

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

ALEX FRIEDMANN, Individually
And As An Associate Editor of
PRISON LEGAL NEWS,

Petitioner,

v.

CORRECTIONS CORPORATION OF
AMERICA,

Respondent.

No. 08-1105

2008 MAY 19 PM 1:03
CLERK OF MASTER
DAVIDSON COUNTY CHANCERY CT
503M

FILED

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, T.C.A. §§ 10-7-501, *et seq.* to 10-7-505, ("Act"), petitioner Alex Friedmann petitions this Court for access to certain public records and to obtain judicial review of the actions of the respondents in denying the petitioner access to those records and state as follows:

1. Petitioner is a citizen of the State of Tennessee whose requests to exercise his right of personal inspection of public records under the Act have been denied. Petitioner is also an Associate Editor of Prison Legal News, a nationally distributed publication that reports on news and litigation related to prison, jails and the criminal justice system.

2. Respondent, Correction Corporation of America (hereinafter "CCA"), at all pertinent times mentioned herein, was a company doing business in the state of

Tennessee and performing the traditionally and uniquely state governmental function of operating a prison through contractual relationships with the State of Tennessee.

3. This Court has subject matter jurisdiction of this petition and venue is proper in this Court under T.C.A. § 10-7-505(b).

4. The Tennessee Public Records Act, Tennessee Code Annotated Section 10-7-501, *et seq.*, applies to records “made or received” by CCA in connection with the transaction of official business by any “government agency,” which includes those records in the hands of any private entity which operates as the functional equivalent of a governmental agency.

5. At all times pertinent to the request, CCA operated prisons and/or jails under contract with either the state or local governmental agencies. Operating a prison is exclusively and traditionally a governmental activity and public function. Therefore, at all times material hereto, CCA was acting as the functional equivalent of a governmental agency and bound by the terms of the Public Records Act.

6. Upon information and belief, CCA receives all of its funding for operating and running private prisons and/or providing correctional services from governmental agencies.

7. Pursuant to the Private Prison Contracting Act of 1986, governmental entities may enter into contracts to allow private prison contractors to provide correctional services under contract. T.C.A. Section 41-24-101, *et seq.* However, any private prison contractor is subject to significant statutory restrictions and limitations with respect to the operation and running of a private prison and/or providing correctional services which include, but are not limited to:

- a. **T.C.A. Section 41-24-103: Contract for correctional services.** This statute authorizes the commissioner to enter into contracts for correctional services subject to the requirements and procedures of the Private Prison Contracting Act of 1986.
- b. **T.C.A. Section 41-24-104. Review and Approval of contract proposals – Price and costs adjustments – Cancellations.** This statute sets forth the requirements and conditions which must be met before any contract for correctional services can be executed. The statute indicates that: 1) contracts for correctional services must be approved by the State Building Commission, the Attorney General and Reporter and the Commissioner of the Tennessee Department of Correction; 2) proposals for contracts to provide correctional services must be reviewed by an oversight committee; and 3) any entity proposing to provide correctional services must prove its qualifications to run a facility and comply with correctional standards.
- c. **T.C.A. Section 41-24-105: Performance criteria for contracts – Contract terms and renewal – Comparison of Performance – Reporting.** This statute requires the state to establish performance criteria to measure the performance of the contractor that shall be incorporated into any proposal or contract to provide correctional services. Throughout the term of any contract to provide correctional services, the contractors performance is to be evaluated against the performance criteria set by the state.
- d. **T.C.A Section 41-24-106: Standards of Security – Resumption of state control on termination of contract.** This statutes requires the Governor to certify a plan under which the State would resume control of the prison upon termination of the contract.
- f. **T.C.A Section 41-24-110: Powers and duties not delegable to contractor.** This statute addressed certain duties and powers that are not delegable to prison contractors providing correctional services and which are retained by the state or governmental entity.
- g. **T.C.A Section 41-24-115: Rules and Regulations.** This statute authorizes and directs the Commissioner of Corrections to promulgate rules and regulations applicable to all prison contractors. Upon information and belief, the Commissioner has actually implemented such rules and regulations that are applicable to private prison contractors such as CCA.
- h. **T.C.A Section 41-24-117: Records relating to inmates in private facilities.** This statutes providers that “(t)he records and other documents concerning any inmate who is sentenced to the custody of the department

of correction and is being housed in a prison or facility operated by a private prison contractor shall be public records to the same extent such records are public if an inmate is being housed in a department of correction facility.”

8. Based on the above referenced statutory scheme, CCA is performing a traditionally and exclusively governmental function when operating a prison and/or providing correctional services. In fact, until the Private Prison Contracting Act of 1986, neither the state nor a private prison contractor could enter into a contract to provide correctional services at a prison in Tennessee. After the passage of the Private Prison Contracting Act of 1986, the state could enter into contracts with private prison contractors such as CCA. However, under the Private Prison Contracting Act of 1986, the State has a statutory duty and obligation to monitor, regulate, supervise and oversee the conduct and performance of any and all private prison contractors such as CCA.

9. Further, CCA provides prisoner housing and prison management services, traditionally a state function, to the State of Tennessee pursuant to the “Contract Between State of Tennessee Department of Correction and Correction Corporation of America,” (hereinafter “Contract”).

10. Pursuant to the Contract, the “Contract Monitoring Unit” with the Tennessee Department of Correction is responsible for monitoring the quantity and quality of services required under the contract, the reporting obligations of CCA and carrying out the liaison responsibilities between the State and CCA. Further, the Contract defines “Partial Default” and “Partial Takeover” in contemplation of situations and circumstances whereby the CCA fails to perform under the Contract and gives the State the discretionary power to assume “a portion of the services to be rendered by the Contractor...resulting from the Contractor’s failure to perform.”

11. The Tennessee Public Records Act applies to CCA, notwithstanding that CCA is a private, for-profit corporation, because CCA operates as the functional equivalent of a governmental agency as CCA houses prisoners and manages detention facilities for the State of Tennessee. CCA performs a State function in return for which the State of Tennessee provides CCA with government funding.

12. On or about April 3, 2007, Petitioner sent an Open Records Request pursuant to T.C.A. Section 10-7-501, *et seq.*, and in particular 10-7-503, to CCA requesting the right to inspect certain public records maintained by CCA. (Letter attached as “Exhibit A”).

13. CCA, through its legal counsel, responded to Petitioner’s Open Records Request by letter dated April 24, 2007. (Letter attached as “Exhibit B”).

14. CCA’s legal counsel denied the Petitioner’s Open Records Requests stating that CCA is a private business and “not subject to the Tennessee Public Records Act.”

15. The Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503 *et seq.*, which governs the right of access to the records of government agencies in Tennessee and thereby promotes government accountability to the people through public oversight of governmental activities, provides in pertinent part that “[a]ll municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee” to the extent that said records were “made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.”

16. As Petitioner is a citizen of the State of Tennessee and the records that Petitioner is seeking are public records, Respondent has no authority to refuse Petitioner's right to inspect the requested records. Respondent's argument that CCA is a private business and that the requested records are not subject to the Tennessee Public Records Act is entirely without merit.

17. To the best of the Petitioner's knowledge, information and belief, the requested records are in the possession, custody or control of the Respondent in some form or fashion.

18. The records that the Petitioner requested to inspect clearly constitute public records under the Public Records Act, and none of the exceptions to the act are applicable under the facts. Thus, the denial of access by CCA to these public records constitutes a willful violation under the Act necessitating the filing of the instant action pursuant to T.C.A. Section 10-7-505, entitling the Petitioner to all reasonable costs and attorneys fees.

WHEREFORE, PETITIONER RESPECTFULLY REQUESTS THAT THIS COURT:

1. Issue an order requiring the Respondent to appear before this Court immediately, or in no event later than ten days, and show cause, if any can be shown, why this petition should not be granted, as provided by T.C.A. § 10-7-505(b);

2. Grant Petitioner a declaratory judgment that documents in the possession, custody or control of Respondent requested by the Petitioner are public records under Tennessee law and that Respondent's denial of access to these public records constitutes a willful violation of the Tennessee Public Records Act, T.C.A. §§ 10-7-501 to 10-7-505;

3. Grant Petitioner his reasonable costs and attorneys fees pursuant to T.C.A.
§ 10-7-505(g); and
4. Grant Petitioner any such further relief to which they may be entitled.

Respectfully submitted,

BOROD & KRAMER, PLC

By: 

Andrew C. Clarke (# 15409)
Scott A. Kramer (#19462)
80 Monroe, Suite G-1
Memphis, TN 38103
(901) 524-0200

KELLY, KELLY & ALLMAN

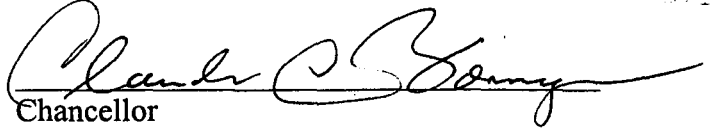
By: _____

Andy L. Allman (# 17857)
629 E. Main Street
Hendersonville, Tennessee 37075
(615) 824-3703


FIAT

TO THE CLERK OF THIS COURT:

Issue Notice and set this PETITION FOR ACCESS TO PUBLIC RECORDS
AND TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS for hearing,
the 15 day of July, 2008, at 10:00 am/


Chancellor

Date: 5-19-2008


CLERK AND MASTER
BIRMINGHAM CO. CLERKERY OF
2008 MAY 19 PM 1:17
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PRISON LEGAL NEWS

Dedicated to Protecting Human Rights

2400 NW 80th Street #148, Seattle WA 98117 — 206-246-1022 fax: 515-581-0776

www.prisonlegalnews.org

Please Reply to Tennessee Office:
Alex Friedmann, Associate Editor

stein919@gmail.com

Direct Dial: 615-255-5357
5341 Mt. View Rd. #130
Antioch, TN 37013

SENT VIA CERTIFIED MAIL

April 3, 2007

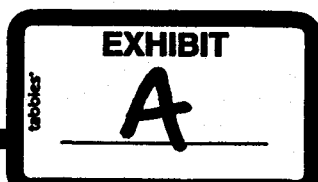
John D. Ferguson, President and CEO
Gus A. Puryear, General Counsel
Corrections Corp. of America
10 Burton Hills Blvd.
Nashville, TN 37205

RE: Public Records Request Pursuant to T.C.A. § 10-7-503

Dear Messrs. Ferguson and Puryear:

Acting as both an individual Tennessee resident (please see attached driver's license) and in my capacity as Associate Editor of *Prison Legal News* (PLN), a nationally-distributed publication that reports on news and litigation related to prisons, jails and the criminal justice system, I am formally requesting that you produce the following public records pursuant to the Tennessee Public Records Act and in particular, T.C.A. § 10-7-503.

- 1) I am requesting the last complaint or amended complaint (or written claim) in each and every lawsuit, claim and other legal action filed against Corrections Corp. of America (CCA) and its subsidiary companies, originating in the State of Tennessee, in which CCA paid \$500.00 (five hundred dollars) or more in damages, settlements and/or attorney fees to the claimant, plaintiff or petitioner. The requested documents should show the names of the parties, court filed in (if any), identifying court and case number if applicable, and the underlying facts alleged therein giving rise to the claim. I am requesting all such complaints/amended complaints or claims in which CCA paid \$500.00 (five hundred dollars) or more in damages, settlements and/or attorney fees from January 1, 2002 through and including the date of this letter. This request includes applicable claims or demands that were resolved prior to suit being filed.
- 2) I am requesting the verdict forms, releases, claim payment forms and/or settlement agreements in which CCA paid damages and/or attorney fees in each and every case specified in request number 1, above. These documents should include the case or claim number, identity of the parties, and the amount paid by CCA to satisfy the judgment,



settlement or claim. I am requesting all such verdict forms, releases, claim payment forms and/or settlement agreements in which CCA paid \$500.00 (five hundred dollars) or more in damages, settlements and/or attorney fees which were awarded and/or paid from Jan. 1, 2002 through and including the date of this letter. This request includes applicable claims or demands that were resolved prior to suit being filed, and regardless of whether CCA contends that any such settlements or payments are or were confidential.

- 3) I am requesting all Tennessee state, county and municipal government reports, audits, investigations or other similar documents which found or alleged that CCA did not comply with one or more terms of its contracts to provide correctional services (including contracts to operate jails, prisons, immigration facilities, etc.), where said reports, audits, etc. were issued from Jan. 1, 2002 through and including the date of this letter. Said reports audits, etc. should include the identity of the agency issuing the finding, a description of the finding and any sanction(s) imposed for said contract violations.
- 4) I am requesting all Tennessee court rulings issuing injunctive or declaratory judgments against CCA, including sanctions and contempt orders, between January 1, 2002 through and including the date of this letter.
- 5) I am requesting all spreadsheets, summaries or similar databases showing all litigation concluded against CCA in Tennessee which resulted in the payment of money damages, settlements, sanctions, claims and/or attorney fees from January 1, 2002 through and including the date of this letter regardless of whether CCA contends that the payments of money damages are or were confidential. Said documents should include the names of the parties, name and location of the court, case/claim number, the amount paid, and type of claim. All cases or claims involving prisoner property damage or lost property should be excluded from these requested records.
- 6) I am requesting all final executed contracts and contract renewals between CCA, the State of Tennessee and/or any county or municipality in Tennessee regarding the ownership, management or operation of any jail, prison, holding facility, immigration facility, etc., from January 1, 2000 through and including the date of this letter.

The requested documents can be provided to me in electronic format if available in that format. In the event such documents are only available in hard copy, I request an opportunity to inspect and copy the specific records I select from the records requested above.

If you have records of any type requested in this letter that you claim are not a public record, or for which you claim a privilege not to disclose said record, please advise what this information pertains to and why you claim it is not a public record or why it is privileged or confidential. I expect all public records for which you do not claim an exemption or privilege to be produced as requested in this letter in a timely manner. Please cite the specific portion of the Tennessee Code that you claim exempts the requested information from disclosure.

Each public record request contained herein is intended to be severable. I believe some of the public records requested herein can be found and produced for inspection in a short time period without charge, while others may take longer. If any of these public record requests involve any charges, please contact me prior to said charges being incurred for authorization.

I request that all of the public records requested above which are available in electronic format be e-mailed to me for inspection. For public records that are only available in hard copy, I request an estimate of the cost for copying same. If the cost for copying is excessive, I will request a mutually agreeable time for me to travel to your office to inspect said records.

If you are not the records custodian for the records I have requested, please give this letter to the appropriate records custodian for a response as set forth herein.

Failure to respond to this letter by April 25, 2007 will be considered a complete denial of my public records request and I will duly take appropriate action. If you need additional time in which to produce the requested records, please advise in writing so your request for an extension of time may be considered. A unilateral request for an extension will not be acceptable.

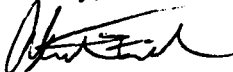
Further, please be advised that we have retained legal counsel to assist us in this request, who has provided an opinion that all of the requested information is considered a public record under Tennessee law based on Memphis Publishing Company v. Cherokee Children and Family Services, Inc., 87 S.W.3d 67 (Tenn 2002), which held in pertinent part:

"Our review of authority from other jurisdictions persuades us that the functional equivalency approach described above provides a superior means for applying public records laws to private entities which perform "contracted out" governmental services. As the facts of these cases demonstrate, private entities that perform public services on behalf of a government often do so as independent contractors. Nonetheless, the public's fundamental right to scrutinize the performance of public services and the expenditure of public funds should not be subverted by government or by private entity merely because public duties have been delegated to an independent contractor."

Based on applicable case law, there is no question that CCA is the functional equivalent of a governmental agency and subject to Tennessee's Public Records Act. Without question, running a jail or prison is exclusively a governmental function which makes CCA subject to Tennessee's Public Records Act. Accordingly, the failure to provide the requested information in a timely manner will be considered a willful refusal to disclose public records in violation of Tennessee's Public Records Act. If the requested documents are not produced in a timely manner, please be advised that I will file a Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access seeking access to these public records, as well as reasonable costs and attorney's fees associated with this request pursuant to T.C.A. § 10-7-505(b).

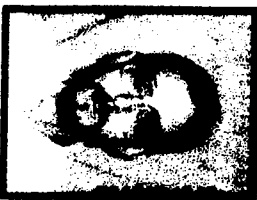
Thank you for your time and attention in this matter. If you have any questions or comments or require additional information, please do not hesitate to contact me at the above e-mail or phone number. Please reply to the Tennessee address above. I look forward to your reply;

Sincerely,



Alex Friedmann
5341 Mt. View Rd. #130
Antioch, TN 37013

✓ cc: Paul Wright, PLN Editor
Andrew C. Clarke, Esq.



ALEXANDER FUNDERBURK
1517 BALLETT STREET
NASHVILLE, TN 37206

Class B
Endorsements NONE
Restrictions BY
SEX M IN SVR* EYES BR
SSN ON FILE

Expires 08-03-2009
Issued 02-17-2004
Reference 05-03-1969

Tennessee
THE GREAT STATE

W/BR



WALKER, TIPPS & MALONE

ATTORNEYS AT LAW

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KATHRYN HAYS SASSER
SARA F. REYNOLDS
ERIN N. PALMER
CHASITY F. GOODNER
JOHN L. FARRINGER IV
CHARLES I. MALONE

April 24, 2007

VIA FEDERAL EXPRESSAlex Friedmann
Prison Legal News
5341 Mt. View Road #130
Antioch, TN 37013Re: *Your April 3, 2007 letter*

Dear Mr. Friedmann:

Walker, Tipps & Malone represents Corrections Corporation of America ("CCA") with respect to your April 3, 2007 letter requesting production of certain documents pursuant to Tennessee's Public Records Act, Tenn. Code Ann. § 10-7-503. As set forth below, CCA denies your requests for several reasons.

First, CCA respectfully disagrees with your assumption that CCA is subject to Tennessee's Public Records Act. As the Tennessee Supreme Court held: "A private business does not open its records to public scrutiny merely by doing business with, or performing services on behalf of, state or municipal government." *See Memphis Publishing Co. v. Cherokee Children & Family Services, Inc.*, 87 S.W.3d 67, 79 (Tenn. 2002). CCA is a privately-owned, for-profit corporation. CCA is not managed or operated by the State of Tennessee or any of its subdivisions, it was not formed by an act of the Tennessee legislature or a local general assembly, and it was not formed for the sole purpose of serving any Tennessee government functions. Rather, CCA has contracts with multiple federal, state, and municipal governments throughout the country. The only money CCA receives from political divisions of the State of Tennessee is as a *quid pro quo* for providing correctional facility management services, and this amount of money is a small percentage of CCA's overall income. Unlike a government agency, CCA does not claim the benefit of governmental immunity from suit in tort actions, CCA employees do not participate in public retirement plans, and CCA maintains its own insurance. CCA is simply not the functional equivalent of a Tennessee government agency. *See Cherokee Children*, 87 S.W.3d at 79; *Memphis Publishing Co. v. Shelby Cty. Health Care Corp.*, 799 S.W.2d 225, 229-231 (Tenn. Ct. App. 1990), *appl. perm. appeal denied* (Tenn. 1990).

Second, even if CCA were subject to the Public Records Act, many of the documents you request are not covered by the Public Records Act by operation of state law. *See* Tenn. Code Ann. § 10-7-503(a). Tennessee law protects from inspection under the Public Records Act

EXHIBIT

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Alex Friedmann
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attorney work product and documents protected by the attorney-client privilege. *See Arnold v. City of Chattanooga*, 19 S.W.3d 779, 786 (Tenn. Ct. App. 1999), *perm. app. denied* (Tenn. 2000); Tenn. Op. Atty. Gen. No. 06-104 (Tenn. A.G. 2006); Tenn. R. Civ. P. 26.02; Tenn. Code Ann. § 23-3-105. Similarly, Tennessee law protects from inspection under the Public Records Act documents sealed by a protective order of a court. *See Ballard v. Herzke*, 924 S.W.2d 652, 662 (Tenn. 1996). Your request for documents protected by privilege and/or confidentiality is not appropriate under the Public Records Act.

Third, many of the documents you request are otherwise obtainable through either court clerk's offices or through the relevant governmental agency with whom CCA has contracted. In construing the Public Records Act, "the public's right of access to government records must be balanced with the burden that the disclosure of these records will place on the government." *See Swift v. Campbell*, 159 S.W.3d 565 (Tenn. Ct. App. 2004), *perm. app. denied* (Tenn. 2005). To the extent you request documents that are otherwise available to you, CCA submits that it would be overly burdensome to require a private entity like CCA to gather and/or obtain such documents and make them available for inspection.¹

You request six categories of documents. All requests are limited to documents pertaining to correctional facilities managed by CCA in the State of Tennessee pursuant to a contract between CCA and the State of Tennessee or a subsidiary county or municipal government. Further, you limit your requests to the time frame of January 1, 2002 through April 3, 2007. There are six (6) correctional facilities encompassed by your requests:

- Hardeman County Correctional Center, Whiteville, TN (contract with Hardeman County Correctional Facilities Corporation)
- Metro-Davidson County Detention Facility, Nashville, TN (contract with Davidson County Sheriff's Department)
- Shelby Training Center, Memphis, TN (contract with Juvenile Court of Memphis and Shelby County, Tennessee)
- Silverdale Detention Facilities, Chattanooga, TN (contract with Hamilton County, Tennessee)
- South Central Correctional Center, Clifton, TN (contract with Tennessee Department of Corrections)
- Whiteville Correctional Facility, Whiteville, TN (contract with Hardeman County Correctional Facilities Corporation)

Each category of documents is addressed separately as follows:

¹ Even if CCA were subject to the Public Records Act and some of the documents requested were not confidential or protected and not otherwise available, the Act requires only that documents be made available for inspection. *See* Tenn. Code Ann. § 10-7-503(a). For that reason, and because it would create an unreasonable burden, CCA would not be required to provide any documents in electronic format or via electronic mail.

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(1) Complaints in Tennessee Lawsuits. Complaints filed in Tennessee courts are available in the court clerk's offices. Please refer to the list of relevant facilities above and contact the applicable federal or state courts where those facilities are located to obtain any records. It would be unreasonably burdensome to require CCA to gather and/or obtain such records when they are equally available to you from the court clerk's offices.

(2) Verdicts Forms and Settlement Agreements in Tennessee Lawsuits. As with complaints, any other pleadings or rulings filed with the respective court clerk's offices are as easily available to you as to CCA. Upon information and belief, all settlement agreements encompassed by your request contain confidentiality provisions and are, therefore, not open for inspection under the Public Records Act. Well-settled public policy protects the confidentiality of settlement negotiations and agreements in order to encourage settlement. See *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 980 (6th Cir. 2003). Further, some such confidential settlement agreements are sealed pursuant to court order and clearly not available for public inspection. See *Ballard v. Herzke*, 924 S.W.2d 652, 662 (Tenn. 1996).

(3) Audits and Investigations by Tennessee Governments. You may refer to the above list of Tennessee government entities with whom CCA has contracted and request this information from them directly, to the extent any such information exists. It would be unreasonably burdensome to require CCA, who is not a government agency subject to the Public Records Act, to do this work for you.

(4) Tennessee Court Rulings. Once again, this information is as readily available to you as to CCA by contacting the respective court clerk's offices.

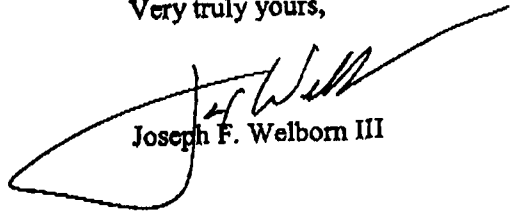
(5) Spreadsheets or Databases Regarding Tennessee Litigation. The only information CCA understands this request to encompass is protected by the attorney-client privilege and/or work product doctrine. Any CCA databases regarding Tennessee litigation contain case evaluations, settlement considerations, litigation strategies, and other protected and/or privileged information. Such information is not subject to the Public Records Act.

(6) Final Contracts and Renewals Between CCA and State of Tennessee. As with respect to any audits and investigations, you may obtain this information directly from the relevant Tennessee government entity with whom CCA has contracted.

My review and analysis of applicable law suggests that the facts and law support CCA's position that it is not subject to the Tennessee Public Records Act. I would be happy to discuss this matter further with you and invite you to share with me anything I may have overlooked in my analysis. Please direct all future correspondence and communications regarding this matter to me.

Alex Friedmann
April 24, 2007
Page 4

Very truly yours,

A handwritten signature in black ink, appearing to read 'Joe Welborn', with a large, sweeping flourish that loops back under the name.

Joseph F. Welborn III

JFW/pkg