



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

**POLICIES AND GUIDELINES**

- I. Best Practices & Guidelines
- II. Model Public Records Policy
- III. Schedule of Reasonable Charges
- IV. Reasonable Charges for Frequent and Multiple Requests
- V. Safe Harbor Policy
- VI. Informal Advisory Opinions
- VII. Mediation of Open Records Issues



**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 (7<sup>th</sup>) 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.

*Submitted to ACOG: November 8, 2016*  
*Effective: January 20, 2017*



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

**MODEL PUBLIC RECORDS POLICY**

**PURPOSE:**

Pursuant to Tenn. Code Ann. § 10-7-503(g), every governmental entity subject to the Tennessee Public Records Act ("TPRA") (Tenn. Code Ann. § 10-7-501 et seq.), must establish a written public records policy properly adopted by the appropriate governing authority by July 1, 2017. The policy adopted shall not impose requirements on those requesting records that are more burdensome than state law and shall include:

- The process for requesting access to public records and any required form(s);
- The process for responding to requests, including redaction practices;
- A statement of any fees charged for copies of public records and the procedures for billing and payment; and
- The name or title and contact information of the individual or individuals designated as the Public Records Request Coordinator(s).

Pursuant to Tenn. Code Ann. § 8-4-604(a)(1)(4), the Office of Open Records Counsel ("OORC") is required to establish a model best practices and public records policy for use by a records custodian in compliance with Tenn. Code Ann. § 10-7-503. The following Model Public Records Policy serves as guidance for records custodians and their respective governmental entities in developing a public records policy and fulfilling their duties under the TPRA. The OORC encourages and will provide assistance for governmental associations and groups to develop model public records policies tailored to their specific governmental entity subgroup.

**POLICY:**

**MODEL PUBLIC RECORDS POLICY**

PUBLIC RECORDS POLICY  
FOR  
[NAME OF GOVERNMENTAL ENTITY]

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for [Name of Governmental Entity] is hereby adopted by [Name of Governing Authority] to provide economical and efficient access to public records as provided under the Tennessee Public Records Act (“TPRA”) in Tenn. Code Ann. § 10-7-501, et seq.

The TPRA provides that 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. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of [Name of Governmental Entity] are presumed to be open for inspection unless otherwise provided by law.

Personnel of [Name of Governmental Entity] shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Policy shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of [Name of Governmental Entity], shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for [Name of the Governmental Entity] or to the Tennessee Office of Open Records Counsel (“OORC”).

This Policy is available for inspection and duplication in the office of \_\_\_\_\_. [This Policy is posted online at \_\_\_\_\_]. This Policy shall be reviewed [annually][every two years].

This Policy shall be applied consistently throughout the various offices, departments, and/or divisions of [Name of Governmental Entity] except the following offices, departments, or divisions of [Name of Governmental Entity], which have separate public records policies:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

**I. Definitions:**

- A. Records Custodian: The office, official or employee lawfully responsible for the direct custody and care of a public record. See Tenn. Code Ann. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.
- B. Public Records: 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. See Tenn. Code Ann. § 10-7-503(a)(1)(A).

- C. Public Records Request Coordinator: The individual, or individuals, designated in Section III, A.3 of this Policy who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. See Tenn. Code Ann. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.
- D. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

## II. Requesting Access to Public Records

- A. Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or his/her designee [or via online submission] in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- B. Requests for inspection only cannot be required to be made in writing. The PRRC should request a mailing [or email] address from the requestor for providing any written communication required under the TPRA.
- C. Requests for inspection may be made orally or in writing [using the attached Form \_\_\_] at [physical location and mailing address for the request to be made] or by phone at [insert number]. [*Indicate additional acceptable means for submission of requests.*]
- D. Requests for copies, or requests for inspection and copies, shall [may] be made in writing [using the attached Form \_\_\_] at [physical location and mailing address for the request to be made]. [*If a form is required for copies, ensure it is attached to the policy as this is now required by Tenn. Code Ann. § 10-7-503(g).*] [*Indicate additional acceptable means for submission of request.*]
- E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of ID) is [not] required as a condition to inspect or receive copies of public records.
- F. [*If appropriate, describe where public notices, meeting documents, and frequently requested records are posted and readily available; describe any directive regarding posting of records online.*]

## III. Responding to Public Records Requests

### A. Public Record Request Coordinator

1. The PRRC shall review public record requests and make an initial determination of the following:
  - a. If the requestor provided evidence of Tennessee citizenship (*if required*);

- b. If the records requested are described with sufficient specificity to identify them; and
    - c. If the Governmental Entity is the custodian of the records.
  - 2. The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
    - a. Advise the requestor of this Policy and the elections made regarding:
      - i. Proof of Tennessee citizenship;
      - ii. Form(s) required for copies;
      - iii. Fees (and labor threshold and waivers, if applicable); and
      - iv. Aggregation of multiple or frequent requests.
    - b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:
      - i. The requestor is not, or has not presented evidence of being, a Tennessee citizen (*if proof of citizenship is required*).
      - ii. The request lacks specificity. (*Offer to assist in clarification*)
      - iii. An exemption makes the record not subject to disclosure under the TPRA. (*Provide the exemption in written denial*)
      - iv. The Governmental Entity is not the custodian of the requested records.
      - v. The records do not exist.
    - c. If appropriate, contact the requestor to see if the request can be narrowed.
    - d. Forward the records request to the appropriate records custodian in [Name of the Governmental Entity].
    - e. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC for that entity if known.
- 3. The designated PRRC(s) is(are):
  - a. Name or title: \_\_\_\_\_
  - b. Contact information: \_\_\_\_\_ [*include the physical and mailing address and the phone number. If available, include the email address and the fax number*].

4. [The PRRC(s) shall report to the governing authority on an annual basis about the Governmental Entity's compliance with the TPRA pursuant to this Policy and shall make recommendations, if any, for improvement or changes to this Policy.]

#### B. Records Custodian

1. Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, counsel, or the OORC.
2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then a records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form which is attached as Form \_\_\_, based on the form developed by the OORC.
3. If a records custodian denies a public record request, he or she shall deny the request in writing as provided in Section III.A.2.b using the Public Records Request Response Form.
4. If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian shall use the Public Records Request Response Form to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian should contact the requestor to see if the request can be narrowed.
5. If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

#### C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC [(if the Governmental Entity is a state agency) or with the Office of Attorney General and Reporter].
2. Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

#### **IV. Inspection of Records**

- A. There shall be no charge for inspection of open public records. [*If a law expressly requires an inspection charge, describe.*]
- B. The location for inspection of records within the offices of [Name of Governmental Entity] should be determined by either the PRRC or the records custodian.
- C. Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location. [*If an appointment is needed, or hours for inspection are less than the full business hours, describe it here.*]

#### **V. Copies of Records**

- A. A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- B. Copies will be available for pickup at a location specified by the records custodian [*or indicate here*].
- C. Upon payment for postage, copies will be delivered to the requestor's home address by the United States Postal Service. [Additional permitted means of delivery are \_\_\_\_\_.]
- D. A requestor will [not] be allowed to make copies of records with personal equipment. [*Indicate under what circumstances, if any, the Governmental Entity will permit requestors to make their own copies or provide their own storage devices.*]

#### **VI. Fees and Charges and Procedures for Billing and Payment**

- A. Fees and charges for copies of public records should not be used to hinder access to public records. [No charges will be assessed for copies and duplicates unless \_\_\_\_\_.]
- B. Records custodians shall provide requestors with an itemized estimate of the charges [using Form \_\_\_] prior to producing copies of records and may require pre-payment of such charges before producing requested records.
- C. When fees for copies and labor do not exceed \$\_\_\_\_\_, the fees may be waived. [Requests for waivers for fees above \$\_\_\_\_\_ must be presented to \_\_\_\_\_, who is authorized to determine if such waiver is in the best interest of [Name of Governmental Entity] and for the public good.][Fees associated with aggregated records requests will not be waived].
- D. Fees and charges for copies are as follows (*if higher than the amounts authorized by the OORC Schedule of Reasonable Charges, documentation should be attached*):
  - 1. \$0.15 per page for letter- and legal-size black and white copies.
  - 2. \$0.50 per page for letter- and legal-size color copies.

3. Other: \_\_\_\_\_.
  4. Labor when time exceeds \_\_\_ hours.
  5. If an outside vendor is used, the actual costs assessed by the vendor.
- E. [No duplication costs will be charged for requests for less than [\$/# of pages.]
- F. Payment is to be made [in cash][by personal check][by credit card] payable to [\_\_\_\_\_] presented to [the records custodian][bursar][other].
- G. Payment in advance will be required [when costs are estimated to exceed \$\_\_\_\_\_].
- I. Aggregation of Frequent and Multiple Requests
1. [Name of Governmental Entity] will [not] aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than (4) requests are received within a calendar month (either from a single individual or a group of individuals deemed working in concert).
  2. [If aggregating]:
    - a. The level at which records requests will be aggregated is \_\_\_\_\_ (*whether by agency, entity, department, office or otherwise*).
    - b. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.
    - c. Routinely released and readily accessible records excluded from aggregation include, but are not limited to: (*list records*).

## PUBLIC RECORDS REQUEST FORM

*The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.*

**To:** [Insert Governmental Entity Name and Name and Contact Information for the Public Records Request Coordinator]

**From:** [Insert Requestor's Name and Contact Information (include an address for any TPRA required written response)]

**Is the requestor a Tennessee citizen?**  Yes  No

**Request:**  Inspection (The TPRA does not permit fees or require a written request for inspection only<sup>i</sup>.)  
 Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed \$ \_\_\_\_\_? If so, initial here: \_\_\_\_\_.

**Delivery preference:**  On-Site Pick-Up  USPS First-Class Mail  
 Electronic  Other: \_\_\_\_\_

**Records Requested:**

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

\_\_\_\_\_  
Signature of Requestor and Date Submitted

\_\_\_\_\_  
Signature of Public Records Request Coordinator and Date Received

<sup>i</sup> Note, Tenn. Code Ann. § 10-7-504(a)(20)(C) permits charging for redaction of private records of a utility.

**PUBLIC RECORD REQUEST RESPONSE FORM**  
**[Insert Governmental Entity Name and Address]**

[Date]

[Requestor's Name and Contact Information]:

In response to your records request received on [Date Request Received], our office is taking the action(s)<sup>1</sup> indicated below:

- The public record(s) responsive to your request will be made available for inspection:  
Location: \_\_\_\_\_  
Date & Time: \_\_\_\_\_
  
- Copies of public record(s) responsive to your request are:
  - Attached;
  - Available for pickup at the following location: \_\_\_\_\_; or
  - Being delivered via:  USPS First-Class Mail  Electronically  Other: \_\_\_\_\_.
  
- Your request is denied on the following grounds:
  - Your request was not sufficiently detailed to enable identification of the specific requested record(s). You need to provide additional information to identify the requested record(s).
  - No such record(s) exists or this office does not maintain record(s) responsive to your request.
  - No proof of Tennessee citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification.
  - You are not a Tennessee citizen.
  - You have not paid the estimated copying/production fees.
  - The following state, federal, or other applicable law prohibits disclosure of the requested records:  
\_\_\_\_\_.
  
- It is not practicable for the records you requested to be made promptly available for inspection and/or copying because:
  - It has not yet been determined that records responsive to your request exist; or
  - The office is still in the process of retrieving, reviewing, and/or redacting the requested records.

The time reasonably necessary to produce the record(s) or information and/or to make a determination of a proper response to your request is: \_\_\_\_\_.

If you have any additional questions regarding your record request, please contact [Records Custodian or Public Records Request Coordinator].

Sincerely,

[Records Custodian or Public Record Request Coordinator]  
[Name, Title, and Contact Information]

<sup>1</sup> If all requested records do not have the same response, so indicate.

## POLICY CONSIDERATIONS

The Tennessee General Assembly declares that the Tennessee Public Records Act (“TPRA”) “shall be broadly construed to give the fullest possible access to public records.” See Tenn. Code Ann. § 10-7-505(d). Accordingly, unless there is a clear exception provided in law, all public records of a governmental entity are to be open to Tennessee citizens for inspection.

Records custodians must comply with the TPRA and their respective public records policies and rules. Tenn. Code Ann. § 10-7-506(a) grants records custodians the right to adopt and enforce reasonable rules governing the making of copies.

Adherence to the Model Public Records Policy developed by the Office of Open Records Counsel (“OORC”) is not mandatory. However, courts may consider adherence to guidance provided by the OORC in determining whether a denial of access to public records by a records custodian is willful. See Tenn. Code Ann. § 10-7-505(g). Additionally, adherence to the policies and guidelines of the OORC provides a safe harbor for records custodians. See the OORC’s Safe Harbor Policy.

- I. The TPRA authorizes a governmental entity to determine the following with respect to each entity’s public records policy:
  - A. Whether to respond to TPRA requests by persons who are not citizens of Tennessee;
  - B. Whether to require government-issued photo identification as a prerequisite to providing access to records;
  - C. Whether to require requests for copies to be in writing and on a specific form;
  - D. Whether to charge for copying and duplication costs, including labor, when requestors ask for copies or duplicates;
  - E. Whether to waive copying and duplication costs in certain circumstances; and
  - F. Whether to permit requestors to make copies or duplicates using their own devices, such as a cell phone camera. (Note that use of requestor-provided devices such as flash drives pose serious security concerns.)
- II. Prior to adopting a public records policy, a governmental entity should consider and determine the following:
  - A. Who or what is the “appropriate governing authority” responsible for approval of the policy as required by Tenn. Code Ann. § 10-7-503(g).
  - B. Who or what sub-entities or offices are to be covered by the policy.
  - C. Whether there are legal requirements, other than the TPRA, that require the governmental entity to provide public access to specific records.
  - D. What authority, other than the TPRA, exists for charging fees for copies and whether it is mandatory or discretionary.
    1. If no separate authority exists for duplication fees or copying fees, will fees be assessed for copies?

2. Will labor be charged when it exceeds one (1) hour (or will the governmental entity use a higher threshold)?
  3. Will waivers be permitted, and who should have the authority to make the decision to waive fees?
- E. Who, within the governmental entity, are “records custodians,” which are defined as “any office, official or employee of any governmental entity lawfully responsible for the direct custody and care of a public record” and whether there is a designated records officer or records archivist.
- F. What records the government entity creates or receives that are required by law or ordinance, or that occur in the transaction of official business, that would be subject to disclosure under the TPRA.
1. Are the records produced in physical or electronic format and where are they stored or maintained?
  2. If electronic, what capability exists to search and to securely electronically redact the records?
  3. If in physical form, how are the records filed or cross-referenced?
  4. If on microfilm, microfiche or other legacy formats, how are the records filed or cross-referenced? Is equipment available to access/read the records?
- G. What, if any, exemptions apply to the governmental entity’s public records or the information in the records making them confidential.
- H. What means of communication exist for the public to communicate with the governmental entity.
- I. What are the governmental entity’s existing policies on:
1. Government transparency;
  2. How to respond to TPRA requests, including what fees to charge;
  3. Records management, including:
    - a. Retention, maintenance, and destruction;
    - b. Records made or received “off-site” or using personal devices; and
    - c. Monitoring of the accessibility and readability of records;
  4. Use of email and other electronic communication and social media;
  5. Use of personal devices in the work place;
  6. Securing of records upon the departure of an employee/official; and

7. Disaster recovery and planning.
- J. What resources are available for compliance with the TPRA.
1. What space is, or will be, available to requestors for physical inspection of records?
  2. Is a secure computer terminal (that does not allow access to confidential records) available for public inspection of electronic records?
  3. What is the governmental entity's capability to duplicate records? If the entity does not have internal capability, are there existing contracts with vendors or available duplication services to respond promptly to requests?
  4. What staffing and funding is available?
- K. What the governmental entity has or provides that may contain or produce records accessible pursuant to the TPRA, including:
1. Portable electronic devices such as cell phones, laptops, or tablets;
  2. Voice mail;
  3. Email accounts;
  4. Websites; and
  5. Social media accounts, such as Facebook or Twitter.
- L. Who should be appointed the Public Records Request Coordinator(s).
1. How will the appointment be disclosed internally and externally?
  2. What authority exists to require records custodians to respond to the coordinator?
- M. Whether Tennessee citizenship will be required for requests under the TPRA, and if so:
1. Will visual inspection of a Tennessee driver's license suffice or will a copy be kept?
  2. What forms of proof beyond a Tennessee driver's license will be accepted?
- N. Whether requests will be aggregated, whether by individual requestors or requestors acting in concert. See the OORC's Reasonable Charges for Frequent and Multiple Requests Policy.



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

**SCHEDULE OF REASONABLE CHARGES**

**PURPOSE:**

Pursuant to Tenn. Code Ann. § 8-4-604(a)(1), the Office of Open Records Counsel (“OORC”) is required to establish a schedule of reasonable charges a records custodian may use as a guideline to charge citizens requesting copies of public records. Additionally, Tenn. Code Ann. § 10-7-503(g) requires each governmental entity subject to the Tennessee Public Records Act (“TPRA”) to establish a written public records policy that includes a statement of any fees charged for copies of public records and the procedures for billing and payment. Accordingly, the following policy sets forth general guidelines for records custodians when assessing reasonable charges associated with record requests under the TPRA.

**POLICY:**

**I. General Considerations**

- A. Records custodians may not charge for inspection of public records except as provided by law.
- B. The following schedule of reasonable charges should not be interpreted as requiring records custodians to impose charges for copies of public records. Charges for copies of public records must be pursuant to a public records policy properly adopted by the governing authority of a governmental entity. See Tenn. Code Ann. § 10-7-503(g) and § 10-7-506(a).
- C. 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 public records.
- D. A records custodian may reduce or waive charges, in whole or in part, in accordance with the governmental entity’s public records policy.
- E. A records custodian may require payment for copies before producing copies of the records.
- F. 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 based on the purpose of a record request. However, other statutory provisions, such as Tenn. Code Ann. § 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, based upon the type of records requested should be expressly set forth and permitted in the adopted public records policy.

- G. Records custodians shall provide a requestor an estimate of reasonable costs to provide copies of requested records.

## **II. Per Page Copying Charges**

- A. For each standard 8½" x 11" or 8½" x 14" copy produced, a records custodian may assess a per page charge of up to 15 cents (\$0.15) for black and white copies and up to 50 cents (\$0.50) for color copies. If producing duplex (front and back) copies, a charge for two separate pages may be imposed for each single duplex copy.
- B. If the charge for color copies is higher than for black and white copies, and a public record is maintained in color but can be produced in black and white, 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.
- C. If a governmental entity's actual costs are higher than those reflected above, or if the requested records are produced on a medium other than 8½" x 11" or 8½" x 14" paper, the governmental entity may develop its own charges. The governmental entity must establish a schedule of charges documenting "actual cost" and state the calculation and reasoning for its charges in a properly adopted policy. A governmental entity may charge less than those charges reflected above. Charges greater than 15 cents (\$0.15) for black and white copies and 50 cents (\$0.50) for color copies can be assessed or collected only when there is documented analysis of the fact that the higher charges represent the governmental entity's actual cost of producing such material, unless there exists another basis in law for such charges.

## **III. Additional Charges**

- A. When assessing a fee for items covered under this section, records custodians shall utilize the most economical and efficient method of producing the requested records.
- B. A records custodian may charge its actual out-of-pocket costs for flash drives or similar storage devices on which electronic copies are provided. When providing electronic records, a records custodian may charge per-page costs only when paper copies that did not already exist are required to be produced in responding to the request, such as when a record must be printed to be redacted.
- C. It is presumed copies of requested records will be provided in person to a requestor when the requestor returns to the records custodian's office to retrieve the records.
- D. If a requestor chooses not to personally retrieve records and the actual cost of delivering the copies, in addition to any other permitted charges, have been paid by the requestor or otherwise waived pursuant to the public records policy, then a records custodian is obligated to deliver the copies via USPS First-Class Mail. It is within the discretion of a records custodian to agree to deliver copies of records through other means, including electronically, and to assess the costs related to such delivery.
- E. If it is not practicable or feasible for the records custodian to produce copies internally, the records custodian may use an outside vendor and charge the costs to the requester.

- F. If a 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 recover from the requestor the costs assessed for retrieval.

#### **IV. Labor Charges**

- A. A records custodian shall utilize the most cost efficient method of producing requested records. Accordingly, a records custodian should strive to utilize current employees at the lowest practicable hourly wage to fulfill public records requests for copies.
- B. "Labor" is the time (in hours) reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, redacting, and reproducing records.
- C. "Labor threshold" is the first (1<sup>st</sup>) hour of labor reasonably necessary to produce requested material(s). A governmental entity may adopt a higher labor threshold than one (1) hour. A records custodian is only permitted to charge for labor exceeding the labor threshold established by the governmental entity.
- D. "Hourly wage of an employee" is based upon the base salary of the employee 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 workweek and receives \$39,000 in salary on an annual basis will be deemed to be paid \$20 per hour.
- E. In calculating labor charges, a records custodian should determine the total amount of labor for each employee and subtract the labor threshold from the labor of the highest paid employee(s). The records custodian should then multiply the amount of labor for each employee by each employee's hourly wage to calculate the total amount of labor charges associated with the request.

#### Example:

The hourly wage of Employee A is \$15.00. The hourly wage of Employee B is \$20.00. Employee A spends two (2) hours on a request. Employee B spends two (2) hours on the same request. The labor threshold is established at one (1) hour. Since Employee B is the highest paid employee, the labor threshold will be applied to the time Employee B spent producing the request. For this request, \$50.00 could be charged for labor. This is calculated by taking the number of hours each employee spent producing the request, subtracting the threshold amount, multiplying that number by the employee's hourly wage, and then adding the amounts together (i.e. Employee A (2 x \$15.00) + Employee B (1 x \$20.00) = \$50.00).

*Submitted to ACOG: November 8, 2016.  
Effective: January 20, 2017*



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

**REASONABLE CHARGES FOR FREQUENT AND MULTIPLE REQUESTS**

**PURPOSE:**

Tenn. Code Ann. § 8-4-604(a)(2) requires the Office of Open Records Counsel (“OORC”) to establish a policy related to reasonable charges a records custodian may charge for frequent and multiple requests for public records pursuant to the Tennessee Public Records Act (“TPRA”), Tenn. Code Ann. § 10-7-501, et seq. Accordingly, the following policy sets forth guidelines for assessing reasonable charges associated with the aggregation of multiple and frequent record requests by allowing records custodians to charge for labor and costs that may otherwise be waived when responding to a single record request.

It is within the discretion of each governmental entity to charge for frequent and multiple record requests. Any decision to charge should be consistent with the Schedule of Reasonable Charges promulgated by the OORC and reflected in the governmental entity’s public records policy.

**POLICY:**

**I. Aggregation Policy**

- A. Aggregation, as well as excessive fees and other rules, shall not be used to hinder access to public records. A records custodian may reduce or waive, in whole or in part, any charge in accordance with the governing entity’s public records policy.
- B. A governmental entity may include in its public records policy a rule whereby multiple or frequent records requests are aggregated for purposes of calculating charges for copies or duplicates of public records.
- C. A governmental entity may aggregate multiple public record requests made by a single requestor. A governmental entity may also aggregate public record requests made by multiple requestors, if the public records request coordinator determines the requestors are acting in concert with each other or as the agents of another person, entity, or organization.
- D. A governmental entity’s public record policy shall indicate the number of requests within a calendar month that will trigger aggregation; that amount must be no lower than four (4) requests. This amount is the aggregation threshold.
- E. A governmental entity’s public record policy shall specify the level at which records requests will be aggregated, whether for the entire governmental entity or by agency, department, office, or otherwise.

## II. Charges for Aggregated Requests

- A. Once a records custodian reaches the aggregation threshold, the records custodian is no longer required to deduct the labor threshold set forth in the Schedule of Reasonable Charges or any other minimum charge per request threshold that would ordinarily be waived.
- B. When the aggregation threshold is met, a records custodian choosing to aggregate requests must inform the requestor(s) of the determination to aggregate and of the right of the requestor(s) to appeal the records custodian's decision to aggregate to the OORC.
- C. Requests for current records that are routinely released and readily accessible, such as agendas or meeting minutes, are exempt from this policy.
- D. Disputes regarding aggregation shall be brought to the OORC.

*Submitted to ACOG: November 8, 2016*  
*Effective: January 20, 2017*



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

**SAFE HARBOR POLICY**

**PURPOSE:** Tenn. Code Ann. § 8-4-604(a)(3) requires the Office of Open Records Counsel (“OORC”) to establish a safe harbor policy for records custodians who adhere to the policies and guidelines established by the OORC.

This policy should not be interpreted as requiring a records custodian to impose charges for copies of public records nor should it be interpreted as requiring records custodians to aggregate frequent and multiple requests. However, if a records custodian does decide to impose charges for copies, or to aggregate requests, this policy establishes that those fees are presumed to be reasonable when assessed in accordance with the policies and guidelines developed by the OORC.

**POLICY:**

Any labor fees and charges related to copying or duplicating public records are presumed reasonable if the fees and charges are set forth in the governmental entity’s public records policy and such fees and charges were developed in accordance with the provisions of the Schedule of Reasonable Charges.

The aggregation of frequent and multiple requests for copies of public records and any fees and charges resulting from aggregation are presumed to be reasonable if the fees and charges are set forth in the governmental entity’s public records policy and such fees and charges were developed in accordance with the provisions of the Reasonable Charges for Frequent and Multiple Requests Policy.

*Submitted to ACOG: November 8, 2016  
Effective: January 20, 2017*



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

**INFORMAL ADVISORY OPINIONS**

**PURPOSE:**

Tenn. Code Ann. § 8-4-601(b) provides that “the office of open records counsel shall answer questions and issue informal advisory opinions as expeditiously as possible to any person, including local government officials, members of the public and the media. Any opinion issued by the office of open records counsel shall be posted on the office's web site.” The following policy sets forth guidelines for issuing such informal advisory opinions.

**POLICY:**

The Office of Open Records Counsel (“OORC”) will issue informal advisory opinions on matters related to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501 et seq., and the Tennessee Open Meetings Act, Tenn. Code Ann. § 8-44-101 et seq., when the OORC determines the matter under advisement is broad enough in scope that issuing an informal advisory opinion would provide useful guidance and direction with respect to future inquiries regarding Tennessee’s public records or open meetings laws. The determination of whether to issue an informal advisory opinion will be made on a case-by-case basis at the discretion of Open Records Counsel.

In accordance with Tenn. Code Ann. § 8-4-601(b), informal advisory opinions issued by the OORC will be posted on the office’s website.

*Submitted to ACOG: November 8, 2016.  
Effective: January 20, 2017*



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

**MEDIATION OF OPEN RECORDS ISSUES**

**PURPOSE:**

Pursuant to Tenn. Code Ann. § 8-4-601(c), the Office of Open Records Counsel (“OORC”) is authorized to informally mediate and assist with the resolution of issues concerning the open records laws compiled in Title 10, Chapter 7 of the Tennessee Code Annotated. The following policy sets forth the guidelines and circumstances for mediation of open records issues by the OORC.

**POLICY:**

Mediation is the informal process through which a neutral party conducts discussions among disputing parties in order to enable the parties to reach a mutually acceptable agreement among themselves on any or all of the issues in dispute. The OORC may informally mediate and assist with the resolution of disputes when:

- I. The issues in dispute pertain to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501 et seq.<sup>1</sup>;
- II. The disputing parties mutually consent to have the OORC informally mediate the dispute and agree to enter into mediation with the goal of resolving the matters; and
- III. The parties have both submitted a statement of the issues in dispute and their respective position on the issues.

If the aforementioned requirements are met, the OORC will schedule a time and place convenient for the parties to discuss the issues in dispute and work on informal resolution of the issues.

*Submitted to ACOG: November 8, 2016.  
Effective: January 20, 2017*

---

<sup>1</sup> In accordance with Tenn. Code Ann. § 8-4-601(c), the Office of Open Records Counsel is only authorized to informally mediate issues concerning the Public Records Act.