



## Tennessee Public Records Statutes

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Dear Reader:

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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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# Table of Contents

Tennessee Public Records Statutes .....	3
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## Tennessee Public Records Statutes

**Reference Number:** MTAS-464

The Tennessee Public Records Act (hereinafter referred to as "TPRA") is found in Title 10, Chapter 7, Part 5 of the T.C.A. The starting point for a discussion of the law in this area is the declaration found in T.C.A. § 10-7-503 that government records are open to public inspection. It reads as follows:

... All state, county and municipal records shall at all times during business hours ... be open for personal inspection by any citizen of this state, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.<sup>[1]</sup>

The TPRA has been construed broadly by both the state attorney general and the Tennessee judiciary.<sup>[2]</sup> The legislature made it clear that its intent in passing this law was to "... give the fullest possible public access to public records," and it instructed the courts to exercise whatever remedies are necessary to ensure that purpose is fulfilled.<sup>[3]</sup> The courts have ruled that a "presumption of openness" exists with government documents.<sup>[4]</sup> That is not to say, however, that public access is totally without limitation.

### ***Who Has the Right to Access Public Records?***

The TPRA provides that records must be open for inspection by any citizen of Tennessee. In keeping with the legislative intent to provide for liberal public access to government records, the Tennessee Supreme Court determined that the word citizen includes convicted felons incarcerated as inmates within the Tennessee prison system.<sup>[5]</sup> Although certain rights are stripped from individuals when they are convicted of a felony (e.g., voting, ability to hold public office), the court concluded that neither the Tennessee Public Records Act nor any other statute prevented a convicted felon from seeking access to public records. Neither should access be denied to anyone else who appears to be a citizen of this state.

The TPRA is not as generous with nonresidents, however. Since the language in the statute grants public access to "any citizen of this state," the Tennessee Attorney General opined that public officials may deny requests for copies of public records based on the lack of state citizenship.<sup>[6]</sup> Since there is no fundamental federal right to access of government records and since the TPRA only requires that access be provided to Tennessee citizens, the attorney general reached the conclusion that it is not a violation of the privileges and immunities clause of the United States Constitution to deny access to people from other states who make requests for Tennessee records. Keep in mind that although the TPRA does not affirmatively require disclosure of public records to noncitizens, neither does it prohibit the release of public records to noncitizens.<sup>[7]</sup> Governmental entities are required to have properly adopted policies in place that address who can access municipal records. These policies should be enforced consistently and reviewed regularly.

### ***How Should Access Be Provided?***

The TPRA states that records shall be open to inspection "during business hours." Additionally, in all cases where a person has the right to inspect public records, he or she also has the right to copies of those records.<sup>[8]</sup> Every effort should be made to provide reasonable accommodation to parties requesting access to records; however, providing this service need not prevent the performance of other duties of the office. A request to see every record of an office and make a photocopy of each of them could bring the entire operation of an office to a halt. For this reason, each governmental entity subject to the Act is required to have a properly adopted policy in place that governs how requestors can access public records and obtain copies or duplicates of the records.<sup>[9]</sup> These regulations should be reasonable and not interfere with the intent of the legislature to provide broad public access to records. The official with custody of the record should strive to balance the right of access to records with his or her responsibility to preserve and protect the records. Regulations should be tailored to accommodate requests in a timely manner while allowing for the continued efficient functioning of the office and for the preservation and security of the records. Regulations that are intended to frustrate the ability of a citizen to access records will likely be found unreasonable and be struck down by the courts.

Be aware that there is a danger of theft, vandalism or damage by negligence inherent in allowing a member of the public access to government records. There is a profitable market for certain historical

manuscripts. Across the country, government records are disappearing from government offices and reappearing for sale in antiques stores, flea markets and specialty shops. To prevent theft or vandalism, someone from your office should supervise the person accessing the records, or, at a minimum, the person accessing the records should be required to examine them in an open area.

The records custodian must promptly make available any public record not exempt from disclosure. If it is not practicable for the record to be made available promptly, the custodian must within seven business days either (1) make the record available, (2) deny the request in writing including the basis for denial, or (3) furnish the requestor with a completed records request response form developed by the Office of Open Records Counsel stating the time necessary to produce the record or information.

The records custodian may not require that a request to **inspect** public records be made in writing, but the custodian may require a request for a **copy** of a public record to be in writing or on a form provided by the Office of Open Records Counsel in the comptroller's office. The custodian also may require a photo identification of the requestor or other form of identification suitable to the custodian to establish Tennessee residency.

The records custodian may require the requestor to pay the reasonable costs, including certain labor costs of producing and copying public records. The Office of Open Records Counsel has established a recommended schedule of fees for this purpose.

### **Office of Open Records Counsel**

The General Assembly established the Office of Open Records Counsel in the Office of the Comptroller of the Treasury to answer questions and provide information to the public about public records. The Office provides informal opinions, creates forms for records requests and responses, establishes a suggested fee schedule, and mediates disputes about records. Information created by this office is available on its website at <https://www.comptroller.tn.gov/openrecords/> [1].

### **Denial of Access — Liability**

Any citizen of Tennessee who is denied the right to personal inspection of a public record in whole or in part is entitled to petition the court to review the actions that were taken to deny access to the record.<sup>[10]</sup> Petitions may be filed in the chancery court or circuit court for the county where the records are located or in any other court exercising equity jurisdiction in the county.<sup>[11]</sup> Upon the filing of the petition, the court shall, at the request of the petitioning party, issue an order requiring the defendant to appear and show cause why the petitioner should not be granted access to the record. No formal written response to the petition is required. The burden of proof rests on the person having custody of the records to show why public access should not be allowed.<sup>[12]</sup>

If the court determines that the petitioner has a right to inspect the records, the records must be made available unless the defendant timely files for appeal or the court certifies a question with respect to disclosure of the records to an appellate court.<sup>[13]</sup> If a public official is required to disclose records pursuant to these procedures, he or she cannot be held civilly or criminally liable under state law for any damages caused by the release of the information.<sup>[14]</sup> If the court determines that the government entity knowingly and willfully refused to disclose a public record, it may, at the discretion of the judge, assess all reasonable costs involved on obtaining the record, including attorney's fees, against the governmental entity.<sup>[15]</sup> In determining whether denial of access was willful, the court may consider any guidance provided to the records custodian by the Office of Open Records Counsel.

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[1] T.C.A. § 10-7-503.

[2] See generally, *Memphis Publishing Co. v. Holt*, 710 S.W. 2d 513 (Tenn. 1986).

[3] T.C.A. § 10-7-505(d).

[4] *Griffin v. City of Knoxville*, 821 S.W. 2d 921, 924 (Tenn. 1991).

[5] *Cole v. Campbell*, 968 S.W. 2d 274 (Tenn. 1998).

[6] Op. Tenn. Atty Gen. No. 99-067 (March 18, 1999).

[7] Op. Tenn. Atty Gen. No. 99-067 (March 18, 1999).

[8] T.C.A. § 10-7-506(a).

[9] T.C.A. § 10-7-503(g).

[10] T.C.A. § 10-7-505(a).

[11] T.C.A. § 10-7-505(b).

[12] T.C.A. § 10-7-505(c).

[13] T.C.A. § 10-7-505(e).

[14] T.C.A. § 10-7-505(f).

[15] T.C.A. § 10-7-505(g).

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**Links:**

[1] <https://www.comptroller.tn.gov/openrecords>

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