

Sample Forms, Letters and Policies

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://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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Sample Forms, Letters and Policies

Reference Number:
MTAS-451

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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 [1] addressing the adoption of a public records policy in the City of Hendersonville. A more recent version [2], 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. $(2 \times 15) + (1 \times 20) = \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 [3]

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 [4]

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 in segments 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> [5]

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.

Links:

- [1] http://www.comptroller.tn.gov/openrecords/pdf/20131015ResolutionVOrdinance13_01.pdf
- [2] http://www.comptroller.tn.gov/openrecords/pdf/20131015ResolutionVOrdinanceAmendedClean13_02.pdf
- [3] <mailto:open.records@cot.tn.gov>
- [4] https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/BestPractices_1-20-17.pdf
- [5] <https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/ScheduleofReasonableCharges.pdf>

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