



May 16, 2022

BY EMAIL (matthew.lung@lexisnexis.com)

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Re: Request for Records under the Tennessee Public Records Act

Dear Mr. Lung:

I represent David L. Hudson, Jr., a Justice Robert Jackson Fellow with the Foundation for Individual Rights in Education and First Amendment Fellow with the Freedom Forum, and Carl Malamud, President and Founder of Public.Resource.Org. I write today to request access to and copies of public records under the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503(a), and the Tennessee Supreme Court's 2002 decision construing the Act in *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67 (Tenn. 2002).

Specifically, my clients request access under the Act to the following records in the possession of your company:

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.

Copies of any final, executed versions of any contracts or agreements between your company and the Tennessee Code Commission (or the State of Tennessee or any officer, official, employee, or agent of the Tennessee Code Commission or the State) concerning the to editing, annotating, or publishing of the Tennessee Code Annotated that date from 1995 to the present.

My clients are aware that, at one time, your company did publish and sell to the public the document or documents we seek on a CD-ROM. Providing the requested documents

in that format would likely satisfy my client's request, assuming, of course, that the documents produced reflect the most current Tennessee Code Annotated.

Further, our request is intended to seek these records from LexisNexis, Matthew Bender & Company, Inc., and any affiliates of these two companies.

We understand that the State of Tennessee has contracted exclusively with your company (or Matthew Bender & Company, Inc.) to edit, annotate, and publish the Tennessee Code Annotated. Under well-settled Tennessee law, electronic versions of this publication are public records subject to the access requirements of our Public Records Act. This is true, regardless of the fact that your company is not a part of Tennessee government, because, as concerns the Tennessee Code Annotated, your company is the functional equivalent of government. We believe the same is clearly true of the company's contract to publish the Tennessee Code Annotated.

Under the Tennessee Supreme Court's 2002 decision in *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67 (Tenn. 2002), your company is, for purposes of its contracted work on the Tennessee Code Annotated, the "functional equivalent" of government. Thus, all of its records concerning this work are public records subject to the access requirement of the Act. To be clear, however, my clients' public record request currently seeks only the documents described above.

The *Cherokee* decision held that records in the hands of a private, non-governmental, not-for-profit corporation were public records because that company was the "functional equivalent" of government. That company had contracted with the Tennessee Department of Human Services (TDHS) to perform certain functions related to government-subsidized child care services in Shelby County. Before that contract, the services at issue in *Cherokee* had been performed by TDHS; after the contract was terminated, those services were again performed by TDHS. If the governmental functions outsourced by TDHS led to the private company in *Cherokee* being found to be the "functional equivalent" of a government agency, then the editing, annotation, and publishing of the Tennessee Code Annotated would surely also be considered the "functional equivalent" of government.

Tennessee law provides for an award of attorney fees and expenses in the event that the custodian of a public record willfully denies access to public records under the Act. Tenn. Code Ann. § 10-7-505(g).

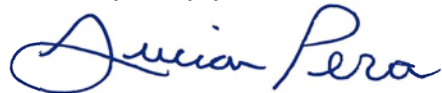
Finally, please be aware that Tennessee law requires that a custodian of public records must respond to a request under the Act within 7 days and that failure to meet this

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deadline constitutes a violation of the access requirement of the Act entitling the requestor to bring suit. Tenn. Code Ann. § 10-7-503(a)(2)(B) and (a)(3). Thus, we expect to receive your response within 7 days.

I look forward to your prompt response.

Very truly yours,

A handwritten signature in blue ink that reads "Lucian Pera". The signature is written in a cursive style with a large initial "L".

Lucian T. Pera

c: Mr. Carl Malamud, Public.Resource.org
David L. Hudson, Jr.