

Craig E. Willis
Assistant County Attorney
Shelby County Government
160 N. Main Street, Suite 660
Memphis, TN 38103

June 6, 2008

Dear Mr. Willis:

You have asked for the opinion of this Office as to the effective date of Public Chapter 853 (SB3668/HB3850) that was signed by the Governor on May 1, 2008.

ANALYSIS

Section 4 of the bill provides that “[t]his act shall take effect upon becoming law, the public welfare requiring it.” Article II, Section 18 of the Tennessee Constitution provides that a bill becomes law “when approved by the governor or otherwise passed under the provisions of this Constitution.” The Governor signed the bill on May 1, 2008, which is deemed the effective date of the act.

It is not clear the impact Public Chapter 853 has on pending open records requests made prior to May 1, 2008. It would appear that a court would consider whether or not the public record that was requested prior to the effective date of the act was readily available at the time the request was made. Even prior to the current law becoming effective, Tenn. Code Ann. § 10-7-504(f)(1) made confidential certain information regarding public employees; therefore substantial review and redaction of records was likely taking place on the effective date of Public Chapter 853. A court could rule that the record was not ripe for access at the time of the request and the subsequently effective act makes unavailable any requested information made confidential by Public Chapter 853.

Please feel free to contact either me or Elisha Hodge upon receipt of this opinion if you have anything further that you would like to discuss.

Sincerely,

Ann V. Butterworth
Director, Office of Open Records