

Jeremy Johnson
Communications Supervisor
Sumner County School System
695 East Main Street
Gallatin, Tennessee 37066

June 10, 2008

Dear Mr. Johnson:

You have requested an opinion from the Office of Open Records that specifically addresses whether or not a governmental entity is required to provide a citizen an electronic copy of a record requested in accordance with the Tennessee Public Records Act (hereinafter referred to as "TPRA") when the entity maintains the record in electronic format. You also requested that if the opinion of this Office is that a records custodian is required to provide the requested record in electronic format, that the opinion also address whether or not the electronic copy provided to the citizen has to be in a format that can be manipulated.

You represented to this Office that the Sumner County School System (hereinafter referred to as the "school system") is currently going through the budgeting process for FY 2008-09. As part of this process an electronic spreadsheet was created by school system staff that is representative of a draft budget. Recently, each member of the school board was given a paper copy of the spreadsheet. Subsequently, one of the school board members requested an electronic copy of the spreadsheet. The school system acknowledges that the draft budget meets the definition of public record and is thus open for public inspection and copying.

1. Access to Public Records

The Tennessee General Assembly has for over fifty years embraced the concept that absent certain exceptions found with state law, all governmental records should be open for inspection by citizens of Tennessee. This concept is codified in the Tennessee Public Records Act (hereinafter referred to as the "TPRA") and says the following:

Except as provided in § 10-7-504(f), all state, county and municipal records and all records maintained by the Tennessee performing arts center management corporation, except any public documents authorized to be destroyed by the county public records commission in accordance with § 10-7-404, shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

Tenn. Code Ann. § 10-7-503(a).

The records that are referred to in the above-cited statutory provision are often called “public records.” While the definition of “public record” is currently not found within the TPRA, Tennessee Courts have adopted the definition of “public records” that is found in Tenn. Code Ann. § 10-7-301(6) which defines public records as:

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.¹

Just as a citizen has a right to inspect government records that are not made confidential under state law, citizens are also permitted to take a copy of those records inspected.

Tenn. Code Ann. § 10-7-506(a) says the following:

In 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, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or such custodian's authorized deputy; provided, that the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

As indicated above, the school system, being aware of the above-cited statutory provisions and definitions, acknowledges that as a governmental agency, it is subject to the TPRA and that the spreadsheet requested is a public record that must be made available for inspection and copying by the requestor.

II. Format of Record Made Available for Inspection and Copying

The Tennessee Court Of Appeals, in *Wells v. A.C. Wharton* opined that the Tennessee Public Records Act does not require a custodian of records to provide public records in

¹ If SB3280 is signed into law, then effective July 1, 2008, the TPRA will contain a definition of “public records” that is identical to the definition found in Tenn. Code Ann. § 10-7-301(6).

the manner a citizen requests. *Wells v. A.C. Wharton*, 2005 WL 3309651 at *9 (Tenn. Ct. App. Dec. 7, 2005). In *Wells*, the requestor used a computer system he had created himself to download public records in bulk from the Shelby County Portal website. *Id.* at *1. The Shelby County government subsequently shut down the website due to the computer system being overloaded. *Id.* The website was shut down for several weeks and when it reopened, restrictions were placed on the amount of data that could be downloaded and the time that a user could be connected to the site. *Id.* The requestor, unable to download the information in bulk, went to the offices where the documents were maintained in order to utilize the office's computers; however, he was still unable to download the records in bulk because either the office computers could not handle the requests or the office did not provide public access computers. *Id.* Thereafter, the requestor filed suit against Shelby County claiming that he had been denied access to public records. *Id.* At all times relative to the litigation, the requestor could have accessed the public records he was seeking by requesting the paper copies from the records custodian. *Id.*

In its analysis, the Court recognizing that this was the first time a Tennessee court had been asked to address whether or not a citizen could request public records in a particular format, first looked to decisions in other jurisdictions. While noting that none of the cases cited from other jurisdictions were binding, the Court also noted the following:

these cases illustrate that the issue in the present case depends on whether the purpose of the Tennessee Public Records Act is one of access to the information contained within the public records or one of access to the public records in their normally kept form.

Id. at *9. In determining the purpose of the Tennessee Public Records Act, the Court says:

[i]n Tennessee, the purpose of the Public Records is to allow maximum access to the information contained within public records [and] in light of the purpose of the Tennessee Public Records Act, we conclude that the Tennessee Public Records Act does not require a custodian of records to provide public records in the manner a citizen requests.

Id. at *9.

According to the Court, “allowing a custodian of records to choose the manner in which he or she presents public records to citizens is not unreasonable so long as that manner does not distort the record or inhibit access to that record.” *Id.*

Based upon the language of the Court in *Wells*, it is the Opinion of this Office that as long as the school system provides the requestor with a copy of the record that does not “distort the record or inhibit access to that record,” the custodian can provide the record in any format he or she chooses, even if that format is not the same format that was requested. *Id.*

II. Conclusion

It is the opinion of this Office based upon the above-cited case law that the school system is not required to provide the draft budget to the requestor in electronic format.

Additionally, since the school system is not required to provide the document in the format that was requested, it is not necessary for this opinion to address whether or not the record has to be provided in an electronic format that can be manipulated.

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

Sincerely,

Elisha D. Hodge
Open Records Specialist