



City of Chattanooga

Office of the City Attorney

Michael A. McMahan
City Attorney

Phillip A. Noblett
Kenneth O. Fritz
Crystal Freiberg
Valerie L. Malueg
Patrick P. H. Bobo
Special Counsel

September 11, 2009

Kyle Holden
6940 Lee Highway, Suite 107
Chattanooga, TN 37421

Gary W. Stames – *Via Facsimile (423) 266-7800 and U.S. Mail*
Suite 404, Dome Building
736 Georgia Avenue
Chattanooga, TN 37402

Re: Request for Fifteen Broad Areas of Public Records That You Have Made Involving Ten (10) Different Annexation Areas Including 1B, 4A, 4C, 8A, 8B, 9A, 9B, 10A, 10B and 11A

Gentlemen:

On September 1, 2009, at 3:44 p.m., I received a copy of a Public Records response from Marie Chinery in Mayor Littlefield's Office indicating that your records requests had been received and would be considered pursuant to the Tennessee Open Records Act. The policies adopted by the Office of Open Records Counsel (OORC) in Tennessee requires municipal records custodians to provide some response to public records requests received by them no later than seven (7) business days after receipt of a records request. This response is provided to your attention on the seventh business day after receipt of your records requests as referenced in the email correspondence by Ms. Chinery.

Pursuant to the Tennessee Open Records Act, a municipal records custodian must respond within seven (7) days and either: (1) provide the requested records for review, or (2) provide a written explanation of why the records will not be made available and/or (3) provide communication that record production will take longer than seven (7) days to compile-research the data. In this event, the municipal record custodian will provide an estimated length of time necessary before production of requested records will occur. The OORC has further adopted written policies for applicable charges for expenses incurred by a municipality to respond to a public records request as authorized by T.C.A. § 8-4-604(a)(1), which may include: (1) the cost

of employee's time in excess of one (1) hour to compile/research/redact the documents requested; and (2) if copies of the documents are requested, the copying cost is \$.15 for B/W and \$.50 for color on 8 1/2 by 11" pages. The OORC has further adopted policies which permit municipalities to charge for labor where multiple requests (more than four (4)) requests are made by any citizen per calendar month), at which time records custodians are permitted to stop providing a free hour of labor beginning with the fifth (5th) request for records. All of these provisions were included in the response emailed by Ms. Chinery to Mr. Holden at admin@hcraa.org on September 1, 2009.

Since that date, the City Attorney's Office has contacted multiple city department heads regarding your fifteen (15) specific records questions for ten (10) different annexation areas which are currently scheduled for public hearings between September 15, 2009 and September 29, 2009, by the Chattanooga City Council. These annexation areas are scheduled for public hearings on September 15, 2009. (Area 1B), September 17, 2009 (Areas 4A and 4C), September 22, 2009 (Areas 8A, 8B, 9A and 9B), September 24, 2009 (Areas 11A), and September 29, 2009 (Areas 10A and 10B). None of the records you have requested are in the possession or under the control of Ms. Chinery. Some of those requests will require extensive electronic search retrieval of emails and electronic data that will be a time and cost burden on computer specialists and legal advisors for the City. The requests that you have made include "All documents, reports, papers, studies, letters, emails, electronic data processing files, or other material" pertaining to twelve (12) different areas in the Plans of Services for ten (10) different annexation areas which are scheduled to be considered by the Chattanooga City Council on different dates near the end of this month. None of these annexation areas currently requested are scheduled for any area in which you reside.

The requests that you have made further seek to recover "all documents, reports, papers, studies, analysis, letters, emails, electronic data processing files, or other material pertaining to, connected to, discussing or describing in any manner all tax revenues, including, but not limited to, property taxes, sales taxes, corporate taxes, and commercial taxes, estimated to be collected" in ten (10) different proposed annexed areas. Your requests further seek to obtain "all documents, reports, papers, studies, analysis, letters, emails, electronic data processing files, or other materials pertaining to, connected to, discussing or describing in any manner the projected debt to be incurred by the City" as a result of annexation of ten (10) different annexation areas which are currently under consideration by the City of Chattanooga. You have also requested "all documents, reports, papers, studies, letters, emails, electronic data processing files, or other material pertaining to, connected to, discussing or describing in any manner, all payments expected to be made to Hamilton County" in ten (10) different annexation areas as a result of these annexations. Your requests have also requested projected time frames within which all projected services included in any Plan of Services for ten (10) different annexation areas will be provided in the proposed annexation area. As such, your company has provided more than 150 separate requests for information in a very short time frame which came to my attention on September 1, 2009, which will require considerable staff and costs estimation before these documents may be reviewed.

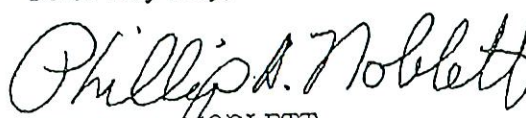
I have requested each department head to provide estimates of the amounts of documents which you have requested and the staff time necessary to gather such documents which must be

provided to the City under the current policies adopted by the OORC. It is anticipated that it will take at least thirty (30) days to locate and gather all the records you have requested while City employees and personnel are also busy with public hearings on ten (10) different annexation areas which will occur during public meetings between September 15 and September 29, 2009. It is further anticipated that these public hearings and preparation by City employees for those hearing will generate further documents that may be responsive to your public records requests. This office will also have to review the documents obtained by City of Chattanooga employees once they have been gathered in specific locations to determine whether those documents contain trial preparation materials or work product information that is not required to be produced pursuant to Rule 26 of the *Tennessee Rules of Civil Procedure*. This office will further have to review and redact any privileged communications with City employees protected by the attorney/client privilege before they can be reviewed.

As Ms. Chinery initially told you on September 1, 2009, the costs associated with the production of the records you have requested will have to be determined by the City and applicable costs approved by the OORC will have to be collected by the municipal record keeper prior to providing any copies of records requested in accordance with T.C.A. § 10-7-506. As soon as those costs have been determined, this office will provide you with an invoice of applicable charges for employee time and copying costs if such records are requested to be copies. This office will also obtain a timeline from each municipal department record keeper which will provide documents that you have requested and which are more easily accessible on or before September 18, 2009.

Although this records request was initially made by Mr. Holden, this office is now aware of a pending Open Records lawsuit which was filed this morning by Attorney Gary Starnes requesting a Show Cause Hearing at 9:00 a.m. on September 18, 2009, in the Hamilton County Chancery Court. That lawsuit asserts that Attorney McMahan did not respond to multiple phone calls this week made by Attorney Starnes. Attorney McMahan has been on vacation this week but no request was made to speak with me even though I have been present every day during Mr. McMahan's vacation. As such, this office will have additional issues to consider on whether work product or trial preparation materials for this pending lawsuit may be required to be redacted from the City's records. This letter is provided to you and your attorney since you initially sent ten (10) different sets of requests to Ms. Chinery dated August 28, 2009.

Yours very truly,


PHILLIP A. NOBLETT
Special Counsel

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