

IN THE CHANCERY COURT OF MARSHALL COUNTY, TENNESSEE
AT LEWISBURG

ALEX FREIDMANN, Individually,)	
and as a Managing Editor of)	
PRISON LEGAL NEWS)	
Petitioner,)	
)	
vs.)	CASE NO. 17017
)	
)	
MARSHALL COUNTY,)	
JOE BOYD LIGETT, County Mayor)	
acting by and through)	
MARSHALL COUNTY SHERIFF'S DEPARTMENT,)	
NORMAN DALTON, Sheriff.)	
Respondent.)	

MEMORANDUM OPINION AND ORDER

This cause came on for hearing on the 4th day of June, 2014. From the exhibits and the testimony in open court the Court finds as follows:

FINDINGS OF FACT

1. A public records request was made by Mr. Friedmann by letter of February 3, 2014.
2. Said letter requested disclosures of jail policies, concerning inmate mail, inmate grievance policy, inmate medical care policies, whether the jail maintains a formulary of medications for inmates, a copy of the jail's phone service contract, a contingency request if the jail is paid a commission on prisoner generated calls, and how the funds if any from these commissions are used by the county or the Sheriff's office.
3. The letter also included a request that the records be produced in an electronic format.

4. The letter included a paragraph about denial and it cited T.C.A. § 10-7-504 and requested notification of the "exemptions" used in denial of the request.
5. The letter goes on to state that the requests are segregable so that an exemption for one document would not preclude disclosure of other types of documents.
6. A response to the letter was made in writing by Terry Wright, Assistant Administrator of the Marshall County Jail, on February 10, 2014.
7. The response does not facially deny the request but indicates that the records were available for inspection in person and sets a time frame for the inspection to occur between the hours of Monday thru Friday between 8 am and 4 pm.
8. The response invites Mr. Friedmann to come to the jail and personally request the information.
9. Mr. Friedmann did not come in person to get the records or to inspect the records between February 10, 2014 and February 19, 2014.
10. On February 19, 2014, Mr. Friedmann corresponded to Ms. Wright via email. In that email he makes a request that the records be sent to him by mail or by email.
11. Said email also offers to pay any copy costs and/or postage for the records.
12. Mr. Friedmann views his email as a renewed request for the records.
13. On February 21, 2014, at 3:03 p.m., Mr. Friedmann again makes reference to his request in a follow up email which is very brief.
14. At 3:08 p.m. on the same day, Ms. Wright responds to Mr. Friedmann's email informing him that the Sheriff insisted that he come to the jail for the records.
15. This email does not deny Mr. Friedman the records, but imposes a condition that he come to the jail for them.
16. At 4:01 p.m. on February 21, 2014 (the same day), Mr. Friedman responds to Ms. Wright's email. He advises that the sheriff is not following state law and he is inviting litigation if he does not comply with Mr. Friedman's request.

17. Mr. Friedmann alludes to the Public Records Act and states that “the law does not require an in-person request for inspection of public records.”
18. He further goes on to state the position of “Open Records Counsel for the Tennessee Comptroller’s Office” stating “citizens are not required to request or retrieve public records in person.”
19. Mr. Friedmann references a “faq” page of the comptroller’s website for authority for his position in his email.
20. Mr. Friedmann goes on to renew his original request of February 3, 2014, and makes a demand that a response be made within five (5) business days of that he will “proceed accordingly”
21. Mr. Friedmann also invites contact with a new person, Mr. Lance Weber, who is held out to be General Counsel for Prison Legal News.
22. On February 27, 2014, Ms. Wright responds to Mr. Friedmann’s latest email. In that email she forwarded a form that Mr. Friedman was asked to fill out. She communicated to him that he must sign the form in person to obtain the records.
23. Said email invites Mr. Friedmann to direct legal questions to the County Attorney Bill Haywood.
24. This response does not deny Mr. Friedmann the record, but it impliedly imposes a condition that he be present to sign the Sheriff’s form.
25. At 3:58 p.m. on the same day Mr. Friedmann fires an email back informing Ms. Wright that,” You may inform the sheriff that he is incorrect.”
26. The email goes on to expound upon what the public records law requires and concludes with the following statement, “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.”
27. The next correspondence by Prison Legal News is sent from Robert Jack, Staff Attorney for Human Rights Defense Center, P.O. Box 1511, Lake Worth Florida 33460, to Mr. Bill Haywood, County Attorney for Marshall County, Tennessee.

28. Mr. Jack is not the person Mr. Friedmann advised Ms. Wright would be contacting Mr. Haywood.
29. Mr. Jack, in his email to Mr. Haywood, attaches a letter that was purportedly sent to Mr. Haywood via certified mail regarding a Public Records Act request sent from Prison Legal News.
30. Mr. Jack imposes a timetable for response on Mr. Haywood of March 21, 2014.
31. In his attached letter, Mr. Jack is clear that he is representing Prison Legal News, a publisher project of the Human Rights Defense Center. Again he represents that he is staff attorney for the Human Rights Defense Center and again his address of Florida is listed for correspondence. There is no indication in the letter that he is licensed to practice law in Tennessee.
32. His attached letter goes on to reference the February 3, 2014, request made by Alex Friedman.
33. He further sets out the statement, consistent with email correspondence, that Mr. Friedman was required to sign a county specific form in person to request the records.
34. Mr. Jack makes reference to a conversation that was supposed to have been between Mr. Haywood and Ms. Elisha Hodge, Open Records Counsel which occurred on March 12, 2014.
35. Mr. Jack sets out a portion of the Tennessee Code applicable to Marshall County and again imposes a timetable of March 21, 2014, for a response.
36. Mr. Jack's email attaches an email from Ms. Hodge to Mr. Haywood which references the situation.
37. This email, which apparently came through Nicole Shaffer and was sent by Ms. Hodge to Mr. Haywood on March 12, 2014, at 8:50 a.m.
38. Her email indicates that she had been contacted by Mr. Friedmann regarding his public records request made to the Marshall County Sheriff's Department.

39. Ms. Hodge sets out in her email in great detail the state of existing case law concerning open records requests and citizens not having to appear in person to make them.
40. Mr. Haywood responds to Mr. Jack on March 19, 2014, and indicates that he believes that Mr. Jack is misinterpreting the code and advises Mr. Jack that he or Mr. Friedmann may come to the jail to inspect the records.
41. On March 24, 2014, Mr. Friedmann made a renewed request for the records on the sheriff's form.
42. Contemporaneously, Mr. Friedmann also sent a letter to Sheriff Dalton via email and certified mail concerning the renewed request. The letter outlined the correspondence between Mr. Friedmann and Ms. Wright.
43. The letter amounts to a renewed request for the information requested on February 3.
44. The letter requests copies of the records previously requested, and makes reference to the procedure for providing the copies to the requestor.
45. The letter further references attempts to contact Mr. Haywood and also refers to Mr. Friedmann's desire that the records be provided electronically.
46. The letter further outlines the statutory provision relied upon by Mr. Friedmann for his position and makes reference to the seven (7) day requirement provided in the statute.
47. This letter was also copied to Mr. Haywood, Mr. Weber and Mr. Jack.
48. Attached to the letter is the Sheriff's form required to be filled out by Mr. Friedmann and a photocopy of the driver's license of Mr. Friedmann.
49. On April 9, 2014, Mr. Friedmann emailed Ms. Wright about not having received a response to his renewed request.
50. Another email was sent from Mr. Friedmann on April 11, 2014.
51. Another email was sent from Mr. Friedmann on April 17, 2014. This email sets out a time frame for the institution of litigation in the absence of production of the records requested. The deadline was set by Mr. Friedmann for April 30, 2014.

52. No other written response was sent by the Marshall County Sheriff's Office in response to Mr. Friedmann's renewed request.
53. Sheriff Dalton testified that he was initially relying on the advice of counsel for his initial position that Mr. Friedmann needed to appear in person to inspect or copy the records.
54. This reliance continued on until the time of the hearing.
55. Sheriff Dalton further testified that he looked into the address submitted to him by Mr. Friedmann on his driver's license and found it to be a postal annex or a drop box facility not affiliated with the United States Post office, not a physical address.
56. Sheriff Dalton testified that he drove to Antioch and located the address given by Mr. Friedmann and found it to be a postal annex or a drop box that was a non physical address for Mr. Friedmann.
57. Sheriff Dalton testified that he liked to know the people who were requesting information about his facility and wanted the opportunity to talk to Mr. Friedmann about his request in person.
58. Mr. Friedmann testified that his physical address was not the same as the mailing address on his driver's license.
59. Both parties focused on a residency requirement in their positions taken before the Court.
60. Mr. Friedmann testified that he was in fact a citizen of the state of Tennessee and the Court has no other proof on this issue.
61. No one has paid the Marshall County Sheriff's Department or any other named party any monies in connection with the records requested.

LEGAL STANDARD

The framework for a public records request and response to the request is set out in Tennessee Code Annotated § 10-7-503, which states in pertinent part:

(a)(1)(A) As used in this part and title 8, chapter 4, part 6, "public record or records"

or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(B) "Public record or records" or "state record or records" does not include the device or equipment, including, but not limited to, a cell phone, computer or other electronic or mechanical device or equipment, that may have been used to create or store a public record or state record.

(2)(A) All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, 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.

(B) 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.

(3) Failure 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.

(4) This section shall not be construed as requiring a governmental entity or public official to sort through files to compile information; however, a person requesting the information shall be allowed to inspect the nonexempt records.

(5) This section shall not be construed as requiring a governmental entity or public official to create a record that does not exist; however, the redaction of confidential information from a public record or electronic database shall not constitute a new record.

(6) A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.

(7)(A) A records custodian may not require a written request or assess a charge to view a public record unless otherwise required by law; however, a records custodian may require a request for copies of public records to be in writing or that the request be made on a form developed by the office of open records counsel. The records custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, that includes the person's address. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.

(B) Any request for inspection or copying of a public record shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied.

(C)(i) A records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested material and to assess the reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.

(ii) The records custodian shall provide a requestor an estimate of the reasonable costs to provide copies of the requested material.

(b) The head of a governmental entity may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to maintain the confidentiality of records concerning adoption proceedings or records required to be kept confidential by federal statute or regulation as a condition for the receipt of federal funds or for participation in a federally funded program.

(2) Information made confidential by this chapter shall be redacted whenever possible, but the costs associated with redacting records or information, including the cost of copies and staff time to provide redacted copies, shall be borne as provided by current law.

(3) Any person making an inspection of such records shall provide such person's name, address, business telephone number, home telephone number, driver license number or other appropriate identification prior to inspecting such records.

(e) All contingency plans of law enforcement agencies prepared to respond to any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident shall not be open for inspection as provided in subsection (a). *Id.*

Open Records Counsel's authority is also an important guide to the Court.

ANALYSIS

Initially, it must be noted that there is apparently no objection made to the content of the records themselves being available to be inspected under the statute. There is apparently no debate that the records in question are of a nature that they are subject to being turned over to a requestor when an open records act request was made. There was no argument of any kind before the Court questioning whether the records were in fact public records and were subject to the act. The Court will act accordingly.

The initial response to Mr. Friedmann was not a denial of his request per se. In fact the response invited Mr. Friedmann to come to the jail to review the records. It sets out reasonable times and places for the review of the records. The Sheriff, acting on advice of counsel, proposed that Mr. Friedmann come down in person to review the records and to receive copies of the records. This is not a denial as contemplated by the statute. It was however sufficient to spark further conversation and renewed requests.

Mr. Friedmann was patient in his approach to initiating this litigation. He did attempt to provide information to show that he was justified in not appearing to get the records he requested. He attempted to follow the Sheriff's conditions in filling out the form requested by the Sheriff's department. He got his counsel, apparently from Florida, and Open Records Counsel involved in the process. He supplied authority for his position, although his attitude left much to be desired, and finally he made renewed requests for the information.

It is the renewed requests that cause the Court the most concern. The renewed requests were not acted on by the Marshall County Sheriff's Department consistent with

the statute. No communication occurred after March when the renewed requests were made. Silence prevailed throughout the month of April. This failure to respond is tantamount to a denial of the records. A response was required by the statute within seven (7) days and no response occurred. As the statute says, this is tantamount to a denial without a stated reason.

The statute further requires the responding entity to give a good faith estimate of the anticipated costs in obtaining the records so the requestor can tender sufficient proceeds to cover the cost of obtaining the records. This statutory procedure was not followed in this case and it should have been. The records must be turned over to Mr. Friedmann after he tenders sufficient funds to cover the cost of copying the records and the cost of mailing the records to Mr. Friedmann.

Mr. Friedmann did not make the process flow smoothly. He presented a driver's license that is not a physical address and this action complicated the matter greatly. Even though the address given appears on its face to be an apartment address, the Sheriff was justified in investigating the address to determine that it was not a physical address for Mr. Friedmann.

Sheriff Dalton's reliance upon his counsel's advice and his willingness to produce the records upon personal appearance show the Court that he was not willfully denying Mr. Friedmann his access to the records. Sheriff Dalton was merely acting on advice of counsel and later attempting to be appropriately careful to determine residency and status of the requesting party. These actions should not give rise to an award of attorney fees in this instance.

However, the law appears clear, barring an appeal Sheriff Dalton shall turn over the requested records to Mr. Friedmann within five (5) days of the entry of this Order and since no good faith estimate of the costs was given pursuant to the statute, he shall do so at no cost to Mr. Friedmann.

CONCLUSION

For the foregoing reasons, the Court finds that the lack of response to the renewed request for information presented by Mr. Friedmann's counsel on March 24, 2014, was tantamount to a denial of the request without a reason as contemplated by the statute. The court orders Sheriff Dalton and the Marshall County Sheriff's Department to turn over the records requested within five (5) days of the entry of this Order at no cost to Mr. Friedmann. The Court further Orders that attorney fees are not appropriate in this instance and declines to award them.

Costs of the cause are assessed against the Defendants.

IT IS SO ORDERED this the 13th day of June, 2014.

RECEIVED FROM J.B. COX
FILED AND ENTERED 6/16/14
MIN. BOOK 150 PAGE 2-24
[Signature] CLERK & MASTER
Alsup

[Signature]
J. B. COX
CHANCELLOR


CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum Opinion and Order has been mailed/ hand delivered/ faxed to all counsel of record as follows:

Honorable Robert Dalton #029791
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This the 15th day of June, 2014.



J. B. COX
CHANCELLOR