



**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 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)¹ 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]

¹ 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.