

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

May 30, 2014

Opinion No. 14-59

Inspection Under Public Records Act of Applications for Position of Clerk and Master

QUESTIONS

1. Are applications (consisting of letters and resumes) for the position of chancery court clerk and master subject to inspection under the Public Records Act, Tenn. Code Ann. § 10-7-503(a)?
2. If such applications are public records, may the chancery court prevent their disclosure by placing them under seal?

OPINIONS

1. Yes. Applications for the position of chancery court clerk and master are public records.
2. No. Unless there is an action pending before the court, the chancery court has no jurisdiction to issue an order sealing application documents for the position of clerk and master.

ANALYSIS

“All state, county and municipal records shall, at all times during business hours, . . . be open for personal inspection by any citizen of this state, . . .” Tenn. Code Ann. § 10-7-503(a)(2)(A). Tenn. Code Ann. § 10-7-503(a)(1)(A) defines “public records” as follows:

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 agency* (emphasis added).

Art. VI, § 13, of the Tennessee Constitution provides that “Chancellors shall appoint their clerks and masters, who shall hold their offices for six years.” *See* Tenn.

Code Ann. § 18-5-101. Pursuant to these constitutional and statutory provisions, the appointment of a clerk and master is part of the “official business” of the chancellor(s) of a chancery court. Consequently, while neither Art. VI, § 13 nor Tenn. Code Ann. § 18-5-101 requires chancellors to solicit or receive documents applying for or inquiring into the appointment of the clerk and master, to the extent that any such records have been received, they have been received “in connection with the transaction of official business” of the chancellors and are thus public records subject to inspection.¹ See *Bd. of Educ. of Memphis City Schs. v. Memphis Publ’g Co.*, 585 S.W.2d 629 (Tenn. Ct. App. 1979) (holding that applications for position of city school superintendent were public records subject to inspection).

It matters not whether such applications are received by the chancellors themselves or by the office of the clerk and master. The Public Records Act applies to the judiciary, see *Memphis Publ’g Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994) (“traditional public records” include court records),² and it applies to county offices, see Tenn. Code Ann. § 10-7-503(a)(2)(A); see also Tenn. Code Ann. § 10-7-403 (“public records” within the county means “[a]ll documents, papers, records, books, and books of account in all county offices”). Furthermore, the Public Records Act provides that a governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity. Tenn. Code Ann. § 10-7-503(a)(6).

2. Having received applications for the position of chancery court clerk and master, the court may not order the records sealed in order to prevent their disclosure. The Court of Appeals addressed a similar situation in *Adams v. The Tennessean*, No. M2001-00662-COA-R3-CV, 2002 WL 192575 (Tenn. Ct. App. Feb. 7, 2002), in which the City of Lebanon had entered into a settlement agreement with a private party that contained a confidentiality provision. After a public-records request for inspection of the agreement was made and declined, the City secured a protective order from the circuit court. *Id.* at *1. On appeal, the Court of Appeals held that because there was no action pending before the court, the circuit court had acted without jurisdiction in issuing the protective order sealing the settlement

¹ Certain personal information that such applications might be expected to include, such as telephone numbers and email addresses, is confidential and must be redacted under Tenn. Code Ann. § 10-7-504(f).

² See also Tenn. Sup. Ct. R. 34(1) (“the public has the right to inspect public records maintained by the clerk of the appellate courts unless the record has been submitted under seal or is the subject of a protective order”). Court records, by definition, are those that have been filed in court. See *Memphis Publ’g Co.*, 871 S.W.2d at 687. Applications for the position of clerk and master are not filed in court but would be received by the court in its administrative, appointing capacity and thus would be more akin to “agency records,” which are “available to apprise the public about the goings-on of its governmental bodies” and “are accessible at any time unless specifically excepted.” *Id.* at 687-88.

agreement. *Id.* at *4.³ Under *Adams*, therefore, in the absence of any pending action that would give a chancery court jurisdiction to seal application documents for the position of clerk and master, such records may not be sealed.

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³The court further ruled that the City's filing of the motion for a protective order was not a complaint and thus did not initiate an action for the purpose of giving the circuit court jurisdiction. *Id.*