

1 of 1 DOCUMENT

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Bredesen imposes secrecy on select harassment cases

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Most involve top state officials; 'Tennessean' finds different handling for regular workers

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The governor's office has become involved in a select number of workplace harassment complaints against top state officials and has put them under a veil of secrecy that does not apply to ordinary state workers, a Tennessean review of case files shows.

Routine state cases are generally documented with notes or reports, and the resulting files are available for the public to review and assess whether appropriate action was taken.

But when cases are routed through Gov. Phil Bredesen's office, the files are empty, are shredded or contain only one or two pages with almost no details about the accusations or how the investigations were handled.

Bredesen's top liaison to the legislature, Mack Cooper, was demoted in May for harassing a state worker. The governor's office refused to release any details of the case. Bredesen said he was trying to protect the victim. He also said that harassment was a problem in state government.

That led The Tennessean in June, under provisions of the state's Open Records law, to request case files on all harassment complaints filed in state government since Bredesen took office. So far, the newspaper has reviewed 30 cases.

Three of the files were completely empty. A fourth file contained only the text of two e-mails that gave no indication of the nature of the case. The state cited "attorney-client" privilege in withholding documents.

Last week the governor confirmed that one of those cases involved a complaint against Correction Commissioner Quenton White, which the governor said was unfounded. The confirmation came as White resigned amidst criticism of his handling of sexual harassment cases in his department and of other issues.

The administration also confirmed that the investigator's notes in the case had been shredded. The same thing happened in the Mack Cooper case.

Friday, Bredesen put a stop to one practice that has been used to keep cases secret -- shredding of notes.

Tomorrow, he expects to talk with lawyers from the attorney general's office to discuss whether records of past cases that have been withheld should be made public, he told The Tennessean, which is seeking the records.

Bredesen also said cases involving political appointees lack documentation because such positions do not have the protections of civil-service jobs and not as much paperwork is needed.

The newspaper's review found clear differences in the way cases were handled, depending on whether the governor's office was involved:

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o In four cases identified as originating from the governor's office, the file was empty or contained few documents and did not detail the accusations or how the state responded. In two of those cases involving high officials in Bredesen's administration, notes were shredded.

o In 25 cases that were not handled through the governor's office the files contain notes, written findings or other documents that provide at least some understanding of the allegations and subsequent investigations. In 14 of those cases, the outcomes were clearly detailed. In 11, the outcomes were unclear or not included.

o There was one other case in which the governor's office was not involved in which the Personnel Department withheld all documents, refusing even to name the agency involved.

In two cases in which records were available, women who filed sexual harassment complaints said they faced retaliation later. One male witness who corroborated a complaint also claimed retaliation.

One of the women and her witness said they were fired for speaking out. In another case, a secretary in the Correction Department said she felt pressured to resign after lodging a complaint against a male employee with close ties to Commissioner White.

The controversy over state harassment cases came into full bloom in May when Bredesen's top lobbyist Robert "Mack" Cooper was forced out. At the time, Bredesen announced that Cooper had been the subject of a harassment investigation that found he had acted inappropriately.

In response to media inquiries, state officials revealed that the investigator's notes had been shredded and that the file in that case was virtually empty. Some records that were kept have been withheld by the administration, citing attorney-client privilege.

In an interview Friday, Bredesen said the shredding in both cases involving top officials was a mistake.

Cooper and White were executive service employees who served at the will of the governor and were not protected by state civil service laws as are lower-ranking employees. It is this distinction, Bredesen said, that causes the different ways cases were handled.

"I really do believe the difference is not the involvement of the governor's office but the difference between civil service and executive service," Bredesen said. "If there's a dismissal involved or a reprimand or a demotion or something like that, there may be litigation or arguments under the civil service law.

"Where executive service employees are involved, they are hired and fired at-will so the need for the documentation is not there."

But in at least one harassment case involving an executive service employee, detailed records were created and kept. Bredesen said he was not familiar with that case.

Some observers said that even among executive service employees, there is a need to maintain harassment files.

In fact, the state's own course on workplace harassment teaches investigators to document investigations, take notes and create a final report. One of the teachers in the course is Kae Carpenter, who was the investigator who shredded her notes in the two cases handled through Bredesen's office.

Personnel Commissioner Randy Camp on Thursday defended Carpenter, his department's general counsel.

"Whatever reason she had, she felt necessary to destroy them in one case," he said. "Whatever reason she had for doing that, I trust she did the right thing."

By Friday, Camp had switched course after Bredesen ordered an end to the shredding of investigative files. Camp maintained, however, that it is important to protect the identities of victims to ensure that they come forward.

Documenting harassment investigations and taking notes are basic tenets in both the public and private sectors, several human resource experts and attorneys have said. Such documentation can be vital later if the cases are disputed or go to litigation.

"It's a bad thing for the state," said David Raybin, a private attorney and a former assistant state attorney general. "There's a law that says that if you destroy evidence that there's a presumption that the evidence is

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adverse to the person who destroyed it. ... That could prejudice the state in subsequent litigation if the state were sued."

The cases should be fully documented, and records should be open to the public, said Dick Williams, Tennessee director of Common Cause, a group that pushes for open government.

"I see the value for keeping the victim's name confidential or the responsible press not publishing unless there is a compelling public interest or the victim wants to pursue it further," Williams said.

However, "I would be more comfortable risking the press making an irresponsible decision than public officials making irresponsible decisions to withhold information the public ought to have access to," he said.

Not everybody agrees.

Verna Wyatt, who heads the Nashville-based victims rights organization You Have the Power, said she is comfortable with policies that allow shredding of investigative files. The choice to make harassment files public should be left to the victim, she said.

"It's hard for victims to come forward in the first place," she said. "If cases are handled appropriately, I'm happy with them not making information public and showing the dirty details."

When asked how the public could assess the actions of its government officials in past harassment cases without any records, Bredesen said: "On matters like this, I would ask the public to have some trust in the process."

Still, he conceded the need for effective public oversight.

"I'm saying to you, and I acknowledged to you, that a significant protection for the public is the ability of the press to look at these things," the governor said. "As in a lot of things, you get competing interests here. I want people to come forward. I want the press to be able to hold somebody's feet to the fire if they're not doing the right thing."

Bredesen has said that sexual harassment is a problem in Tennessee's state government as it is in the private sector.

"Anytime you mix men and women together in a work environment there's going to be issues," he said. "What I want is an environment where it's clear we don't tolerate it." o

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Christian Bottorff and Michael Cass contributed to this article.

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Bredesen imposes secrecy on select harassment cases The Tennessean (Nashville, Tennessee) July 17,
2005 Sunday 1st Edition

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MENT (89%); LEGISLATIVE BODIES (78%); WRITERS (78%); PUBLIC RECORDS (78%); RESIGNA-
TIONS (78%); FREEDOM OF INFORMATION (77%); ATTORNEYS GENERAL (76%); SERVICE WORK-
ERS (73%); SUNSHINE LAWS (72%); VICTIMS RIGHTS (69%); APPOINTMENTS (66%); ATTORNEY
CLIENT PRIVILEGE (64%);

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GRAPHIC: CREDIT: AP , FILECorrection Commissioner Quenton White speaks to a Senate committee April 12. He resigned Wednesday, writing to Gov. Phil Bredesen that recent events have "crippled my ability to serve in an effective manner." The governor said the state had looked into a harassment complaint against White but found no merit to it.

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