

COPY

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

FILED
2019 DEC 17 PM 3:20
CLERK AND MASTER
DAVIDSON CO. CHANCERY
DC88

KARRIE MARREN,)
)
Petitioner,)
)
v.)
)
TENNESSEE SCHOOL BOARDS)
ASSOCIATION,)
)
Respondent.)

Case No. 19-1512-I

**PETITION FOR ACCESS TO PUBLIC RECORDS AND TO
OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

Pursuant to the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501, *et seq.* to 10-7-505 (the “Act”), petitioner Karrie Marren hereby petitions this Court for access to certain public records, and to obtain judicial review of the actions of respondents the Tennessee School Boards Association (TSBA) – a functional equivalent of government, charged with training school board members of this state – in denying the Petitioner access to those records.

Introduction

This a public records case requesting that this Court declare TSBA a functional equivalent of government and order it to disclose records under its control to Karrie Marren. Karrie is a mother residing in Williamson County, Tennessee. Frustrated by the unresponsiveness of

the Williamson County school board members who are legally mandated to receive their training and ethical standards from the Tennessee School Boards Association (TSBA), Karrie sought documents from TSBA. After TSBA rejected her request, Karrie brought her petition under the Tennessee Public Records Act.

Identification of Parties

1. Respondent Tennessee School Boards Association is organized under the laws of Tennessee as a non-profit 501(c)(3) corporation.

2. The Tennessee School Boards Association is located in at 525 Brick Church Park Drive, Nashville, TN 37207.

3. At all pertinent times mentioned herein, at least 90% of TSBA's funding derived from "public support." See Ex. 1 (IRS Form 990 from 2016); Ex. 2 (IRS Form 990 from 2017).

4. Karrie Marren is a mother, citizen of the State of Tennessee, and resident of Williamson County. TSBA denied her access to records under its custody after Karrie lodged a request.

Jurisdiction and Venue

5. This Court has subject matter jurisdiction over this petition under Tenn. Code Ann. §§ 10-7-505(b), 16-11-101 *et seq.*, 29-14-102 and 29-14-103.

6. As the county where TSBA is headquartered and stores its records, venue is proper in Davidson County under Tenn. Code Ann. §§ 10-7-505(b) and 20-4-101(a).

7. This Court has authority to enter a declaratory judgment and injunctive relief under Tenn. Code Ann. § 10-7-505(d), 29-1-101 *et seq.*, 29-14-102, 29-14-103, and Tenn. R. Civ. P. 65 *et seq.*

Facts

The Tennessee Public Records Act (TPRA)

8. The Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503, applies to records “made or received” in connection with the transaction of official business by any “government agency.”

9. TPRA applies to those records in the hands of any private entity that operates as the functional equivalent of a government agency (a functional equivalent).

TSBA

10. The TSBA’s organizational mission “is to assist school boards in effectively governing school districts.” *See* Ex. 1 (2016 IRS Form 990); Ex. 2 (2017 IRS Form 990).

11. By law, TSBA “is recognized as the organization and representative agency of the members of school boards of this state.” Tenn. Code Ann. § 49-2-2001(a).

12. By law, TSBA has exclusive authorization to coordinate the policies, control, and management of the schools under any board of education, state or local. Tenn. Code Ann. § 49-2-2001(b)(3).

13. By law, TSBA has an exclusive responsibility to provide the school board members of all the public-school districts the majority of their training. Tenn. Code Ann. §§ 49-2-202(a)(6), 49-2-2001(b)(1); Tenn. Comp. R. & Regs. R. 0520-01-02-.11(4) (“The Tennessee School Boards

Association (TSBA) shall develop and conduct the majority of the approved modules [used to train local school board members].”).

14. TSBA describes its involvement in the training of school board members on its website as follows:

In 1990, the Tennessee Legislature mandated that school board members attend one full-day training session each year. The State Board of Education authorized the Tennessee Department of Education to plan and implement the program. The Department of Education contracts with TSBA to conduct all of the training.¹

15. All school board members are required by law to undergo 7 hours of training through the “School Board Academy.” Tenn. Comp. R. & Regs. R. 0520-01-02-.11(1).

16. Also, newly-elected members must attend 14 hours of orientation in their first year in office. *Id.*

17. School Board Academy is administered by the Department of Education. Tenn. Comp. R. & Regs. R. 0520-01-02-.11(2).

18. The annual program of School Board Academy consists of modules approved by the state Board of Education. Tenn. Comp. R. & Regs. R. 0520-01-02-.11(3).

19. By law, TSBA “shall” develop and conduct “the majority” of the approved modules. *Id.*

20. TSBA updates and will continue to update annual training modules, or School Board Academies, to be used in training school board members. *See* Ex. 3, TSBA’s 2018-20 Contract with the State.

¹ Available here at: tsba.net/about/history-of-tsba/ (last viewed on Dec. 17, 2019)

21. TSBA must conduct three training sessions annually on subjects ranging from “The Board’s Role in School Finance and School Law” to “Advocating the Board’s Vision,” and “Board’s Role in School Reform and Orientation.” *See id.*

22. TSBA also provides professional development and training for school board members. *See id.* at 1 Intro., A.2, A.3.

23. TSBA develops and conducts and will continue to develop and conduct the majority of the approved modules used at School Board Academy.

24. The state Board of Education establishes a School Board Academy Advisory Committee that evaluates academy programs and recommends an annual program plan for the academy each school year. Tenn. Comp. R. & Regs. R. 0520-01-02-.11(4).

25. By law, the Advisory Committee “will include” the Executive Director and President of TSBA. *Id.*

26. By law, TSBA sets the ethical standards for school board members in the state. Tenn. Code Ann. § 8-17-105(a). *See Ex. 4, New Member Guide, at 9.*

27. By law, TSBA is designated as a political subdivision of the state for purposes of protecting Social Security to state employees and its political subdivision. Tenn. Code Ann. § 8-38-101(9).

28. By law, TSBA is designated as a participating employer in the state’s retirement system. Tenn. Code Ann. § 8-35-209(a).

29. TSBA’s constitution (attached as “Ex. 5”) requires that major policy decisions be determined by the Delegate Assembly.

30. TSBA's Delegate Assembly is comprised of representatives selected from each local board of education in Tennessee. *See* Ex. 5.

31. Every TSBA board member is a local elected official. *See* Ex. 5.

32. TSBA relates on its website that in 1953, the state "officially recognized and "authorized TSBA to provide services through membership dues paid by school boards."² *See* Tenn. Code Ann. §§ 49-2-2001(c), (d).

33. In 2016, TSBA received approximately 91% of funds from "public support." *See* Ex. 1 (2016 IRS Form 990).

34. In 2017, TSBA received approximately 90% of funds from "public support" *See* Ex. 2 (2017 IRS Form 990).

Karrie Marren

35. Karrie is a citizen of Tennessee residing in Williamson County.

36. Karrie is the mother of school aged children.

37. Karrie pays property taxes in Tennessee.

Karrie's Request and TSBA's Denial

38. On November 25, 2019, Karrie requested of TSBA certain documents from 2018 and 2019. (Request attached as "Ex. 6").

39. More specifically, Karrie requested access to:

- (a) All training materials not posted on your website for the 2019-20 School Board Academy Catalog. This includes, but is not limited to materials for 'Board Policy and Operations,' 'A Deep Dive into Boardsmanship,'

² Available at: tsba.net/about/history-of-tsba/ (last viewed on Dec. 16, 2019).

'Planning: A Joint Venture' (Part I & II), 'Teaming and the School Board,' and 'Legal Issues Impacting School Boards,'

- (b) Any and all communications with legislators, school board members, superintendents, or any other elected officials or public officials about your 2018 and 2019 Legislative Agendas,
- (c) Any and all documents specifically pertaining to TSBA's position statements on governance (particularly TSBA's desire to 'reduce state education law for the purpose of eliminating unconstitutional, conflicting, redundant, and unnecessary statutes'), and allocation of public funds (particularly advocacy supporting the idea 'that funds raised by general taxation for educational purposes should be administered by public officials and should not be used to support privately operated schools through tuition tax credits, vouchers, or block grants').

40. On December 2, 2019, Karrie's request for access to most of those records was denied.

41. As to Karrie's first request, Ben Torres, Executive Director and General Counsel for TSBA, replied by email: "the program is administered by the TN Department of Education and all training materials associated with the School Board Academy belong to the Department of Education." Ex. 7 (Torres email (Dec. 2, 2019)).

42. Mr. Torres provided a link to some of the school board academies on TSBA's website, attached 2018-19 materials to the email response for some, explained that others were not yet published, that some had not been requested or created, and that some courses were only available online. See Ex. 7.

43. As to Karrie's second and third requests, Mr. Torres replied: "TSBA is a private, nonprofit organization and not subject to these requests pursuant to TCA 10-7-503." *See* Ex. 7.

Claim

44. Pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-101, *et seq.*; and Tenn. Code Ann. § 29-25-101, Petitioner brings this action seeking access to certain public records, created and maintained by Respondent Tennessee School Boards Association.

45. The Tennessee Public Records Act applies to TSBA, notwithstanding its claim that as a non-profit agency otherwise subject to public records requests, it is exempt from compliance based on its participation in an annual auditing scheme.

46. The Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503 *et seq.*, governs the right of access to the records of government agencies in Tennessee, promoting government accountability and proper public oversight of government activities.

47. Tenn. Code Ann. § 10-7-503 *et seq.* provides in pertinent part that [a]ll municipal records ... shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee ..." to the extent that those records were "made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency."

48. Since the Supreme Court's decision in *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67 (Tenn. 2002), compliance with public records requests is also demanded of otherwise exempt organizations that operate as the functional equivalent of

government, “so as to give the fullest possible public access.” *Id.* at 71; Tenn. Code Ann. § 10-7-505(d).

49. TSBA acts as the functional equivalent of government owing:

- a) to the public service it performs,
- b) the significant amount public funding,
- c) its legal recognition, board composition, and level of state control,
- d) its designation as a “political subdivision” and ability to participate as in employer in the state’s retirement.

50. Karrie is a citizen of the State of Tennessee.

51. On November 25, 2019, Karrie submitted a request to TSBA for public records under Tenn. Code Ann. § 10-7-503. *See Ex. 3.*

52. On December 2, 2019, TSBA sent Karrie a response by email, refusing access to most of the records she had requested. *See Ex. 7.*

53. TSBA’s denied her access to responsive records during business hours.

54. To the best of Karrie’s knowledge, information and belief, the requested records are in the possession, custody, or control of TSBA.

55. To the best of Karrie’s knowledge, information and belief, TSBA houses those records in Davidson County where the organization is headquartered.

56. In its response, TSBA does not deny that it controls responsive documents.

57. The aforementioned records are public records to which the public is entitled access and which are not confidential records under Tenn. Code Ann. § 10-7-504 or any other state or federal law.

58. TSBA wrongly and willfully denied Karrie's request.

59. TSBA has no authority to refuse Petitioner's request to inspect the relevant records.

60. Because TSBA acts as the functional equivalent of government, and because TSBA is aware of and familiar with the requirement that even private entities acting in such a capacity are covered by the Public Records Act, Respondent TSBA's denial was without merit.

61. As a result of this willful refusal, Karrie incurred costs and expenses.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays:

62. That the Court issue an Order to Show Cause requiring Respondent to appear before this Court and to show cause, if any such cause can be shown, why this Petition should not be granted with respect to each record withheld as provided by Tenn. Code Ann. § 10-7-505(b).

63. That the Court grant this Petition and order Respondent to provide, and otherwise permit Petitioner to receive, the aforementioned documents, as set forth above in the request. *See* Ex. 3.

64. That the Court issue a declaration that TSBA is a functional equivalent of government subject to the Public Records Act

65. That the Court issue a declaration that the records Petitioner requested are public records under Tennessee law.

66. That Petitioner recover judgment against Respondent for costs incurred in obtaining the records sought as provided by § 10-7-505(g).

67. That the Court order Respondent to show cause as to why Petitioner should not recover attorney's fees as provided by § 10-7-505(g).

68. That the Court grant Petitioner any and all other relief to which it appears she is entitled.

Dated: December 17, 2019.

Respectfully submitted,



BRADEN H. BOUCEK

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CERTIFICATE OF SERVICE

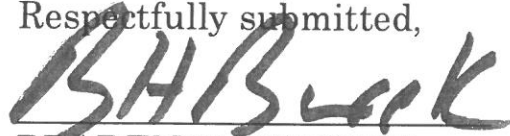
I hereby certify that a true and exact copy of the foregoing was served upon the following, by the following means:

Party	Counsel for	Via
Tennessee School Boards Association 525 Brick Church Park Dr. Nashville, TN 37207 T: (615) 815-3906 F: (615) 815-3911 ATTN: Ben Torres btorres@tsba.net	TSBA	<input type="checkbox"/> United States mail, postage prepaid <input checked="" type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fed Ex <input type="checkbox"/> CM/ECF

Dated: December 17, 2019.

Respectfully submitted,

By:



BRADEN H. BOUCEK

Ex. List

1. Tennessee School Boards Association 2016 IRS Form 990
2. Tennessee School Boards Association 2017 IRS Form 990
3. Tennessee School Boards Association's 2018-2020 Contract with the State
4. Tennessee School Boards Association New Board Member Guide
5. Tennessee School Boards Association Constitution
6. Records Request Letter from Karrie Marren
7. Tennessee School Boards Association's Response to and Denial of the Records Request