



## Policies and Procedures

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Policies and Procedures

**Reference Number:** MTAS-443

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### Open Records Procedures

**Reference Number:** MTAS-444

Tennessee law allows municipalities to adopt reasonable rules and regulations relating to accessing public records. Every municipality was statutorily required to have a public records policy adopted by July 1, 2018. The policy was, at a minimum, required to include:

1. The process for making requests to inspect public records or receive copies of public records and a copy of any required request form;
2. The process for responding to requests, including redaction practices;
3. A statement of any fees charged for copies of public records and the procedures for billing and payment; and
4. The name or title and the contact information of the individual or individuals within such governmental entity designated as the PRRC.

MTAS developed a sample public records resolution to assist municipalities in adopting a policy. The sample resolution is found here: <https://www.mtas.tennessee.edu/knowledgebase/sample-resolution-adopting-...> [1].

### Fees and Copying

**Reference Number:** MTAS-445

Municipal records must be accessible to the public during regular business hours. A municipality has no legal authority to charge any fee for viewing/ inspecting public records, unless state law requires a fee to be assessed. T.C.A. § 10-7-503(a)(7)(A)(i). If a requestor wants to merely view a public document, generally, no fee can be assessed.

More often, however, the requestor will want a copy of the requested records or information. If the record is public and not covered by an exemption, the requestor has a right to inspect the requested record and a right to obtain a copy or duplicate. T.C.A. § 10-7-506(a). Municipalities may adopt and enforce reasonable rules governing the making of copies of public records and those rules should be included in the municipality's public records policy.

If a municipality assesses fees for copies and duplicates, the municipality's public records policy should also include how those fees are assessed. The OORC established the Schedule of Reasonable Charges (hereinafter "the Schedule") in 2008 that municipalities can adopt; however, municipalities are not required to adopt the Schedule. Any municipality assessing fees for copies or duplicates that are higher than those set out in the Schedule must prove and document through a cost analysis that the actual cost to the municipality for copying or duplicating records exceeds the fees in the Schedule. MTAS strongly encourages every municipality to establish and assess its fees in accordance with the Schedule <sup>[1]</sup>. The Schedule sets the following as reasonable charges:

- Black and white copy, 8 ½ X 11 or 8 ½ X 14                      \$0.15
- Color copy, 8 ½ X 11 or 8 ½ X 14                                      \$0.50

Duplication of other materials such as DVDs, CDs, audio tapes, maps, plats, etc., should be reproduced at actual cost. If a municipality lacks the means to reproduce a requested record, the PRRC may use a private vendor. When doing so, the PRRC must use the most cost efficient method of reproducing the

requested record.

The Schedule also provides that after one hour of labor is expended on a request for copies, the requestor can be assessed a labor fee that includes the total time that was required to locate, retrieve, review, redact and copy the requested records. The one free hour of labor is to be deducted from the labor provided by the highest paid employee. When calculating the labor fee, a municipality may multiply the total time that each employee spends on the request by the employee's hourly wage. The Schedule is included as Appendix D.

It is important to remember that a municipality is not required to assess a fee for labor and copies; however, if fees are going to be assessed, a municipality is statutorily required to provide the requestor an estimate of the fees. T.C.A. § 10-7-503(a)(7)(C)(ii). [2] It is imperative that the PRRC confer with staff after a request for copies is made to determine the estimated cost of the copies and labor. That estimate should then be provided to the requestor in writing, as soon as possible and the requestor should be asked to agree to the payment of the estimate in writing. Also, a municipality has the authority, through its public records, to require all or a portion of the estimate to be paid upfront.

If a requesting party is not physically present and the requested records must be physically sent to the requestor, case law states that cities may recover actual costs associated with delivery of the records. *Waller v. Bryan*, 16 S.W. 3d 770 (Tenn. Ct. App. 1999).

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[1] Municipalities that establish and assess copying and duplication fees in accordance with the Schedule are covered by the OORC's Safe Harbor Policy. <http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePolici...> [2]

[2] A municipality also has the authority to waive fees for copies and labor. However, if fees are going to be waived, there should be explicit language in the municipality's public records policy that addresses when waiver will occur.

## Requests for Records

**Reference Number:** MTAS-446

While a requestor seeking to view or inspect records generally cannot be required to make the request in writing, it is important for the PRRC to keep written documentation of all such requests made and all responsive records provided. T.C.A. § 10-7-503(a)(7)(A)(i). The PRRC is encouraged to complete a records request form for each request to inspect received. A municipality is required to accept requests for inspection by telephone, fax, mail, in person, via email, if email is used by a municipality to conduct business, or through an Internet portal, if a municipality maintains an Internet portal that is used to make a public records request.

A municipality may require a request for copies to be made in writing and on a specific form. If a municipality requires a specific form to be used, the form is required to be provided to the requestor as quickly as possible after being requested. T.C.A. § 10-7-503(a)(7)(A)(v). A recommended best practice is to have the records request form, whether required or not, available on the municipality's website. A sample records request form is included as Appendix B. Requests for copies that are required to be made in writing must be accepted in person, via mail, via email, if email is used by a municipality to conduct business, or through an Internet portal, if a municipality maintains an Internet portal that is used to make a public records request. If a request for copies is not required to be made in writing, the request may be submitted in any of the ways permitted for a request to inspect. T.C.A. § 10-7-503(a)(7)(A)(ii-iv).

Once a PRRC receives a request for inspection or copies, access to the requested records is required to be provided as "promptly" as possible. If the requested records cannot be promptly made available, the PRRC has seven (7) business days to do one of the following:

- Provide the requested records;

- Provide the requestor a written denial of the requested record that includes the legal basis for the denial; or
- Provide the requestor a completed records request response form that includes the time needed to produce the requested records.<sup>[1]</sup>

T.C.A. § 10-7-503(a)(2)(B).

Municipalities are required to make every reasonable effort to produce requested records as quickly as possible. Requests for voluminous or archival records will understandably require additional time. Additionally, factors such as the kind, amount, and nature of the records requested; uncertainty as to what records are requested; the location of the records requested; the format in which the records are requested; the extent of the department head's resources to locate the records at the time the request is made; intervening emergencies, problems, and other events might reasonably delay the production of requested records. However, regardless of the circumstances, records are required to be produced without unnecessary delay. In the event a municipality receives a voluminous request or a request that requires extensive review and redaction, a recommended best practice is to provide the requested records as quickly as possible, incrementally. By providing the records incrementally, as opposed to waiting an extended amount of time to provide all of the requested records at once, a municipality is able to demonstrate a good faith effort towards complying with a request.

When circumstances prevent the use of municipal copying equipment, commercial copying services may be used. In this situation, the PRRC should receive an estimate from the commercial copying service that will be used. The estimate should then be forwarded to the requestor along with an explanation of the need to use the commercial service and a timeframe for completion. Finally, the PRRC should secure an agreement to pay the estimate from the requestor before any copies are made. As with all copying, strict precautions must be taken to ensure the integrity of the records. When possible, the PRRC should oversee the commercial copying process. However, if that is not possible, a detailed inventory of the original records should be taken before they are delivered to the commercial entity, and then inventoried again upon return.

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[1] T.C.A. § 10-7-503(a)(2)(B)(iii) requires a municipality to use the records request response form developed by the OORC when it is going to take beyond seven business days to make the requested records available. This form is available as Appendix C.

## Maintaining the Integrity of Records

**Reference Number:** MTAS-447

A municipality's records serve as the legal foundation for all of its actions; therefore, preserving these records is of paramount importance. With few exceptions, original records should never leave the physical custody of the records custodian.<sup>[1]</sup>

For guidance on issues related to records maintenance, see the MTAS publication *Records Management for Municipal Governments*. This document is available at <http://www.mtas.tennessee.edu/reference/records-management-municipal-governments> [3].

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[1] When a municipality, through its public records policy, allows a requestor to bring in his/her own copying equipment to copy public records, the PRRC remains responsible for maintaining the integrity of the records being copied. As such, the PRRC should be present during the copying process or copies of the originals should be provided to the requestor for copying.

## Redaction Process

**Reference Number:**

MTAS-448

Deciding what, if any, information is required to be redacted from a public record is often a difficult decision to make. Records that are otherwise accessible to the public often contain confidential information. However the fact that there is some confidential information in a record generally does not make the entire record confidential. It is the duty of the municipality to redact the confidential information before providing the remaining public information to the requestor. It is important that confidential information be redacted from records before the records are made accessible to the public, given that there are some confidentiality provisions that include criminal penalties for unlawful disclosure.

Before information is redacted from a public record, the PRRC should identify the provision within State law that makes the information confidential. A number of exceptions are included in this publication; however the list is not exhaustive. A more comprehensive list of exceptions is now available on the OORC's website in a searchable database at <https://apps.cot.tn.gov/PublicRecordsExceptions> [4]. In situations where the PRRC is unsure about whether information should be redacted, your municipal attorney and/or your MTAS management consultant should be consulted.

## When Requests for Records are Denied

**Reference Number:** MTAS-449

When a municipality denies a request for records or impedes a requestor's ability to access public records, the Act guarantees the requestor's right to petition a court for access to the records. T.C.A. § 10-7-505(a). At trial, the municipality has the burden of proving that it did not violate the Act. T.C.A. § 10-7-505(c). A court must then weigh the evidence presented by the municipality against the court's duty to construe the Act "to give the fullest possible access to public records." T.C.A. § 10-7-505(d). If the court finds that the municipality "willfully" violated the Act, the "court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the municipality." T.C.A. § 10-7-505(g).

## When Requestors Fail to Inspect in a Timely Manner or Pay for Copies

**Reference Number:** MTAS-3001

For nearly 60 years, there was language in the act that set out the recourse that a citizen had when he/she felt that a municipality failed to provide access to requested records, but there was no language in the Act that provided municipalities any recourse when requestors failed to inspect in a timely manner or failed to pay for requested copies. However, both of these issues are now addressed by the language in T.C.A. § 10-7-503(a)(7)(A)(vii)(a)-(b). Now, if a requestor makes two (2) requests to inspect within a six (6) month period and fails to inspect the records within 15 days of being notified that they are available to inspect, the municipality is not required to comply with any public records request from the requestor for six (6) months from the date that the second request was made, unless the municipality determines that failure to inspect was for a good cause. Additionally, when a request for copies is made, an estimate is provided to the requestor in writing, the requestor agrees to pay the estimate, which should also be in writing, the copies are produced and the requestor fails to pay for the copies, the municipality is not required to comply with any public records request from the requestor until the requestor pays for copies that were produced.

## Office of Open Records Counsel

**Reference Number:** MTAS-450

The OORC is housed within the Office of the Comptroller of the Treasury and receives comments and guidance from a 17 member advisory committee. The OORC provides local governments with information and informal opinions on public records questions. These opinions are available for viewing on the OORC website. Not only are opinions issued by the OORC valuable for the information

contained therein, they can also provide a safe harbor for employees who rely on them. If a municipality is sued for violation of the Act, a court may consider guidance provided by the OORC when determining whether a municipality willfully denied a requestor's public records request.

Additionally, the OORC is available to mediate disputes between local governments and requesting citizens. The OORC also developed several policies and a number of forms, one of which is required to be used and others that may be used by municipalities. The forms and policies are found at <https://www.comptroller.tn.gov/openrecords/forms.asp> [5].

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**Links:**

[1] <https://www.mtas.tennessee.edu/knowledgebase/sample-resolution-adopting-public-records-policy>

[2] <http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePoliciesGuidelines/20170119SafeHarbor.pdf>

[3] <http://www.mtas.tennessee.edu/reference/records-management-municipal-governments>

[4] <https://apps.cot.tn.gov/PublicRecordsExceptions>

[5] <https://www.comptroller.tn.gov/openrecords/forms.asp>

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