



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL**

BEST PRACTICES & GUIDELINES

PURPOSE:

Pursuant to Tenn. Code Ann. § 8-4-604(a)(4), the Office of Open Records Counsel is required to establish a model best practices and public records policy for use by records custodians in compliance with Tenn. Code Ann. § 10-7-503. Accordingly, the following policy sets forth general best practices and guidelines for records custodians when handling public record requests made pursuant to the Tennessee Public Records Act.

POLICY:

A public records policy should balance a governmental entity's need to function efficiently, protect confidential information, and maintain the integrity of records with the public's right to access records pursuant to the Tennessee Public Records Act ("TPRA"). Any practices and procedures, including charging fees, should not be used to hinder the exercise of rights granted to citizens under the TPRA. The following sections address common best practices and guidelines in each subject area in an effort to achieve a balance of these interests.

In interpreting the TPRA, courts consistently base their decisions on the facts and circumstances of the specific situation. These Best Practices & Guidelines do not cover all situations. Records custodians of state government records who have questions about how to respond to a particular record request should contact the Office of Attorney General and Reporter. All other records custodians who have questions about how to respond to a record request should contact the Office of Open Records Counsel ("OORC").

I. TPRA Responsibilities

- A. Governmental entities subject to the TPRA shall establish a public records policy properly adopted by its governing authority no later than July 1, 2017. See Tenn. Code Ann. § 10-7-503(g).
- B. Governmental entities, in their public records policy, shall identify a Public Records Request Coordinator ("PRRC") or Coordinators to ensure public record requests are routed to the appropriate records custodian and fulfilled in accordance with Tenn. Code Ann. § 10-7-503(a)(2)(B). See Tenn. Code Ann. § 10-7-503(a)(1)(B).
- C. Governmental entities should identify all persons serving as records custodians, defined as "any office, official, or employee of [the] governmental entity lawfully responsible for the direct custody and care of a public record." See Tenn. Code Ann. § 10-7-503(a)(1)(C).

- D. Governmental entities should identify the types of public records that are “made or received pursuant to law or ordinance or in connection with the transaction of [its] official business.” See Tenn. Code Ann. § 10-7-503(a)(1)(A). Review of retention schedules and destruction authorizations can help in the identification of records.
- E. Governmental entities shall provide prompt access to open public records, unless otherwise provided by law. See Tenn. Code Ann. § 10-7-503(a)(2)(A).
 - 1. The records of governmental entities subject to the TPRA shall be open for personal inspection by any Tennessee citizen at all times during business hours.
 - 2. Business hours for public hospitals are defined as the business hours of their administrative offices.
 - 3. Public records are presumed open. Accordingly, governmental entities should take appropriate action at the time records are created or received to be able to promptly provide access to records.

II. Citizenship

- A. Only citizens of Tennessee have an enforceable right to access public records. Accordingly, a governmental entity has discretion to provide access to persons who do not provide proof of Tennessee citizenship. The decision to respond to requests from requestors who are not Tennessee citizens should be clearly expressed in the governmental entity’s public records policy.
- B. Although not required, a records custodian has the right to require government issued photo identification that includes a person’s address to verify citizenship. The decision to require photo identification should be clearly expressed in the governmental entity’s public records policy and uniformly imposed for all requestors.
- C. A records custodian may accept alternate forms of identification to verify citizenship. If alternative forms of identification are accepted, such as a student ID from a Tennessee school, governmental entities should develop a list of acceptable alternative forms of identification.
- D. Requests from inmates or prisoners incarcerated in Tennessee correctional facilities should be considered submitted by Tennessee citizens without further proof of citizenship when copies are to be delivered to the requestors at the correctional facilities.
- E. Before deciding to keep a copy of a requestor’s form of identification, a governmental entity should determine whether there is a benefit to keeping a copy of the proof of identification that outweighs the obligation to keep confidential any “personally identifying information,” as defined under Tenn. Code Ann. § 10-7-504(a)(29)(C).
- F. If a records custodian anticipates receiving copies of driver’s licenses electronically, the governmental entity should develop procedures to maintain the confidentiality of the information contained in the electronic copies of the licenses.

III. Fees

- A. Fees shall not be used to discourage or impede public record requests.
- B. The decision whether to charge fees for copies or duplicates should be made considering the governmental entity's budget, funding sources, available resources and staffing.
- C. If the determination is made to charge fees for copies or duplicates, the governmental entity should consider waivers of the fees for certain circumstances. Waivers (or reductions) of fees could be based on several factors, including:
 - 1. The number of copies requested;
 - 2. The dollar amount for charges;
 - 3. The type or nature of the record requested; or
 - 4. The record's accessibility.

Waivers may also be appropriate when the record contains information that is in the best interest of the public to widely disseminate (such as notices of road closures or notices of public hearings).

- D. The decision whether to charge for copies or duplicates must be properly reflected in a governmental entity's public records policy.
- E. If a governmental entity decides to charge fees for copies or duplicates, it is recommended such entity adhere to the Schedule of Reasonable Charges Policy promulgated by the OORC, as this creates a presumption such charges are reasonable. If a governmental entity determines its actual costs are higher than the amounts established by the OORC, the governmental entity should retain written documentation of such costs.
- F. If charging for labor, employees with appropriate skill and knowledge should be utilized, but overall end cost should be kept in mind when selecting employees to fulfill the request. Although lower-compensated employees are preferred, it may be more beneficial to utilize a higher-compensated employee if they can accomplish the task more efficiently, which may result in lower labor costs.
- G. Whether charging for copies or labor, a governmental entity should determine its administrative costs associated with charging fees as there may be a minimum amount of fees necessary in order to avoid losing money from processing charges.
- H. A governmental entity should consider requiring and receiving either full or partial payment of estimated charges prior to production of copies when duplication costs for requested records are significant.
- I. If a records custodian is going to segment the production of requested records, the requirement for payment prior to the production of the records should also be segmented accordingly.

- J. 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 when requested.
 - 1. When a records custodian is aware that the governmental entity does not have the internal ability to reproduce public records that are requested on a recurring basis, the governmental entity should identify and prequalify vendors that can securely provide the copy, redaction, and duplication services.
 - 2. When a records custodian does not have the internal ability to make copies or duplicates of a requested record, the records custodian should notify the requestor and identify the vendor that will be used to produce the requested records, as well as the estimated cost to produce the record.
 - 3. When an outside vendor is utilized, the records custodian should require payment by the requestor in advance based on the estimated cost.
- K. When a governmental entity accepts multiple forms of payments (such as cash, checks, credit or debit cards, money orders, and online payment applications) in the transaction of official business, the governmental entity should consider permitting similar forms of payment for copies of public records.

IV. Process

- A. Governmental entities should provide public notice of, and easy access to, public records policies.
- B. Governmental entities should ensure open public records responsive to a TPRA request are provided promptly. It is not considered “prompt,” under the TPRA, to routinely wait seven (7) business days to respond to a record request.
- C. A governmental entity should identify exemptions under the TPRA that apply to its records.
- D. In the event it is not practicable to promptly respond to a request, a governmental entity shall respond to a record request in one of the three manners as set forth in Tenn. Code Ann. § 10-7-503(a)(2)(B). To provide a response other than supplying or denying access to the requested records, a governmental entity must use the Public Records Request Response Form developed by the OORC.
- E. Denials of record requests must be in writing and, if required in the governmental entity’s public records policy, on a particular form. If the form is not specified in the policy, a records custodian may use the Public Records Request Response Form developed by the OORC.
- F. Any form(s) required for requesting copies of records should be made readily available.

- G. A governmental entity should determine what documentation it will require the PRRC and the records custodian to maintain so the entity is assured of its compliance with the TPRA.
- H. When record requests are for a large number of records, or for records that will require longer than a few weeks to provide, access to the records should be segmented and provided in waves instead of waiting to provide access until all records are available. Segmentation is not necessary if the request is for copies, the requestor pays in advance for the copies, and the requestor agrees to a single date for delivery.
- I. The TPRA does not provide guidance about prioritizing responses to record requests other than mandating that access to public records shall be made promptly when practicable. Therefore, governmental entities should respond to requests promptly, when practicable, while continuing to respond to more time-consuming requests.
- J. When a governmental entity is compensated in advance for postage expenses and costs of copies, the records custodian is obligated to use USPS First-Class Mail for delivery of copies to the requestor's home address. Governmental entities should consider using other requested means of delivery when feasible.

V. Public Records Request Coordinator

- A. It is the role of the PRRC to ensure that record requests are routed to the proper records custodian, and that the custodian complies with Tenn. Code Ann. § 10-7-503(a)(2)(B), by either providing prompt access to the requested records or, if not practicable to provide prompt access, taking appropriate action within seven (7) business days.
- B. The role of the PRRC is to make the record request process work more efficiently and is not to burden or impede responses to record requests.
- C. The PRRC should be knowledgeable about the TPRA and the governmental entity (including an understanding of the records management system being utilized and any policy related to records and information management). The PRRC should also be knowledgeable about any applicable exemptions to the TPRA that relate to the governmental entity's records.
- D. If a governmental entity is large, more than one PRRC may be necessary.
- E. The PRRC should report to the governing authority of the governmental entity on a regular basis about the entity's record requests activity and compliance with the TPRA. The PRRC should make recommendations to the governing authority about the public records policy.
- F. The governmental entity should inform the PRRC of all relevant records custodians and ensure that any changes in records custodians are promptly provided to the PRRC.

VI. Records Custodians

- A. The TPRA requires records custodians to allow for the inspection of public records during business hours. Accordingly, whenever practicable, a records custodian should have a designated, well-lit and comfortable space, available during normal business hours, where requestors can inspect public records under the supervision of the records custodian.
- B. Records custodians are required to respond to record requests “promptly”. It is not considered “prompt” to routinely wait until the seventh (7th) business day to respond to a record request.
- C. Records custodians should strive to respond to all record requests in the most economical and efficient manner practicable. For example, if labor charges are going to be assessed, then qualified staff persons with lower hourly wages should be utilized to produce the requested records.
- D. When records are maintained electronically, records custodians should produce requested records electronically. Records should be produced electronically, when feasible, as a means of utilizing the most economical and efficient method of producing records. It is recommended that record custodians provide records in a secure format. A custodian is not obligated to provide the record in a format that can be manipulated. (For example, a Word document can be provided to a requestor in pdf format.)
- E. Records custodians should maintain copies of records that are reasonably expected to be requested in a place where the records can be easily located and produced for frequent requests. When frequently requested records require redaction, a records custodian should maintain a copy of the redacted records. If practicable, frequently requested records should be routinely posted online.
- F. In certain cases, access cannot be provided to original records. For example, the original records cannot be provided when redaction is required or when records are frail due to age or other conditions and direct access may cause damage to the originals. In such instances, the records custodian should inform the requestor access will be provided to copies of the records.

VII. Redaction

- A. A records custodian is obligated to keep confidential information confidential. If there is not a legal obligation to have or maintain the confidential information, the simplest method to protect confidentiality is to not create or receive records with unnecessary confidential information.
- B. A records custodian is obligated to maintain the integrity of records. Redaction obscures or removes confidential information. A records custodian should never redact original documents unless the custodian is advised by counsel to do so. A records custodian should copy a redacted document to make sure the confidential information cannot be seen through the redaction.

- C. In cases where the record is maintained in paper form, or is scanned and stored electronically, the records custodian should make a copy of the record, mark-out the information being redacted with a black marker, and scan the paper into pdf format.
- D. A records custodian should use caution when redacting electronic records. Redacted information may appear unreadable; however, metadata is still imbedded in records that have not been scrubbed. This means that although the redacted information may not appear at first glance, the document's metadata may store the redacted information, making it easy for a user to manipulate the metadata and gain access to the redacted information. A governmental entity should not rely solely on electronic redaction programs to ensure information is kept confidential.

VIII. Website

- A. A governmental entity should clearly post its public records policy, or a link to the policy, on the homepage of its website.
- B. A governmental entity should include the contact information for the Public Records Request Coordinator(s) on the homepage of its website.
- C. Public records with a primarily public audience (such as annual financial statements, press releases, and documents related to meetings of governing bodies like notices, agendas, and minutes) and frequently requested records should be posted to a governmental entity's website whenever practicable.
- D. A governmental entity should utilize its website to efficiently handle record requests. A records custodian may direct a requestor to the website for requested records. However, a requestor still has the right to inspect public records during regular business hours and/or to receive a copy or duplicate made by the records custodian.

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