

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

**THE TENNESSEAN; RACHEL
WEGNER; and TODD GARDENHIRE in
his individual capacity,**

Plaintiffs/Petitioners,

v.

**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON
COUNTY,**

Defendant/Respondent.

Case No. _____
[Possibly to be consolidated with
Case No. 23-0538-III and 23-0542-III]

COMPLAINT AND PETITION FOR ACCESS TO PUBLIC RECORDS

Plaintiffs/Petitioners have requested access to public records, some created by and others obtained from third parties by the Metropolitan Nashville Police Department (“Metro Police Department”) of the Metropolitan Government of Nashville and Davidson County (“Metropolitan Government”), but the requests have been denied. These records pertain to murders at a local private school, The Covenant School, in Nashville, Tennessee, on March 27, 2023. On that date, an individual named Audrey Hale, who also went by the name Aiden Hale (“Hale”), shot Hale’s way into The Covenant School and began shooting and killing staff and students of that school. Officers of the Metro Police Department quickly responded. Hale was killed in an exchange of gunfire with police officers. The Metro Police Department acknowledges that it believes Hale acted alone. Petitioners submit that there is no pending criminal investigation. There is no criminal suspect to investigate. Public records requests made by the Plaintiffs/Petitioners have been denied, with the sole excuse given by Metro Government for non-disclosure being Rule 16 of the Tennessee Rules of Criminal Procedure.

Plaintiffs/Petitioners file this Complaint/Petition pursuant to the Tennessee Public Records Act (“TPRA”), Tenn. Code Ann. §§ 10-7-501 *et seq.*, for access to public records which are within the custody, possession or control of the Metropolitan Government. As grounds for this Complaint/Petition, the Plaintiffs/Petitioners state as follows:

1. This Court has subject matter jurisdiction over this action. Venue is proper in Davidson County, Tennessee.

2. Plaintiff/Petitioner *The Tennessean* is a Nashville-based regional daily newspaper which is operated by Gannett GP Media, Inc. Multiple public records requests were made by Rachel Wegner, a Tennessee citizen and Davidson County resident, in both her official capacity as a reporter for *The Tennessean* and in her individual capacity.

3. Plaintiff/Petitioner Todd Gardenhire is a citizen of Tennessee and Hamilton County resident. Mr. Gardenhire is the Chair of the Tennessee Senate Judiciary Committee. He pursues this case in his individual capacity as a citizen of the State of Tennessee.

4. Defendant/Respondent Metropolitan Government is a governmental entity which is required to comply with the TPRA, Tenn. Code Ann. §§ 10-7-501 *et seq.* One of Metropolitan Government’s departments or divisions is the Metro Police Department. Officers of the Metro Police Department quickly responded to the gunfire at The Covenant School. Multiple officers entered the school and began the process of clearing students and staff. Two officers confronted Hale, and, while under fire, shot and killed Hale. Since that time, the actions of the Metro Police Department officers have been characterized in *The Tennessean* and elsewhere as heroic.

5. On information and belief, the Metro Police Department created records and also gathered information from a variety of sources, including journals from Hale’s car and Hale’s parents’ home, together with a suicide note.

6. The Metro Police Department produced a video for public release which included portions of body cam footage from various police officers, including the two officers who returned fire against Hale.

7. The murders on the campus of The Covenant School have resulted in significant public interest. These killings are part of a broader public debate about shootings at locations including schools, movie theatres, nightclubs, and shopping malls.

8. In this particular instance, debate has arisen regarding Hale's motivations, goals, planning, and acquisition of firearms while under mental health treatment. For example, did Hale attack a Christian school because of its religious affiliation? Or because of the conservative views of the denomination of which The Covenant's School's sponsoring church is a participating congregation? Or because Hale hated the school that Hale once attended? Or because Hale had a grudge against some employee or administrator at the school? What do Hale's autopsy/toxicology tests show, and are they connected to the shootings? What do Hale's records show that might be of assistance to the Tennessee special legislative session scheduled to take place in August 2023? What do these records reveal which may help to avoid school shootings in the future? These and other questions have caused debate and intense public interest.

9. School shootings, such as those at The Covenant School, have led to rallies and protests in 2023, not only at Legislative Plaza in Nashville, but also within the Chambers of the Tennessee House of Representatives. These rallies and protests have resulted in national media attention.

10. On April 27, 2023, the Metro Police Department, through its Public Information Office, announced that it would be releasing records. *See* Adrian Mojica, *Nashville Mass*

Shooter's Manifesto Being Reviewed for Public Release, KHQA (Apr. 27, 2023, 11:22 AM), <https://tinyurl.com/KHQARel>.

11. Tennessee Governor Bill Lee has taken an interest in school shootings, and in particular, the murders that took place at The Covenant School. On Thursday, April 27, 2023, Governor Lee released a statement on social media that he had been assured by Metro Police Department Chief Drake the information requested by various public records would be “released to the public very soon.”

12. On Friday, April 28, 2023, the Metro Police Department denied the public records request of Michael Leahy and *The Tennessee Star*, citing Tenn. R. Crim. P. 16 as the sole basis for refusal.

13. On Friday, April 28, 2023, the Metro Police Department changed course 180 degrees and refused to produce any more records. Chief Drake’s assurance of disclosure to Governor Lee on April 27 was reversed.

14. Tennessee Governor Bill Lee has announced a special session of the Tennessee General Assembly, beginning August 21, 2023, during which the Legislature will reconvene and consider new legislation regarding public safety. The records requested by the Plaintiffs/Petitioners will contribute to the discussion and debate which is anticipated at the Tennessee General Assembly.

15. On or about May 15, 2023, sixty-six of the Tennessee House representatives delivered a letter to Metro Police Chief Drake requesting the release of records, some of which are the subject of this Complaint/Petition. A true and correct copy of this letter is attached as Exhibit 1.

16. The result of the positions taken by the Metropolitan Government and the proposed Intervenor could be the disruption of the Special Session of the Tennessee General Assembly and the hoped-for gun legislation.

17. Plaintiffs/Petitioners seek to bring to light additional facts regarding this incident, societal and mental health issues, and issues regarding firearms more broadly, which have not yet been revealed through other means.

18. The Tennessee General Assembly has stated its intention that the TPRA be read broadly in order to promote transparency. The statute 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).

19. Public records subject to the Act 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. § 10-7-301(6). “Given this definition, the Public Records Act has been described as an ‘all encompassing legislative attempt to cover all printed material created or received by government in its official capacity.’” *Schneider v. City of Jackson*, 226 S.W.3d 332, 339 (Tenn. 2007) (quoting *Griffin v. City of Knoxville*, 821 S.W.2d 921, 923 (Tenn. 1991)).

20. Metropolitan Government is the creator and/or custodian of the records Plaintiffs/Petitioners seek.

21. *The Tennessean* has submitted multiple public records requests to the Metro Police Department through its reporting staff for documents relating to the shootings at The Covenant School. Some requests have been fulfilled. Multiple requests have been denied. Attached as Exhibit 2 is a summary of the requests of *The Tennessean* which, to date, have been denied and which are the subject of this Complaint and Petition. The sole reason given by the Metropolitan Government for denying *The Tennessean*'s requests is Tenn. R. Crim. P. 16. A copy of one of Metro's denials is attached as Exhibit 3.

22. On April 12, 2023, Senator Gardenhire submitted a request asking for "a copy of the following document: the manifesto and journals left by Audrey Hale prior to the shooting at The Covenant School." Senator Gardenhire sought the documents for "research" in "writing new laws regarding school safety." Attached as Exhibit 4 is a true and correct copy of Senator Gardenhire's request.

23. On April 24, 2023, the Metro Police Department denied Senator Gardenhire's request on the ground that "[t]hese items remain relevant to an open criminal investigation," citing "Rule 16 of the Tennessee Rules of Criminal Procedure." Attached as Exhibit 5 is a true and correct copy of the Metro Police Department's denial of Senator Gardenhire's request.

24. Also on April 24, 2023, undersigned counsel sent a letter to the Metro Police Department and Metro Legal to reconsider its denial of Ms. Wegner's public records request. Attached as Exhibit 6 is a true and correct copy of this letter. The Metro Police Department did not modify its denial.

25. The State of Tennessee does not recognize a law enforcement investigative exception to the TPRA. In prior years, law enforcement agencies have sought to establish an exception to the TPRA for records pertaining to law enforcement investigations. In *Schneider v.*

City of Jackson, the Tennessee Supreme Court stated that “none of the[] express exceptions [to the TPRA] incorporate the law enforcement privilege” and “the law enforcement privilege has not previously been adopted as a common law privilege in Tennessee.” *Schneider*, 226 S.W.3d at 343-44. As the Court was “unwilling[] to judicially adopt public policy exceptions to the Public Records Act,” it found that “the law enforcement privilege is not a ‘state law’ exception to the Public Records Act.” *Id.* at 344.

26. Rule 16 of the Tennessee Rules of Criminal Procedure governs discovery in state criminal cases. Tenn. R. Crim. P. 16(a)(2) generally prohibits “the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with investigating or prosecuting the case.” Tenn. R. Crim. P. 16(a)(2) is a “work product” rule, protecting against the disclosure of mental impressions, conclusions, and legal theories of the pending case. *Wilson v. State*, 367 S.W.3d 229, 236 (Tenn. 2012); *Swift v. Campbell*, 159 S.W.3d 565, 572-73 (Tenn. Ct. App. 2004).

27. On information and belief, no open criminal investigation regarding The Covenant School murders is pending. Hale is dead. Metropolitan Government cannot prosecute a dead person. These Petitioners submit that the Metropolitan Government cannot establish the existence of an open criminal investigation.

28. In addition, the exception to the TPRA offered by Tenn. R. Crim. P. 16 is waivable. On multiple occasions, the Metro Police Department has released videos of crimes and requested the assistance of media entities to identify the suspect. The Metro Police Department released body cam footage relating to the Covenant School shootings.

29. Since the murders at The Covenant School, law enforcement officials have made comments to media outlets in briefings and press releases concerning information contained in the

records Plaintiffs/Petitioners have requested. These Petitioners submit that these comments have confirmed that there is not a pending criminal investigation related to the shootings.

30. Because there is no pending criminal investigation, Tenn. R. Crim. P. 16 and the *Tennessean* case cited by the Metro Police Department as grounds for denial of the public records requests are inapplicable. Rather, this case is controlled by the Tennessee Supreme Court's earlier decision in *Memphis Publishing Company v. Holt*, 710 SW2d 513 (Tenn. 1986), in which the Court held that Rule 16 was not applicable because there was no pending or contemplated criminal action due to the fact that the perpetrators of the unlawful activity had been killed in the police shoot-out.

31. The TPRA provides that "the [written] response [to a public records request] **shall** include the basis for the denial." Tenn. Code Ann. § 10-7-503(a)(2)(B)(ii) (emphasis added). The TPRA further provides: "The burden of proof for justification of nondisclosure of records sought shall be upon the official of and/or designee of the official of those records and the justification for the nondisclosure must be shown by a preponderance of the evidence." Tenn. Code Ann. § 10-7-505(c).

32. The sole reason given by the Metro Police Department for denial of the Plaintiffs/Petitioners' TPRA requests is Tenn. R. Crim. P. 16. Metropolitan Government/Metro Police Department should be barred and/or estopped from claiming other so-called exemptions not included in their first denial(s). The TPRA does not provide for, nor does it permit, governmental entities to "make up" additional TPRA exceptions "on the fly" in response to a TPRA lawsuit. Metropolitan Government should be limited to the sole reason it gave in refusing Plaintiffs/Petitioners' TPRA requests.

33. On information and belief, the Metropolitan Government has communicated with representatives of The Covenant School, the Covenant Presbyterian Church, and/or parents or

relatives of murder victims on the subject of the requests it has received from multiple TPRA requestors. On information and belief, Metropolitan Government has invited intervention by third parties.

34. To date, upon information and belief, motions to “intervene” have been filed by Covenant Presbyterian Church, The Covenant School, and a group of unnamed parents. The gist of the intervention motions is to object to the production by Metropolitan Government of records which the proposed intervenors perceive as having been requested by one or more TPRA requestors. The motions to intervene are, in essence, “reverse” public records requests seeking to prohibit or enjoin the disclosure of public records. Intervention by these third parties is not provided for under the TPRA. The intervention requests impede the Plaintiffs/Petitioners’ rights under the First Amendment to the U.S. Constitution and Article I, Sections 19 and 23 of the Tennessee Constitution to the right to free speech (including newsgathering and publication) and right to petition government, in violation of the Tennessee Public Participation Act (“TPPA”). Petitioners submit that the proposed intervenors lack standing to intervene in this case.

35. Defendant/Respondent has willfully violated the TPRA and is liable for all reasonable attorneys’ fees and costs.

36. Plaintiffs/Petitioners reserve all rights and claims under the TPRA and TPPA against Defendant/Respondent and/or any proposed intervenors.

WHEREFORE, Plaintiffs/Petitioners pray:

1. That process issue and be served upon Defendant/Respondent;
2. That the Court schedule a show cause hearing ordering Defendant/Respondent to immediately appear and show cause (*see* Tenn. Code. Ann. § 10-7-505(b)) why the relief requested

in this Complaint/Petition should not be granted and that Defendant/Respondent be enjoined from refusing to promptly produce documents Plaintiffs/Petitioners have requested;

3. That the Court set a date at least ten (10) business days prior to the date of the hearing which it schedules for Defendant/Respondent to file any brief;

4. That the Court issue an Order in favor of Plaintiffs/Petitioners 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 TPRA in this case when there is neither a pending criminal prosecution nor one reasonably likely to begin related to the records sought in a request under the TPRA;

6. That the Court declare that Defendant/Respondent is estopped and/or otherwise barred from asserting purported exceptions/exemptions to the TPRA other than those asserted in its initial denial(s) of TPRA requests;

7. That the Court deny any and all motions to intervene;

8. That the Plaintiffs/Petitioners reserve all claims/rights/damages under the TPRA and TPPA;

9. That the Court determine that the Defendant/Respondent's refusal to produce these records promptly has been done knowingly, willfully, and deliberately, and award Plaintiffs/Petitioners 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;

10. That the costs of this action be taxed against Defendant/Respondent;

11. That the Court grant further relief to ensure Defendant/Respondent continues production of the requested records promptly; and

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

Respectfully submitted,

s/ Robb S. Harvey

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2023, the foregoing Complaint/Petition was electronically filed via the Court's electronic filing system. A courtesy copy of the foregoing was emailed to the following:

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