

IN THE CHANCERY COURT OF MARSHALL COUNTY, TENNESSEE

ALEX FRIEDMANN, Individually,)
and as a Managing Editor of)
PRISON LEGAL NEWS,)
)
Petitioner,)
)
v.)
)
MARSHALL COUNTY,)
JOE BOYD LIGGETT, County Mayor,)
acting by and through)
MARSHALL COUNTY SHERIFF'S DEPARTMENT,)
NORMAN DALTON, Sheriff,)
)
Respondent.)

Case No. 17017

FILED 12:18 P:M

MAY 16 2014

KIMBERLEE ALSUP, C&M
BY Nacy DEPUTY
Haskins

PETITION FOR ACCESS AND TO SHOW CAUSE

Comes now the Petitioner, Alex Friedmann, by and through undersigned counsel, and, pursuant to the Tennessee Public Records Act, T.C.A. § 10-7-501, *et seq.* (hereinafter “the Act”), hereby petitions this Honorable Court for access to certain public records and to obtain judicial review of the actions of the Respondent in denying the Petitioner access to those records. In support of this Petition, the Petitioner states as follows:

1. T.C.A. § 10-7-503(a)(2)(A) requires that:

[a]ll state, county and municipal records shall, at all times during business hours ... 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.

2. Petitioner is a citizen of the state of Tennessee whose requests to exercise his right to receive copies of public records under the Act and the common law of this state have been denied.

Petitioner is also a Managing Editor of Prison Legal News, a nationally distributed publication that reports on news and litigation related to prison, jails and the criminal justice system.

3. This Court has subject matter jurisdiction of this matter and venue is proper in this Court under T.C.A. § 10-7-505(b).
4. On February 3, 2014, Petitioner sent a formal written Public Records Request pursuant to T.C.A. § 10-7-501, *et seq.*, and in particular T.C.A. § 10-7-503, to Respondent by mail requesting copies of certain public records maintained by Respondent. *Appx. 1-2.*
5. On February 10, 2014, Respondent, through an Assistant Administrator of the Marshall County Sheriff's Department, Terry Wright, sent a letter to Petitioner in response to Petitioner's Public Records Request. *Appx. 3.* Mr. Wright stated to Petitioner that Petitioner could come to the Marshall County Jail to make his Public Records Request in person.
6. On February 19, 2014, Petitioner sent an email to Mr. Wright to clarify that he did not wish to make his Public Records Request in person. *Appx. 4.* Petitioner restated his desire that the requested documents be provided by mail or in electronic format via email. Petitioner further restated his intention to pay any costs (as allowable by law) associated with this request.
7. On February 21, 2014, Mr. Wright responded to Petitioner's email described at Paragraph 5, above. *Appx. 6.* Mr. Wright stated that “[the Sheriff] insist[ed] that [Petitioner] make these request[s] in person.”
8. On February 21, 2014, Petitioner responded to Mr. Wright's email described at Paragraph 6, above. *Appx. 7.* Petitioner advised Mr. Wright that the Office of Open Records Counsel has directly addressed this issue, stating that citizens are not required to make a request to inspect or receive copies of records in person as long as the request is sufficiently detailed for the records custodian to know what records are being requested. Petitioner directed Mr. Wright to view the Open Records Counsel's position on this matter at the Office of Open Records Counsel website, <http://comptroller.tn.gov/openrecords/faq.asp#16>.

9. On February 27, 2014, Mr. Wright responded to Petitioner's email described at Paragraph 7, above. *Appx. 8*. Mr. Wright forwarded to Petitioner a copy of a form that "must be filled out and signed in person to obtain records" and directed Petitioner to contact William Haywood, Marshall County Attorney, with any further questions.
10. On March 12, 2013, Elisha Hodge, Tennessee Open Records Counsel, sent an email to Mr. Haywood. *Appx. 12-13*. Ms. Hodge stated that "[t]he courts in Tennessee have held for a number of years now that a citizen does not have to appear in person in order to make a public records request" and cited extensive case law substantiating the same. Ms. Hodge further stated that Petitioner could easily sign Respondent's form and send it to Respondent along with a photocopy of his identification.
11. On March 14, 2014, Petitioner, through Human Rights Defense Center Staff Attorney Robert Jack, sent a letter to Mr. Haywood. *Appx. 10-13*. Mr. Jack reiterated Petitioner's Public Records Request. Further, Mr. Jack attached to his correspondence a copy of the email sent to Mr. Haywood by Ms. Hodge, described at Paragraph 9, above.
12. On March 19, 2014, Mr. Haywood responded to Mr. Jack's letter, described at Paragraph 10, above. *Appx. 14*. Mr. Haywood stated that Mr. Jack has "misinterpret[ed]" the law and that Respondent was "only obligated to make [the records] available for public inspection."
13. On March 24, 2014, Petitioner renewed his Public Records Request to include Respondent's form and a photocopy of Petitioner's identification. *Appx. 15-22*.
14. Respondent has failed to respond to Petitioner's March 24, 2014, Public Records Request.
15. Further, Respondent has failed to respond to Petitioner's numerous requests for a response in this matter. *Appx. 23-25*.

16. T.C.A. § 10-7-503(a)(2)(B) provides that:

The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days:

(i) Make the information available to the requestor;

(ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or

(iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.

17. Respondent has not made the requested documents available, has not provided a denial in writing, and has not furnished Petitioner a completed records request response form, all in violation of T.C.A. § 10-7-503(a)(2)(B).

18. T.C.A. § 10-7-503(a)(3) provides that “[f]ailure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the right to bring an action as provided in §10-7-505.”

19. Respondent's failure to respond to Petitioner's Public Records Request constitutes a denial pursuant to T.C.A. § 10-7-503(a)(3).

20. As Petitioner is a citizen of the state of Tennessee, and the records that Petitioner is seeking are public records, Respondent has no authority to deny Petitioner's request to receive copies of the requested records.

21. Respondent's claim that Petitioner must make his Public Records Request in person is entirely false. *For a detailed description of the current state of the law regarding this matter, see Ms. Hodge's email to Mr. Haywood at Appx. 12-13. See also Ms. Hodge's formal opinion on this matter at Appx. 26-27.*

22. To the best of Petitioner's knowledge, information, and belief, the requested records are in the possession, custody, or control of Respondent in some form or fashion.

23. The records that the Petitioner requested to inspect clearly constitute public records under the Act, and none of the exceptions to the Act are applicable under the facts of this case. Thus, the denial of access by Respondent to these public records constitutes a willful violation under the Act necessitating the filing of the instant action pursuant to T.C.A. § 10-7-505 and entitling the Petitioner to all reasonable costs and attorneys fees.

WHEREFORE, PREMISES CONSIDERED, PETITIONER PRAYS:

1. That this Court issue an order requiring Respondent to appear before this Court and show cause, if any can be shown, why this Petition should not be granted, as provided by T.C.A. § 10-7-505(b);
2. That Petitioner be granted a declaratory judgment that documents in the possession, custody, or control of Respondent requested by Petitioner are public records under Tennessee law and that Respondent's denial of access to these public records constitutes a willful violation of the Tennessee Public Records Act, T.C.A. §§ 10-7-501 to 10-7-505;
3. That this Court order Respondent to provide the requested documents to Petitioner either by mail or in electronic format via email;
4. That Petitioner be awarded his reasonable costs and attorneys fees pursuant to T.C.A. § 10-7-505(g); and
5. For such other, further, general, and specific relief to which he may be entitled.

I am a surety in this action not to exceed ~~three~~ hundred dollars (\$~~300.00~~).

File
MP2

\$500.00
MP

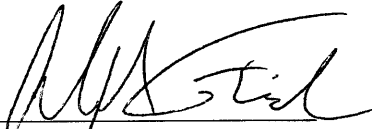


Robert Dalton #029791
Michael Auffinger #030934

VERIFICATION OF ALEX FRIEDMANN

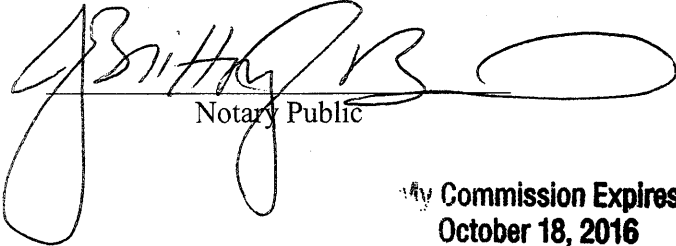
STATE OF TENNESSEE)
COUNTY OF Davidson

I hereby verify, under penalty of perjury, that all of the facts in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.



Alex Friedmann

Sworn to and subscribed before me this 3rd day of May, 2014.




Notary Public

My Commission Expires
October 18, 2016



Respectfully submitted this 15th day of May, 2014.



Robert Dalton #029791
Michael Auffinger #030934
Counsel for Petitioner
535 2nd Avenue North, No.1
Lewisburg, TN 37091
931.422.5400

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PRISON LEGAL NEWS

Dedicated to Protecting Human Rights

www.prisonlegalnews.org

Please Reply to Tennessee Office:

afriedmann@prisonlegalnews.org

Direct Dial: 615-495-6568

5331 Mt. View Rd. #130

Antioch, TN 37013

February 3, 2014

**SENT VIA EMAIL AND
CERTIFIED MAIL**

Marshall County Sheriff's Dept.
Attn: Sheriff Norman Dalton
209 1st Avenue North
Lewisburg, TN 37091

RE: Public Records Request

Dear Sheriff Dalton:

I previously spoke with Ms. Patterson regarding this public records request, but she was not helpful. Therefore, pursuant to T.C.A. § 10-7-503, *et seq.*, I am requesting copies of the following records in the possession or control of the Marshall County Sheriff's Department:

1. The policy currently in effect at the Marshall County Jail Complex ("Jail") related to or concerning mail sent to and/or sent from prisoners held at the Jail. In the absence of a formal policy, I am requesting any guidelines, rules, regulations, memos and other records related to or concerning mail sent to and/or sent from prisoners held at the Jail.
2. The policy currently in effect at the Jail related to or concerning the grievance or internal complaint process for prisoners held at the Jail, whereby prisoners may file grievances or complaints regarding their conditions of confinement or other matters. In the absence of a formal policy, I am requesting any guidelines, rules, regulations, memos and other records related to or concerning the grievance or internal complaint process for prisoners held at the Jail.
3. All policies currently in effect at the Jail related to or concerning medical care for prisoners held at the Jail, including but not limited to sick-call procedures, access to medical personnel such as nurses and physicians, dental care, medications provided to prisoners, and the use and availability of medication for pain management at the Jail. In the absence of formal policies related to these issues, I am requesting any guidelines, rules, regulations, memos and other records related to or concerning medical care for prisoners held at the Jail, as set forth above.

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4. Copies of all current contracts, agreements, memorandums of understanding or similar records between Marshall County and/or the Marshall County Sheriff's Office and any hospital, clinic or medical practitioner to provide medical care for prisoners held at the Jail.

5. If the Jail has or maintains a formulary of medications available for prisoners held at the Jail, I am requesting a copy of the Jail's current formulary.

6. A copy of the Jail's current inmate phone service contract; i.e., the contract between the Jail and/or Marshall County and the telephone service provider that provides phone services for prisoners held at the Jail.

7. If the contract referenced in request no. 6 includes a provision whereby Marshall County, the Jail or another county agency receives payments based on a percentage of revenue generated from prisoner phone calls (typically called "commissions"), I request all policies, regulations, rules, memos and other records related to how such commission payments are used by Marshall County, the Jail or other county agencies, and the disposition of all such funds in 2009 through 2013 (either calendar year or fiscal year, depending on how such records are maintained).

If this public records request is denied in whole or in part, please notify me promptly and provide the specific exemptions you are claiming under T.C.A. § 10-7-504 or other statutory authority. The information requested is segregable; if you claim an exemption for any of the requested documents, please promptly produce those for which you do not claim an exemption.

I am requesting that the requested records be produced in electronic format if they are available in that format.

Thank you for your assistance in this regard; please respond to this public records request within 7 business days as required by statute, and advise when the records are available.

Sincerely,



Alex Friedmann
Managing Editor, PLN

NORMAN DALTON
SHERIFF

Marshall County
Sheriff's Office

209 First Avenue North
Lewisburg, Tennessee 37091
Phone 931-359-6122

BOB JOHNSON
CHIEF DEPUTY

"Marshall County is an equal opportunity provider and employer"

February 10, 2014

Dear Mr. Friedmann,

Hello, My name is Terry Wright and I am the Assistant Administrator at the Marshall County Jail. I am writing you in regards of you public records request. You may come to our facility and personally request the information your requesting in person. You may request this information on Monday thru Friday between 8am and 4pm. We have this information at the jail and can help you in person.

Thank you
Terry Wright
Assistant Administrator
phone: (931) 359-0555
terry.wright@marshalltn.com

000003

Follow-up re public records request

Alex F. <afriedmann@prisonlegalnews.org>

Wed, Feb 19, 2014 at 6:19 PM

To: terry.wright@marshalltn.com

Dear Terry Wright,

Thank you for your letter of February 10, 2014 concerning the public records request I submitted to the Marshall County Sheriff's Office.

In your response, you indicated that I may come to the facility to "personally request," in person, the information I am seeking in my public records request.

Instead, I am asking that the requested records be provided to me by mail or in electronic format via email. I will, of course, be glad to pay any copy costs (as set forth by the public records law), and/or postage for same.

Please advise, and thank you for your assistance.

--

Alex Friedmann

Managing Editor, PLN

www.prisonlegalnews.org

(615) 495-6568

(866) 735-7136 fax

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NOTE: PLEASE DIRECT ALL FUTURE EMAIL TO:

afriedmann@prisonlegalnews.org

000004

Follow-up re public records request

Alex F. <afriedmann@prisonlegalnews.org>

Fri, Feb 21, 2014 at 3:03 PM

Cc: terry.wright@marshalltn.com

Dear Terry Wright,

Please see my previous email, below; I await your response. Many thanks;

--

Alex Friedmann

Managing Editor, PLN

www.prisonlegalnews.org

(615) 495-6568

(866) 735-7136 fax

PLN is a project of the Human Rights Defense Center

NOTE: PLEASE DIRECT ALL FUTURE EMAIL TO:

afriedmann@prisonlegalnews.org

000005

Follow-up re public records request

Terry Wright <terry.wright@marshalltn.com>

Fri, Feb 21, 2014 at 3:08 PM

Reply-To: terry.wright@marshalltn.com

To: "Alex F." <afriedmann@prisonlegalnews.org>

I have spoke with the Sheriff and he insist that you make these request in person. Thank you

Terry Wright

Assistant Administrator

000006

Follow-up re public records request

Alex F. <afriedmann@prisonlegalnews.org>

Fri, Feb 21, 2014 at 4:01 PM

To: terry.wright@marshalltn.com, Lance Weber

<lweber@humanrightsdefensecenter.org>

Thank you for your response; however, please advise the sheriff that that is not what state law requires, and he is inviting litigation if he does not follow the laws he is sworn to uphold.

The Public Records Act applies to Marshall County just as it does to all other public entities in Tennessee, and the law does not require an in-person request for or inspection of public records.

This is the position of the Open Records Counsel for the Tennessee Comptroller's Office, which specifically states that citizens are not required to request or retrieve public records in person:

<http://www.comptroller.tn.gov/openrecords/faq.asp#15>

Therefore, I renew my original request that copies of the requested records be provided by mail or in electronic format, in compliance with the Public Records Act.

Please provide a response within 5 business days; if no response is forthcoming from your office, I will proceed accordingly. If the sheriff prefers, he or the county attorney may contact our general counsel, Lance Weber, at 561-360-2523. Mr. Weber is cc'd on this email.

--

Alex Friedmann

Managing Editor, PLN

www.prisonlegalnews.org

(615) 495-6568

(866) 735-7136 fax

PLN is a project of the Human Rights Defense Center

NOTE: PLEASE DIRECT ALL FUTURE EMAIL TO:

afriedmann@prisonlegalnews.org

000007

Follow-up re public records request

Terry Wright <terry.wright@marshalltn.com>

Thu, Feb 27, 2014 at 3:22 PM

Reply-To: terry.wright@marshalltn.com

To: "Alex F." <afriedmann@prisonlegalnews.org>

Mr Friedmann,

I have discussed with the Sheriff of your e-mails. I am forwarding you our form that must be filled out and signed in person to obtain records. He also states if you have any legal questions that you may contact out county attorney Bill Haywood.

Thank You

Terry Wright

Assistant Administrator

000008

Follow-up re public records request

Alex F. <afriedmann@prisonlegalnews.org>

Thu, Feb 27, 2014 at 3:58 PM

To: terry.wright@marshalltn.com

You may inform the sheriff he is incorrect. You have already received, and acknowledged receipt, of my public records request. The law does not require requestors to use a specific form. Nor does the law require requestors to sign a form in person. I'll have our attorney contact Mr. Haywood to ensure that the sheriff follows the law. As you are likely aware, the sheriff is not above the law.

--

Alex Friedmann

Managing Editor, PLN

www.prisonlegalnews.org

(615) 495-6568

(866) 735-7136 fax

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NOTE: PLEASE DIRECT ALL FUTURE EMAIL TO:

afriedmann@prisonlegalnews.org

000009

From: Robert Jack
To: "whaywood@haywoodatlaw.com"
Bcc: [Alex Friedmann](#); [Lance Weber](#); [Paul Wright](#)
Subject: Follow-up re Public Records Request
Date: Friday, March 14, 2014 4:42:00 PM
Attachments: [Marshall County PRA Letter - R Jack 3 14 14.pdf](#)

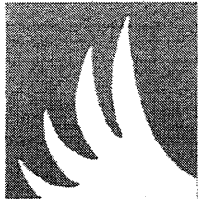
Attorney Haywood,

Attached is a letter that was sent to you today via U.S. Certified Mail regarding a recent Public Records Act request from Prison Legal News. As stated in the letter, I expect to hear back from you or your client no later than March 21, 2014.

Robert Jack, Staff Attorney
Human Rights Defense Center
PO Box 1151, Lake Worth, Florida 33460
561.360.2523 Tel 866.735.7136 Fax

This communication may be confidential, privileged and/or attorney work product. If you received it in error, please notify me and delete it from your system. Any unauthorized use is prohibited and may be unlawful.

000010



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

March 14, 2014

Bill Haywood, County Attorney
Marshall County
104 Belfast Avenue
Lewisburg, TN 37091
Email: whaywood@haywoodatlaw.com

Sent via Email and U.S. Certified Mail, Return Receipt Requested
Article # 7013 2250 0001 8713 7186

RE: TN Public Records Request on February 3, 2014

Dear Mr. Haywood,

I represent Prison Legal News ("PLN"), a publisher project of the Human Rights Defense Center. I write regarding Alex Friedmann's Public Records Act request on February 3, 2014 to Sheriff Norman Dalton of the Marshall County Sheriff's Dept. (Attached).

Mr. Friedmann was told via email from the Sheriff's Department on February 27, 2014 that a county-specific form was required and needed to be signed in person to request these records. However, as explained to you by Attorney Elisha Hodge, Open Records Counsel, in her email on March 12, 2014, Mr. Friedmann is not required to appear in person to make a public records request. (Attached). As you are also likely aware, under T.C.A. § 10-7-505(g), Marshall County may be liable for all reasonable costs involved in obtaining this record, including reasonable attorneys' fees.

Please reply by **Friday, March 21, 2014** or we will have no choice but to seek judicial relief for the Sheriff's violation of the provisions of the Public Record Act. Thank you in advance for your attention to and cooperation with this request.

Very Truly Yours,
HUMAN RIGHTS DEFENSE CENTER

By: Robert Jack
Staff Attorney

Encls. (2)

CC: Marshall County Sheriff's Department, Attn: Sheriff Norman Dalton

P.O. Box 1151, Lake Worth, FL 33460
Phone: 561.360.2523 Fax: 866.735.7136
Email: rjack@humanrightsdefensecenter.org

000011 (1)

Nicole Shaffer

From: Elisha Hodge
Sent: Wednesday, March 12, 2014 8:50 AM
To: whaywood@haywoodatlaw.com
Subject: Alex Friedmann Public Records Request

Mr. Haywood,

Good morning. I was contacted by Alex Friedmann about two weeks ago regarding a public records request that he made to the Marshall County Sheriff's Department. Based upon the information that I received from Mr. Friedmann, he was told that in order to make a public records request, he had to come, in person, to the Sheriff's Department and fill out and sign a request form. He was also told that if he had any questions, he needed to contact you. Mr. Friedmann contacted this office and I have called and left several messages for you so that we can discuss this matter. However, since I have not heard from anyone in your office, I thought it might be best to send an email.

The courts in Tennessee have held for a number of years now that a citizen does not have to appear in person in order to make a public records request. The impetus for these cases was prisoners being denied access to records because they could not appear in person. In *Waller v. Bryan*, 16 S.W. 3d 770, 773-774 (Tenn. Ct. App. 1999) the court examined a governmental entities requirement that the requestor make his request in person and held as follows:

While Appellees do not have an obligation to review and search their records pursuant to a Public Records Act request, they do have the clear obligation to produce those records for inspection, unless otherwise provided by state law, and to provide a copy or copies of any such record requested by such citizen, upon the payment of a reasonable charge or fee therefor. See *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297, 303 (Tenn.1998). If the citizen requesting inspection and copying of the documents can sufficiently identify those documents so that Appellees know which documents to copy, a requirement that the citizen must appear in person to request a copy of those documents would place form over substance and not be consistent with the clear intent of the Legislature. The adoption of the Appellees' position would mean that any citizen who was unable to personally appear before the records custodian would be unable to obtain copies of the documents pursuant to the Public Records Act. This restriction would prohibit all Tennessee citizens who are unable, because of health reasons or other physical limitations, to appear before the records custodian from obtaining copies of public documents pursuant to the Public Records Act. Such a result is not consistent with the clear intent of the Legislature, and this Court will not interpret this statute in such a way as to prohibit those citizens, or those citizens incarcerated, from the rights provided by the Public Records Act. Appellees can fix a charge or fee per copy so as to recover the actual cost of producing and delivering the copies. *Id.*

The court goes on to conclude its analysis of this matter with the following:

If a citizen can sufficiently identify the documents which he wishes to obtain copies of so as to enable the custodian of the records to know which documents are to be copied, the citizen's personal presence before the record custodian is not required. However, the records custodian is not required under the Public Records Act to make the inspection for the citizen requesting the documents. The citizen, to be able to obtain copies of those documents without making a personal inspection, must sufficiently identify those documents so that the records custodian can produce and copy those documents without the requirement of a search by the records custodian. The records custodian can require a charge or fee per copy that will cover both the costs of producing the copies and delivering the copies. It is the opinion of this Court that such was the intent of the Legislature.

Id. at 774.

This same line of reasoning was followed in *Swift v. Campbell*, 159 S.W. 3d 565 (Tenn. Ct. App. 2004) and *Hickman v. Tennessee Board of Professional Responsibility*, 2003 WL 724474 (Tenn. Ct. App. March 4, 2003). Since these cases, there has been no court that has held that a citizen has to appear in person in order to make

a public records request. While I understand that your client wants a signed request, the requestor can easily sign the request and send it, along with a photocopy of his identification, in to your client. I hope that the case law set out above helps bring some resolution to this issue so that Mr. Friedmann's request can be processed accordingly.

Please let me know if you have any questions or would like to discuss.

Elisha D. Hodge
Open Records Counsel



HAYWOOD LAW OFFICE

WILLIAM M. HAYWOOD, ATTORNEY AT LAW
104 BELFAST STREET, LEWISBURG, TENNESSEE 37091
TELEPHONE: 931-270-8669 FACSIMILE: 931-270-6079

March 19, 2014

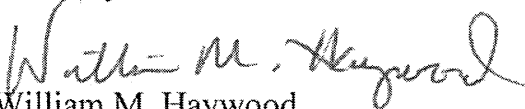
Robert Jack
Staff Attorney
Human Rights Defense Center
P O Box 1151
Lake Worth, FL 33460

RE: TN Public Records Request on February 3, 2014

Dear Mr. Jack:

I believe you are misinterpreting T.C.A. 10-7-503 in thinking Marshall County is obligated to assemble and forward records to Mr. Friedmann. We are only obligated to make available for public inspection. We are more than willing for Mr. Friedmann or someone from your office to come to Marshall County for inspection.

Sincerely,


William M. Haywood
County Attorney

WMH/kpd

000014

From: [Robert Jack](#)
To: whaywood@haywoodatlaw.com
Cc: [Lance Weber](#)
Subject: Follow up notice - Marshall County PRA
Date: Monday, March 24, 2014 8:45:00 PM
Attachments: [Marshall County PRA 3-24-14.pdf](#)

Attorney Haywood,

Attached is a carbon copy of a letter sent today from my client PLN to the Marshall County Sheriff. I have still not received any reply to my previous certified letter which was received and signed for by your agent on March 17, 2014.

Please advise promptly whether your client will comply with this Public Records Act Request by Mr. Friedmann.

Robert Jack, Staff Attorney
Human Rights Defense Center
PO Box 1151, Lake Worth, Florida 33460
561.360.2523 Tel 866.735.7136 Fax

This communication may be confidential, privileged and/or attorney work product. If you received it in error, please notify me and delete it from your system. Any unauthorized use is prohibited and may be unlawful.

000015

Re: Public records request for Sheriff Dalton

Alex F. <afriedmann@prisonlegalnews.org>
Mon, Mar 24, 2014 at 3:37 PM
To: terry.wright@marshalltn.com

Dear Ms. Wright,

Please see attached for my renewed public records request submitted to the Marshall County Sheriff's Office, which includes the records request form that you provided in a previous email.

A hard copy of this letter is being sent today via certified mail, with a copy to Marshall County Bill Haywood.

--

Alex Friedmann
Managing Editor, PLN
www.prisonlegalnews.org
(615) 495-6568
(866) 735-7136 fax

PLN is a project of the Human Rights Defense Center
NOTE: PLEASE DIRECT ALL FUTURE EMAIL TO:
afriedmann@prisonlegalnews.org

000016

PRISON LEGAL NEWS

Dedicated to Protecting Human Rights

www.prisonlegalnews.org

Please Reply to Tennessee Office:

afriedmann@prisonlegalnews.org

Direct Dial: 615-495-6568

5331 Mt. View Rd. #130

Antioch, TN 37013

March 24, 2014

**SENT VIA EMAIL AND
CERTIFIED MAIL**

Marshall County Sheriff's Dept.
Attn: Sheriff Norman Dalton
209 1st Avenue North
Lewisburg, TN 37091

RE: Public Records Request, Redux

Dear Sheriff Dalton:

On February 3, 2014, I submitted a public records request to your office pursuant to T.C.A. § 10-7-503, *et seq.* Terry Wright acknowledged receipt of my request by letter dated February 10, 2014, informing me that I may come to the jail “and personally request the information your [sic] requesting in person.” Ms. Wright further informed me by email on February 21, 2014 that she had spoken with you, and that you insisted I “make these request [sic] in person.”

I informed Ms. Wright that state law does not require public records requests to be made in person, and that the Office of Open Records Counsel for the State of Tennessee clearly states on its website that “As long as the request is sufficiently detailed for the records custodian to know what records are being requested, the request does not have to be made in person.”

On February 27, 2014, after again stating she had discussed the matter with you, Ms. Wright then informed me by email that I must fill out a form to request the public records I am seeking – even though she had already acknowledged receipt of my original request – and stated the form must be “signed in person to obtain records.”

Again, this is contrary to state law and the position of the Office of Open Records Counsel for the State of Tennessee. However, in an effort to be agreeable, while not waiving any of my rights under the Public Records Act, I am submitting the requested form along with a copy of my driver's license. As specified by the form, I filled out sections 1 through 4 and did not sign or date the form, as the requested records have not yet been received.

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Please note that this is a request for *copies* of the records described on the page I am attaching to the form, and I am requesting that said records be e-mailed (or mailed) to me after I submit payment. As stated by the Office of Open Records Counsel for the State of Tennessee, "If a requestor requests that the records be mailed to him/her, the records custodian is required to mail the records after the requestor pays the cost of delivering the records."

Please note that both our counsel and Open Records Counsel Elisha Hodge have repeatedly tried to contact Marshall County Attorney Bill Haywood with respect to my public records request, but he has not responded.

If this public records request is denied in whole or in part, please notify me promptly and provide the specific exemptions you are claiming under T.C.A. § 10-7-504 or other statutory authority. The information requested is segregable; if you claim an exemption for any of the requested documents, please promptly produce those for which you do not claim an exemption.

I am requesting that the requested records be produced in electronic format if they are available in that format.

Thank you for your assistance in this regard; please respond to this public records request within 7 business days as required by statute, and advise when copies of the requested records are available and the cost for same.

Sincerely,



Alex Friedmann
Managing Editor, PLN

cc: Lance Weber, HRDC General Counsel
Robert Jack, HRDC Staff Attorney
Bill Haywood, Marshall County Attorney

000018

NORMAN DALTON
SHERIFF

Marshall County Sheriff's Office

209 First Avenue North
Lewisburg, Tennessee 37091
Phone 931-359-6122

BOB JOHNSON
CHIEF DEPUTY

"Marshall County is an equal opportunity provider and employer"

INSPECTION/DUPLICATION OF RECORDS REQUEST

Requestor Instructions: To make a request for copies of public records: Fill in section 1-4. Do not sign and date the signature line until the records are received.

Custodian Instructions: For requests to inspect, the records custodian is to fill in section 1-5 and 8. For requests for copies, the records custodian is to fill in sections 5-8. Do not sign and date the signature line until the records are delivered to the requestor.

Note: Section 1 of Public Chapter 1179, Acts of 2008, amends T.C.A. §10-7-503 (a) adding (7) (A) to provide that unless the law specifically requires such, a request to inspect is not required to be in writing nor can a fee be assessed for inspection of records.

1. Name of requestor Alex Friedmann
(Print or type; initials required for copy requests)

2. Form of identification provided:
 Photo I.D. issued by government entity including requestor's address
Other: _____

3. Requestor's address and contact information: 5331 Mt. View Rd. #130, Antioch, TN
37013 (615) 495-6568

4. Record(s) requested to be inspected/copied:
 - a. Previously inspected on: N/A (date); inspection waived
 - b. Type of record: _____ Minutes _____ Annual Report _____ Annual Financial
_____ Statements _____ Budget _____ Employee File _____ Reports
 Other: see attached.
 - c. Detailed description of the record(s) including relevant date(s) and subject matter:
see attached.

000019

NORMAN DALTON
SHERIFF

Marshall County Sheriff's Office

209 First Avenue North
Lewisburg, Tennessee 37091
Phone 931-359-6122

BOB JOHNSON
CHIEF DEPUTY

"Marshall County is an equal opportunity provider and employer"

5. Request submitted to: _____
(Name of Governmental Entity, Office of Agency)
- a. Employee receiving request: _____
(Print or Type and Initial)
- b. Date and time request received: _____
- c. Response: Same Day Other: _____
6. Costs
- a. Number of pages to be copied: _____ Estimated
- b. Cost per page: _____
- c. Estimate of labor costs to produce the copy (for time exceeding 5 hours): _____
Labor at \$ _____/hour for _____ hour(s).
Labor at \$ _____/hour for _____ hour(s).
Labor at \$ _____/hour for _____ hour(s).
Labor at \$ _____/hour for _____ hour(s).
- d. Programming cost to extract information requested: _____
- e. Method of delivery and cost: _____ Estimated
 On-site pick-up U.S. Postal Service Other: _____
- f. Estimate of total cost to produce request: _____
- g. Estimate of total cost provided to requestor: in person by U.S.P.S.
 by phone Other: _____
7. Form, Amount, Date of Payment:
- a. Form of Payment: Cash Check Other: _____
8. Date of Delivery: _____

Signature of Records Custodian

Date

Signature of Requestor

Date

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Marshall County Sheriff's Office
Inspection/Duplication of Records Request Form
(Continued)

4.c. Record(s) requested to be copied:

1. The policy currently in effect at the Marshall County Jail Complex ("Jail") related to or concerning mail sent to and/or sent from prisoners held at the Jail. In the absence of a formal policy, I am requesting any guidelines, rules, regulations, memos and other records related to or concerning mail sent to and/or sent from prisoners held at the Jail.

2. The policy currently in effect at the Jail related to or concerning the grievance or internal complaint process for prisoners held at the Jail, whereby prisoners may file grievances or complaints regarding their conditions of confinement or other matters. In the absence of a formal policy, I am requesting any guidelines, rules, regulations, memos and other records related to or concerning the grievance or internal complaint process for prisoners held at the Jail.

3. All policies currently in effect at the Jail related to or concerning medical care for prisoners held at the Jail, including but not limited to sick-call procedures, access to medical personnel such as nurses and physicians, dental care, medications provided to prisoners, and the use and availability of medication for pain management at the Jail. In the absence of formal policies related to these issues, I am requesting any guidelines, rules, regulations, memos and other records related to or concerning medical care for prisoners held at the Jail, as set forth above.

4. All current contracts, agreements, memorandums of understanding or similar records between Marshall County and/or the Marshall County Sheriff's Office and any hospital, clinic or medical practitioner to provide medical care for prisoners held at the Jail.

5. If the Jail has or maintains a formulary of medications available for prisoners held at the Jail, I am requesting a copy of the Jail's current formulary.

6. The Jail's current inmate phone service contract; i.e., the contract between the Jail and/or Marshall County and the telephone service provider that provides phone services for prisoners held at the Jail. If not included in the current inmate phone service contract, I am further requesting the current phone rates for calls made by prisoners at the Jail, for all types and categories of calls (e.g., local, intrastate and interstate calls, and collect, debit and prepaid calls).

7. If the contract referenced in request no. 6 includes a provision whereby Marshall County, the Jail or another county agency receives payments based on a percentage of revenue generated from prisoner phone calls (typically called "commissions"), I request all policies, regulations, rules, memos and other records related to how such commission payments are used by Marshall County, the Jail or other county agencies, and the disposition of all such funds in 2009 through 2013 (either calendar year or fiscal year, depending on how such records are maintained).

Re: Public records request for Sheriff Dalton

Alex F. <afriedmann@prisonlegalnews.org>
Wed, Apr 9, 2014 at 4:48 PM
To: "Alex F." <afriedmann@prisonlegalnews.org>
Cc: terry.wright@marshalltn.com

Dear Ms. Wright,

I did not receive a response to my second, renewed public records request submitted to your office on March 24 (see attached). You are now beyond the statutory time period required for a response to my request.

Please advise if the Marshall County Sheriff's Office will comply with my request and produce the requested records. You will note that I submitted the form that you had asked me to use. If you do not intend to comply, please inform me why you refuse to do so.

Many thanks;

--

Alex Friedmann
Managing Editor, PLN
www.prisonlegalnews.org
(615) 495-6568
(866) 735-7136 fax

PLN is a project of the Human Rights Defense Center
NOTE: PLEASE DIRECT ALL FUTURE EMAIL TO:
afriedmann@prisonlegalnews.org

000023

Re: Public records request for Sheriff Dalton

Alex F. <afriedmann@prisonlegalnews.org>

Fri, Apr 11, 2014 at 6:18 PM

To: "Alex F." <afriedmann@prisonlegalnews.org>

Cc: terry.wright@marshalltn.com

Dear Mr. Wright,

To recap our phone conversation earlier today, I contacted you to inform you that the Marshall County Sheriff's Office is now beyond the statutory deadline for responding to my renewed public records request, submitted to your office on March 24.

You stated that you had received the request and forwarded it to Sheriff Dalton, who told you he would respond to same. You indicated the Sheriff has not yet done so.

I asked you to inform Sheriff Dalton that he is beyond the statutory time limit for responding to my public records request, and asked whether a response would be forthcoming. You stated you would contact the Sheriff in that regard, and I requested a response by early next week.

Thank you for your continued time and attention in this regard;

--

Alex Friedmann
Managing Editor, PLN
www.prisonlegalnews.org
(615) 495-6568
(866) 735-7136 fax

PLN is a project of the Human Rights Defense Center
NOTE: PLEASE DIRECT ALL FUTURE EMAIL TO:
afriedmann@prisonlegalnews.org

000024

Follow-up to unanswered public records request

Alex F. <afriedmann@prisonlegalnews.org>

Thu, Apr 17, 2014 at 4:04 PM

To: terry.wright@marshalltn.com

Mr. Wright,

As you know, during our phone conversation last week you stated that Sheriff Dalton was aware of my renewed public records request submitted to his office on March 24, but had not responded to same. As I mentioned, he is now beyond the statutory time period to respond to the request, and I asked that a response be provided. Thus far I have not received any response from you or Sheriff Dalton.

Be advised that the Office for Open Records Counsel has issued an opinion as to whether citizens are required to submit public records requests in person or retrieve records in person. The opinion is available online at the following link, and I am attaching a copy to this email:

http://www.comptroller.tn.gov/openrecords/pdf/20140416PersonalAppearanceToMakeRequestForCopies14_01.pdf

Given this development, please inform Sheriff Dalton that I demand a response to my renewed March 24 records request no later than April 30. After that time, I will take legal action to ensure the Sheriff complies with Tennessee's public records law, as the Sheriff is not above the law.

If Sheriff Dalton would like to speak with in this regard, instead of relaying messages through you as he has done in the past, I may be reached at the number below.

Sincerely,

--

Alex Friedmann
Managing Editor, PLN
www.prisonlegalnews.org
(615) 495-6568
(866) 735-7136 fax

PLN is a project of the Human Rights Defense Center
NOTE: PLEASE DIRECT ALL FUTURE EMAIL TO:
afriedmann@prisonlegalnews.org

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STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
James K. Polk State Office Building
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-1402

Justin P. Wilson
Comptroller

April 15, 2014

Mr. Alex Friedmann
Via email: afriedmann@prisonlegalnews.org

You have requested an opinion from this office that addresses the following issues:

1. Does the Tennessee Public Records Act (hereafter referred to as the "TPRA") require a Tennessee citizen to submit a public records request for copies in person at the office of the governmental entity that maintains the requested records?
2. Does the TPRA require a Tennessee citizen, who has paid all applicable labor and copy fees, to retrieve the requested records in person at the office of the governmental entity that maintains the requested records?

Analysis

Tenn. Code Ann. Section 10-7-503(a)(2)(A) requires that all public records, whether maintained by a state, county, or municipal governmental agency, be open for personal inspection by a citizen of Tennessee during normal business hours, unless there is a provision within state law that makes the record confidential. Additionally, Tenn. Code Ann. Section 10-7-506(a) provides that "[i]n all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof . . ." subject to reasonable rules of the records custodian. There is very little guidance in the TPRA about the types of reasonable rules that a records custodian can require a requestor to adhere to in order to obtain copies of public records. As such, many of the questions related how records can be accessed and copies obtained are addressed through case law.

The court addressed each of the questions presented above in *Waller v. Bryan*, 16 S.W. 3d 770 (Tenn. Ct. App. 1999). In *Waller*, the court specifically examined whether or not a requestor's "inability to present himself in person to inspect and request copies of the documents prohibits him from obtaining those copies if he is otherwise entitled to receive them under the Public Records Act." *Id.* at 773. In its analysis, the court determined that

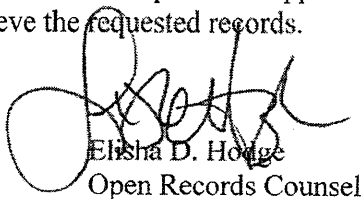
if it were to hold that personal appearance was required in order to obtain copies of public records, that “would mean that any citizen who was unable to personally appear before the records custodian would be unable to obtain copies of the documents pursuant to the Public Records Act.” *Id.* According to the court, such a “restriction would prohibit all Tennessee citizens who are unable, because of health reasons or other physical limitations, to appear before the records custodian from obtaining copies of public documents pursuant to the Public Records Act.” *Id.* The court concluded that “[s]uch a result is not consistent with the clear intent of the Legislature” and instead held:

[i]f a citizen can sufficiently identify the documents which he wishes to obtain copies of so as to enable the custodian of the records to know which documents are to be copied, the citizen's personal presence before the record custodian is not required. However, the records custodian is not required under the Public Records Act to make the inspection for the citizen requesting the documents. The citizen, to be able to obtain copies of those documents without making a personal inspection, must sufficiently identify those documents so that the records custodian can produce and copy those documents without the requirement of a search by the records custodian. The records custodian can require a charge or fee per copy that will cover both the costs of producing the copies and delivering the copies.

Id. at 774.

Conclusion

Based upon that language above, it is the opinion of this office that, to the extent that a requestor is able to sufficiently identify the records for which copies are being requested and has paid all necessary copying, labor and delivery fees associated with producing the requested copies, the requestor is not required to appear in person either to submit a public records request or retrieve the requested records.


Elisha D. Hodge
Open Records Counsel