONAL MEDICAL
CENTER AUTHORITY,

Respondent.

FILED 3/12 20 23
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LINDA F. REEDER, CLERK & MASTER
BY Regena Henry
DEPUTY CLERK & MASTER

No. 2023-38

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

Petitioner Lindsay Pride submit this Memorandum of Law in Support of their 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 herein, this Court should grant the Petition, order Respondent Cookeville Regional Medical Center Authority (the "Hospital") to immediately produce the requested public records to Petitioner, and grant Petitioner reasonable costs, including reasonable attorneys' fees.

FACTS

On August 29, 2022, Ms. Pride requested the following from the Hospital's Chief Executive Officer, Paul Korth, and his Executive Assistant Mindy Youngblood pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503, *et seq.* (the "TPRA"): "public records that include the salaries of the top administrative positions at Cookeville Regional Medical Center including the chief executive

officer, the medical staff president, chief operating officer, chief financial officer, chief legal counsel, chief nursing officer and chief strategy officer” (the “Hospital Salary Records”). Pet. ¶ 4. On September 26, 2022, the undersigned attorney for Petitioner sent a letter on her behalf to Luke Hill, Chief Legal Counsel for the Hospital. *Id.* ¶ 5. On November 8, 2022, Mr. Hill said in an email to the undersigned that he had discussed the issue “with our CEO, and I do not have a response for you at this time.” Pet. ¶ 7.

The Hospital was created by the Tennessee General Assembly pursuant to the Private Act Hospital Act of 1996. 1999 Tenn. Priv. Acts Ch. 49¹; *City of Cookeville v. Humphrey*, 126 S.W.3d 897, 900 (Tenn. 2004); *Clary v. Miller*, 546 S.W.3d 101, 107 n.5 (Tenn. Ct. App. 2017). The Hospital was created “for the purpose of operating Cookeville Regional Hospital and all other hospital, clinical and health care facilities related thereto.” 1999 Tenn. Priv. Acts Ch. 49 § 1. Originally, “Cookeville Regional Medical Center was established as part of the Charter of the City of Cookeville.” *Id.* at 1.

ARGUMENT

I. The TPRA Must Be Interpreted Broadly in Favor of Public Access.

“The Public Records Act reflects the legislature’s effort to . . . advance[] the best interests of the public.” *State v. Cawood*, 134 S.W.3d 159, 167 (Tenn. 2004). “Facilitating access to governmental records promotes public awareness and knowledge of governmental actions and encourages governmental officials and

¹ Exhibit B, Attachment 3 to the Petition is a true and correct copy of 1999 Tenn. Priv. Acts Ch. 49.

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 (citation omitted) (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). Thus, Tennessee’s courts have held that the Public Records Act is a “clear mandate in favor of disclosure.” *Tennessean v. Elec. Power Bd.*, 979 S.W.2d 297, 305 (Tenn. 1998); *see also* *Gautreaux v. Internal Med. Educ. Found., Inc.*, 336 S.W.3d 526, 529 (Tenn. 2011) (citing *City of Memphis*, 871 S.W.2d at 684) (explaining that “the legislative mandate of the Public Records Act [is] very broad and . . . require[s] disclosure of government records even when there are significant countervailing considerations”). Consistent with this broad construction, public records are presumptively open 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)).

To fully effectuate the broad legislative mandate in favor of disclosure, exemptions to the TPRA—like exemptions to other states’ public records statutes—

must be narrowly construed. *See, e.g., Lightbourne v. McCollum*, 969 So. 2d 326, 332–33 (Fla. 2007) (holding that Florida 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)); *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 records law be “liberally construe[d] . . . to accomplish its 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 Hospital is subject to the TPRA.

The Hospital is subject to the statutory requirements of the TPRA. The TPRA “governs the right of access to records of government agencies in this state.” *Memphis Publ’g Co.*, 87 S.W.3d 67, 74 (Tenn. 2002) (quoting *Cole v. Campbell*, 968 S.W.2d 274, 275 (Tenn. 1998); *see also* Tenn. Code Ann. § 10-7-503(a)(1)(A)(i) (defining public records as “all documents, papers, ...made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity”) (emphasis added). The Hospital is no exception. *See* Tenn. Code Ann. § 10-7-503(a)(2)(A) (noting that “public hospitals” must respond to TPRA requests “during the business hours of their administrative offices”).

The Tennessee Court of Appeals addressed this very issue in *Cleveland Newspapers, Inc. v. Bradley County Memorial Hospital Board of Directors*, 621 S.W.2d 763 (Tenn. Ct. App. 1981), a case that was cited in Petitioner's letter to the Hospital, Pet. Ex. B, Attach. 1. In *Cleveland Newspapers*, a local newspaper sought a "determination from the courts of its right under [the TPRA] to inspect the Defendants' payroll records." 621 S.W.2d at 763. The defendant, Bradley County Memorial Hospital Board of Directors, operated the Bradley County Memorial Hospital, which was created "by virtue of Chapter 846 of the Private Acts of 1947." *Id.* at 763-64. The Court rejected the hospital's arguments against disclosure and, instead, found that it was subject to the TPRA. *Id.* at 767. The *Cleveland Newspapers* decision and the plain language of the TPRA are dispositive here and make clear that the Hospital is subject to the TPRA.

III. The Hospital Salary Records are public records for which there is no lawful basis for denying access.

The TPRA broadly defines "public record" as anything "made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity." Tenn. Code Ann. § 10-7-503(a)(1). Salary records of public employees fall within this definition as they are records made by government employers, like the Hospital, "in connection with the transaction of official business." *Id.* In fact, many Tennessee governmental entities proactively post their employees' salaries on the Internet, including Tennessee Tech University in Cookeville. *E.g.*, <https://www.tntech.edu/hr/su-salaries/index.php> (database with employee salary information for Tennessee Tech employees).

The Hospital's refusal to respond to Petitioner's public records request is a denial. Tenn. Code Ann. § 10-7-503(a)(3). Under the TPRA, public records may only be withheld from a requester when withholding is permitted "by state law." Tenn. Code Ann. § 10-7-503(A)(2)(A). The Hospital has not identified any state law basis for not responding to Petitioner's request for the Hospital Salary Records; nor is there any state law basis for doing so. As such, the Petition should be granted.

IV. Petitioner should be awarded attorneys' fees and costs.

"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); *see also Schneider*, 226 S.W.3d at 346 (explaining that the TPRA "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") (citing *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 789 (Tenn. Ct. App. 1999)).

The Court of Appeals has "stressed that willfulness should be measured 'in terms of the relative worth of the legal justification cited by a [governmental entity] 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 a [governmental entity] relies on in support of its refusal of records.'" *Id.* (quoting

Friedmann, 471 S.W.3d at 438). While Tennessee courts, “in assessing willfulness, . . . must not impute to a governmental entity the ‘duty to foretell an uncertain juridical future,’” *Schneider*, 226 S.W.3d at 346 (quoting *City of Memphis*, 871 S.W.2d at 689), “[i]f a [governmental entity] 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 Hospital willfully refused to disclose the records requested by Petitioner. As discussed above, both the plain language of the TPRA and binding case law make clear the Hospital’s denial is not supported by existing law, or by any good faith argument for modification of existing law. Tenn. Code Ann. § 10-7-503(a)(2)(A) (specifying that “public hospitals” need only make public records available for inspection during their administrative office’s business hours); *Cleveland Newspapers*, 621 S.W. 2d at 763, 767 (holding that a public hospital was subject to the TPRA for its payroll records). The Hospital offered no justification for denying the request and there is no lawful basis for doing so.

Case law, including from the Tennessee Supreme Court, supports a finding of willfulness on the part of the Hospital. For example, in *Schneider*, the petitioners sought field interview cards generated by the Jackson police department, among other records. “The City failed either to provide access to the requested records or to provide a written response to the repeated requests,” including a letter from counsel for the requesters. *Schneider*, 226 S.W.3d at 335. After petitioners brought

suit, but shortly before the first hearing, the City filed a written response to the petition asserting that the interview cards—which it had not reviewed to determine whether they were part of any ongoing criminal investigation—were protected by a blanket law enforcement privilege and thus not subject to the disclosure requirements of the TPRA. *Schneider*, 226 S.W.3d at 336. The Tennessee Supreme Court upheld the trial court’s decision that this response to petitioners’ request constituted a willful refusal to disclose public records and warranted an award of attorneys’ fees. *Id.* at 347 (“[R]ecognizing that at least a portion of the field interview cards were subject to disclosure would not have required the City ‘to foretell an uncertain juridical future.’”). Here, the Hospital has taken the same approach as the City in *Schneider*—ignoring the request. And given the Hospital’s refusal to respond and failure to offer *any* legal justification for its denial of the request, the Court should, like the Court in *Schneider*, award Petitioner reasonable costs, including attorneys’ fees.

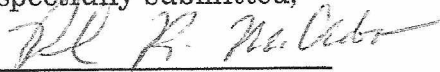
Similarly, in *Friedmann*, a journalist asked for records from the Marshall County Sheriff that were admittedly public records. 471 S.W.3d at 429. The Sheriff took the position, however, that the journalist was required to appear in person to request the records. *Id.* The journalist, his attorney, and the Tennessee Office of Open Records Counsel (the “OORC”) all told the Sheriff’s attorney that he could not require that the request be made in person, but the Sheriff persisted, purportedly on the advice of his attorney. *Id.* at 430. The trial court granted the journalist’s petition requiring the production of the requested public records but declined to

award attorneys' fees. *Id.* at 431. The Court of Appeals reversed the denial of an attorneys' fees award for abuse of discretion. *Id.* at 441. The Court of Appeals explained that "[g]iven the state of the law and the communication of that law to both the Sheriff's Office and the County Attorney, [the Sheriff's] failure to comply with [the journalist's] request was willful." *Id.* at 440. The same can be said here. The state of the law is clear and counsel for Petitioner communicated that law to the Hospital's attorney. Just as the Court of Appeals found that attorneys' fees were necessary in *Friedmann*, the Court here should likewise grant Petitioner reasonable costs, including reasonable attorneys' fees.

CONCLUSION

For the foregoing reasons, the Court should order the Hospital to release the requested Hospital Salary Records to Petitioner and award reasonable costs, including attorneys' fees, in this matter.

Respectfully submitted,

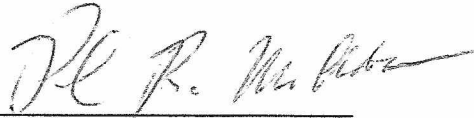


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CERTIFICATE OF SERVICE

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



Counsel for Petitioner