



JASON E. MUMPOWER
Comptroller

January 29, 2021

Mr. Paul McAdoo
Reporters Committee for Freedom of the Press
Local Legal Initiative Staff Attorney (Tennessee)
6688 Nolensville Rd. Ste. 108-20
Brentwood, TN 37027

Re: Informal Advisory Opinion about Basis for Denial of Public Record Requests

Mr. McAdoo:

Thank you for your request for an informal advisory opinion addressing what level of specificity is required when a records custodian denies a public record request on the basis that the records or information requested are statutorily exempt from disclosure under the Tennessee Public Records Act (“TPRA”).

The TPRA provides that “[a]ll state, county and municipal records shall... 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.” Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, public records in Tennessee are presumed open for inspection to Tennessee citizens, unless otherwise provided by state law. *Memphis Pub. Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994).

While the Tennessee General Assembly instructs courts to interpret the TPRA broadly “so as to give the fullest possible public access to public records,” it also recognizes there are times when records and information should not be available to the public because “the reasons not to disclose a particular record or class of records... outweigh the policy favoring public disclosure.” Tenn. Code Ann. § 10-7-505(d); *Swift v. Campbell*, 159 S.W. 3d 565, 571 (Tenn. Ct. App. 2004). In *Swift*, the Tennessee Court of Appeals acknowledged that exceptions to the TPRA are found “not only in statutes, but also the Constitution of Tennessee, the common law, the rules of court, and administrative rules and regulations because each of these has the force and effect of law in Tennessee.” *Id.* at 571-572. In *Tennessean v. Metro. Gov't of Nashville*, the Tennessee Supreme Court reiterated that “[t]he Public Records Act...is not absolute, as there are numerous statutory exceptions to disclosure.” 485 S.W.3d 857, 865 (Tenn. 2016).

The TPRA provides that information made confidential by state law must be redacted whenever possible, and the redacted record shall then be made available for inspection or copying. Tenn. Code Ann. § 10-7-503(a)(5); *Eldridge v. Putnam Cnty.*, 86 S.W. 3d 572 (Tenn. Ct. App. 2001). If



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a record custodian denies a public record request, the denial must be in writing and must include the basis for denial. Tenn. Code Ann. § 10-7-503(a)(2)(B)(ii).

It is well settled that a governmental entity may rely upon statutory exceptions to the TPRA to deny public record requests. *Tennessean*, 485 S.W.3d at 865. However, there are numerous other grounds for denying a public record request beyond a state law making the records or information confidential. For example, a governmental entity may deny a request that asks the custodian to sort through files and compile information. Tenn. Code Ann. § 10-7-503(a)(4); *Hickman v. Tennessee Bd. of Prob. & Parole*, No. M200102346COAR3CV, 2003 WL 724474, at *10 (Tenn. Ct. App. Mar. 4, 2003). A request may be denied because it is not sufficiently detailed to enable the records custodian to identify records responsive to the request. Tenn. Code Ann. § 10-7-503(a)(4); *Jakes v. Sumner Cnty. Bd. of Educ.*, No. M201502471COAR3CV, 2017 WL 3219511, at *7 (Tenn. Ct. App. July 28, 2017). Failure to provide adequate government-issued identification when a governmental entity requires presentation of photo identification in accordance with Tenn. Code Ann. § 10-7-503(a)(7)(A)(vi) is also a sufficient basis for denial. A request may also be denied simply because the records do not exist or because the governmental entity is not the custodian of the requested records. *Fletcher v. Totten*, 1988 WL 82069, at *3 (Tenn. Ct. App. Aug. 8, 1988).

While Tenn. Code Ann. § 10-7-503(a)(2)(B)(ii) provides that a denial must be in writing and include the basis for denial, the statute does not differentiate between the various bases for denial nor does it include additional requirements when a denial is based upon a statutory exception to the TPRA. Given the lack of specificity contained in the plain language of the statute, we are of the opinion that a court would be unlikely to read such additional requirements into the law.

“Where the statutory language is not ambiguous ... the plain and ordinary meaning of the statute must be given effect.” *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 214 (Tenn. 2012). Courts “presume that the legislature says in a statute what it means and means in a statute what it says there.” *Id.* Accordingly, where the statutory language is clear, courts will apply the plain and normal meaning of the words chosen by the General Assembly, interpreting the statute to effectuate the General Assembly's intent without a forced interpretation that would limit or expand the statute's application. *State v. White*, 362 S.W.3d 559, 566 (Tenn. 2012). Moreover, a court will not apply a particular interpretation to a statute if that interpretation would yield an absurd result. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000).

Here, Tenn. Code Ann. § 10-7-503(a)(2)(B)(ii) provides that when a governmental entity denies a request for records, it must do so “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.” If the Legislature intended for governmental entities to expand upon the basis for denial with a certain level of specificity when relying upon a statutory exception to the TPRA, it likely would have included such requirements in the law. Instead, the statute just directs a governmental



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entity to “include the basis for the denial.” Interpreting that provision as requiring a heightened level of specificity when the denial happens to be based upon a state law that makes records or information confidential seems to force an interpretation that would expand the statute's application beyond what the Legislature intended. Moreover, a more detailed disclosure of the basis for denial could indirectly reveal information deemed confidential by state law. Interpreting the TPRA to require such specificity that the denial could compromise the confidentiality a state law was enacted to protect would lead to an absurdity that the Legislature likely would not intend. Accordingly, we are of the opinion that Tenn. Code Ann. § 10-7-503(a)(2)(B)(ii) only requires a governmental entity to include a general basis for denial when denying a public record request.¹ This basis is often a citation to a specific statute making records or information confidential, but it could also be one of the various general bases for denial set forth above.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Pope", with a horizontal line extending to the right.

Lee Pope
Open Records Counsel

¹ After issuance of this advisory opinion, the Office of Open Records Counsel discovered an unpublished opinion from the Tennessee Court of Appeals consistent with this conclusion. In that opinion, the Court of Appeals determined that a governmental entity did not need to provide a specific basis for denial each time it redacted confidential information from public records because the governmental entity was responding pursuant to the TPRA, which only requires a written denial that includes the basis for such denial. *Sharp v. Tennessee Dep't of Commerce & Ins.*, No. M201601207COAR3CV, 2017 WL 5197291, at *5 (Tenn. Ct. App. Nov. 9, 2017).

