



To: Requesting MTAS consultants
From: Elisha D. Hodge, MTAS Legal Consultant
Re: Document retention
Date: March 28, 2022

You asked the following questions on behalf of staff in the City Attorney's office:

- 1) How long does the city government have to retain closed files?
- 2) Re: public records requests, once the requesting party has been notified that all records are ready to be inspected or picked up, if the requesting party does not show up to inspect or pick up their copies, how long does the city have to hold on to these requested copies?

[Here](#) is a link to a formal ethics opinion from the Board of Professional Responsibility that addresses retention of client files. The opinion is general in nature and not specific to government attorneys. The city attorney might want to ask for an informal advisory opinion on retention of government attorney files.

With regard to the second question, the language in Tennessee Code Annotated Section 10-7-503(g) reads:

(7) Written or electronic correspondence regarding a public record request, including, without limitation, forms, emails, letters, facsimiles, and other attachments must be retained by the respective records custodian for not less than twelve (12) months. This subdivision (h)(7) does not apply to the public records subject to the request.

Tenn. Code Ann. § 10-7-503 (West)

While there is a requirement that the request and any communication related to the request be maintained for one year, there is no retention period established for the records subject to the request. If the request is for inspection (and assuming all of the requested records are being made available for inspection at one time and not in batches), I recommend maintaining the records responsive to the request for at least one month after the requestor is notified in writing that the records are ready for inspection. I also recommend that the written communication include the fact that the records in the request dated (insert date) will be available for inspection until (insert time frame, but at least a month after the written notification is sent to the requestor), unless a different date is agreed upon by the City and the requestor. These recommendations are based upon the language in Tennessee Code Annotated Section 10-7-503(a)(7)(vii)(a) that reads:

If a person makes two (2) or more requests to view a public record within a six-month period and, for each request, the person fails to view the public record **within fifteen (15) business days of receiving notification that the record is available to view**, the governmental entity is not required to comply with any public records request from the person for a period of six (6) months from the date of the second request to view the public record unless the governmental entity determines failure to view the public record was for good cause.



Depending upon the volume of the records and since inspection is free, the City might want to establish a longer retention period so that they are not duplicating a lot of work unnecessarily.

For requests for copies, Section VII(B) of the City's public records policy, which is found [here](#), reads:

Records custodians shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.

To the extent the option in the policy is being exercised and pre-payment is being required after an estimate is provided in writing, there should not be an issue with producing copies and never receiving payment. However, when pre-payment is not required and the requestor does not retrieve and pay for the copies made after a written estimate is provided and the requestor agrees to pay the estimate in writing, I recommend maintaining the copies for at least one month after the notification is made. Again, I think that it is important for the notification to include the time frame that the copies will be retained, unless a different date is agreed upon by the City and the requestor. I encourage staff to make sure that when pre-payment is not required, before any copies are made, an estimate that includes labor and the cost of copies is provided to the requestor in writing and the requestor agrees to pay the estimate in writing. Following this process allows the City to take advantage of the language in Tennessee Code Annotated Section 10-7-503(a)(7)(vii)(b) that reads:

If a person makes a request for copies of a public record and, after copies have been produced, the person fails to pay to the governmental entity the cost for producing such copies, the governmental entity is not required to comply with any public records request from the person until the person pays for such copies; provided, that the person was provided with an estimated cost for producing the copies in accordance with subdivision (a)(7)(B)(ii) prior to producing the copies and the person agreed to pay the estimated cost for such copies.

Finally, before any records are destroyed, I recommend that staff provide this email to the city attorney and the Office of Open Records Counsel to make sure they are in agreement with the recommendations contained herein.

Please let me know if there are other questions.

Elisha D. Hodge
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