

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

CLATA RENEE BREWER; JAMES)
HAMMOND; THE TENNESSEE)
FIREARMS ASSOCIATION, INC.;)
MICHAEL P. LEAHY; STAR NEWS)
DIGITAL MEDIA, INC.; THE)
TENNESSEAN; RACHEL WEGNER;)
and TODD GARDENHIRE in his)
individual capacity;)

Petitioners,

vs.

METROPOLITAN GOVERNMENT)
OF NASHVILLE AND DAVIDSON)
COUNTY;)

Respondent,

PARENTS OF MINOR COVENANT)
STUDENTS JANE DOE AND JOHN)
DOE; THE COVENANT SCHOOL;)
And COVENANT PRESBYTERIAN)
CHURCH)

Intervenors.

Case No. 23-0538-III
CONSOLIDATED

****controlling case****

BREWER’S REPLY TO METRO’S RESPONSE TO MOTION
TO REMOVE RESTRICTIONS ON LOG OF MATERIALS
PROVIDED FOR IN CAMERA REVIEW

Petitioner, Clata Renee Brewer, submits the following as her Reply to the Response of Metropolitan Government of Nashville and Davidson County (“Metro”) to Brewer’s Renewed Motion to Remove Restrictions on Log of Materials Provided for In Camera Review. Metro’s Response does not deny the validity of all three of the grounds for Brewer’s motion. Specifically, Metro does not and cannot deny that; there is nothing confidential in the Log, there is a general common law presumption that court filings should be open to the public, and; the current restriction will interfere with the ability of the parties to refer to various documents, identified in the Log, as necessitated by further proceedings in this Court. Although conceding the validity of the grounds

for Brewer's motion, Metro offers an alternative suggestion that is inconsistent with this Court's previous orders concerning the Log.

This Court's May 4, 2023 Order requiring Metro to provide the documents at issue in camera and requiring Metro to provide a log of materials clearly envisioned that Metro would produce **all** of the documents at issue to the Court. As this Court's May 25, 2023 Order shows, after Metro's initial production with the Log, Brewer's counsel requested an update on Metro's production of the remainder of the documents. Metro indicated it wanted the Court to come to the police department to inspect the remainder of the records. This May 25 Order further stated when that inspection would take place and that Metro "shall prepare an Excel document with an index of the information pertaining to the case and the type of record. (ex: witness statement, lab report, paraphernalia, *etc.*) and the source of the record." Although Petitioners' counsel has not been allowed to see this Excel index, the requirements the Court placed upon that index appear to be consistent with the information in the Log, which means there is nothing confidential in the Excel index. Both the Log and the Excel index are essentially privilege logs. The very purpose of any privilege log is to allow the parties to know the nature of the documents, so as to allow free discussion of those documents for the purpose of the litigation, while not revealing the documents themselves.

In its Response, Metro now suggests that the Log be treated similarly to the Excel index to deny access to the very information for which such logs and indices exist. Instead, both the Log and the index should be made available to Petitioners' counsel without restrictions.

As Metro has conceded, there is nothing confidential in the Log itself (and therefore, presumably the index as well) and the common law presumption is that such documents will be public. *E.g., United States v. Beckham*, 789 F2 401 (6th Cir. 1986) (there is a common law presumption that judicial records are public); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710

F.2d 1165, 1176 (6th Cir. 1983) (court that seals records must set forth specific findings and conclusions “which justify nondisclosure to the public”); *In re Knoxville News Sentinel Co.*, 723 F.2d 470, 474, (6th Cir. 1983) (“long established legal tradition is the presumptive right of the public to inspect and copy judicial records and files”). Metro has made no effort whatsoever to suggest that the common law presumption of openness should not apply in this case for non-confidential documents.

Similarly, Metro does not deny that the inability to refer to the documents at issue, by at least the limited designation in the Log, will interfere and complicate the show cause hearing. As just one example, the fifth of the eight items listed in the Log is a document which unequivocally describes a document *inconsistent* with the intestate probate proceeding currently pending in the Probate Court of Davidson County for the administration of the estate of Audrey Hale (*See* Exhibit A to Brewer’s original Motion to Remove Restrictions). Moreover, there is a specific section of the Tennessee Criminal Code that makes it a felony to fail to produce this type of document Metro has identified. Unless the parties can openly discuss this document by the name Metro has given it in its Log then, presumably, the Court would have to hold a closed hearing to continue to protect the identification of this document. Any such closed hearing is prohibited unless Metro established very stringent standards for courtroom closure, and Metro has not even made any attempt to do so. *State v. Drake*, 701 S.W.2d 604 (Tenn. 1985).

Further, the Log restrictions prevent Petitioners’ counsel from seeking guidance and advice from their clients to properly present their case.

Moreover, the listing of documents in the Log is no more revealing than the listing of documents in Paragraph 8 of Lieutenant Bret Gibson’s Declaration which has been publicly filed and is also a part of the police file. Therefore, some of what is in the police file is publicly

identified, consistent with a standard privilege log, but those documents in the Log and Excel index are not. There is no valid reason for this inconsistency.

Therefore, because Metro does not deny that the Log contains no confidential information, that continued restrictions on that Log violate the common presumption of public access to court filings, and that the information in the Log is necessary to allow an unfettered presentation of evidence and arguments at the show cause hearing, Brewer's Motion to Remove the Restrictions on the Log should be granted. Moreover, the Excel index should also be made available, at least initially to counsel only to determine if it should be free from any restrictions. However, none of these steps should interfere with the expeditious progression of this case as required by the Tennessee Public Records Act.

This the 23rd day of January, 2024.

Respectfully submitted,

/s/ Douglas R. Pierce

Douglas R. Pierce, BPR #10084

KING & BALLOW

26 Century Boulevard, Suite NT 700

Nashville, Tennessee 37214

(615) 259-3456 – Phone

(888) 688-0482 – Fax

Attorney for Petitioner Clata Renee Brewer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **BREWER’S REPLY TO METRO’S RESPONSE TO MOTION TO REMOVE RESTRICTIONS ON LOG OF MATERIALS PROVIDED FOR IN CAMERA REVIEW** has been served via the Davidson County Chancery Court electronic filing system (or by e-mail if the individual is not reflected on the Court’s service notice) on January 23, 2024:

Wallace W. Dietz
Lora Fox
Cynthia Gross
Phylinda Ramsey
Allison Bussell
**METROPOLITAN GOVERNMENT OF
NASHVILLE & DAVIDSON COUNTY**
Metropolitan Courthouse
1 Public Square, Suite 108
Nashville, Tennessee 37210
wally.dietz@nashville.gov
lora.fox@nashville.gov
cynthia.gross@nashville.gov
phylinda.ramsey@nashville.gov
allison.bussell@nashville.gov

*Counsel for Respondent Metropolitan
Government of Nashville & Davidson County*

Rocklan W. King III
F. Laurens Brock
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203
rocky.king@arlaw.com
larry.brock@arlaw.com

Counsel for Intervenor, Covenant Presbyterian Church

Eric G. Osborne
William L. Harbison
Christopher S. Sabis
C. Dewey Branstetter
Ryan T. Holt
Micah N. Bradley
Frances W. Perkins
Hunter C. Branstetter
William D. Pugh
SHERRARD ROE VOIGT & HARBISON, PLC

150 Third Avenue South, Suite 1100
Nashville, Tennessee 37201
eosborne@srvhlaw.com
bharbison@srvhlaw.com
csabis@srvhlaw.com
branstetter@srvhlaw.com
rholt@srvhlaw.com
mbradley@srvhlaw.com
fperkins@srvhlaw.com
hbranstetter@srvhlaw.com
wpugh@srvhlaw.com

Edward M. Yarbrough
Sara D. Naylor
SPENCER FANE, LLP
511 Union Street, Suite 1000
Nashville, Tennessee 37219
eyarbrough@spencerfane.com
snaylor@spencerfane.com

Hal Hardin
HARDIN LAW OFFICE
211 Union Street; Suite 200
Nashville, Tennessee 37201
hal@hardinlawoffice.com

Counsel for Intervenors, the Covenant School Parents

Peter F. Klett
Autumn L. Gentry
DICKINSON WRIGHT PLLC
424 Church Street, Suite 800
Nashville, Tennessee 37219
pklett@dickinsonwright.com
agency@dickinsonwright.com

Nader Baydoun
BAYDOUN & KNIGHT, PLLC
5141 Virginia Way, Suite 210
Brentwood, Tennessee 37027
nbaydoun@baydoun.com

Counsel for Intervenor, The Covenant School

/s/ Douglas R. Pierce
Douglas R. Pierce