

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, AT NASHVILLE**

<b>CLATA RENEE BREWER</b>	)	
	)	
<b>Plaintiff/Petitioner</b>	)	
	)	
v.	)	<b>Case No. 23-0538-III</b>
	)	<b>(Consolidated with</b>
<b>METROPOLITAN GOVERNMENT</b>	)	<b>Case No. 23-0542-III)</b>
<b>OF NASHVILLE AND DAVIDSON</b>	)	
<b>COUNTY</b>	)	
	)	
<b>Defendant/Respondent</b>	)	

**FIRST SUPPLEMENTAL AND AMENDED COMPLAINT AND PETITION  
FOR ACCESS TO PUBLIC RECORDS**

Plaintiff files this Supplemental and Amended Complaint as a matter of right under Tennessee Rule of Civil Procedure 15 as her petition to receive prompt access to inspect and copy certain records created and/or maintained by the Metropolitan Government of Nashville and Davidson County (“Metropolitan Government”). Metropolitan Government has failed and refused to produce these public records promptly, as required by the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.* (“the Public Records Act”).

1. Clata Renee Brewer is a citizen of Tennessee who, in conjunction with the National Police Association, requested on April 21, 2023, certain records of Metropolitan Government, as shown by Exhibit A hereto.

2. Defendant Metropolitan Government is a governmental entity that is required to comply with the Public Records Act. One of Metropolitan Government’s department or divisions is the Police Department (“the Metro Police Department”).

3. The Public Records Act provides: “All 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.” Tenn. Code Ann. § 10-7-503(2)(A).

4. Under the Public Records Act, records are defined broadly to include “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.” Tenn. Code Ann. § 10-7-503(a)(1)(A). The Tennessee Supreme Court has recognized that under this definition, public records include all written matter “created or received by government in its official capacity.”

5. The Public Records Act expressly states that it “shall be broadly construed so as to give the fullest possible access to public records.” Tenn. Code Ann. §10-7-505(d).

6. Metropolitan Government is the creator and/or custodian of the records Plaintiff has requested and those records are public records.

7. As shown by Exhibit A, the records Plaintiff has requested are public records and they relate to the mass shooting that occurred at the Covenant School in Nashville, Tennessee on March 27, 2023 (“Covenant School incident” or “the incident”). On that date, Aiden Hale, also known as Audrey Hale (“Hale”), unlawfully, entered the Covenant School while heavily armed and began shooting and killing staff and students of that school.

8. Officers of the Metro Police Department quickly responded to this incident. These officers entered the school, located Hale, and shot and killed Hale. Since that time, the actions of the Metro Police Department officers have been correctly characterized as commendable and heroic, and no one has suggested that these officers engaged in any criminal activity in their response to the incident.

9. There is no criminal prosecution concerning the Covenant School incident, and despite extensive media coverage, including interviews of public officials, no one has suggested that there will be any criminal prosecution or proceeding because of the incident.

10. On May 1, 2023, the Metro Police Department denied Plaintiff's request as shown by Exhibit B. This denial offered one, and only one, excuse for refusing to produce the requested records.

11. Defendant's reason for not allowing disclosure of the requested public records is that Rule 16 of the Tennessee Rules of Criminal Procedure prohibits disclosure because this incident is an open case. Further, Defendant has relied upon the Tennessee Supreme Court case of *Tennessean v. Metro Government of Nashville*, 485 S.W.3d 857 (Tenn. 2016).

12. Because there is no pending or contemplated criminal prosecution, Rule 16 and the above cited *Tennessean* case are inapplicable. Rather, this case is controlled by the Tennessee Supreme Court's earlier decision in *Memphis Publishing Company v. Holt*, 710 S.W.2d 513 (Tenn. 1986), in which the Court held that Rule 16 was not applicable because there was no pending or contemplated criminal action because the perpetrators in the unlawful activity had been killed in the police shoot out.

13. Defendant has not identified anyone who might be subjected to any prosecution because of the Covenant School incident or any class of persons who might be subject to criminal prosecution because of the incident. Defendant has not identified any crime or class of crime that might be charged because of this incident. Defendant has not indicated what, if any, agency is investigating or might bring charges for anything because of the incident.

14. Since the Covenant School incident, law enforcement officials have made numerous comments to both local and national media concerning some or all of the records

Plaintiff has requested, and these comments are inconsistent with there being any criminal prosecution related to the incident.

15. Before this lawsuit was filed, the Metro Police Department had denied several other requests for information and documents related to the Covenant School incident, and had likewise denied all of these requests relying upon one, and only one, reason -- Tennessee Rule Of Criminal Procedure 16. *See* Exhibits C & D (a request by Tonda Johnson, virtually identical to Plaintiff's request, and the Metro Police Department denial of that request asserting the identical reason given to Plaintiff, respectively).

16. On May 3, 2023, in the week following the filing of this case, the Metro Police Department publicly stated: "Due to pending litigation filed this week, the Metropolitan Police Department has been advised by counsel to hold in abeyance the release of records related to the shooting at The Covenant School pending orders or direction of the court." Exhibit E.

17. This statement constitutes an admission that its Rule 16 basis for denial is invalid because there would be no reason to assert this excuse to deny access if the Rule 16 excuse was valid. This statement also sets forth a completely invalid reason to deny access under the Public Records Act. This statement presents the ultimate "Catch-22" position that a records requester can sue to obtain records, but the very act of filing such a suit acts as an exception to the Public Records Act.

18. The filing of a Public Records Act lawsuit is not an exception to the Public Records Act that would allow a records custodian to deny access to the requested records.

19. Metro Police Department has a demonstrated history of willfully failing to comply with the Public Records Act by creating its own policies and procedures directly contrary to the Public Records Act. Five years ago, the Tennessee Supreme Court refused to consider, and therefore confirmed, the Tennessee Court of Appeals' conclusion that the Metro Police

Department had willfully violated the Public Records Act by creating policies contrary to the Public Records Act, *Jetmore v. Metro. Gov't of Nashville & Davidson Cty.*, 2017 Tenn. App. LEXIS 688, at \*\*27-31 (Tenn. Ct. App. Oct. 12, 2017), which resulted in Defendant having to pay more than \$127,000 in attorney fees. *See* Exhibit F. Defendant's reliance upon its Catch-22 argument is indicative of a pattern and practice of willful violations of the Public Records Act.

20. Defendant cannot evade its obligation to follow the Public Records Act by seeking to shift its responsibility to the Court. The Court in this case has issued no order that would permit or allow Defendant to cease compliance with the Public Records Act. Even if the Metro Police Department had relied upon advice of legal counsel to develop and announce its Catch-22 exemption, reliance upon legal advice does not eliminate a finding that the records custodian acted in willful violation of the Public Records Act. *Taylor v. Town of Lynnville*, 2017 Tenn. App. LEXIS 469, at \*8 (Tenn. Ct. App. July 13, 2017).

WHEREFORE, Plaintiff prays:

1. That process issue and be served upon Defendant;
2. That the Court schedule a hearing ordering Defendant to immediately appear and show cause (*see* Tenn. Code Ann. § 10-7-505(b)) why the relief requested in this Petition should not be granted and that Defendant be enjoined from refusing to promptly produce documents Plaintiff has requested;
3. That the Court set a date at least five (5) business days prior to the date of the hearing which it schedules for Defendant to file any brief it might want to file;
4. That the Court issue an Order in favor of Plaintiff requiring that all outstanding records requested be produced as quickly as possible, or alternatively, that some, or redacted versions of the records be produced as quickly as possible;

5. That the Court declare that Tennessee Rule of Criminal Procedure 16 is not an exemption to the Public Records Act when there is no pending criminal prosecution related to the records sought in a request under the Public Records Act;

6. That the Court declare that a custodian of public records may not deny a request under the Public Records Act for the reason that requester has filed suit to obtain the requested records;

7. That the Court determine that the Defendant's refusal to produce these records promptly has been done knowingly, willfully and deliberately, and award Plaintiff all attorneys' fees and costs, pursuant to Tenn. Code Ann. § 10-7-505(g); such amount shall be shown to the Court at the conclusion of this matter;

8. That the costs of this action be taxed against Defendant;

9. That the Court grant further relief to ensure Defendant continues production of the requested records promptly;

10. That the Court grant such further relief as it deems just and equitable.

Respectfully Submitted,

/s/Douglas R. Pierce

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing First Supplemental and Amended Complaint and Petition for Access to Public Records was served on the following via email and U.S. Mail this 5th day of May, 2023:

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*/s/Douglas R. Pierce*

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