

State ordered to release information on 50 child deaths

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Written by Bobby Allyn

Davidson County Chancellor Carol McCoy on Wednesday ordered the Tennessee Department of Children's Services to provide the Tennessean and other media outlets with redacted case files of the 50 most recent cases involving 2012 fatalities or near-fatalities of children under their watch.

McCoy said the state cannot charge for redacting those records or criss-crossing the state to pick them up. Previously, state lawyers had said the state would charge \$55,584 for the same records, a price they later reduced to \$34,225.

Instead, media groups must pay 50 cents per copy for the records — more than 3 times the standard copying costs for state records.

The state has until May 3 to turn over an initial batch of records being sought by the media groups. The 50 files — a fourth of the total number of records sought by the media — will cost \$1,067.50. The media is seeking 200-plus records of the fatalities or near fatalities of children overseen who had some contact with DCS and who died or suffered critical injuries between January 2009 and July 2012.



DCS Hearing Attorney Robb Harvey, right, states his case as Janet Kilenfelter and Douglas Dimond have discussions during a hearing on efforts to open up DCS records on children who have died after some contact with the system. / Larry McCormack /The Tennessean

McCoy ordered state officials to turn over six of seven completed forms identified by media groups as containing relevant information to determine how and why a child may have died or suffered critical injuries. McCoy said any of those forms completed within 30 days of the child's death or injury were public records. She denied the coalition's request for a seventh form — a computerized printout giving the interaction history of the child with DCS. McCoy also ordered any relevant information about cases that resulted in criminal prosecutions to be included in those forms.

During the hearing, McCoy said determining the degree to which the files should be made public is a delicate balancing act. "You can't unring the bell," McCoy said, noting that releasing too much information about the children could have dire consequences.

Deputy Attorney General Janet Kleinfelter said providing the records that the media have requested would be troublesome for staff and costly to the state.

Kleinfelter noted that the information is “very, very sensitive,” adding that she “would not trust some low-level employee with redacting the information.”

Attorney Robb Harvey, who represents the media coalition, said the records in question are not “buried in a warehouse like the Lost Ark of Indiana Jones,” saying the price the state was asking for the records was excessive. He asked McCoy to waive the fee since, he argued, the files are of high public interest.

Maintaining that the fee is legitimate, Kleinfelter noted that “the plaintiff is a for-profit news organization. These are not private citizens.”

In McCoy’s decision, however, she said the state’s public records law applies equally to corporations and citizens.

The Tennessean and a dozen other news organizations filed a lawsuit in December alleging that the state Department of Children's Services was violating state law by refusing to disclose the records of children who died under the agency's supervision.

DCS has balked at those requests, claiming some of the records are not public and that it would cost tens of thousands of dollars to produce.

In its latest filing, the media coalition asked McCoy to waive all costs for producing the records, which the state first priced at \$55,584 and later reduced to \$34,225, saying it would mean hand-delivering records from all over the state and hours removing sensitive information.

“We are deeply appreciative of the Chancellor’s ruling that the State must turn over records ...” said Harvey in a statement. The records “will allow the public to consider DCS’s actions and accountability, and we certainly are supportive of DCS’s statements that it taking steps to promote the safety of children entrusted to its care.”

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