

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

JOSE MARCUS PERRUSQUIA,

Petitioner,

v.

THE CITY OF MEMPHIS,

Respondent.

No.

**PETITION FOR ACCESS TO PUBLIC RECORDS AND
TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

**TO THE HONORABLE CHANCELLORS OF THE
CHANCERY COURT FOR THE THIRTIETH JUDICIAL DISTRICT:**

Pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.* (“TPRA”), Petitioner Jose Marcus Perrusquia (“Mr. Perrusquia”) hereby petitions this Court for access to specific public records maintained by the City of Memphis (the “City”), for judicial review of the City’s denial of access to those records, and for attorneys’ fees and costs. In support of this Petition, Mr.

Perrusquia states as follows:

PARTIES

1. Petitioner is a journalist, a resident of Shelby County, Tennessee, and a Tennessee citizen. Mr. Perrusquia has been a journalist covering Memphis and Shelby County for more than 30 years. Perrusquia Decl. ¶ 4 (attached as Exhibit A).

2. Respondent is the City of Memphis. Service of process upon Respondent will be made by delivering a copy of the summons and this Petition to the City's chief executive officer or city attorney pursuant to Rule 4.04(8) of the Tennessee Rules of Civil Procedure.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this Petition and venue is proper in this Court under Tenn. Code Ann. § 10-7-505(b). This Court also has subject matter jurisdiction over this petition pursuant to Tenn. Code Ann. § 1-3-121.

FACTUAL ALLEGATIONS

4. Public oversight of government and its employees, including of law enforcement entities and officers, is necessary in a democracy; facilitating such oversight is the fundamental purpose of the TPRA. Here, Mr. Perrusquia seeks public records that would shine a light on how the City and the Memphis Police Department ("MPD") assesses and evaluates a non-disciplinary program that seeks to improve the performance of MPD officers.

The City's Constructive Denial of Mr. Perrusquia's Public Records Requests

5. On December 26, 2020, Mr. Perrusquia made a public records request to the City seeking "a copy of all Performance Enhancement Program (PEP) audits and evaluations of the system from Jan. 1 2016 to the present." Perrusquia Decl. ¶ 6; Attach. 1.

6. The City initially responded to the request on December 26, 2020, confirming receipt and stating it would respond "as soon as possible or within 5

business days . . . [though] certain requests may take longer to process due to the size of the records requested or current request volumes.” Perrusquia Decl. ¶ 6, Attach. 1

7. Between January 5, 2021 and December 13, 2021, the City contacted Mr. Perrusquia on twenty-one occasions. On each of those occasions, the City extended the time reasonably necessary to produce responsive records and/or make a determination regarding a proper response to Mr. Perrusquia’s request. Perrusquia Decl. ¶ 7; Attach. 2.

8. On January 20, 2022, over a year after Mr. Perrusquia’s public records request, the City contacted Mr. Perrusquia, stating that it would take another one to three months to “produce the record(s) or information and/or to make a determination of a proper response,” and that the responsive documents were with City Attorney Jennifer Sink for review. Perrusquia Decl. ¶ 8; Attach. 3.

9. The City contacted Mr. Perrusquia on February 25, 2022, March 4, 2022, and March 25, 2022. On each of those occasions, the City stated that it had not yet determined that records responsive to his request existed and extended the time reasonably necessary to fulfill his public records request. Perrusquia Decl. ¶ 9; Attach. 4.

10. On April 14, 2022, the City contacted Mr. Perrusquia, extending the time reasonably necessary to fulfill his public records request to May 6, 2022. Perrusquia Decl. ¶ 10; Attach. 5.

11. The City did not contact Mr. Perrusquia on or about May 6, 2022. Perrusquia Decl. ¶ 11.

12. Between June 6, 2022 and September 27, 2022, the City contacted Mr. Perrusquia seven more times. On each of these seven occasions, the City extended the time reasonably necessary to make a determination on and/or to fulfill Mr. Perrusquia's public records request. Perrusquia Decl. ¶ 12; Attach. 6.

13. On October 27, 2022, the City contacted Mr. Perrusquia, extending the time reasonably necessary to fulfill his public records request to November 17, 2022. Perrusquia Decl. ¶ 13; Attach. 7.

14. The City did not contact Mr. Perrusquia on or about November 17, 2022. Perrusquia Decl. ¶ 14.

15. Between December 8, 2022 and March 30, 2023, the City contacted Mr. Perrusquia six times extending the time reasonably necessary to make a determination on and/or fulfill his public records request. Perrusquia Decl. ¶ 15; Attach. 8.

16. In the City's last communication to Mr. Perrusquia on May 30, 2023, the City extended the time reasonably necessary to fulfill his public records request to June 27, 2023. Perrusquia Decl. ¶ 16; Attach. 9.

17. On December 22, 2022, Mr. Perrusquia's undersigned counsel sent a letter to the City Attorney, Jennifer Sink, requesting that the City cease delaying its response to the records request and provide Mr. Perrusquia "with the requested public records no later than January 3, 2023." McAdoo Decl. ¶ 4, Attach. 2.

18. On January 26, 2023, Mr. Perrusquia’s counsel followed up with the City regarding his December 22, 2022 letter, asking whether he should expect a response. McAdoo Decl. ¶ 5, Attach. 3.

19. To date, the City has not acknowledged or responded to the December 22, 2022 letter sent by Mr. Perrusquia’s counsel. McAdoo Decl. ¶ 6.

The City’s Performance Enhancement Program

20. The City’s MPD’s Policy and Procedures Manual (the “MPD Manual”), describes the Performance Enhancement Program (“PEP”) as

a structured system designed to identify and manage behaviors that result in performance related problems. It is a non-disciplinary system that is designed to improve the performance of Department members through coaching, training, and professional development as described in this policy. The intent of PEP is to provide non-disciplinary intervention, as needed, to assist members in order to provide the highest level of service and satisfaction to the public.

McAdoo Decl. ¶ 4; Attach. 3 at 2.

21. Oversight measures for the PEP include an audit of the program every six months to “verify the accuracy of the data” and to “evaluate the data entry system, the outcomes of supervisory interventions, and the quality of supervisory reviews” as well as quarterly and annual statistical reports. *Id.* at 9.

22. Annually, the quarterly reports as well as the audits are used “to assist in completing an evaluation of the system.” *Id.*

CLAIM FOR RELIEF

23. Petitioner incorporates the allegations in paragraphs 1 through 22

24. Pursuant to the TPRA, Mr. Perrusquia requested audits and evaluations of the PEP from January 1, 2016 to the time of his request on December 26, 2020.

25. The PEP audits and evaluations are “public records” within the meaning of Tenn. Code Ann. § 10-7-503(a)(1).

26. The City has failed to fulfill Mr. Perrusquia’s public records requests for the audits and evaluations of the PEP.

27. No exemption applies to bar disclosure of the requested public records.

28. The City’s chronic delay is a violation the TPRA’s requirement that non-exempt public records be made “promptly” available to a requester. Tenn. Code Ann. § 10-7-503(a)(2)(B).

29. The City’s repeated delays also violate Tenn. Code Ann. § 10-7-503(a)(2)(B)(iii), which limits any delays in production of public records to “the time reasonable necessary to produce the record or information.”

30. The City’s repeated delays constitute a constructive denial of Mr. Perrusquia’s public records request. Tenn. Code. Ann. § 10-7-503(a)(3).

31. As set forth above, Mr. Perrusquia’s attempts to obtain these public records without filing a petition with this Court have been unsuccessful. It is therefore necessary to bring this action for access and judicial review pursuant to Tenn. Code Ann. § 10-7-505.

32. Mr. Perrusquia is entitled to access the public records he requested under the TPRA.

33. Tenn. Code Ann. § 10-7-505(g) provides that the Court may award “all reasonable costs involved in obtaining the records, including reasonable attorneys’ fees” if the government “knew the record was public and willfully refused to disclose it.”

34. The City knew that the PEP audits and evaluations requested by Mr. Perrusquia were public records and willfully refused to disclose them.

35. Therefore, Petitioner is entitled to access to these public records as well as an award of all reasonable costs, including reasonable attorneys’ fees.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Jose Marcus Perrusquia prays that this Court:

- 1) Immediately issue an order, pursuant to Tenn. Code Ann. § 10-7-505(b), requiring representatives of the City to appear before this Court and show cause why this Petition should not be granted;
- 2) Order the City to provide copies of the public records sought in this Petition to the Court for *in camera* review in advance of that show cause hearing;
- 3) Grant Petitioner a declaratory judgment that the PEP evaluations and audits he requested are public records under Tennessee Law for which no exemption applies and that the City’s failure to timely grant Petitioner access to these public records constitutes a willful and knowing violation of the TPRA;
- 4) Order the City to immediately make available to Petitioner copies of the PEP evaluations and audits he requested;

- 5) Grant Petitioner an award of reasonable costs and attorneys' fees pursuant to Tenn. Code Ann. § 10-7-505(g);
- 6) Grant Petitioner discretionary costs under Tenn. R. Civ. P. 54; and
- 7) Grant Petitioner all such further relief to which he may be entitled.

Dated: June 6, 2023

Respectfully submitted,

/s/ Paul R. McAdoo
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