



STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY  
OFFICE OF OPEN RECORDS COUNSEL  
James K. Polk State Office Building  
505 Deaderick Street, Suite 1600  
Nashville, Tennessee 37243-1402

Justin P. Wilson  
Comptroller

November 3, 2009

John Trippett  
246 County Road  
Calhoun, Tennessee 37309

Dear Mr. Trippett:

You have requested an opinion from this Office that addresses the following issue:

1. Is a patrol car dash cam video of a traffic stop made by an officer working/training with the Charleston Police Department (hereinafter "CPD") a public record that is accessible to the public when the case involving the traffic stop has been closed and there is no other criminal investigation or prosecution related to the video either pending or contemplated?

Tenn. Code Ann. Section 10-7-503(a)(2) reads as follows:

All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, 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.

Additionally, Tenn. Code Ann. Section 10-7-506(a) states that whenever an individual has the right to inspect a record, the individual also has the right to receive a copy or duplicate of the record after adhering to any reasonable rule established by the records custodian related to the production of the copy or duplicate.

The Tennessee General Assembly directed the courts to interpret the Tennessee Public Records Act as broadly as possible "so as to give the fullest possible public access to public records." Tenn. Code Ann. Section 10-7-505(d). As a result of this directive, Tennessee courts have consistently held that even in the face of serious "countervailing considerations" unless there is a specific exemption within the law that prohibits disclosure of a record, a records custodian is required to make the record available for public access. *See Memphis Publishing Co. v. City of Memphis*, 871 S.W. 2d 681, 684 (Tenn. 1994); *Allen v. Day*, 213 S.W. 3d 244, 261 (Tenn. Ct. App. 2006); and *Schneider v. City of Jackson*, 226 S.W. 3d 332, 340 (Tenn. 2007). The courts have also held that the specific exemptions that prohibit access to

public records are not just found in statute, but are also found in the Tennessee Constitution, rules of court, administrative rules, common law, and federal law. *Swift v. Campbell*, 159 S.W. 3d 565,571-572

(Tenn. Ct. App. 2004). In this case, Tenn. R. Crim. P. 16(a)(2) must be analyzed in order to determine whether or not it creates an exception to public access of the dash cam video.

Tenn. R. Crim. P. 16(a)(2) states:

Except as provided in paragraphs (A), (B), (E), and (G) of subdivision (a)(1), this rule does not authorize 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. Nor does this rule authorize discovery of statements made by state witnesses or prospective state witnesses.

Tennessee courts have held that this rule is not only applicable to defendants in criminal matters, but it also applicable to other individuals who are making public records requests for the types of records described above, when the records are relevant to a pending or contemplated criminal investigation or prosecution. *Appman v. Worthington*, 746 S.W. 2d 165 (Tenn. 1987). In this situation, the dash cam video would not be available for public inspection or copying if it were relevant to a pending or contemplated criminal investigation or prosecution.

However, it does not appear that the requested video is relevant to a pending or contemplated criminal investigation or prosecution. *See* attached Exhibit 1. As such, it is the opinion of this Office that the dash cam video is a public record that must be made available for public inspection or copying if it is maintained by the CPD.

With regard to the denial that you received from the CPD, this Office is not certain whether or not your request was denied because the requested video no longer exists or because the officer who made the stop is no longer working/training with the CPD. *See* attached Exhibit 2. If the video does not exist, then it cannot be produced. However, if the video does exist, but is in the possession of the officer who made the stop, it is the opinion of this Office that the CPD is required to retrieve the video and provide you a copy of it after payment is made for the copy.

Please feel free to call me at (615) 401-7891 if you have any further questions.

Sincerely,

Elisha D. Hodge  
Open Records Counsel

JOHN J. TRIPPETT (7)  
KATHY L. TRIPPETT  
246 COUNTY ROAD 733  
CALHOUN, TN 37309  
PHONE: 423-336-9738

5919  
87-7848/2642

10-1-09 Date  
Pay to the Order of City of Calhoun \$ 113.75  
One hundred thirteen and 75/100 Dollars



For Code 12234 Ticket Kathy Trippett  
5919

Herland Clarke

5439

CASE CLOSED Due To PAYMENT  
OF FINE.

10-19-09

Chief  
Hyden

EXHIBIT  
1



RECORDS REQUEST DENIAL LETTER  
(Insert Agency Name and Address)

Insert Date

Dear Sir or Madam:

On <sup>10-15-09</sup> insert date this Office received your open records request to inspect/receive copies of IN CAR VIDEOS insert type of records. After reviewing the request, this Office is unable to provide you with either all or part of the requested record(s). The basis for this denial is:

- No such record(s) exists.  
*OFFICER NO LONGER HERE - NEVER EMPLOYED TRAINING ONLY*
- This office is not the records custodian for the requested record(s).
- Additional information is needed to identify the requested record(s): \_\_\_\_\_

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- The following law (citation and brief description why access denied):
  - Tenn. Code Ann. Section: \_\_\_\_\_
  - Court Rule: \_\_\_\_\_
  - Common Law Provision: \_\_\_\_\_
  - Federal Law (HIPAA, FERPA, etc.): \_\_\_\_\_

If you have any additional questions please contact insert contact person and phone number

Sincerely,

(Record Custodian's name and title)

EXHIBIT  
2