

Transparency in Government: the Tennessee Public Records Act and Public Records Policies

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County Register of Deeds

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Office of Open Records Counsel (OORC)

Statutory Duties/Responsibilities:

- ◆ Assist citizens and public officials with public records and open meetings questions.
- ◆ Collect data on open meetings inquiries and problems.
- ◆ Provide educational outreach
- ◆ Issue informal advisory opinions
- ◆ Mediate records disputes
- ◆ Develop forms and guidelines to assist with compliance

T.C.A. § 8-4-601 & T.C.A. § 10-7-503.

Schedule, Policies, and Guidelines Developed by the OORC

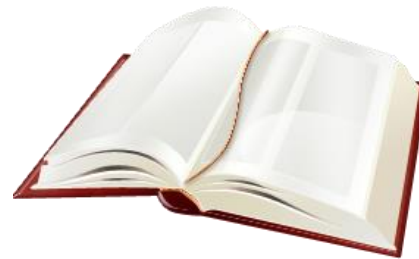
- ◆ Best Practices & Guidelines
- ◆ Model Public Records Policy
- ◆ Schedule of Reasonable Charges
- ◆ Reasonable Charges for Frequent and Multiple Requests
- ◆ Safe Harbor Policy
- ◆ Informal Advisory Opinions
- ◆ Mediation of Open Records Issues

Forms Developed by the OORC

- ◆ Records Request Form
- ◆ Records Response Form
 - *May* be used:
 - To provide access to information
 - To deny request in writing
 - *Must* be used if not practicable to promptly provide access within 7 days

Tennessee Public Records Act

Tennessee Public Records Act, 1957 (TPRA)
(T.C.A. § 10-7-501 *et seq.*)



Policy of Transparency

Access to public records promotes governmental accountability and transparency by enabling citizens to keep track of what the government is doing.



All state, county and municipal records shall at all times, **during business hours**, be open for personal inspection by **any citizen of Tennessee**, and those in charge of such records shall not refuse such right of inspection to any citizen, **unless otherwise provided by state law.**

T.C.A.. § 10-7-503(a)(2)(A)

Who Can Access Records under TPRA?

Citizen of Tennessee:

- Individuals, not corporations
- Includes convicted felons

Governmental entity has discretion whether to respond to requests from non-citizens.



What Records are Accessible Under the TPRA?

“Public Records” of any Government Agency

- ◆ State, county or municipal level -> not federal
- ◆ Any department, division, board, bureau, commission, or other separate unit of government created by law or pursuant to law
- ◆ Note: FOIA does not apply to state and local government
- ◆ “Functional Equivalent” – Certain private entities performing governmental or public functions

T.C.A. § 10-7-503.

What is a Public Record?



facebook

- 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



T.C.A. § 10-7-503(a)(1)(A).

Examples of Public Records

1. Personnel records/applications and references
2. Travel and leave information for employees
3. Emails, text messages, and voicemails
4. Published financial or performance audits
5. Plats, Maps, Surveys
6. Contracts
7. “Instruments” – Deeds, Bonds, etc...
8. Records related to RFP/RFQs and other bids
9. Citizen and constituent communications
10. Budgets

“Unless otherwise provided by state law”

◆ 350+ Statutory Exemptions

- Start with T.C.A. § 10-7-504

◆ Sources of Exemptions:

- Tennessee Code Annotated
- Tennessee Supreme Court Rules and Rules of Civil and Criminal Procedure
- Administrative Law Rules
- Common Law
- Federal Law

New Exemptions for 2017

- ◆ Pub. Ch. 114 - Identity of vendor providing goods and services used to protect electronic information processing systems, if governing body votes to make confidential.
- ◆ Pub. Ch. 255 - Body Camera footage confidential if depicts interior health facility, interior of home not a crime scene, or minors within a K-12 school.
- ◆ Pub. Ch. 277 - TBI Investigation of Officer Involved Shootings public record after investigation and prosecution complete; DA may disclose prior to becoming public record.

Personally Identifying Information

- ◆ Social security numbers;
- ◆ Official state or government issued driver licenses or identification numbers;
- ◆ Alien registration numbers or passport numbers;
- ◆ Employer or taxpayer identification numbers;
- ◆ Unique biometric data, such as fingerprints, voice prints, retina or iris images, or other unique physical representations; or
- ◆ Unique electronic identification numbers,* routing codes or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data.

*"Addresses" removed by Legislature April, 2017 – See Pub. Ch. 113

T.C.A. § 10-7-504(a)(29)(C).

Personally Identifying Information

- ◆ T.C.A. 10-7-515
- ◆ Preparer of documents recorded in the register of deeds shall not place personally identifying information on documents, other than power of attorney
- ◆ Shall not refuse to record if not removed/redacted
- ◆ Form for requesting removal from electronic databases
 - Record form if redacting is practicable
 - If not practicable to redact, don't record form and explain why impracticable
- ◆ Compliance satisfies obligation to redact under 504(a)(29)

Public Employee Personnel Records

Certain information is held confidential when held by a governmental entity in its capacity as an employer.

- ◆ Relates to current and former employees as well as applicants, and
- ◆ Covers the same information of immediate family members (whether or not residing with the employee) or of household members.

T.C.A. § 10-7-504(f).

Public Employee Personnel Records (cont.)

Confidential information:

- ◆ Home and cellular telephone numbers;
- ◆ Personal, nongovernment issued email addresses;
- ◆ Residential street address for non-state employees;
- ◆ Bank account information, health savings account, retirement account, and pension account information;
- ◆ Social security number;
- ◆ Driver license information (except when driving or operating a vehicle part of job description); and
- ◆ Emergency contact information.

Responding to Requests

PROMPTLY-

T.C.A. §10-7-503(a)(2)(B) requires it!

If cannot be promptly available, within seven (7) business days must:

- ◆ Provide access to the record (whether inspection or duplication);
- ◆ Deny in writing with legal basis for denial; or
- ◆ Indicate in writing the additional time necessary to produce the record.

Response to a Public Records Request (cont.)

- ◆ Not required to create a document that does not already exist
- ◆ Not required to sort through files to compile information
- ◆ May require an appointment to view a public record when reasonable basis for requirement exists

Public Records Policy

◆ Must include:

- Process for making requests, including any required forms;
- Process for responding to requests;
- Statement of fees and billing/payment procedures; and
- Contact info for Public Record Request Coordinator (“PRRC”)

◆ Must be adopted by July 1, 2017

T.C.A. §10-7-503(g).

Public Records Policy: Initial Considerations

- ◆ Who/what is the “appropriate governing authority” responsible for approval of the policy?
- ◆ Who or what sub-entities or offices will be covered by the policy? – Will your office need its own policy?

Public Records Policy: Initial Considerations – Types of Records

- ◆ What records does your office create or receive that are required by law or ordinance or occur in the transaction of official business?
 1. Physical or electronic
 2. Searchability
 3. Equipment and software required
 4. Online access

Public Records Policy: Process for Making Requests

Who will receive requests: PRRC or designee?

◆ PRRC:

- Individual within a governmental entity whose role it is to ensure public records requests are routed to the appropriate records custodian and that requests are fulfilled in accordance with T.C.A. § 10-7-503(a)(2)(B)

◆ RC:

- Any office, official, or employee of any governmental entity lawfully responsible for the direct custody and care of a public record

Public Records Policy: Process for Making Requests (cont.)

How will you receive requests?

- ◆ What means of communication exist for the public to communicate with the governmental entity?
 - Phone/Fax/US Mail/deliver/in-person
 - Email
 - Webportal or online submission
 - Facebook/Twitter
 - Pub. Ch. 233 (effective July 1, 2017)

Public Records Policy: Process for Making Requests (cont.)

- ◆ Requests for Inspection vs. for Copies
 - May require form or in writing only when copies
- ◆ Require Proof of TN Citizenship?
 - Acceptable alternative forms of ID?
- ◆ Readily available records?
 - Minutes, Agendas, Press releases
 - Posted online?

Public Records Policy: Responding to Requests

Review by PRRC/Role of PRRC

- Citizenship
- Sufficiency of description of the records – request additional information
- Correct custodian (county records)
- Required Forms
- Aggregation if multiple/frequent requestor
- Response: Deny request/Request Additional Information/Forward to correct RC

Public Records Policy: Responding to Requests (cont.)

Review by RC/Role of RC

- Make records promptly available
- Deny in writing if record not open or not exist
- If must search, redact, etc., send response form
- Large request? – segment/narrow request?
- Estimate of costs
- Aggregation if multiple/frequent requestor

Public Records Policy: Responding to Requests (cont.)

Redaction Practices

- Duty to maintain confidentiality – Review exceptions
- Consult local counsel or OORC
- Never redact originals
- Provide basis for redaction
- Costs associated with redacting electronic records

Public Records Policy: Responding to Requests (cont.)

Inspection vs. Copies

◆ Inspection:

- When? Where? Appointment? Supervision?
- No charge unless express statutory requirement
- Effective July 1, 2017- no obligation to comply with TPRA request for 6 months if two 15-day no-shows

Public Records Policy: Responding to Requests (cont.)

Inspection vs. Copies

◆ Copies:

- Request payment upfront?
- Pick up in person? Mail? Email?
- Permit use of own equipment?
- Effective July 1, 2017- no obligation to comply with future TPRA request if fail to pay for copies after agreeing to estimate

Public Records Policy: Fees – Initial Considerations

- ◆ Authority, other than the TPRA, for charging fees for copies? Mandatory or discretionary?
 - TCA 8-21-1001 - \$1.00 per page for documents other than plat, map or survey. \$2.00 service charge.
 - Will labor be charged? Threshold of one (1) hour or higher?
 - Will waivers be permitted, and who will have the authority to waive fees?

Public Records Policy: Fees

- ◆ Cannot to be used to discourage or impede TPRA requests
- ◆ Cannot charge for inspection
- ◆ Estimate of Charges
- ◆ Schedule of Reasonable Charges/Actual Costs
- ◆ Waivers
- ◆ Acceptable forms of payment

Records Retention and Disposition

County Technical Assistance Service (CTAS) compiles and produces a records retention manual for use by county public records commissions, county offices, and judges (T.C.A. § 10-7-404).

County Public Records Commission/Archives

<http://www.comptroller.tn.gov/openrecords/>



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Office of Open Records Counsel

The Office of Open Records Counsel serves citizens, media, and local governmental entities as a resource for issues related to Tennessee's public records and open meetings laws. Although the Office assists requestors in determining and locating the correct governmental records custodian, the Office does not serve as a clearinghouse for all public records requests and does not make public record requests on behalf of others.

News & Updates

- » [March 1, 2017: Office of Open Records Counsel and Advisory Committee on Open Government Report to the General Assembly](#)
- » [Click here for the Model Public Records Policy and updated](#)

Contact the OORC

Quick Links

- » [Transparent Tennessee](#)
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! If you would like to be contacted, please be sure to include your email address and/or phone number.

OORC Contact Information

If you have questions regarding the TPRA, the TOMA, or the Office of Open Records Counsel, contact

(615) 401-7891 or
(866) 831-3750

Rachel Buckley, Ann Butterworth or Lee Pope

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<http://www.comptroller.tn.gov/openrecords/>