

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, COUNTY OF DAVIDSON**

PARTIES

3. Petitioner Thomas Wesley is a citizen of the State of Tennessee and resident of Davidson County. Mr. Wesley submitted the public records request at issue in this petition.

4. Respondent DOHR is an agency of the State of Tennessee. DOHR has possession of and control over the record that Mr. Wesley seeks.

BACKGROUND

5. The Tennessee Public Records Act provides: “All state, county and municipal records shall ... 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.” Tenn. Code Ann. § 10-7-503(a)(2)(A). The Act further provides a presumption of openness “to give the fullest possible public access to public records.” *Id.* § 10-7-505(d).

6. The Public Records Act defines “public record” to “[m]ean[] all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity.” *Id.* § 10-7-503(a)(1)(A)(i).

7. The Public Records Act provides that “[i]nformation made confidential by state law shall be redacted wherever possible, and the redacted record shall be made available for inspection and coping.” *Id.* § 10-7-503(5).

8. In April 2020, the State of Tennessee contracted with McKinsey & Company to provide consulting services regarding the State’s response to the COVID-19 pandemic. Exhibit 1 (McKinsey contract). Pursuant to its contract with the State, McKinsey agreed to “provide government efficiency assessment and review to identify potential performance improvements and

assist the State's response to the COVID-19 pandemic including but not limited to cost efficiency, citizen and State employee experience, overall government effectiveness, State government department review, and fiscal benchmarking and forecasting.” *Id.* ¶ A.1(a). In particular, McKinsey agreed to consult on three projects regarding the State's COVID-19 response: (i) “re-opening Tennessee,” *id.*, Attachment B; (ii) the State government's operations as an employer and provider of public services, *id.*, Attachment C; and (iii) supporting the “Unified Command Group,” *id.*, Attachment D.

9. On September 26, 2021, Mr. Wesley submitted a public records request to DOHR using DOHR's online records-request form. Specifically, Mr. Wesley requested “a copy of the government efficiency assessment report delivered by McKinsey & Company, Inc. Washington D.C., pursuant to an awarded Tennessee State Contract (#66331).” Exhibit 2. The request stated that the time frame for the requested record was from April 13, 2020, to the date of the request. *Id.*

10. By email on September 27, 2021, Andrew Puryear, Associate General Counsel of DOHR, denied Mr. Wesley's request, stating: “In response to the record request you submitted on September 26, 2021, re: McKinsey & Company report, we must respectfully deny the request. The documents requested are subject to the deliberative process privilege and contain confidential information that is subject to the exception for information regarding operational vulnerabilities pursuant to Tenn. Code Ann. § 10-7-504(i)(1)(B).” Exhibit 3.

11. By email sent on September 27, 2021, Mr. Wesley asked Mr. Puryear to confirm that the public records request to DOHR was being denied. Mr. Puryear confirmed by email on September 28, 2021, that DOHR had denied the request. Exhibit 3.

CAUSE OF ACTION

12. The record sought by Petitioner is a “public record” under the Tennessee Public Records Act, and no applicable exception exempts the record from public access. Neither the deliberative process privilege nor Tenn. Code Ann. § 10-7-504(i)(1)(B) permits the withholding of the requested McKinsey report.

13. To the extent that the McKinsey report included any confidential information excepted from disclosure under the Public Records Act, DOHR failed to redact such information and produce a redacted copy of the requested record to Petitioner.

14. DOHR knew that the requested record was public and willfully refused to disclose it.

15. DOHR’s failure to produce the requested record to Petitioner violates the Public Records Act.

16. Petitioner is entitled to access to the requested record and an award of all costs and reasonable attorney’s fees. A memorandum of law in support of this Petition is filed contemporaneously with this Court.

PRAYER FOR RELIEF

PREMISES CONSIDERED, PETITIONER PRAYS:

- A. That the Court issue an order requiring Respondent to appear before this Court and show cause why this Petition for Access should not be granted as provided by Tenn. Code Ann. § 10-7-505(b);
- B. That the Court grant this Petition and order Respondent to promptly allow inspection and copying by Petitioner of the requested public record;

- C. That the Court award Petitioner all costs incurred in obtaining the requested record, including reasonable attorneys' fees; and
- D. That the Court grant Petitioner any and all other relief to which Petitioner is entitled.

Dated: December 17, 2021

Respectfully submitted,

/s/ William J. Harbison II

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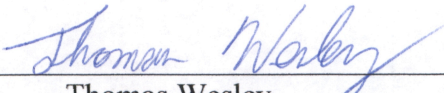
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Counsel for Petitioner

**Pro hac vice application forthcoming*

VERIFICATION

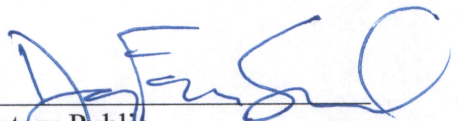
The undersigned hereby states upon his own personal knowledge that the factual representations contained herein are true and correct to the best of his knowledge, information and belief.


Thomas Wesley

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

SWORN to and subscribed before me
this 8 day of December, 2021




Notary Public
ex 03/07/2023

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via mail and e-mail to the following on this 17th day of December, 2021.

OFFICE OF THE ATTORNEY GENERAL

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/s/ William J. Harbison II

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