

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

CITY PRESS COMMUNICATIONS, )  
LLC, )  
and )  
STEVE CAVENDISH, )  
and )  
KEN WHITEHOUSE, )  
Petitioners )  
v. )  
TENNESSEE SECONDARY SCHOOL )  
ATHLETIC ASSOCIATION, )  
Respondent. )

No. 12-240-7

FILED  
2012 FEB 15 PM 2:43  
CLEAN AND MASTER  
DAVIDSON CO. CHANCERY CT.  
DC&M

PETITION FOR ACCESS TO PUBLIC RECORDS

Pursuant to Tenn. Code Ann. § 10-7-505, the petitioners file this Petition seeking access to public records within the custody and control of the Tennessee Secondary School Athletic Association.

Petitioners allege:

1. The petitioner City Press Communications, LLC, is a Tennessee limited liability company which publishes the weekly newspaper The City Paper.
2. The petitioner Steve Cavendish (“Cavendish”) is editor of the City Paper and is a resident and citizen of Tennessee.
3. The petitioner Ken Whitehouse (“Whitehouse”) is a senior writer for the City Paper and is a resident and citizen of Tennessee.

4. The respondent Tennessee Secondary School Athletic Association (“TSSAA”) is a nonprofit Tennessee corporation. Its principal office is located at 3333 Lebanon Road, Hermitage, Tennessee 37076, in Davidson County.

5. Approximately four hundred (400) secondary schools in Tennessee are currently members of the TSSAA. Although membership in the TSSAA is open to public, private and parochial high schools, more than three quarters (3/4) of the member schools are public high schools. Almost every public high school in Tennessee is a member of the TSSAA.

6. According to its constitution, the purpose of the TSSAA is to regulate interscholastic athletic competition among its member schools. In furtherance of that purpose, the TSSAA has adopted detailed rules and standards which must be followed by its member schools. These rules and standards are contained in a 60-page Handbook published on the TSSAA website.

7. The bylaws, rules and standards of the TSSAA were adopted, and are periodically reviewed and revised, by a nine-person Legislative Council, the members of which must be school principals, assistant principals, or superintendents. Currently, eight of the nine members of the TSSAA Legislative Council are employees of public high schools.

8. The administrative authority of the TSSAA is vested in a nine-person Board of Control, the members of which must be school principals, assistant principals, or superintendents. Currently, all nine members of the TSSAA Board of Control are employees of public high schools.

9. Since 1925 the TSSAA has regulated interscholastic athletic competition among secondary schools in Tennessee. It is the only entity in Tennessee which performs this function.

10. Over the years, the TSSAA has been officially recognized by the Tennessee Board of Education as the entity to perform this regulatory function. Rule 0520-01-02-.08(1) of the rules of the Board of Education currently states:

The State Board of Education recognizes the value of participation in interscholastic athletics and the role of the Tennessee Secondary School Athletic Association in coordinating interscholastic athletic competition. The State Board of Education authorizes the public schools of the state to voluntarily maintain membership in the Tennessee Secondary School Athletic Association.

11. As a result of this longtime relationship between the TSSAA and the Tennessee Board of Education, several public officials from the education sector of state government serve as “ex officio” representatives to the TSSAA Legislative Council and Board of Control, including at least one representative from each of the following:

Tennessee Board of Education  
Tennessee Department of Education  
Tennessee School Boards Association  
Tennessee Organization of School Superintendents  
Tennessee Athletic Coaches Association  
Tennessee High School Athletic Administrators Association  
Tennessee Association of Secondary School Principals

12. Every member school pays annual membership dues to the TSSAA. Because the Board of Education rule quoted in paragraph 10 above authorizes public high schools to belong to the TSSAA, the membership dues paid to the TSSAA by these schools are public funds.

13. Many of the games and athletic contests involving TSSAA member schools are played in public buildings or on public grounds. A source of revenue for the TSSAA is the gate receipts from games between member schools in tournaments held in public buildings or on public grounds.

14. From 1997 through 2008, the TSSAA was engaged in litigation in the federal courts with Brentwood Academy, a member of the TSSAA. During the course of that litigation, the U.S. Supreme Court determined that the TSSAA's "regulatory activity may and should be treated as state action owing to the pervasive entwinement of state school officials in the structure of the association." Brentwood Academy v. Tennessee Secondary School Athletic Association, 531 U.S. 288, 291, 148 L.Ed.2d 807, 121 S.Ct. 924 (2001).

15. In the last several months, the City Paper has published several news stories about the TSSAA's enforcement of its rules against several of its member schools. These stories have raised substantial questions about the manner in which the TSSAA enforces its rules and the disparity in sanctions imposed on member schools.

16. In the course of the investigation which led to the publication of these news stories, the City Paper requested records from the TSSAA, which failed to provide the requested records.

17. On August 22, 2011, petitioner Whitehouse sent an e-mail to Bernard Childress, the TSSAA executive director, making a request for access to the following records pursuant to the Tennessee public records statute: "the report submitted by Montgomery Bell Academy regarding financial contributions to students/families of the

school. Also, any email correspondence between MBA officials and TSSAA staff during the 2011 calendar year.” A copy of this request is Exhibit A to this Petition.

18. Petitioner Whitehouse received no response from the TSSAA to his request for access to these records under the public records statute.

19. On January 9, 2012, petitioner Cavendish sent a request to the TSSAA requesting access to the following records:

“Pursuant to the state open records law, Tenn. Code Ann. Secs. 10-7-503 to 10-7-516, I write to request access to and a copy of the following records in the possession of the TSSAA:

- 1) A report submitted by Montgomery Bell Academy regarding financial contributions to students/families of the school. Also, any email or written correspondence between MBA officials and TSSAA staff during the 2011 calendar year pertaining to this subject.
- 2) Any and all records, emails and correspondence regarding Montgomery Bell Academy and coach Daniel McGugin up to his dismissal in April 2011.
- 3) Any and all records, emails and correspondence between the TSSAA and member schools regarding possible violations of financial aid rules during the 2011 calendar year.”

This request was contained in a letter to Mr. Childress which was attached to an email to Mr. Childress. A copy of the e-mail, including the attached letter, was sent to the long-time attorney for the TSSAA, Richard Colbert. A copy of this request is Exhibit B to this Petition.

20. Petitioner Cavendish received no response from the TSSAA to his request for access to records under the public records statute. However, Mr. Colbert informed

the undersigned attorney for the City Paper that the TSSAA would not allow access to the requested records.

21. The petitioners contend that the documents they seek are “public records,” as defined in Tenn. Code Ann. § 10-7-301(6), and are “open for public inspection by any citizen of Tennessee” under Tenn. Code Ann. § 10-7-503(a).

22. The petitioners contend that the TSSAA is the “functional equivalent” of a governmental entity, within the meaning of that phrase as described in Memphis Publishing Co. v. Cherokee Children & Family Services, Inc., 87 S.W.3d 67, 79 (Tenn. 2002).

23. The TSSAA is the functional equivalent of a governmental entity for numerous reasons, including but not limited to:

- (a) the pervasive entwinement of state school officials in the governing structure of the TSSAA;
- (b) the overwhelming predominance of public high schools in the membership of the TSSAA;
- (c) the payment of public funds to the TSSAA by public high schools as membership dues and the TSSAA’s receipt of revenues from athletic contests held on public grounds and in public buildings;
- (d) the official recognition of the TSSAA by the Tennessee Board of Education in its rules and in numerous ways over the years;
- (e) the use of public facilities for many of the athletic contests which are regulated by the TSSAA; and

- (f) the performance of a vital regulatory function by the TSSAA which would, in the absence of the TSSAA, be performed by the Board of Education or another government agency.

24. The petitioners submit that the public has a strong interest in interscholastic athletic competition between high schools and in how that competition is regulated by the TSSAA. The City Paper has been instrumental in providing information about this general subject through its published news stories. Petitioners have requested the records described in Exhibits A and B so that the City Paper can publish additional news stories about this subject.

25. The petitioners respectfully contend that the TSSAA has no legal ground to withhold the requested records from the petitioners and that the TSSAA should make the records available to the petitioners immediately for inspection and copying.

WHEREFORE, the petitioners pray:

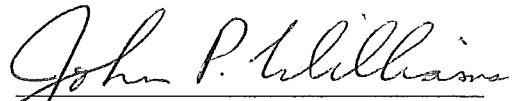
1. That the Court issue an order requiring the respondent TSSAA to provide the requested records to the petitioners.

2. That the petitioners be awarded attorney's fees as a result of the respondent's willful refusal to disclose the requested public records, pursuant to T.C.A. § 10-7-505(g).

3. That the costs of this action be taxed against the respondent.

4. That the Court grant such further relief as it deems just and equitable.

Respectfully submitted,

  
John P. Williams (#0531)

Tune, Entrekin & White, P.C.

Regions Center, Suite 1700

315 Deaderick Street

Nashville, TN 37238

Ph: 615-244-2770

Fax: 615-244-2778

Attorney for Petitioners



**From:** Ken Whitehouse [mailto:kwhitehouse@nashvillepost.com]  
**Sent:** Monday, August 22, 2011 10:45 AM  
**To:** tssaa@tssaa.org; bchildress@tssaa.org; gmenees@tssaa.org  
**Cc:** Stephen George; William Williams  
**Subject:** Attn: Bernard Childress, legal request  
**Importance:** High

August 22, 2011  
Bernard Childress  
Executive Director, TSSAA  
P.O. Box 319, 3333 Lebanon Rd.  
Hermitage, TN 37076

Dear Mr. Childress,

Pursuant to the state open records law, Tenn. Code Ann. Secs. 10-7-503 to 10-7-512; 10-7-701 to 10-7-702; 10-8-101 to 10-8-103, I write to request access to and a copy of the report submitted by Montgomery Bell Academy regarding financial contributions to students/families of the school. Also, any email correspondence between MBA officials and TSSAA staff during the 2011 calendar year.

In the case of Brentwood Academy V. Tennessee Secondary School Athletic Assn. (99-901) 531 U.S. 288 (2001) heard before the U.S. Supreme Court, it was determined by a majority of the court that the TSSAA is a state actor. As a state actor, it is therefore subject to open records laws. I agree to pay any reasonable copying and postage fees of not more than \$100. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within seven (7) business days. See Tenn. Code Ann. Sec. 10-5-703(a)(2)(B).

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that the knowing and willful violation of the open records law can result in the award of all reasonable costs involved in obtaining the records, including attorney fees. See Tenn. Code Ann. Sec. 10-7-505(g).

Thank you for your assistance.

Sincerely,

Ken Whitehouse  
Senior Writer  
The City Paper  
210 12th Avenue South, Suite 100  
Nashville, Tennessee 37203

EXHIBIT A

**John Williams**

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**From:** Steve Cavendish <scavendish@southcomm.com>  
**Sent:** Monday, January 09, 2012 3:33 PM  
**To:** bchildress@tssaa.org; gmenees@tssaa.org  
**Cc:** RColbert@kaygriffin.com  
**Subject:** Records request  
**Attachments:** TSSSAARquest.pdf; ATT301228.txt

Mr. Childress,

I am attaching a formal open records request to the TSSAA.

Thank you,

Steve Cavendish

EXHIBIT B

# The City Paper

January 9, 2012

Bernard Childress  
Executive Director, TSSAA  
P.O. Box 319, 3333 Lebanon Rd., Hermitage, TN 37076

Dear Mr. Childress,

Pursuant to the state open records law, Tenn. Code Ann. Secs. 10-7-503 to 10-7-516, I write to request access to and a copy of the following records in the possession of the TSSAA:

- 1) A report submitted by Montgomery Bell Academy regarding financial contributions to students/families of the school. Also, any email or written correspondence between MBA officials and TSSAA staff during the 2011 calendar year pertaining to this subject.
- 2) Any and all records, emails and correspondence regarding Montgomery Bell Academy and coach Daniel McGugin up to his dismissal in April 2011.
- 3) Any and all records, emails and correspondence between the TSSAA and member schools regarding possible violations of financial aid rules during the 2011 calendar year.

In the case of Brentwood Academy v. Tennessee Secondary School Athletic Assn., 531 U.S. 288 (2001), the U.S. Supreme Court, determined that the TSSAA is a state actor. In the case of Memphis Publishing Co. v. Cherokee Children & Family Services, Inc., the Tennessee Supreme Court held that the Tennessee open records law applies to a nonprofit corporation that is the "functional equivalent" of a government agency. Under the principles of both these cases, the TSSAA is therefore subject to open records laws.

I agree to pay any reasonable copying and postage fees of not more than \$100. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within seven (7) business days. See Tenn. Code Ann. Sec. 10-5-703(a)(2)(B).

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that the knowing and willful violation of the open records law can result in the award of all reasonable costs involved in obtaining the records, including attorney fees. See Tenn. Code Ann. Sec. 10-7-505(g).

Thank you for your assistance.

Sincerely,

Steve Cavendish  
Editor  
The City Paper  
210 12th Avenue South, Suite 100, Nashville, Tennessee 37203