

**GOOD MORNING, SUNSHINE:  
THE TENNESSEE PUBLIC RECORDS ACT**

**Municipal Court Clerk Conference  
April 11, 2025**

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# TRANSPARENCY IN GOVERNMENT

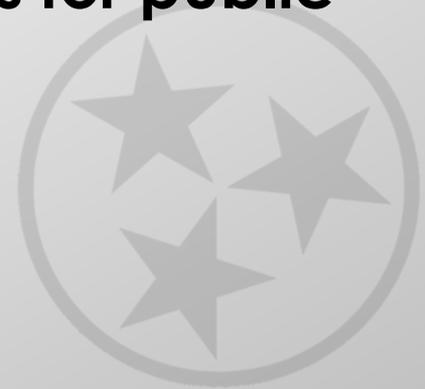
- 🌐 **What we're going to cover:**
  - **Office of Open Records Counsel ("OORC")**
  - **Tennessee Public Records Act ("TPRA")**
  - **Common Exceptions to TPRA**
  - **Tennessee Open Meetings Act ("TOMA")**



# ABOUT THE OORC

## Office of Open Records Counsel

- Created in 2008
- Helps citizens and government officials better understand Tennessee's laws on public records and open meetings.
  - Respond to questions and concerns
  - Educational outreach
  - Develop forms, schedules, and policies for public record requests
  - Post resources online
  - Cannot enforce TOMA or TPRA



# OFFICE OF OPEN RECORDS COUNSEL

## Policies and Guidelines

- 🌟 Best Practices
- 🌟 Model Public Records Policy
- 🌟 Schedule of Reasonable Charges
- 🌟 Charges for Frequent Requests
- 🌟 Safe Harbor Policy
- 🌟 Informal Advisory Opinions
- 🌟 Mediation of Records Disputes
- 🌟 Records Request Form, Records Response Form



# OFFICE OF OPEN RECORDS COUNSEL

## Benefits of Utilizing OORC

- ⊙ Whether a custodian must pay attorney's fees, if a court overturns their denial.
- ⊙ Schedule of Reasonable Charges
  - Charges Presumed Reasonable
- ⊙ Familiarity with Records/Meetings Issues
- ⊙ Neutral Intermediary
- ⊙ We're FREE



# OFFICE OF OPEN RECORDS COUNSEL

## OORC Website

Learn about Public Records



Frequently Asked Questions

OORC to Provide Free Virtual Training



Reports, Policies and Updates

Policies, Guidelines & Forms

Advisory Opinions

Annual Report

About the Office

Open Records News & Updates



Resources

Frequently Asked Questions

Sunshine Laws

Contacts for Public Record Requests

Exceptions to the Tennessee Public Records Act

Records Retention

Advisory Committee on Open Government

Public Records Training



Submit an Inquiry

# TENNESSEE PUBLIC RECORDS ACT

## Symbol of Transparency

“Facilitating access to governmental records promotes public awareness and knowledge of governmental actions and encourages governmental officials and agencies to remain accountable to the citizens of Tennessee.”

- 🌐 *Schneider v. City of Jackson*, 226 S.W.3d 332, 339 (Tenn. 2007).



# TENNESSEE PUBLIC RECORDS ACT

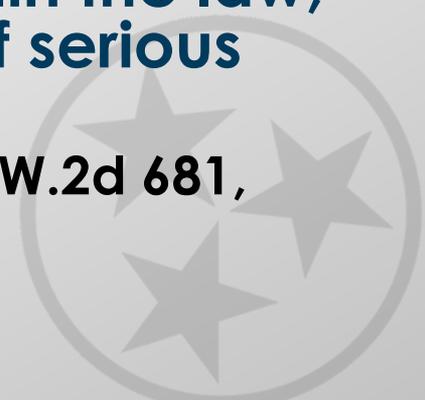
## Tenn. Code Ann. § 10-7-503

- 🇺🇸 All public records
- 🇺🇸 are open to inspection
- 🇺🇸 to any Tennessee citizen,
- 🇺🇸 unless they're not.
  
- 🇺🇸 Creates a presumption of openness!
  - Records are open to Tennessee citizens unless state law provides otherwise



# INTERPRETED BROADLY

- Courts are to interpret the provisions of the TPRA broadly to give the fullest possible public access to public records.
  - Tenn. Code Ann. § 10-7-505(d).
- TPRA expresses a clear legislative mandate favoring disclosure of government records.
  - *State v. Caewood*, 134 S.W.3d 159, 164-5 (Tenn. 2004).
- Unless there is an express exemption within the law, disclosure is required “even in the face of serious countervailing considerations.”
  - *Memphis Publ’g Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994).



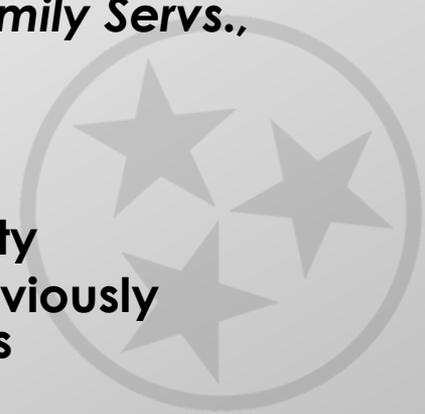
# WHO IS SUBJECT TO THE TPRA?

## Government Entities

- State agencies, counties, municipalities
  - Includes any subdivision, departments, divisions, boards and other government entities created by law.
- Not subject to Freedom of Information Act (“FOIA”)

## “Functional Equivalent”

- “When a private entity’s relationship with the government is so extensive that the entity serves as the functional equivalent of a governmental agency, the accountability created by public oversight should be preserved.”
  - *Memphis Publ’g Co. v. Cherokee Children & Family Servs., Inc.* 87 S.W.3d 67, 70 (Tenn. 2002).
- Based on totality of the circumstances.
  - Level of government funding
  - Government involvement and control over entity
  - Whether entity created by legislative act or previously determined by law to be open to public access
- Burden is on the petitioner



# WHO CAN ACCESS RECORDS?

- Open for personal inspection *by “any citizen of this state.”*
- May require presentation of photo ID that includes the person’s address or require alternative acceptable forms of ID.
  - Driver License
  - Student ID
  - Utility Bill
  - Proof of Property Ownership
- Proof of citizenship is discretionary
- Should be included in Public Records Policy
- Does not include corporations or other artificial entities



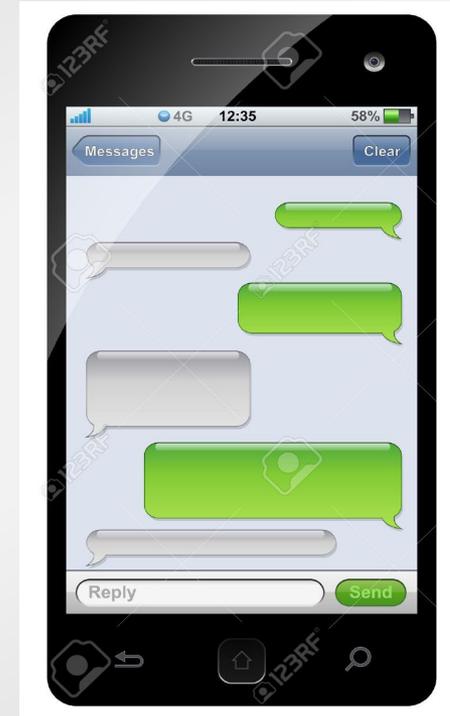
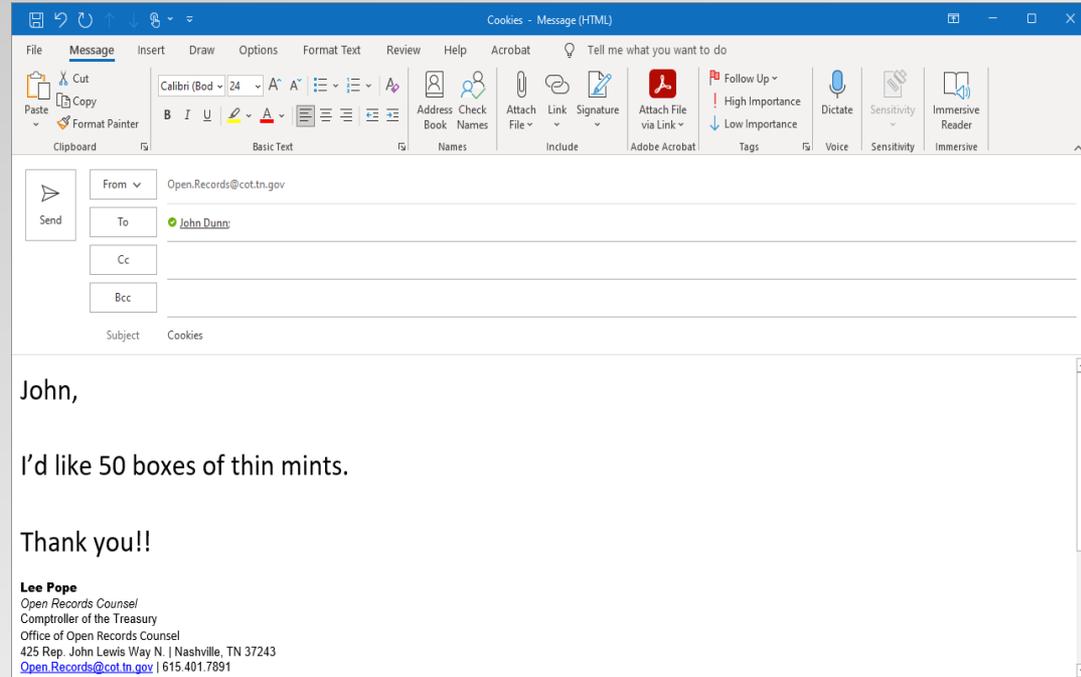
# WHAT IS A “PUBLIC RECORD”?

## Tenn. Code Ann. § 10-7-503(a)(1)(A)

- Made or received pursuant to law or ordinance; or  
In connection with the transaction of official  
business.
- Does not include the actual device or equipment.
- Includes draft records.
- “Public Record” determined by substance of the  
record.
- You don’t have to create new records (sort of).
- Records, not information.



# WHAT IS A "PUBLIC RECORD"?



# TYPES OF PUBLIC RECORDS

## Common “Public Records”

- 🌐 Emails, texts, tweets, FB posts
- 🌐 Video recordings/surveillance
- 🌐 Personnel records/HR Investigations/Applicant Records
- 🌐 Travel/leave information
- 🌐 Meeting agenda and minutes
- 🌐 Contract/bidding documents
- 🌐 Budget records
- 🌐 Financial records



# TYPES OF PUBLIC RECORDS

## Not Public Records

- 🌐 Records that don't exist.
- 🌐 Records that should exist, but don't.
- 🌐 Information.
- 🌐 A custodian is not required to “sort through files to compile information into a new record or to create or recreate a record that does not exist”.\*
- 🌐 \* Sometimes you do though.



# THE NES CASE

**You don't have to create new records, except sometimes you do.**

- 🌐 If the requested information exists electronically, a records custodian is obligated to produce the information requested, provided that the requestor is willing to pay the costs incurred in obtaining the electronic information.
- 🌐 Case likely only applies where information is stored in one database, rather than over several.
- 🌐 *Tennessean v. Electric Power Bd. of Nashville*, 979 S.W.2d 297 (Tenn. 1998).



# EXCEPTIONS TO THE TPRA

## “Unless otherwise provided by state law”

### 🌐 Tenn. Code Ann. § 10-7-504

- 50+ Exceptions; 700+ elsewhere in Tennessee Code

### 🌐 “‘State law’ includes statutes, the Tennessee Constitution, the common law, rules of court, and administrative rules and regulations.”

- *Tennessean v. Metro. Gov’t of Nashville and Davidson Cnty.*, 485 S.W.3d 857, 865-66 (Tenn. 2016), citing *Swift v. Campbell*, 159 S.W.3d 565, 571-72 (Tenn. 2004).

### 🌐 OORC Report on Statutory TPRA Exceptions

- Lists statutory exceptions identified in Tennessee Code



# EXCEPTIONS TO THE TPRA

## Common Exceptions

- TBI Files
- Medical Information – HIPAA
- Student Information – FERPA
- Juvenile Information (in some situations)
- Expunged Records
- Tax information
- Attorney, Physician or Therapist Privileges
- Criminal investigations and prosecutions

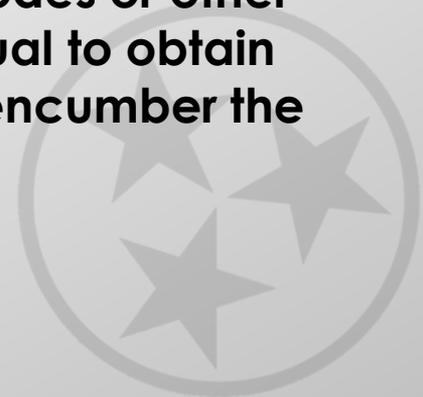


# EXCEPTIONS TO THE TPRA

## “Personally Identifying Information”

### Tenn. Code Ann. § 10-7-504(a)(29)

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



# EXCEPTIONS TO THE TPRA

## Public Employee Personnel Records

⊕ Unless authorized by employee or provided for other governmental purposes, redact:

- Home phone and cell phone numbers;
- Personal, nongovernment issued email addresses;
- Residential street address for non-state employees;
- Bank account information, health savings account, retirement account, and pension account information;
- Social security number;
- Driver license information, except where driving or operating a vehicle is part of the employee's job description;
- Emergency contact information; and
- Above information for immediate family.

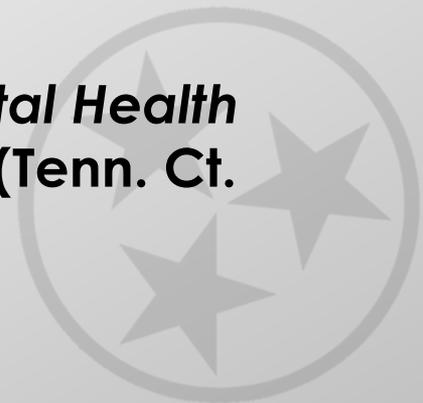
Tenn. Code Ann. § 10-7-504(f)



# EXCEPTIONS TO THE TPRA

## Tenn. R. Crim. P. 16

- ⊙ **Materials relevant to ongoing or pending criminal proceedings are not subject to disclosure.**
  - *Tennessean, et al. v. Metro. Gov't of Nashville and Davidson Cnty., et al.*, 485 S.W.3d 857 (Tenn. 2016)
- ⊙ **Records must be investigatory in nature; ordinary public records do not become confidential due to association with criminal proceeding.**
  - *Scripps Media, Inc. v. Tennessee Dept. of Mental Health and Substance Abuse Serv.*, 2019 WL 3854298 (Tenn. Ct. App., August 16, 2019).

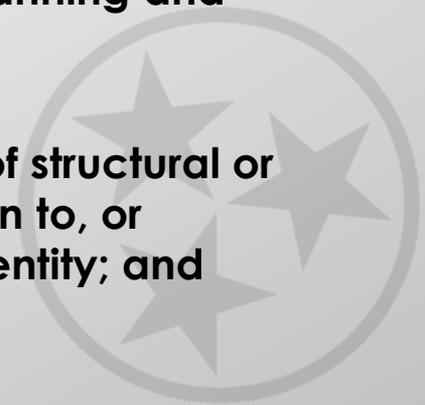


# EXCEPTIONS TO THE TPRA

## Security of Gov't Buildings

### **Tenn. Code Ann. § 10-7-504(m)**

- Information and records that are directly related to the security of any government building shall be maintained as confidential and shall not be open to public inspection.
- Such information and records include:
  - (A) Information and records about alarm and security systems used at the government building, including codes, passwords, wiring diagrams, plans and security procedures and protocols related to the security systems;
  - (B) Security plans, including security-related contingency planning and emergency response plans;
  - (C) Assessments of security vulnerability;
  - (D) Information and records that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and
  - (E) Surveillance recordings.



# PUBLIC RECORDS POLICY

## Tenn. Code Ann. § 10-7-503(g)

**Every Gov't Entity must have a policy that includes:**

- ❁ **Process for making requests, including any required forms;**
- ❁ **Process for responding to requests;**
- ❁ **Statement of fees and billing/payment procedures; and**
- ❁ **Contact information for the Public Records Request Coordinator (“PRRC”).**
- ❁ **OORC Model Policy released January 2017**



# RECEIVING TPRA REQUESTS

## Inspection vs. Copies

- 🌐 **Requests for only inspection:**
  - Cannot require the request to be in writing
  - Cannot assess a charge (even for labor)
  - Can place reasonable restrictions on the inspection
- 🌐 **Requests for copies:**
  - Can require to be in writing or on a form
  - Can charge reasonable costs incurred to produce the requested records



# RECEIVING TPRA REQUESTS

## Tenn. Code Ann. § 10-7-503(a)(7)

- ⊙ Requests for only inspection do not have to be in writing and may be made:
  - In person, telephone, fax, mail, email, or internet portal (if used).
- ⊙ Requests for copies can be required to be in writing or on a form developed by OORC and may be made:
  - In person, mail, email, or internet portal (if used).
- ⊙ Any required forms should be included in policy and must be made readily available to requestors



# RECEIVING TPRA REQUESTS

## Verifying Information

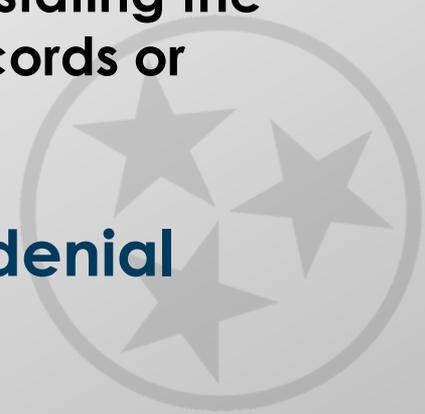
- 🇺🇸 Tennessee Citizenship
- 🇺🇸 What is the requestor looking for?  
Requests must be “sufficiently detailed” to identify what records are requested.
- 🇺🇸 Broad requests vs. insufficiently detailed requests



# RESPONDING TO TPRA REQUESTS

## Tenn. Code Ann. § 10-7-503(a)(2)(B)

- ⊙ Records custodian shall *promptly* make records available
  
- ⊙ If not practicable to make promptly available, must do one of the following within 7 business days:
  - Make the information available;
  - Deny the request in writing with the basis for denial; or
  - Furnish a completed record request response stating the time reasonably necessary to produce the records or information.
  
- ⊙ Failure to respond as indicated above = denial



# RESPONDING TO TPRA REQUESTS

## Grounds for Denying Requests

- ⊙ Not the custodian of the records
- ⊙ Cannot identify responsive records
- ⊙ Records do not exist
- ⊙ Not a Tennessee citizen
- ⊙ Didn't pay for copies/inspect previously requested records
- ⊙ State law makes the records confidential



# CHARGING FOR PUBLIC RECORDS

## OORC Schedule of Reasonable Charges

- 🌐 **Schedule sets forth reasonable charges for copies and labor**
  - Can charge for copies and labor
  - \$.15 per page/\$.50 per page for color
  - Use lowest possible labor
  - One-hour labor threshold
  - Can charge for redaction of copies
  - Can only charge for labor related to providing electronic copies unless physical copies are printed
- 🌐 **Must provide estimate of costs**
- 🌐 **Cannot charge if only inspecting records**



# TPRA PENALTIES

## Tenn. Code Ann. § 10-7-503(a)(7)(A)(vii)

### Failure to Inspect

- 2 or more requests to inspect in 6 months
- Fails to view records within 15 days of being notified that records are available to view
- No TPRA requests for 6 months, unless failure to view was for “good cause.”

### Failure to Pay for Copies

- Government entity provides estimate of costs
- Requestor agrees to pay estimated costs
- Requestor fails to pay for copies after they are produced
- No more TPRA requests until requestor pays costs



# PETITIONING FOR ACCESS

## Tenn. Code Ann. § 10-7-505

### 🇺🇸 Denial Required

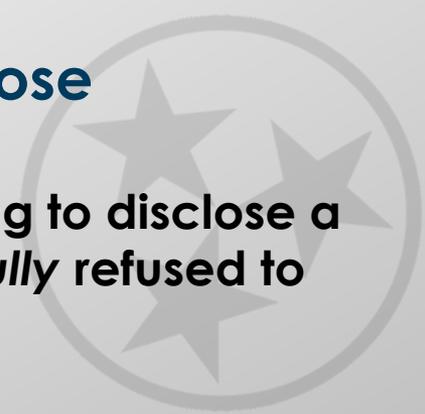
- Failure to respond in accordance with 503 = denial
- Imposition of unreasonable fee = denial

### 🇺🇸 Petition filed in chancery or circuit court

### 🇺🇸 Burden is on governmental entity to prove denial was justified

### 🇺🇸 Court orders access to records and may impose attorney's fees if it finds denial was "willful."

- "[T]he governmental entity, or agent thereof, refusing to disclose a record, knew that such record was public and *willfully* refused to disclose it." Tenn. Code Ann. § 10-7-505(g).



# RECORDS RETENTION

## Municipal Records – MTAS

- Municipal Technical Advisory Service to compile and print a records retention manual for municipalities. Tenn. Code Ann. § 10-7-702
- <http://mtasresource.mtas.tennessee.edu/reference/retention-schedules>

## County Records - CTAS

- The County Technical Assistance Service to compile and print a records retention manual for counties. Tenn. Code Ann. § 10-7-404
- <http://eli.ctas.tennessee.edu/reference/current-retention-schedules>

## State Records – Secretary of State

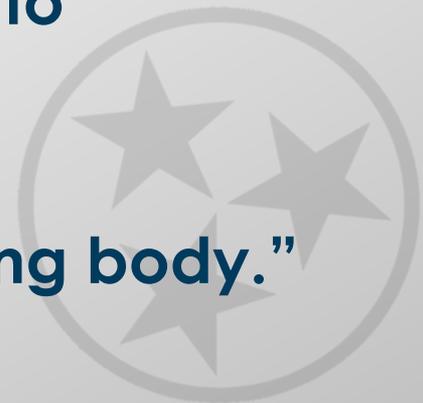
- Division of Records Management directs the disposition of all state records. Tenn. Code Ann. § 10-7-303



# TENNESSEE OPEN MEETINGS ACT

## Tenn. Code Ann. § 8-44-101, *et. seq*

- 🇺🇸 The formation of public policy and decisions is public business and shall not be conducted in secret.
- 🇺🇸 Construed broadly in favor of the public.
- 🇺🇸 Provides the right to attend, and the right to comment.
- 🇺🇸 Applies to all “meetings” of any “governing body.”



# TENNESSEE OPEN MEETINGS ACT

## What is a “Governing Body”?

- ⊙ Members of a public body of 2 or more members with authority to make decisions for or recommendations to a public body on policy or administration.
- ⊙ “Public Body”
  - 1. Origin or authority traced to state, city or county legislative action; and
  - 2. Possess authority to make decisions or recommendations concerning policy or administration.
- ⊙ Includes certain non-profits.
- ⊙ Does not include advisory committees created by a single official



# TENNESSEE OPEN MEETINGS ACT

## What is a “Meeting”?

- ❁ Convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision.
- ❁ “Deliberation” about an issue a quorum would have to vote upon
  - Weigh arguments for or against a proposed course of action
- ❁ Doesn't include executive sessions or informational workshops/sessions
  - Does it go beyond the provision of information and extend into substantive discussion of positions and attempt to develop a consensus?



# TENNESSEE OPEN MEETINGS ACT

## TOMA Requirements

- ④ Meeting must be open to the public
- ④ Adequate Public Notice of the meeting
- ④ Meeting Minutes
  - Persons present
  - Motions, proposals and resolutions offered
  - Results of any votes
- ④ All votes by public vote, public ballot or public roll call
- ④ Agendas available 48 hours in advance
- ④ Opportunity for public comment



# TENNESSEE OPEN MEETINGS ACT

## “Adequate Public Notice”

- ⊙ **Under the totality of the circumstances, does notice give interested citizens a reasonable opportunity to exercise their right to attend?**
- ⊙ **Regular Meeting: Only Time & Place of Meeting**
- ⊙ **Special Meeting:**
  - **Reasonably describe proposed actions to be taken or decisions to be made**
  - **Cannot discuss other matters during the meeting**



# TENNESSEE OPEN MEETINGS ACT

## Public Comment Period

- 🌟 **New-ish provision effective July 1, 2023**
- 🌟 **Requires a governing body for each public meeting reserve time for public comment**
- 🌟 **Reasonable restrictions are allowed**
  - **Length of time for total comments**
  - **Length of time that each speaker may comment**
  - **May require advance notice**
  - **Number of speakers**
- 🌟 **Opposing viewpoints represented fairly**



# TENNESSEE OPEN MEETINGS ACT

## Agendas

### Tenn. Code Ann. § 8-44-110

- *Local government legislative bodies and state government bodies must make an agenda available to the public at no charge at least 48 hours prior to the meeting.*
- **Must describe the matters to be deliberated or acted upon during the meeting.**
- **Items can be added after the agenda is published, if not done so to violate sunshine laws intentionally.**
- **Separate from notice of meeting.**



# TENNESSEE OPEN MEETINGS ACT

## *“Executive Sessions”*

- ⊙ **Meeting with Attorney**
- ⊙ **Informational Sessions/Workshops**
- ⊙ **Hospital Boards**
- ⊙ **School Safety Planning**
- ⊙ **Government Audit Committees**



# TENNESSEE OPEN MEETINGS ACT

## TOMA OOPS!

- ❁ **Any action taken in violation of TOMA is null and void, except commitments affecting public debt.**
  - **Tenn. Code Ann. § 8-44-105**
- ❁ **Court has broad jurisdiction to issue injunctions, impose penalties and otherwise enforce purpose of TOMA.**
  - **Tenn. Code Ann. § 8-44-106**
  - **Court retains jurisdiction and governing body must report to the court semi-annually re TOMA compliance**
- ❁ **Willful violation? Attorney's fees for you!**



# LEGISLATIVE UPDATE

## 2024 Edition\*

- 🌟 Attorney's fees for TOMA violations.
- 🌟 Identifying information for school employees electing to carry firearms is confidential.
- 🌟 Agendas before meetings – now applies to state governing bodies.
- 🌟 Autopsy reports for minors confidential.
- 🌟 APS can share records with law enforcement.

**\*2025 is underway, stay tuned for our 2025 Legislative Update**



# QUESTIONS?

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