



Open Public Records in Tennessee

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Environmental Show of the South

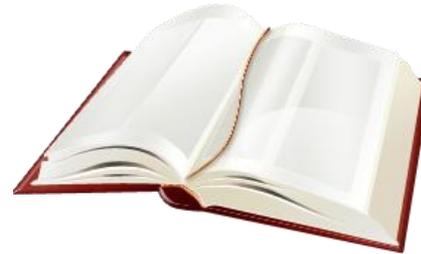
April 20, 2016



Tennessee Public/Open Records Act

Tennessee Public Records Act, 1957 (TPRA)

(T.C.A. § 10-7-501 et seq.)



All state, county and municipal records shall at all times, **during business hours**, be open for personal inspection by **any citizen of Tennessee**, and those in charge of such records shall not refuse such right of inspection to any citizen, *unless otherwise provided by state law.*

T.C.A. Section 10-7-503(a)(2)(A)

Public Record



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



T.C.A. Section 10-7-503(a)(1)(A).

Whose Records are Accessible under the TPRA?

Any Tennessee government agency:

- State, county or municipal level; and
- Any department, division, board, bureau, commission, or other separate unit of government created by law or pursuant to law.

Functional equivalent.

Not applicable to federal agencies.

T.C.A. § 10-7-503(a)(1).

Whose Records are Accessible under the TPRA? (cont.)

The factors to determine whether a private entity is the “functional equivalent” of a governmental agency are as follows:

- ◆ Whether and to what extent the entity performs a governmental or public function;
- ◆ The level of government funding of the entity;
- ◆ The extent of government involvement with, regulation of, or control over the entity; and
- ◆ Whether the entity was created by an act of the legislature or previously determined by law to be open to public access

What Records are Accessible under the TPRA?

1. Personnel records/applications, disciplinary reports, and references
2. Annual reports
3. Emails, text messages, and voicemails
4. Published financial or performance audits
5. Meeting agendas and minutes (and notes)
6. Contracts
7. Environmental records (such as reports of leaks of UST)
8. Records related to RFP/RFQs and other bids*
9. Constituent communications
10. Budgets

Public records are public whether in a draft form or a finalized version, unless a specific exemption exists.

Who Has the Right to Access Records under the TPRA?

Tennessee citizens:

- individuals, not corporations
- convicted felons
- without regard to attitude or intent for use

A records custodian has the right to deny a request to inspect and/or copy public records from a non-Tennessean.

It is discretionary, not mandatory, to deny a request from a non-Tennessean.



When and Where to Access Records under the TPRA



- ◆ Normal business hours of the custodian.
- ◆ The office of the custodian.
- ◆ If requested, copies mailed upon payment of costs for US postage.

“Unless otherwise provided by state law”

More than 350 exceptions to the TPRA are found in the following:

- Tennessee Code Annotated (Statute)
- Tennessee Rules of Civil and Criminal Procedure
- Administrative Law Rules
- Supreme Court Rules
- Common Law
- Federal Law

“Unless otherwise provided by state law” (Public Employees’ Personnel Records)

Certain information is held confidential when held by a governmental entity in its capacity as an employer.

- ◆ Relates to current and former employees as well as applicants, and
- ◆ Covers the same information of immediate family members (whether or not residing with the employee) or of household members.

T.C.A. Section 10-7-504(f)

“Unless otherwise provided by state law” (Public Employees’ Personnel Records) (cont.)

Confidential information:

- Home and cellular telephone numbers;
- Personal, nongovernment issued email addresses;
- Residential information (street address, city, state and zip code for state employees but **only** residential street address for county, municipal and other employees);
- Bank account, 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; and
- Emergency contact information.

“Unless otherwise provided by state law” (cont.)

- ◆ T.C.A. Section 10-7-504(a)(19) makes the credit card numbers of persons doing business with the state or political subdivision thereof and any related personal identification numbers (PIN) or authorization codes confidential.
- ◆ T.C.A. Section 10-7-504(a)(20)(B) makes the private records of any utility confidential. Private Records is defined as a credit card number, social security number, tax identification number, financial institution account number, burglar alarm code, security code, or an access code, as well as consumer specific energy usage data except for aggregate monthly billing information.

**'TOP
SECRET'**

- ◆ Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service provider.
- ◆ All contingency plans of a governmental entity prepared to respond to or to prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, or threat involving a weapon of mass destruction or terrorist incident.

T.C.A. Section 10-7-504(a)(21)(A)



- ◆ Documents concerning the cost of governmental utility property, the cost of protecting governmental utility property, the cost of identifying areas of structural or operational vulnerability of a governmental utility, the cost of developing contingency plans for a governmental entity, and the identity of vendors providing goods.

T.C.A. Section 10-7-504(a)(21)(A)

Who is the Custodian?

Currently, there is no definition of “records custodian” or “custodian” in the Act.

- “Those in charge of the records” to respond to a request for inspection by a citizen.
- “The custodian of a public record or the custodian's designee shall promptly make available.”

Who is the Custodian? (cont.)

Public Chapter ___, Acts of 2016 (HB2082/SB2033) adds two new definitions:

"Public records request coordinator": individual within a governmental entity who ensures that:

- public records requests are routed to the appropriate records custodian, and
- requests are fulfilled in accordance with § 10-7-503(a)(2)(B).

Who is the Custodian? (cont.)

Public Chapter ___, Acts of 2016 (HB2082/SB2033) adds two new definitions:

"Public records custodian":

- any office, official, or employee
- of a governmental entity
- lawfully responsible for the direct custody and care of a public record.

Response to a Public Records Request

PROMPTLY-

T.C.A. Section 10-7-503(a)(2)(B)
requires it!

*There is not a seven business day waiting period
for a response.*

Response to a Public Records Request (cont.)

If the records cannot be made promptly available, within seven (7) business days, the custodian must do one or more of the following:

- Provide access to the record (whether inspection or duplication);
- Deny in writing access to the record with legal basis for denial; or
- Indicate in writing the additional time necessary to produce the record.

Response to a Public Records Request (cont.)

The custodian is:

- Not required to create a document that does not already exist;
- Not required to compile information or conduct searches for documents; and
- Able to require an appointment to view a public record when reasonable.

Requestor's Response to the Custodian's Response

The requestor can:

- Contact the Office of Open Records Counsel; and
- If still dissatisfied, file a petition in either chancery court, circuit court, or any other court in the county having equity jurisdiction. T.C.A. Section 10-7-505.
 - ◆ Records custodian has the burden to prove by a preponderance of the evidence the legal basis for the nondisclosure of the record.
 - ◆ Court must issue findings of fact and conclusions of law.
 - ◆ Court has discretion to order the governmental entity to stop a specific act or behavior.
 - ◆ Court can award attorneys fees if it finds willful refusal to provide records.

Records Retention and Disposition

- ◆ T.C.A. Section 10-7-702 authorizes the Municipal Technical Advisory Service to compile and print a records retention manual for municipalities.
 - <http://mtasresource.mtas.tennessee.edu/reference/retention-schedules> (Entire Retention Schedule)
 - <http://mtasresource.mtas.tennessee.edu/reference/finance-records> (Finance Records Schedule)

Records Retention and Disposition (cont.)

- ◆ T.C.A. Section 10-7-404 authorizes the County Technical Assistance Service to compile and print a records retention manual for counties.
 - <http://eli.ctas.tennessee.edu/reference/current-retention-schedules> (Entire Retention Schedule)
 - <http://eli.ctas.tennessee.edu/reference/accounting-purchasing-and-other-miscellaneous-records> (Accounting, Purchasing and Other Miscellaneous Records Schedule)

Office of Open Records Counsel

Purposes:

- ◆ Answer questions and provide information to public officers and to the public regarding public records;
- ◆ Collect data on open meeting law questions and problems; and
- ◆ Provide educational outreach on public records and open meetings.

T.C.A. § 8-4-601

Office of Open Records Counsel (cont.)

Duties:

- ◆ Establish policies and guidelines;
- ◆ Make information available on the internet;
- ◆ Provide educational outreach on public records and open meetings; and

T.C.A. § 8-4-604

- ◆ Develop forms for a request for copies, denial and production.

T.C.A. § 10-7-503

Forms Developed by the OORC

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

- ◆ Inspection/Duplication Of Records Request
- ◆ Records Request Denial Letter
- ◆ Records Production Letter
- ◆ Notice of Aggregation Form

Schedule, Policies, and Guidelines Developed by the OORC

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

- ◆ Schedule of Reasonable Charges
- ◆ Policy for Frequent and Multiple Requests for Copies of Public Records
- ◆ Safe Harbor Policy
- ◆ Best Practice Guidelines

Public Records Policy to Be Developed by the OORC

Public Chapter ___, Acts of 2016 (HB2082/SB2033) mandates every governmental entity subject to the TPRA to have a written public records policy:

- ◆ Properly adopted by the governing body no later than July 1, 2017;
- ◆ Including:
 - (1) The process for making requests to inspect public records or receive copies of public records and a copy of any required request form;

Public Records Policy to Be Developed by the OORC (cont.)

◆ Including:

- (2) The process for responding to requests, including redaction practices;
- (3) A statement of any fees charged for copies of public records and the procedures for billing and payment; and
- (4) The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.

2015 Summer Study by OORC

Issues Surrounding Fees for Inspection of Public Records

- HB0315/SB0328 taken off notice March 25, 2015.
- OORC held public hearings with the Advisory Committee on Open Government (ACOG) to discuss the issues raised in the bill (charging for inspection).
- OORC submitted report to the General Assembly January 15, 2016.



Tennessee Comptroller of the Treasury

Justin P. Wilson



Home

Open Records Counsel Inquiry

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! If you would like to be contacted, please be sure to include your email address and/or phone number.

OORC Contact Information

If you have questions regarding the Tennessee Public Records Act, the Tennessee Open Meetings Act, or the Office of Open Records Counsel, contact ***Ann Butterworth***:

(615) 401-7891 or
toll-free at 1-866-831-3750.

open.records@cot.tn.gov.

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