

**IN THE CHANCERY COURT FOR MONTGOMERY COUNTY, TENNESSEE
AT CLARKSVILLE**

SCOOP MEDIA GROUP, LLC,)
and JASON STEEN,)
)
 Petitioners,)
)
vs.)
)
MONTGOMERY COUNTY,)
)
 Respondent,)

Docket: MC-CH-CV-MG-20-2

MEMORANDUM OPINION AND ORDER

This case is before the court upon the PETITION FOR ACCESS TO PUBLIC RECORDS AND TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS filed by Scoop Media Group, LLC, and Jason Steen against Montgomery County, Tennessee. Pursuant to the Agreed Order entered April 14, 2020, this matter is being presented to the court on the merits and only on the pleadings, along with the affidavits and depositions taken for proof of Cheryl Castle, Arthur Bieber, Shellie Holder and Lee Eckerman-Caira. Upon the briefs of counsel and the record as a whole, the court makes the following findings of fact and conclusions of law:

1. Petitioner, Scoop Media Group, LLC, (“Scoop”) is a Tennessee limited liability company that operates what it describes as a “website devoted to informing the public about crimes committed in Tennessee.” Petitioner, Jason Steen, is the Chief Executive Officer of Scoop.

2. Montgomery County is a county within the State of Tennessee and the 19th Judicial District. The dispute in this case centers around the actions of the Montgomery County Circuit Court Clerk, who is a duly elected constitutional officer of Montgomery County, Tennessee.

3. In connection with its business operations, Scoop routinely makes public record requests to various Circuit Court Clerk's offices throughout the state. Scoop's requests are for criminal warrants and affidavits of complaint that relate to pending criminal cases. Scoop publishes the information it receives on its website, to include the names and addresses of victims of domestic violence and other criminal offenses. There is no allegation and this court does not find that Scoop publishes the identities of minors or the identities of victims of sexual offenses in violation of Tennessee law.

4. Montgomery County acknowledges that warrants and affidavits of complaint are "public records" under T.C.A. § 10-7-503, and that they are subject to production under the Public Records Act.

5. The dispute in this case began with the decision of the Montgomery County Circuit Court Clerk to redact the names and addresses of alleged crime victims found in warrants and affidavits of complaint prior to producing them to Scoop. Scoop claims that this practice is unlawful and that it is entitled to permanent injunctive relief against Montgomery County as well as its costs and attorneys' fees for having to seek judicial intervention.

6. Scoop began requesting copies of criminal warrants and affidavits of complaint from the Montgomery County Circuit Court Clerk's Office in 2019. In January 2020, a patrol corporal from the Montgomery County Sheriff's Department, advised the department's Public Information Officer that he had seen detailed information on Scoop's website relating to domestic violence cases, to include the names of victims, the addresses where the alleged incidents occurred, the names of the patrol officers who initially investigated the incidents and mugshots of all individuals arrested.

7. Believing that the information published by Scoop was confidential, the Sheriff's Department's Public Information Officer contacted the Circuit Court Clerk, the Montgomery County Public Information Officer and the Office of Open Records Counsel for the State of Tennessee. Open Records Counsel opined as follows:

We are unaware of a state law that specifically makes identifying information of victims of domestic violence confidential. However, if a victim's identifying information was obtained as part of the process of obtaining a warrant, their name, home and work addresses, telephone numbers and social security number are confidential under Tenn. Code Ann. § 40-38-111(b) or (c). This would probably apply to domestic violence situations where an officer responds to a scene and get [sic] information from the victim and later issues a warrant based upon that information.

8. Based upon the guidance received from the Office of Open Records Counsel and the County Attorney, the Montgomery County Circuit Court Clerk began to redact the names and addresses of crime victims from copies of warrants and affidavits of complaint produced to Scoop.

9. The Victim Witness Coordinator for the District Attorney's Office who is assigned to General Sessions court submitted her affidavit and was deposed for this case. She testified that she uses the identifying information contained in the warrant and/or affidavit of complaint to contact a victim in order to coordinate participation and to notify the victim of his or her rights under the Tennessee Victims' Rights Act. She further testified that she "may also obtain additional information from the crime victim subsequently, or [from] other sources...." She further testified that "occasionally, I obtain additional or different victim contact information from that contained on warrants or affidavits."

10. Both parties concede that this case is governed by T.C.A. § 40-38-111 which is contained within the Victims' Bill of Rights, T.C.A. § § 40-38-101 *et seq.* The Victims' Bill of

Rights is comprehensive legislation that spells out specific rights afforded to victims of crime, sets forth methods by which certain crime victims may seek compensation from the criminal injuries compensation fund, establishes duties owed by all levels of the criminal justice system to victims, as well as the duty owed by a victim to keep current contact information so that he or she can be contacted throughout the criminal justice process.

11. Respondent, Montgomery County argues that the confidentiality provision found in T.C.A. § 40-38-111 (i), makes the names and addresses of all crime victims found in all warrants and affidavits of complaint confidential so long as the identifying information was obtained as part of the process of obtaining a warrant. Montgomery County cites T.C.A. § 40-38-111 (b) or (c) in support of this argument. Respondent also argues that use by a victim witness coordinator of information found in a warrant or an affidavit of complaint to notify a victim of his or her rights under the Victims' Rights Act makes the victim's identifying information confidential.

12. Petitioners, on the other hand, argue that the reasons put forth by Montgomery County are a pretext to support the decision of the Circuit Court Clerk. Petitioners argue that the plain language of the statute makes confidential only information that was "obtained in order to comply with the Victims' Rights Act." To counter Montgomery County's argument that use by a victim witness coordinator makes identifying information confidential under T.C.A. § 40-38-111(i), Petitioners reason: "If, for example, a victim witness coordinator found an affiant's address from looking at the affiant's property deed on the [Register of Deeds] website, the property deed would not magically 'become' confidential and require redaction under the Victims' Rights Act."

13. Because each party to this litigation offers a differing interpretation of T.C.A. § 40-38-111 as it applies to the facts of this case, an ambiguity exists, and this court must look to the entire statutory scheme to ascertain legislative intent. *See Lyons v. Rasar*, 872 S.W. 2d 895 (Tenn. 1994). “The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s course beyond its intended scope.” *Owens v. State*, 908 S.W. 2d 923, 926 (Tenn. 1995).

14. T.C.A. § 40-38-111 has nine subparts that can be summarized as follows:

- a. Victims have the **right to be informed** of proceedings and of their rights under the Victims’ Rights Act;
- b. A judicial commissioner, magistrate or general sessions clerk **must notify the victim** of his or her rights under the Victims’ Rights Act if a victim appears before them to obtain an arrest warrant;
- c. A law enforcement officer’s employer **must notify the victim** of his or her rights under the Victim Rights’ Act if an officer obtains an arrest warrant on behalf of a victim;
- d. At the defendant’s initial court appearance the judge **must notify the victim** of his or her rights under the Victims’ Rights Act;
- e. The District Attorney **must notify the victim** of a violent crime of his or her rights under the Victims’ Rights Act;
- f. The District Attorney **must notify the victim** of a non-violent crime of his or her rights under the Victims’ Rights Act;
- g. Defines violent crime;
- h. Defines non-violent crime;
- i. Makes identifying information concerning a crime victim **obtained pursuant to this section** confidential.

15. Stated simply, T.C.A. § 40-38-111 places an affirmative duty on all levels of the criminal justice system **to notify the victim** of his or her rights under the Victims’ Rights Act. Nowhere in T.C.A. § 40-38-111 does it place a duty to collect information from a victim or place upon a victim the duty to provide identifying information. Interestingly, the victim’s duty is found in T.C.A. § 40-38-110(c), “The victim has a duty to keep current information regarding

the victim's location so that the appropriate agency may be able to contact the victim," and T.C.A. § 40-38-112(b), "The victim has a duty to keep current information regarding the victim's location so that the victim witness coordinator may be able to contact the victim, if necessary." Even more interesting is the fact that the "confidentiality" provision found in T.C.A. § 40-38-111(i) is repeated in T.C.A. § 40-38-110(d), but not in T.C.A. § 40-38-112. So what was the intent of the legislature by adding the confidentiality provision found in subsection (i) to the notification requirements found in T.C.A. § 40-38-111 (b), (c), (d), (e) and (f)? The answer can be found in the legislative history behind T.C.A. § 40-38-111(i).

16. T.C.A. § 40-38-111 was amended in 2009 to add the confidentiality provision found in subsection (i) in the same legislative Bill as the addition of confidentiality provisions to the following statutes: T.C.A. § 10-7-504, PUBLIC RECORDS; T.C.A. § 40-28-505 PAROLE; T.C.A. § 41-21-240 NOTIFICATION TO VICTIMS OF INMATE'S RELEASE; T.C.A. § 41-21-242 NOTICE OF RELEASE OF CERTAIN FELONS FROM CORRECTIONAL FACILITIES; T.C.A. § 40-38-103 RIGHTS OF CRIME VICTIMS – GENERALLY; and T.C.A. § 40-38-110 VICTIM'S RIGHT TO NOTIFICATION OF PROCEEDINGS – CONFIDENTIALITY. The Bill Summary to this legislation, a copy of which is attached as Exhibit 4 to the Petition in this case, states as follows:

Present law authorizes victims of crime, or victims' representatives, to request notification of certain information regarding the persons who perpetrate crimes against them, such as arrests, bail hearing dates, parole hearing dates, release dates, pardons, and transfers to lower security facilities.

This bill classifies as confidential any identifying information concerning any person when a person requests notification regarding the status of criminal proceedings or an offender's correctional status.

For purposes of this bill, “identifying information” means the home and work addresses and telephone numbers and social security number of the person.

ON APRIL 9, 2009, THE HOUSE ADOPTED AMENDMENT #1 AND PASSED HOUSE BILL 604, AS AMENDED.

AMENDMENT #1 clarifies that identifying information obtained from persons who request of the department of correction to be notified of an inmate’s release will be confidential and requires that any such information that is maintained by the department of probation and parole must also be kept confidential.

17. Nowhere in the legislative history can support be found for the broad interpretation advanced by Montgomery County for T.C.A. § 40-38-111(i). To the contrary, the information intended to be protected by the legislature in the opinion of this court, was identifying information obtained “when a person requests notification regarding the status of criminal proceedings.” This conclusion is supported by the language found in subsection (i)(1), i.e., “obtained pursuant to this section....” It is also highly unlikely that the legislature intended to restrict public access to information contained in documents admittedly subject to the Public Records Act by an amendment to the Victims’ Rights Act, when the amendment, as interpreted by Montgomery County, would make moot the restrictions found in T.C.A. § 10-7-504(q)(1) and T.C.A. § 10-7-504(t)(1). These statutes have not been deleted from the code in eleven subsequent years and remain the law of this state. *See Wilson v. Johnson County*, 879 S.W. 2d 807, 810 (Tenn. 1994) (“[I]n construing statutes courts must presume that the legislature has knowledge of its prior enactments and knows the state of the law at the time it passes legislation.”).

18. Therefore, the court is of the opinion that T.C.A. § 4-38-111(i) does not make confidential the names and addresses of alleged victims of criminal conduct found in warrants

and affidavits of complaint, and that a permanent injunction shall issue enjoining Respondent Montgomery County from redacting this information, not otherwise specifically made confidential by statute, from proper requests made under the Public Records Act.

19. The Petitioners have made a request that all costs, to include their reasonable attorney's fees, be assessed against the Respondent. Because Respondent's actions were based on the opinion of Open Records Counsel, and because Respondent produced the public records requested, but with the disputed information redacted, the court finds that Respondent's actions were not willful and that no costs or fees should be awarded pursuant to T.C.A. § 10-7-505(g). *See Patterson v. Convention Center Authority*, 421 S.W. 3d 597 (Tenn. Ct. App. 2013).

IT IS SO ORDERED.

This the 7th day of August, 2020.



Laurence M. McMillan, Jr., Chancellor

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was sent by United States Postal Service first class mail, postage prepaid to W. Timothy Harvey, 310 Franklin Street, Clarksville, TN 37040 and J. Alex Little, 222 Second Avenue South, Suite #2000, Nashville, TN 37201, on this the 7th day of August, 2020.



Michael W. Dale
Clerk and Master