Published on *MTAS* (https://www.mtas.tennessee.edu) January 23, 2020

Tennessee Public Records Act

Dear Reader:

The following document was created from the MTAS website (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,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Table of Contents

Tennessee Public Records Act 3
Confidential Records 3
Breach of Computer Security System 5
Law Enforcement Officers' Records 5
Open Records Counsel 6
Complying with Requests for Copies 6
Records Preservation and Destruction 7
Municipal Public Records Guide 7
Scope and Application 7
Municipal Records Categories 9
Business and Financial Records 9
Election and Voter Registration Records 10
Personnel Records 10
Police Personnel Records 11
Law Enforcement Records 12
School and University Records 12
Safety and Security Records 13
Utility Records 13
Policies and Procedures 14
Open Records Procedures 14
Fees and Copying 14
Requests for Records 15
Maintaining the Integrity of Records 16
Redaction Process 17
When Requests for Records are Denied 17
When Requestors Fail to Inspect in a Timely Manner or Pay for Copies 17
Office of Open Records Counsel 18
Sample Forms, Letters and Policies 18
Establishing Procedures for Inspection of Public Records 18
Ordinance Establishing Procedures for Inspection of Public Records 19
Schedule for Charges for Copies of Public Records 19
Records Request Denial Letter 21
Guidelines for Responding to Requests for Public Records 22
Policy for Frequent and Multiple Requests for Public Records 24
Policy for Electronic Mail 25

Tennessee Public Records Act

Reference Number: MTAS-206

All documents made or received by city/town officials and employees related to city/town business are subject to the Tennessee Public Records Act (hereinafter "TPRA"). Records custodians must respond as promptly as possible, but is if it is not possible to provide the requested records promptly, records custodians must, within seven business days of receiving a public records request, either produce the requested records, deny the request in writing with the legal basis for the denial included or provide an estimated time frame for production of the requested records on the Office of Open Records Counsel's (hereinafter "OORC") records request response form. Failure to do so constitutes a denial of the request and gives the requestor the right to file a public records lawsuit. T.C.A. § 10-7-503. Additionally, if copies are requested, a records custodian must provide the requestor with an estimate of the cost of copies. The estimate should be provided as soon as possible.

If a citizen of Tennessee is denied access to requested records, the individual may petition a chancery or circuit court for copies or inspection of the requested records. The burden of proof is on the city/town officials or employees, who must justify the denial by a preponderance of evidence. State law instructs courts hearing these cases to construe the TPRA as broadly as possible to give citizens of Tennessee "… the fullest possible public access to public records". T.C.A. § 10-7-505 (d). If a court determines that a city/town has violated the TPRA, the city/town may be assessed costs. Additionally, if a court determines that the city/town employee or official "willfully refused" access to the requested records, the city/town can also be assessed attorney's fees. When determining whether a city/town willfully violated the TPRA, the court may consider guidance provided to the city/town by the OORC, which is discussed below. T.C.A. § 10-7-505(g). An official required to provide access to requested records will not be civilly or criminally liable for providing access. T.C.A. § 10-7-505(f).

Confidential Records

Reference Number: MTAS-207

In general, city employees' personnel records and most other city documents are subject to public inspection under the Tennessee Public Records Act. Some exceptions that affect local government are:

- Employee assistance program records that apply to counseling or referrals for mental health, marriage, alcoholism, and similar personal problems may remain confidential if they are maintained separately from personnel records. T.C.A. § 10-7-504(d).
- Personal cell phone and home phone numbers, bank account information, Social Security numbers, and driver's license information (except when driving is part of or incidental to the employee's job), emergency contact information, residential street addresses and personal, non-government issued email addresses of applicants, current and former employees are confidential; the same information for the employees' immediate family members and household members is confidential. T.C.A. § 10-7-504 (f)(1).
- City hospital medical records and records of patients receiving medical treatment paid for by a municipality are confidential. T.C.A. § 10-7-504(a)(1). (The Americans with Disabilities Act requires that all employee medical records be confidential and kept in a separate file.)
- Library records identifying a person who requested or obtained specific materials are not open to the public. T.C.A. § 10-8-102.
- Financial statements filed by cities as evidence of their ability to pay workers' compensation claims are confidential. T.C.A. § 50-6-405(b)(3).
- Certain "books, records, and other materials in the possession of the Office of the Attorney General and Reporter which relate to any pending or contemplated legal or administrative proceeding in which the Office of the Attorney General and Reporter may be involved" are not open to public inspection. T.C.A. § 10-7-504(a)(5).
- All files, reports, records, and papers relative to child abuse investigations are confidential. T.C.A. § 37-1-612.

- The Tennessee Rules of Criminal Procedure contains a section that "does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with the investigation or prosecution of the case or of statements made by state witnesses or prospective state witnesses" (Tenn. R. Crim. P. 16(a)(2)). This rule is an exception to the rule of discovery, which requires the state to allow a "defendant to inspect and copy or photograph any relevant written or recorded" statements, records, objects, etc., that are material to the defense's preparation (Tenn. R. Crim. P. 16(a)(1)). [1]
- *Arnold v. City of Chattanooga*, 19 S.W.3d 779 (Tenn. Ct. App. 2000) (permission to appeal denied June 19, 2000) holds that a city attorney's work product prepared in anticipation of litigation or in preparation for trial is confidential and is not subject to disclosure under the Public Records Act.
- Unpublished phone numbers possessed by emergency communications districts are confidential until there is a contract to the contrary between the telephone customer and the service provider, T.C.A. § 10-7-504(e).
- Information about law enforcement officers, firefighters, emergency medical technicians, correction officers, dispatchers and paramedics who seek help for job-related critical incidents through group counseling sessions led by mental health professionals is privileged and is not subject to disclosure unless the privilege is waived. This includes all memoranda, work notes, work products, case files, and related communication. T.C.A. § 10-7-504(a)(13)(A).
- Certain taxpayer information, returns, reports, and audits are confidential. T.C.A. § 67-2-108, T.C.A. § 67-4-722, T.C.A. § 67-5-402, T.C.A. § 67-1-1702.
- The identity of an informant who provides information resulting in an eviction for violation of drug laws or for prostitution is confidential. T.C.A. § 66-7-107.
- Home and work telephone numbers, addresses, social security numbers, and any other information that could be used to locate an individual who has a protection or restraining order are not (utility) and may not be (other governmental entities) open to the public. Such an individual may request this protection and present a copy of the order to the record keeper of the municipality or utility. T.C.A. § 10-7-504(a)(15) and T.C.A. § 10-7-504(a)(16).
- Any information pertaining to the location of a domestic violence shelter, family safety center, rape crisis center, or human trafficking service provider is confidential when the director requests such in writing. T.C.A. § 10-7-504(a)(17).
- Security codes, plans, passwords, combinations, and computer programs used to protect electronic information and government property are confidential. T.C.A. § 10-7-504.
- Filing documents required in order of protection cases, except forms required by the courts, are confidential but may be transmitted to the TBI, emergency response agency, or law enforcement agency. T.C.A. § 10-7-504(a)(16).
- Records that would allow a person to identify areas of vulnerability of a utility service provider or that would permit unlawful disruption of utility service are confidential. Documents relative to costs of utility property or its protection are not confidential, but confidential information must be redacted when the record is made public. This provision does not limit access to these records by other government agencies performing official functions nor does it preclude any governmental agency from allowing public access to these records in performing official functions. T.C.A. § 10-7-504(a)(21).
- Contingency plans for responding to terrorist acts are confidential. T.C.A. § 10-7-504(a)(21).
- Credit card numbers, social security numbers, tax identification numbers, financial institution account numbers, burglar alarm codes, security codes, consumer-specific energy and water usage data except for aggregate monthly billing information, and access codes of utilities are confidential. This information must be redacted when possible when the rest of the record is made public. The requester must pay the costs of redaction. T.C.A. § 10-7-504(a)(20).
- Photographs and recordings of juveniles by law enforcement officers are confidential. T.C.A. §§ 37-1-154 and 37-1-155.

- Financial records filed for income verification under the local option property tax freeze are confidential. T.C.A. § 67-5-705.
- Competitive sealed proposals are confidential until the intent to award is announced. Then the proposals will be open to public inspection. T.C.A. § 12-3-1207.
- Records addressing marketing strategies and strategic plans of public hospitals are confidential until seven days before the strategies and plans are adopted. T.C.A. § 68-11-238.

---

[1] The Tennessee Supreme Court, in *Schneider v. City of Jackson*, 226 S.W. 3d 332 (Tenn. 2007), held that the common-law law enforcement privilege does not apply in Tennessee. Therefore, police officers' field interview cards and other investigative records not protected by this rule may be open for public inspection.

Breach of Computer Security System

Reference Number: MTAS-432

Municipalities that hold personal information in a computer system that is not lawfully available to the public must give notice of any breach of the system if personal information was, or is reasonably believed to have been, obtained by any unauthorized person. The disclosure must be made to the person or persons whose information was or might have been obtained. The law outlines the circumstances under which the notice must be made and the methods for giving the notice. T.C.A. § 47-18-2107.

All municipalities must create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by municipalities. Failure to comply creates a cause of action or claim for damages against the municipality if a citizen of the state proves by clear and convincing evidence that the citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. T.C.A. § 47-18-2901.

Identity Theft Precautions

The federal Fair and Accurate Credit Transactions Act of 2003 (FACTA), Public Law 108-159, requires utilities and other municipal departments that defer payments for services to take precautions to protect personal identifying information in their records. The municipality must have a policy that protects personally identifying financial and medical information and provide training on the policy.

Law Enforcement Officers' Records

Reference Number: MTAS-430

Like all public employees' records, law enforcement officers' personnel files are generally open to public inspection subject to the limitations mentioned in this and the previous section. However, the custodian of the records must record all inspections and notify the officer within three days of the inspection, that an inspection took place. The notification must include the name, address, and telephone number of the person making the inspection; for whom the inspection was made; and the date of the inspection. T.C.A. § 10-7-503(c). It is also important to note that anytime a citizen has the right to inspect, he/she also has the right to receive copies. T.C.A. § 10-7-506(a). So, the same notification procedure set out above must be followed if copies are requested instead of inspection.

T.C.A. § 10-7-504(g)(1) allows the police chief to "segregate" or refuse to release information that could be used to locate or identify any officer working undercover. It also allows the police chief to "segregate" or refuse to release certain personal information about an officer of his or her immediate family when the request is for a professional, business or official purpose. Personal information is defined as the officer's residential address; home and cell phone numbers; place of employment; name, work address, and phone numbers of the officer's immediate family; and the names, locations, and phone numbers of any educational institution or day care center where the officer's spouse or child is enrolled. The police chief must consider the specific circumstances in making the determination. If the police chief decides to withhold personal information, he or she must give specific reasons in writing to the requester within

two business days and must release the redacted file. When the police chief determines there is no reason to keep personal information confidential, he or she must notify the officer and give the officer a reasonable opportunity to oppose release of the information. A request for personal information about a law enforcement officer must include the requester's business address, business phone number, and e-mail address. It also must include the name and contact information for a supervisor for verification. T.C.A. § 10-7-504(g).

The information made confidential by this provision is in addition to the information made confidential by other provisions in the Tennessee Code.

Open Records Counsel

Reference Number: MTAS-428

T.C.A. § 8-4-601 establishes the Office of Open Records Counsel (hereinafter "OORC") in the Comptroller's office to answer questions and provide information to the public and public officials regarding public records. The OORC issues opinions on public records questions and may mediate disputes relative to public records. The OORC established a schedule of reasonable charges that is to serve as guidance to governmental entities on how to charge for copies of public records and public information. The schedule of reasonable charges is found at http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePoliciesGuidelines/20170119ScheduleofReasonableCharges.pdf [1].

Complying with Requests for Copies

Reference Number: MTAS-429

A records custodian may require a request for copies of public records to be made in writing, on a form that complies with T.C.A. § 10-7-503(c), or on a form developed by the Office of Open Records Counsel. If a municipality requires a request for copies to be made in writing, the records custodian must accept the request in person, by mail, through email, if email is used to transact official business, or via an Internet portal, if the municipality maintains an Internet portal that is used to accept public records requests. If a municipality does not require a request for copies to be made in writing, a records custodian must accept the request in person, by mail, fax, or telephone, through email, if email is used to transact official business, or via an Internet portal, if the municipality maintains an Internet portal that is used to accept public records requests. The records custodian may also require any citizen making a request for copies to show government issued photo identification with an address on it or some alternative form of identification that is acceptable to the records custodian, if the requestor does not have government issued photo identification that includes an address.

Additionally, when requests for copies of public records are made, record custodians are required to provide the requestor an estimate of the costs associated with providing the copies. T.C.A. § 10-7-503(A)(7)(C)(ii).

A municipality does not have to create a record that does not exist, but redacting confidential information from a record or electronic database does not constitute creating a new record. A municipality may not avoid its disclosure obligations by contractually delegating its responsibility to a private entity. T.C.A. § 10-7-503.

Fees for Geographic Information System Data

When a request is made for copies of public records that have commercial value, the records require the reproduction of all or a portion of a computer generated map or other similar GIS information and the records were developed with public funds, a municipality may assess the requestor the cost of reproduction of the data and ten percent of the total development costs of the system. An additional ten to twenty percent may be assessed, if approved by the governing body and by the state Information Systems Council. After the total development cost is recovered, fees must be reduced to recover only maintenance costs of the system.

The additional development costs for the GIS data may not be assessed when a request is made by an individual for a non-business use or by the news media for a news gathering purpose. T.C.A. § 10-7-506.

Records Preservation and Destruction

Reference Number: MTAS-431

Preservation and destruction of municipal public records are governed by T.C.A. §§ 10-7-701 and 702. They are defined as "all documents, papers, records, books of account, and minutes of the governing body of any municipal corporation within said county or of any office or department of such municipal corporation within the definition of ‘permanent records,’ ‘essential records,’ and/or ‘records of archival value.’ " T.C.A. § 10-7- 301. T.C.A. § 10-7-702 authorizes the Municipal Technical Advisory Service (MTAS) to publish retention schedules of records for municipal officials.

Electronic Records

T.C.A. §§ 47-10-101, *et seq.*, allow cities to conduct business by electronic means and to determine the extent to which they will send, accept, and rely on electronic records and electronic signatures.

T.C.A. § 47-10-112 provides that electronic records may be retained and have the same status as original records. Electronic records are subject to open records and retention requirements just like other records.

Electronic Mail

A municipality with electronic mail must adopt a written policy addressing any monitoring of e-mail. The policy must include a statement that any form of e-mail may be a public record open to inspection. T.C.A. § 10-7-512.

Disposal of Records

T.C.A. § 10-7-702 allows any municipal governing body to authorize by resolution the disposal, including destruction, of permanent paper records that have been copied to another medium, such as microfilm or CD-ROM, in accordance with T.C.A. § 10-7-121. Other records may be destroyed when the retention period prescribed by the retention schedule used by the municipality has expired.

Municipal Public Records Guide

Reference Number: MTAS-433

The public’s inherent right to inspect government records has officially been recognized by the state of Tennessee for more than 100 years. See *State ex rel. Wellford v. Williams*, 110 Tenn. 549 (Tenn. 1902). This right was statutorily adopted in 1957 by the enactment of the Tennessee Public Records Act (hereinafter “the act”). This law has since been amended by statute and interpreted by case law. From inception, the law in this arena has stressed disclosure wherever possible and struck down any avoidable barrier to public access.

The general rule of the Tennessee Public Records Act is found at T.C.A. § 10-7-503(a)(2)(A) and reads:

All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

Scope and Application

Reference Number: MTAS-434

The Tennessee Public Records Act (hereinafter referred to as the "Act") is a statutory creation of broad scope and application. The legislature has stated that the Act “shall be broadly construed so as to give the fullest possible public access to public records.” T.C.A. § 10-7-505(d). The Act requires that all state, county, and municipal records be open for public inspection during normal business hours unless the records are confidential. The overarching provision of the Act is found at T.C.A. § 10-7-503(a)(2)(A) and reads:

All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal

inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

A: Who is Entitled to Access Public Records?

Pursuant to the Act, only citizens of Tennessee have the statutory right to access requested public records. The term "citizen" is broadly construed, for purposes of the Act. Each municipality's public records request coordinator (hereinafter "PRRC") may, pursuant to the language in the municipality's public records policy, require a requestor making a request to view and/or receive copies of public records to present a valid government-issued photo identification which includes the individual's address. If a requestor does not possess a valid government-issued photo identification that includes an address, the PRRC may accept other forms of identification. As long as a requestor can produce a valid government-issued photo identification that includes a Tennessee address or some other acceptable identification, the requestor must be provided access to requested records that are not otherwise confidential. *Friedmann v. Marshall County, TN*, 471 S.W. 3d 427 (Tenn. Ct. App. 2015). This is true even if the requestor is incarcerated or has a felonious criminal record. *Cole v. Campbell*, 968 S.W. 2d 274 (Tenn. 1998).

While only citizens of Tennessee have the statutory right to access requested public records, municipalities are not statutorily required to deny access to individuals who are not citizens of Tennessee. Each municipality's public records policy should address who has the right to access municipal records.

Also, municipalities may not deny access to public records based upon the requestor's use or intended use of the records. Except in very limited circumstances, a requestor cannot be required to provide an explanation of his or her intended use of the records and a PRRC should not inquire into a requestor's purpose for requesting the records. Questioning could be interpreted as an attempt to discourage requestors from requesting access to records that they are legally entitled to access.

B. What Materials are Covered by the Act?

Almost every record created, maintained, or received by a municipal government is covered by the Act.

The Act defines "public record" as:

…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).

Hence, to determine whether a document is a public record, it must first be determined if the document was made or received in connection with the transaction of official business by any governmental agency. This determination should be made by considering the totality of circumstances.

It is important to note that just because a record is covered by the Act, it is not necessarily open to public inspection. Many records covered are confidential and not accessible to the public.

C. Records of Nongovernmental and Quasi-governmental Bodies

The courts in Tennessee have held that some nongovernmental and quasi-governmental entities, as well as the boards of these bodies, are subject to the Act. To determine if the body is subject, the courts in Tennessee use the "functional equivalency" test analysis. *Memphis Publishing Co. v. Cherokee Child & Family Services*, 87 S.W. 3d. 67 (Tenn. 2002). If the body is acting as the functional equivalent of government, its records are covered by the Act. Here, too, one must consider the totality of circumstances; however, the four (4) factors that the courts have expressly set out as part of the functional equivalency analysis are:

1. Whether the entity is performing a traditional governmental function;

2. The level of governmental funding;
3. The extent of governmental involvement or control; and
4. Whether the entity was created by the government.

Nongovernmental entities found to be covered by the Act include a sports authority, Op. Tenn. Atty. Gen. No. 96-011 (Feb 6, 1996); sublessees of municipally owned property, *Creative Restaurants Inc. v. Memphis*, 795 S.W. 2d. 672 (Tenn. Ct. App. 1990); and a private prison corporation contracted with the State to house inmates, *Friedmann v. Corrections Corporation of America*, 310 S.W. 3d 366 (Tenn. Ct. App. 2009).

D. Documents in Electronic and Other Non-paper Formats

As the quantity of records produced by municipalities expands, the use of technology becomes increasingly necessary to process and store the records. As this technology is implemented into the public sphere, municipalities must ensure that electronic storage does not fetter public access.

The legislative language defining what records are accessible to the public is intentionally broad. Electronic records are subject to public records and retention requirements just like all other records. The language of T.C.A. § 10-7-121 provides that electronically stored records must, like their paper counterparts, be made available for public inspection. This, coupled with case law, solidifies the notion that regardless of format, public records are accessible to the public during municipal business hours.

The Tennessee Supreme Court addressed the issue of access to electronically maintained records and information in *The Tennessean v. Electric Power Board of Nashville*, 979 S.W. 2d 297 (Tenn. 1998). In that case, specific categories of electronically stored information were requested. In order for the requested information to be provided to the requestor, a program had to be created to extract the information. The Court held that the information was public information and the governmental entity was required to create a program or have a program created to extract the requested information.

The court also addressed electronically stored records and information in *Lance v. York*, 359 S.W. 3d 197 (Tenn. Ct. App. 2011). While there is no language in the Act that explicitly states that a requestor has the right to choose the format in which a requested record is produced, the court in *York* did state that when records are maintained in electronic format and are requested in that format, the records should be provided electronically. *Id*. at 203.

Email communications, voicemails and text messages that are sent or received as part of municipal business are also subject to the Act, whether sent or received on personal equipment or equipment owned by a municipality. As is the case with all other municipal records, municipal employees and officials are required to retain electronic records based upon the content of the records. As such, employees and officials should be familiar with the municipality's adopted retention policy to determine what, if any emails, text messages and voicemails are required to be retained.

Municipal Records Categories

Reference Number: MTAS-435

Click on the topics listed below in this section for more information

Business and Financial Records

Reference Number: MTAS-436

There are a number of provisions within the Tennessee Code that make certain business and financial records confidential. Some of these exceptions include:

- T.C.A. § 6-54-142 makes any contract or agreement that obligates public funds as part of a municipality's economic and community development program to assist new and existing businesses and industries, together with all supporting documentation, accessible to the public as of the date the contract or agreement is made available to the members of the governing body, but not before that time. Requires the governing body to publicly disclose the proposed contract or agreement in a manner that will fairly inform the public of the proposed contract or agreement before the vote. Requires trade secrets received to be maintained as confidential. Also requires marketing information and capital plans that are provided with the understanding that they are confidential to be maintained as such until the provider of the information no longer requires the information to be maintained as confidential.
- T.C.A. § 10-7-504(a)(19) makes credit card numbers and related PIN numbers or authorizations codes in the possession of a municipality confidential.
- T.C.A. § 10-7-504(a)(20) makes the "private records" of consumers maintained by a municipal utility confidential. Private records is defined to include "credit card number, social security number, tax identification number, financial institution account number, burglar alarm codes, security codes, access codes, and consumer-specific energy and water usage data except for aggregate monthly billing information."
- T.C.A. § 10-7-504(a)(22) makes the "audit working papers" of the Comptroller's office and municipal internal audit staff confidential. Audit working papers is defined to include, "auditee records, intra-agency and interagency communications, draft reports, schedules, notes, memoranda and all other records relating to an audit or investigation."
- T.C.A. § 67-4-722 provides that only the name and address of any current or former owner of a business, as the information appears on any business license or application, is accessible to the public.
- T.C.A. § 67-1-1702 provides that any tax return filed or submitted with the Commissioner of Revenue or tax information or tax administration information received by, recorded by, prepared by, furnished to, or collected by the Commissioner.

Election and Voter Registration Records

Reference Number: MTAS-437

Generally, election and permanent voter registration records are open to public inspection. The Tennessee Court of Appeals held, in *Chattanooga Publishing Co. v. Hamilton Co. Election Comm'n*, No. E2003-00076-COA-R3-CV, 2003 WL 22469808, (Tenn. Ct. of App. Oct. 31, 2003), that election records are accessible to the public, unless covered by a confidentiality provision, even when they become part of a TBI investigation, if they were requested prior to the investigation.

There are, however, a few exceptions in State law that make specific types of election records confidential. T.C.A. § 2-11-202(a)(5) protects reports generated as the result of an investigation into potential election law violations. Additionally, Article IV, Section 4 of the Tennessee Constitution provides that all elections, except those made by the General Assembly, "shall be by ballot". The Tennessee Supreme Court, in *Mooney v. Phillips*, 118 S.W. 2d 224, 226, (Tenn. 1938) stated, "the prime objective of constitutional provisions that voting shall be by ballot is to insure secrecy to the voter in expressing his choice as between candidates." Based upon this language, the manner in which a registered voter votes in an election is also confidential.

Personnel Records

Reference Number: MTAS-438

Personnel records clearly fall under the Act's definition of public record and are thus accessible to the public. Salary information, disciplinary records, and employment applications are all open for public inspection, subject to any required redaction. Other personal information such as Social Security numbers and bank account and routing numbers, medical records, and driver's license information is confidential and should never be released. Almost every personnel file contains confidential information. This is why original personnel records should never be released. Instead, even where a requestor only

requests inspection, a copy of the requested records should be made, and all confidential information should be redacted before inspection occurs.

The following is a non-exhaustive list of provisions that make certain records and information included as part of an employee's personnel record confidential:

- T.C.A. § 10-7-504(a)(13) makes all records and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, municipal correctional officers, dispatchers, EMTs, EMT-Ps, and firefighters, both volunteer and professional, confidential.
- T.C.A. § 10-7-504(f) makes the following records maintained by a municipality in its capacity as an employer confidential, and only accessible in limited circumstances:

(A) Home telephone and personal cell phone numbers;
(B) Bank account and individual health savings account, retirement account and pension account information; provided, that nothing shall limit access to financial records of a governmental employer that show the amounts and sources of contributions to the accounts or the amount of pension or retirement benefits provided to the employee or former employee by the governmental employer;
(C) Social security number;
(D)(i) Residential information, including the street address, city, state and zip code, for any state employee; and
(ii) Residential street address for any county, municipal or other public employee;
(E) Driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job;
(F) The information listed in subdivisions (f)(1)(A)--(E) of immediate family members, whether or not the immediate family member resides with the employee, or household members;
(G) Emergency contact information, except for that information open to public inspection in accordance with subdivision (f)(1)(D)(ii); and
(H) Personal, nongovernment issued, email address.

- T.C.A. § 10-7-504(d) makes the records related to any employee's identity, diagnosis, treatment or referral for treatment maintained by a municipality's employee assistance program (EAP) confidential.
- T.C.A. § 50-9-109 makes drug and alcohol testing information received by an employer participating in the Drug-Free Workplace Program confidential.
- T.C.A. § 10-7-504(a) makes the medical records of any individual receiving medical treatment, in whole or in part, at the expense of the State or the municipality, confidential.

Police Personnel Records

Reference Number: MTAS-439

Some of the most commonly requested personnel records are those of law enforcement officers. The personnel records of law enforcement officers are also less accessible to the public than the personnel files of any other group of public employees.

When a request is made to inspect or receive copies of the personnel records of a law enforcement officer, the municipality must, within three days of the inspection taking place or the copies being provided, notify the officer whose records were requested. The notice must say that copies were provided or an inspection took place and include the name, address, and telephone number of the person making the inspection; for whom the inspection was made; and the date of the inspection. (T.C.A. § 10-7-503(c)).

Additionally, while the personnel records of law enforcement officers are subject to the exception in T.C.A. § 10-7-504(f) that covers all public employees, the records are also subject to the exception found in T.C.A. § 10-7-504(g) that is specific to law enforcement officers. T.C.A. § 10-7-504(g)(1)(A) allows the police chief to "segregate" information about any officer working undercover and maintain as confidential "personal information" about any officer and his or her immediate family, when there is a reason not to disclose the personal information. Personal information is defined to include, "the officer's residential address, home and personal cellular telephone numbers; place of employment; name, work

address and telephone numbers of the officer's immediate family; name, location, and telephone number of any educational institution or daycare provider where the officer's spouse or child is enrolled." T.C.A. § 10-7-504 (g)(1)(A)(ii) requires the chief or the chief's designee to make a determination as to the accessibility of personal information "when a request to inspect includes such personal information *and the request is for a professional, business, or official purpose*" (emphasis added). However, under Tennessee law, a requestor does not have to state his or her purpose for requesting records. As such, municipalities should have the police chief make the determination *every time* a request is made for a law enforcement officer's personnel records, if the records contain personal information. The police chief should decide, what, if any, personal information should be redacted prior to inspection or copying of the records.

If the police chief decides to withhold any information, he or she must give specific justification in writing to the requestor within two (2) days and release the redacted records. If the police chief decides there is no justification for keeping the personal information confidential, the officer must be notified and given reasonable opportunity to oppose the release. When the request is from a business entity, it must also include the name and contact information for a supervisor for verification.

Law Enforcement Records

Reference Number: MTAS-440

While law enforcement records are generally open to public inspection, exceptions have been enacted to safeguard certain law enforcement records. Some of the exceptions include:

- Tenn. R. Crim. P. 16(a)(2) which provides that all records related to an ongoing criminal investigation or prosecution may be maintained as confidential until the conclusion of the criminal action. *Tennessean v. Metropolitan Government of Nashville*, 485 S.W. 3d 857 (Tenn. 2016) and *Schneider v. City of Jackson*, 226 S.W. 3d 332 (Tenn. 2007).
- T.C.A. § 10-7-504(t) provides that when a minor is the victim of a criminal offense, the minor's name, unless a parent or guardian waives confidentiality of the name, home, work and electronic mail address, telephone numbers, Social Security number, any photo or video depiction of the minor, and whether the defendant is related to the minor, unless the relationship is an essential element of the offense, is confidential.
- T.C.A. § 10-7-504(u) makes the recordings from body-worn cameras that capture minors, when taken inside of a school that serves any grades from K-12, the inside of a facility licensed under Title 33 or Title 68, or the interior of a private residence that is not being investigated as part of a crime scene confidential.
- T.C.A. § 37-1-154 makes the law enforcement records related to a juvenile whose case will be prosecuted in juvenile court confidential.

School and University Records

Reference Number: MTAS-441

Records of students currently enrolled in public schools, including academic, financial, and medical records, are confidential. However, statistical information not identified with a particular student may be released. Additionally, information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement, and academic degrees awarded may be disclosed. T.C.A. § 10-7-504(a)(4). The Family Educational Rights and Privacy Act (FERPA), found in 20 U.S.C. § 1232 includes similar language.

Safety and Security Records

Reference Number: MTAS-442

- T.C.A. § 10-7-504(a)(15) makes the “identifying information” of any individual who has a valid order of protection or similar protection document confidential when maintained by a utility service provider, if the individual asks that his/her identifying information be maintained as confidential and provides a copy of the order to be kept on file with the utility. Identifying information is defined to include “home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual.” Similar language is found in T.C.A. § 10-7-504(a)(16) for all other governmental entities, except that maintaining identifying information as confidential is discretionary in that provision, instead of mandatory.
- T.C.A. § 10-7-504(a)(17) makes the telephone number, address and any other information that could be used to locate a domestic violence shelter, family safety center, rape crisis center, or human trafficking service provider confidential when the information is maintained by a utility service provider and provides other governmental entities with the discretion to maintain the information as confidential.
- T.C.A. § 10-7-504(a)(21)(A)(i) provides that records that would allow a person to identify areas of structural and operational vulnerability of a utility or would permit unlawful disruption to, or interference with, the services provided by a utility are confidential.
- T.C.A. § 10-7-504(a)(21)(A)(ii) provides that all contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident are confidential.
- T.C.A. § 10-7-504(a)(29) prohibits a municipality from publically disclosing “personally identifying information” about any citizen of Tennessee, unless the citizen consents, disclosure is authorized under federal or state law or disclosure is made to certain financial institutions or consumer reporting agencies under federal law. Use of personally identifying information is permitted by governmental entities when performing official functions and disclosure is permitted to other governmental entities or private individuals contracting with a governmental entity. Personally identifying information is defined to include social security numbers, official state or government issued drivers 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, and unique electronic identification numbers, routing codes or other personal identifying data which enables individuals to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data.
- T.C.A. § 10-7-504(m) makes information and records directly related to the security of a municipal building confidential. This includes information and records about alarm and security systems used at a municipal building, security plans, including security-related contingency planning and emergency response plans, assessments of security vulnerability, information and records that would identify areas of structural or operational vulnerability or permit unlawful disruption to, or interference with, the services provided by the municipality, and surveillance recordings; except that portions of the recordings may be made public when they capture an incident related to public safety or security or criminal activity.

Utility Records

Reference Number: MTAS-1592

A public utility commonly possesses confidential information regarding its customers. This information including, credit card numbers, Social Security numbers, account numbers, security codes, and other identifying information in the hands of a utility must be redacted prior to the release of any public record. Furthermore, consumer-specific energy and water usage data is confidential, except aggregate monthly

billing information is open to public inspection. Thus, a customer's monthly usage is open but a breakdown by date and time is not.

When a customer provides the utility with a copy of a valid protection order and requests that his/her identifying information be maintained as confidential, all identifying information for the customer in the possession of a private or public utility service provider that could be used to locate the customer is to be maintained as confidential and is not open to the public.

Records of a utility that would identify areas of vulnerability or allow disruption of utility service are likewise confidential.

Policies and Procedures

Reference Number: MTAS-443

Click on the topics listed below in this section for more information

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-... [2].

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 [1]. 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).

---

[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... [3]

[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.[1]

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.

---

[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.[1]

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 [4].

---

[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 [5]. 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 [6].

Sample Forms, Letters and Policies

Reference Number: MTAS-451

Click on the topics listed below in this section for more information

Establishing Procedures for Inspection of Public Records

Reference Number: MTAS-452

Office of Open Records Counsel Declares Fees for Production of Public Records in the City of Hendersonville Must be Established by Ordinance

In late September the Office of Open Records Counsel (OORC) released an opinion [7] addressing the adoption of a public records policy in the City of Hendersonville. A more recent version [8], updated for clarification, was released on October 14. In the opinion the OORC stated that the city's policy must be adopted by ordinance and that a resolution was inadequate.

To charge a citizen for copies of public records, a city must properly adopt a policy. (1) Hendersonville, like most cities across the state, adopted the OORC's Schedule of Reasonable Charges by resolution. At the time, there was no suggestion that such a policy be adopted by anything other than a resolution. In fact, the MTAS model policy has been in the form of a resolution since its inception.

The stated question in the opinion was whether language in the Mayor-Aldermanic general law charter requiring an ordinance to establish fees for "copying and certification" is applicable to the adoption of fees for copying public records. (2) The authors of the charter language have indicated that its intent was limited to adopting fees for certified copies. However, when a court is interpreting statutory language and determines that statutory language is clear and unambiguous, the court simply applies its plain meaning. The OORC opinion concludes that the plain language of the provision is clear.

The opinion could have ended with only a finding that the Hendersonville charter requires an ordinance. However, the opinion does not stop there. Rather, the OORC also discusses ordinance adoption versus resolution adoption generally based on a 1982 Tennessee Attorney General Opinion that states the use of a resolution is appropriate only for acts that are "ministerial" and "temporary." (3) Relying on this standard, the OORC suggests that in Hendersonville, the act of adopting fees, "was not intended to be ministerial in nature nor was it meant to be temporary…." The OORC opinion's concluding footnote attempts to limit its applicability to, "the question presented that is specific to the City's charter…." Regardless, the act of fee adoption is universal among cities, as is the question of whether a resolution or ordinance is necessary.

While an opinion of the OORC is not legally binding, it does carry persuasive authority. Furthermore, compliance with OORC policies and guidelines affords a city some safe-harbor protections in the event of a legal challenge. (4) A general law city manager-commission or mayor-aldermanic charter city wishing to comply with the holdings of the OORC opinion must adopt any charges related to the

production of public records by ordinance. Other cities are encouraged, by the OORC, “to review the process by which fees for copies was established to ensure compliance with all applicable charter provisions.”

---

(1) T. C. A. § 10-7-503

(2) The Mayor-Aldermanic general law charter, at T. C. A. § 6-4-204(b), reads “(b) Fees for copying and certification shall be charged as established by ordinance.” The City Manager-Commission general law charter, at T. C. A. § 6-21-405 and some private act charters contain similar language.

(3) Tenn. Att’y. Gen. Op. 82-286 (June 3, 1982).

(4) T.C.A. § 8-4-604.

Ordinance Establishing Procedures for Inspection of Public Records

Reference Number: MTAS-1927

Click on the link below to download the ordinance.

Schedule for Charges for Copies of Public Records

Reference Number: MTAS-453

Section 6 of Public Chapter 1179, Acts of 2008 ("Public Chapter 1179") adds T.C.A. Section 8-4-604(a)(1) which requires the Office of Open Records Counsel ("OORC") to establish a schedule of reasonable charges ("Schedule of Reasonable Charges") which may be used as a guideline in establishing charges or fees, if any, to charge a citizen requesting copies of public records under the Tennessee Public Records Act (T.C.A. Sections 10-7-503, *et seq.*)("TPRA"). The Schedule of Reasonable Charges has a development date of October 1, 2008. Notification of the development was given to the Tennessee Code Commission on October 31, 2008. This Schedule of Reasonable Charges will be reviewed at least annually by the OORC.The TPRA grants Tennessee citizens the right to request a copy of a public record to which access is granted under state law. Public Chapter 1179 adds T.C.A. Section 10-7-503(a)(7)(A) which expressly prohibits a records custodian from charging a fee for inspection under the TPRA unless otherwise required by law. However, the TPRA in T.C.A. Section 10-7-506 does permit records custodians to charge for copies or duplication pursuant to properly adopted reasonable rules.

This Schedule of Reasonable Charges should not be interpreted as requiring a records custodian to impose charges for copies or duplication of public records. If a records custodian determines to charge for copies or duplication of public records, such determination and schedule of charges must be pursuant to a properly adopted rule and evidenced by a written policy authorized by the governmental entity’s governing authority. Application of an adopted schedule of charges shall not be arbitrary. Additionally, excessive fees and other rules shall not be used to hinder access to nonexempt, public records. A records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity’s properly adopted written policy. Pursuant to Tennessee case law, a records custodian may also require payment for the requested copies or duplication prior to the production of the copies or duplication.

Copy Charges

- A records custodian may assess a charge of 15 cents per page for each standard 8 ½ x11 or 8 ½ x14 black and white copy produced. A records custodian may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies.
- If a public record is maintained in color, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy. If the requestor then requests a color copy, a records custodian may assess a charge of 50 cents per page for each 8 ½ x11 or 8 ½ x14 color copy produced.

- If a records custodian's actual costs are higher than those reflected above or if the requested records are being produced on a medium other than 8 ½ x11 or 8 ½ x14 2 paper, the records custodian may develop its own charges. The records custodian must establish a schedule of charges documenting "actual cost" and state the calculation and reasoning for its charges in a properly adopted policy. A records custodian may charge less than those charges reflected above. Charges greater than 15 cents for black and white, and 50 cents for color, can be assessed or collected only with documented analysis of the fact that the higher charges actually represent such governmental entity's cost of producing such material; unless there exists another basis in law for such charges.
- The TPRA does not distinguish requests for inspection of records based on intended use, be it for research, personal, or commercial purposes. Likewise, this Schedule of Reasonable Charges does not make a distinction in the charges assessed an individual requesting records under the TPRA for various purposes. Other statutory provisions, such as T.C.A. Section 10-7-506(c), enumerate fees that may be assessed when specific documents are requested for a specific use. Any distinctions made, or waiver of charges permitted, must be expressly permitted in the adopted policy.

Additional Production Charges

- When assessing fee for items covered under the "Additional Production Charges" section, a records custodian shall utilize the most economical and efficient method of producing the requested records.
- Delivery of copies of records to a requestor is anticipated to be by hand delivery when the requestor returns to the custodian's office to retrieve the requested records. If the requestor chooses not to return to the records custodian's office to retrieve the copies, the records custodian may deliver the copies through means of the United States Postal Service and the cost incurred in delivering the copies may be assessed in addition to any other permitted charge. It is within the discretion of a records custodian to deliver copies of records through other means, including electronically, and to assess the costs related to such delivery.
- If a records custodian utilizes an outside vendor to produce copies of requested records because the custodian is legitimately unable to produce the copies in his/her office, the cost assessed by the vendor to the governmental entity may be recovered from the requestor.
- If the records custodian is assessed a charge to retrieve requested records from archives or any other entity having possession of requested records, the records custodian may assess the requestor the cost assessed to the governmental entity for retrieval of the records.

Labor Charges

- "Labor" is defined as the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.
- "Labor threshold" is defined as the labor of the employee(s) reasonably necessary to produce requested material for the first hour incurred by the records custodian in producing the material. A records custodian is not required to charge for labor or may adopt a labor threshold higher than the one reflected above.
- A records custodian is permitted to charge the hourly wage of the employee(s) reasonably necessary to produce the requested records above the "labor threshold." The hourly wage is based upon the base salary of the employee(s) and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee’s annual salary by the required hours to be worked per year. For example, an employee who is expected to work a 37.5 hour work week and receives $39,000 in salary on an annual basis will be deemed to be paid $20 per hour. Again, a records custodian shall utilize the most cost efficient method of producing the requested records.
- In calculating the charge for labor, a records custodian shall determine the number of hours each employee spent producing a request. The records custodian shall then subtract the one (1) hour threshold from the number of hours the highest paid employee(s) spent producing the request. The records custodian will then multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage. Finally, the records custodian will add together the totals for all the employees involved in the request and that will be the total amount of labor that can be charged.

- Example:The hourly wage of Employee #1 is $15.00. The hourly wage of Employee #2 is $20.00. Employee #1 spends 2 hours on a request. Employee #2 spends 2 hours on the same request. Because employee # 2 is the highest paid employee, subtract the one hour threshold from the hours employee #2 spent producing the request. Multiply the number of hours each employee is able to charge for producing the request by that employee's hourly wage and then add the amounts together for the total amount of labor that can be charged (i.e. (2x15)+(1x20)= $50.00). For this request, $50.00 could be assessed for labor.

Questions regarding this Schedule of Reasonable Charges should be addressed to the OORC.

Office of Open Records Counsel
505 Deaderick Street, Suite 1700
James K. Polk Building
Nashville, Tennessee 37243

(615) 401-7891, Fax (615) 741-1551 Toll free number: 1-866-831-3750
Email address: open.records@cot.tn.gov [9]

Revised January 2013

Records Request Denial Letter

Reference Number: MTAS-454

RECORDS REQUEST DENIAL LETTER

(Insert Agency Name and Address)

(Insert Date)

Dear Sir or Madam:

On (insert date) this office received your open records request to inspect/receive copies of (insert type of records). After reviewing the request, this office is unable to provide you with either all or part of the requested record(s). The basis for this denial is:

_____ No such record(s) exist.

_____ This office is not the records custodian for the requested record(s).

_____ Additional information is needed to identify the requested record(s):

_____

_____

_____

_____ The following law (citation and brief description why access is denied):

_____ Tenn. Code Ann. Section: _____

_____ Court Rule: _____

_____ Common Law Provision _____

_____ Federal Law (HIPAA, FERPA, etc.) _____

If you have any additional questions, please contact (insert contact Person and phone number).

Sincerely,

(Record Custodian's signature and title with contact information)

Guidelines for Responding to Requests for Public Records

Reference Number: MTAS-457

In Tenn. Code Ann. Section 10-7-505(d), the Tennessee General Assembly declares that the Tennessee Public Records Act (hereinafter "TPRA") "shall be broadly construed so as to give the fullest possible access to public records." Courts in Tennessee have opined that unless there is a clear exception provided in law, all records of a governmental entity are to be open to citizens for inspection and/or copying. However, these Courts have also acknowledged the ability of records custodians to adopt reasonable rules governing the manner in which records request are to be made and fulfilled.

In an effort to provide records custodians with a resource that can be utilized when responding to public records request made pursuant to the TPRA, the Office of Open Records Counsel (hereinafter "OORC") in conjunction with the Advisory Committee on Open Government (hereinafter "ACOG") has developed "Best Practices Guidelines for Records Custodians Responding to Requests for Public Records." Records custodians must follow the provisions of the TPRA. The guidelines serve as a resource for records custodians, but records custodians are not required to adhere to the guidelines. However, a Court may consider these guidelines in determining whether action by a records custodian is willful [Tenn. Code Ann. Section 10-7-505(g)]. These guidelines will be reviewed at least annually by the OORC.

See https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/BestPractices_1-20-17.pdf [10]

Definitions:
Records custodian: the office, official or employee lawfully responsible for the direct custody and care of a public record and is not necessarily the original preparer or producer of the record. A governmental entity may have more than one records custodian.

Public records: defined in Tenn. Code Ann. Section 10-7-503(a)(1): As used in this part and Title 8, Chapter 4, Part 6, "public record or records" or "state record or records" means 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.

Redacted record: a public record otherwise open for public inspection from which protected information has been removed or made obscured prior to release or inspection.

Requestor: a Tennessee citizen requesting access to or a copy of a public record.

Governmental entity or agency: this includes but is not limited to the state, any political subdivision, agency, institution, county, municipality, city or sub-entity. Note, certain associations, non-profits, and private entities are also subject to the TPRA.

Best Practices Guidelines (2013):
1. To the extent possible, a governmental entity should have a written public records policy properly adopted by the appropriate governing authority. The policy should be applied consistently throughout the various offices, departments, or divisions within a governmental entity; however, when a particular office, department or division has a need for a policy that is distinct from that of the entire governmental entity, a separate policy should be adopted. The policy should include:

a. the process for making requests to inspect public records and/or to receive copies of public records (including whether government issued photo ID's are required and whether written requests for copies are required);

b. the process for responding to requests (including the use of required forms); and

c. whether and when fees will be charged for copies of public records (including establishment of charges pursuant to the Schedule of Reasonable Charges).

The policy should balance the governmental entity's need to function efficiently and to maintain the integrity of records with the public's right to access records pursuant to the TPRA.

2. Whenever possible, one person within each governmental office, department, or division should be designated as the public records request coordinator. This person will ensure that requests made pursuant to the TPRA are routed to the appropriate records custodian and that requests are fulfilled in a timely manner. It is suggested that this individual be knowledgeable about the TPRA, as well as the records management system being utilized and any written public records policy that has been adopted.

3. A records custodian should make requested records available as promptly as possible in accordance with Tenn. Code Ann. Section 10-7-503.

4. A records custodian should strive to respond to all records requests in the most economical and efficient manner possible. For example, when labor charges are going to be assessed, qualified staff persons with the lowest hourly wage should be utilized to produce the requested records.

5. To the extent possible, when records are maintained electronically, records custodians should produce records request electronically. Records should be produced electronically whenever feasible as a means of utilizing the most "economical and efficient method of producing" records.

6. If a governmental entity maintains a website, records custodians should post as many records, and particularly records such as agendas and minutes from meetings, on the website whenever it is possible to do so. A records custodian Best Practices may direct a requestor to the website for requested records. However, a requestor may still exercise the right to inspect the public record during regular business hours in the office of the records custodian and/or to receive a copy or duplicate made by the records custodian.

7. Whenever possible and especially in situations where redaction is necessary, once a records request has been completed and there is a reasonable expectation that the same records will be requested in the future, a records custodian should maintain a copy of the redacted records so that any future request can be easily located and copied.

8. When a records custodian receives a records request for a large volume of records and reasonably determines that production of the records should be segmented, the requestor should be notified that the production of the records will be insegments and that a records production schedule will be provided as expeditiously as possible.

9. If a records request is made to a records custodian who is not the appropriate custodian of the requested records, the records custodian when denying the request should make the requestor aware of the appropriate records custodian (if known) whenever possible. However, it should be noted that the statutory time frame for responding to the request is not triggered until the request is made by the requestor to the appropriate records custodian.

10. If a records custodian has provided what is thought to be all records responsive to a public records request and then discovers that records were omitted, the requestor should be made aware of the omission and the records produced as quickly as practicable.

11. Whenever a record is redacted, a records custodian should provide the requestor with the basis for redaction when the redacted records are provided to the requestor. A records custodian is not required however to produce a privilege log.

12. Whenever possible, a records custodian should have a designated supervised space available during normal business hours where requestors can inspect public records.

13. To the extent a records custodian does not have the ability to make copies or duplicates of a requested record, a records custodian should notify the requestor of such and identify the vendor that will be used to produce the requested records, as well as the estimated cost. The inability of a records custodian to internally produce a duplicate or copy of a record does not eliminate the obligation to provide a duplicate or copy if requested.

14. When a records custodian is unclear as to the records that are being requested, it is suggested that the custodian contact the requestor in an effort to clarify and/or Best Practices Guidelines narrow the request. If, after attempting to clarify the request, the records custodian is still unable to determine what is being requested, the request should be denied based upon the requestor's failure to sufficiently identify the requested records in accordance with the requirements of the TPRA.

15. For purposes of developing a policy that authorizes the assessment of fees, including charging for labor, it is suggested that a governmental entity consider the following:

a. whether waivers or reduction of charges will be permitted, based on:

(1) number of copies or minimum charge amount; or

(2) type of record: whether the requested document is a document that is produced on a regular basis, requested on a regular basis and is easily accessible (i.e. records that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held in the previous calendar month); and

b. whether the administrative cost of documenting fees and processing the payment (including internal controls) exceeds the cost of copying and labor.

16. Whenever possible, a records custodian should require and receive either full or partial payment of the estimated charges prior to production of copies of the requested records.

17. If a records custodian is going to segment the production of requested records, the requirement for payment prior to the production of the records also should be segmented.

18. When a governmental entity has the ability to accept multiple forms of payments, that could include cash, checks, credit or debit cards, and money orders, it is suggested that the governmental entity permit such forms of payment for copies of public records.

19. A records custodian must provide requestors with an estimate of the charges to be assessed for copies and labor. Whenever possible, a records custodian should provide the estimate prior to producing the requested copies of records and should itemize the estimate.

20. State records custodians who have questions about how to respond to a records request should contact the Office of Attorney General and Reporter. All other records custodians who have questions about how to respond to a records request should contact the Office of Open Records Counsel.

Revised January 2013

Policy for Frequent and Multiple Requests for Public Records

Reference Number: MTAS-456

Reasonable Charges a Records Custodian May Charge for Frequent and Multiple Requests for Public Records

NOTE: The Office of Open Records Counsel reviews this schedule annually.
See https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/ScheduleofReasonableCharges.pdf [11]

Section 6 of Public Chapter 1179, Acts of 2008 ("Public Chapter 1179") adds T.C.A. Section 8-4-604(a)(2) which requires the Office of Open Records Counsel ("OORC") to establish a separate policy related to reasonable charges which a records custodian may charge for frequent and multiple requests for copies of public records under the Tennessee Public Records Act (T.C.A. Sections 10-7-503 *et seq.*)("TPRA"). This Policy will be reviewed at least annually by the OORC.

This Policy is to be used in connection with the Schedule of Reasonable Charges dated October 1, 2008. This Policy should not be interpreted as requiring a records custodian to impose charges for copies or duplication of public records. However, if the records custodian does determine to impose charges for copies or duplication, this Policy permits the records custodian to calculate labor charges differently for frequent and multiple requests.

If a records custodian determines to charge for frequent and multiple requests for copies or duplication of public records in accordance with this Policy, such determination and charges must be pursuant to a properly adopted rule and evidenced by a written policy authorized by the governmental entity's

governing authority. The authority shall specify the level of aggregation (whether by agency, entity, department, office or otherwise); however, such level of aggregation, as well as excessive fees and other rules shall not be used to hinder access to non-exempt public records. A records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity's properly adopted written policy.

The Schedule of Reasonable Charges provides that a records custodian may assess a requestor a fee for any labor reasonably necessary to produce copies of requested records after the records custodian spends one (1) hour (or if the records custodian establishes a threshold higher than one (1) hours, any increment of time over that higher threshold) producing the requested records. For purposes of this policy, during each calendar month records custodians in any department, division, agency, bureau, board, commission or other separate unit of state, county, or municipal government as authorized by the appropriate governing authority may aggregate the number of requests for copies made per requestor. When the total number of requests made by a requestor within a calendar month exceeds four, a records custodian may begin to charge the requestor a fee for any and all labor that is reasonably necessary to produce the copies of the requested records after informing the requestor that the aggregation limit has been met. Request for items that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held in the previous calendar month, are exempt from this policy. A records custodian may adopt a labor threshold higher than one (1) hour or a threshold higher than four (4) requests per calendar month for purposes of aggregation. Disputes as to aggregation shall be brought to the Office of Open Records Counsel.

Additionally, a records custodian may aggregate the total number of public records requests made by a requestor and by any other individual, if the records custodian reasonably believes the requestor to be acting in concert with or as the agent of another person, entity or organization. A records custodian choosing to aggregate requests by multiple requestors must inform the requestors of the determination to aggregate and that they have the right to appeal the decision to aggregate to the Office of Open Records Counsel. When aggregating the labor of multiple requestors, the records custodian must file a Notice of Aggregation of Multiple Requestors with the Office of Open Records Counsel. This form is available on the Office's website.

Policy for Electronic Mail

Reference Number: MTAS-2106

Tennessee governments — including cities — that operate or maintain an electronic-mail (e-mail) system must adopt a written policy about monitoring e-mail communications. Information related to the written policy can be accessed on the MORe page Written Email Policy Required [12] and a sample acknowledgement for users of the email system can be accessed at the MORe page Sample Acknowledgement Email Policy [13].

Links:
[1] http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePoliciesGuidelines/20170119ScheduleofReasonableCharges.pdf
[2] https://www.mtas.tennessee.edu/knowledgebase/sample-resolution-adopting-public-records-policy
[3] http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePoliciesGuidelines/20170119SafeHarbor.pdf
[4] http://www.mtas.tennessee.edu/reference/records-management-municipal-governments
[5] https://apps.cot.tn.gov/PublicRecordsExceptions
[6] https://www.comptroller.tn.gov/openrecords/forms.asp
[7] http://www.comptroller.tn.gov/openrecords/pdf/20131015ResolutionVOrdinance13_01.pdf
[8] http://www.comptroller.tn.gov/openrecords/pdf/20131015ResolutionVOrdinanceAmendedClean13_02.pdf
[9] mailto:open.records@cot.tn.gov
[10] https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/BestPractices_1-20-17.pdf

[11] https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/ScheduleofReasonableCharges.pdf
[12] https://www.mtas.tennessee.edu/reference/written-email-policy-required
[13] https://www.mtas.tennessee.edu/reference/sample-acknowledgement-email-policy