



January 24, 2022

BY EMAIL

Janet M. Kleinfelter, Esq.
Deputy Attorney General
Office of the Attorney General
State of Tennessee
P.O. Box 20207
Nashville, TN 37202

Attorneys at Law

Alabama
Florida
Georgia
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

Lucian T. Pera

Direct: 901.524.5278
E-Fax: 901.524.5378
lucian.pera@arlaw.com

Re: Public Records Request of Professor Gautam Hans

Dear Janet:

I hope you are safe and well.

I represent Professor Gautam Hans of Vanderbilt University School of Law in connection with his request made to the State under the Tennessee Public Records Act. You responded by letter of October 19, 2021, and denied this request. I write today to seek a bit of clarification concerning your response.

Professor Hans requested:

A copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety. Examples of such relevant versions include, but are not limited to, files in the following formats: Microsoft Word, XML, PDF, and any other editable document or database.

In response, you wrote that “the Revisor of Statutes does not an electronic version of the most current Tennessee Code Annotated in its entirety.” In a good faith effort to be sure that our clients have communicated effectively, I would appreciate your confirming a few facts for us.

First, my client is seeking these records from the State of Tennessee, no matter in whose possession these records may be. To the extent that you are responding only on behalf of the Revisor of Statutes, rather than the State, we need to know that. For purposes of this request, we consider that the State would certainly include the Revisor of Statutes, the entire Office of Legal Services (including its Director), and the Tennessee

Code Commission (and its Executive Secretary). If that is not how you interpreted Professor Hans' request, please consider this letter a corrected or further request for those same documents from all these parts of the State government. In that event, of course, we would expect a response within 7 days, as required by Tenn. Code Ann. § 10-7-503(a)(2)(B).

Second, I am not completely clear about your use of the phrase, "in its entirety." While this may be obvious, I want to be clear that, if the State has one electronic file that comprises the current Tennessee Code Annotated or 100 electronic files that together comprise the Tennessee Code Annotated, he is requesting each one of them. If there are 100 electronic files that together comprise the Tennessee Code Annotated, and the State has 90, we are requesting them. I would appreciate your confirming whether the State has any electronic documents or files responsive to this request.

One thing that led me to have concern about whether the State has any responsive documents or files is that, later in your letter, you assert another ground for denial of the request, and introduce that denial by saying, "to the extent the Revisor of Statutes may have records..."

Another reason we wanted to confirm the State's position that it has no responsive documents is that the State's contract with the publisher of the Tennessee Code Annotated provides that, "[a]fter each regular or extraordinary session, Publisher shall prepare and provide to the [Tennessee Code] Commission, at no cost to the State of Tennessee, a mutually agreeable electronic format containing an accurate representation of the material contained in the bound volumes of the T.C.A. and its cumulative supplements, as amended in such regular or extraordinary session, for the use of the Commission and the General Assembly...." (2019 Contract with Matthew Bender § 2.9 at pp. 8-9.)

You have also denied the request on a substantive ground – that any "such records are confidential work papers produced by the Revisor of Statutes in her capacity as staff to the Tennessee Code Commission and, therefore, are confidential pursuant to Tenn. Code Ann. § 3-12-105." That statute provides:

(a) All books, papers, records, and correspondence of the office of legal services pertaining to its work shall be kept in the office of legal services and all such materials are public records except:

(1) Intraoffice memoranda made by the director of the office of legal services or the director's staff; and

(2) Work papers and correspondence, including correspondence by electronic mail, with any person receiving service from the office of legal services.

(b) Such papers and correspondence may become public records whenever the director of the office of legal services or the general assembly shall so order.

Tenn. Code Ann. § 3-12-105. Professor Hans' request does not seek any "intraoffice memoranda," so section (a)(1) is inapplicable. He also does not seek any "work papers" or "correspondence" with "anyone receiving service from the office of legal services," so section (a)(2) is inapplicable. For this reason, we see Section 3-12-105 as an express mandate that the records we seek are, in fact, public records. I would be grateful if you could explain how you interpret this section to be a basis for denial of Professor Hans' request.

Most importantly, my client needs to know whether there are, in fact, any responsive documents in the State's possession. Without knowing that, I am not in a position to advise my client appropriately concerning his legal rights in this matter.

I look forward to your prompt response.

Very truly yours,



Lucian T. Pera

c: Professor Gautam Hans