

Report to the General Assembly:
Office of Open Records Counsel
and
Advisory Committee on Open Government

A Report to the Governor and 106th Tennessee General Assembly

March 1, 2009



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
James K. Polk State Office Building
505 Deaderick Street, Suite 1600
Nashville, Tennessee 37243-1402

Justin P. Wilson
Comptroller

March 1, 2009

The Honorable Phil Bredesen, Governor
The Honorable Ron Ramsey, Lieutenant Governor and Speaker of the Senate
The Honorable Kent Williams, Speaker of the House of Representatives
State Capitol
Nashville, Tennessee 37243

Dear Governor Bredesen, Lieutenant Governor Ramsey, and Speaker Williams:

Transmitted herewith is the annual report from the Office of Open Records Counsel and the Advisory Committee on Open Government pursuant to Tennessee Code Annotated Section 8-4-603(b).

Thank you for your consideration of this report, and please do not hesitate to contact our Office if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Ann V. Butterworth".

Ann V. Butterworth, Esq.

Assistant to the Comptroller for Public Finance
and Director of the Office of Open Records Counsel

A handwritten signature in cursive script that reads "Elisha D. Hodge".

Elisha D. Hodge, Esq.
Open Records Specialist

BACKGROUND

The Office of Open Records Ombudsman was funded by the General Assembly for Fiscal Year 2008 and administratively attached to the Office of Comptroller of the Treasury [Item 10, Section 43, Public Chapter 603, Acts of 2007]. In November, 2007, Comptroller John Morgan announced appointments for the Office of Open Records Ombudsman, which is currently referred to as the Office of Open Records Counsel. The Comptroller appointed Ann Butterworth, Assistant to the Comptroller for Public Finance, to serve as director and Elisha Hodge as open records specialist.

Butterworth, who has worked for the Comptroller's Office since 1987, has a law degree from Vanderbilt University and a Bachelor of Arts degree from Duke University. Hodge, who previously served as assistant general counsel for the Tennessee Department of Health, joined the Office of Open Records in December, 2007. Hodge received her law degree from the University of Memphis and a Bachelor of Arts degree from the University of the South.

On April 1, 2008, the Office of Open Records submitted a report to the Governor and the Speakers of the House and Senate. At that time the Office had received 44 inquiries, of which 13 were from governmental entities, 19 from citizens, and 12 from the media.

On July 1, 2008, Public Chapter 1179, Acts of 2008, became law. A copy of this legislation is attached as Attachment A. PC 1179 established the Office of Open Records Counsel (Tenn. Code Ann. Sections 8-4-601 et seq.) and the Advisory Committee on Open Government.

ADVISORY COMMITTEE ON OPEN GOVERNMENT

The Advisory Committee on Open Government was created to provide guidance and advice for the Office of Open Records Counsel. The Committee may review and provide written comments on proposed legislation regarding open meetings and open records laws, with the guidance and assistance of the Office. Additionally, the Committee and the Office are required to provide this annual report to the General Assembly and the Governor by March 1st of each year.

The Committee consists of thirteen (13) members, ten (10) of whom are appointed by the Comptroller of the Treasury from a list of three nominees submitted by the listed groups. Although members are to serve four (4) year terms, the initial appointments were staggered with four (4) and two (2) year terms. On July 1, 2008, Comptroller Morgan announced the following appointments to the Committee:

Dorothy Bowles (Tennessee Coalition for Open Government)
Frank Gibson (Tennessee Press Association)
Chad Jenkins (Tennessee Municipal League)
Jay West (*Tennessee County Services Association or County Officials*)

Association of Tennessee)
Amy Martin (Tennessee School Board Association)
Dick Williams (Common Cause)
Margie Parsley *(League of Women Voters)
Joseph Dawson (Tennessee Hospital Association)
Mike Cutler (Tennessee Association of Broadcasters)
Chris Modisher (Tennessee Board of Regents *or The University of Tennessee*)
*Judy Poulson represented the League of Women Voters while Ms.
Parsley was unavailable.

The three ex officio members of the Committee are: the Attorney General and Reporter for the State of Tennessee and the Chairs of the State and Local Government Committees of the Senate and the House. These members are:

Janet Kleinfelter (designated by Attorney General Bob Cooper)
Senator Bill Ketron (Chair, Senate Committee)
Representative Curry Todd* (Chair, House Committee)
*Representative Ulysses Jones served from July 2008 until January 2009.

Attachment B provides further information about the ACOG members, including their appointment terms.

The Committee has met eleven (11) times, including a joint meeting with the Office to hold a public hearing. Video archives of six (6) of the meetings are available on the General Assembly's website. The Committee has provided advice and comment on all forms, policies, and guidelines developed by the Office.

PURPOSE

The Office of Open Records Counsel serves as the intermediary between citizens and local governmental entities when concerns arise regarding access to local government public records under the Tennessee Public Records Act [Tenn. Code Ann. Sections 10-7-501 et seq.]. The Office assists Tennessee citizens in obtaining public records from local governments through directing citizens to the correct offices/officials and through working to resolve disputes regarding access to records once a request has been delayed or denied. The Office promotes education and awareness of the Tennessee Public Records Act and the Open Meetings Act [Tenn. Code Ann. Section 8-44-101 et seq.] through direct outreach and coordination with existing organizations. This educational outreach is focused on addressing citizens, media, and local governments and is consistent with the mission of the Office (which has adopted the mission of the Comptroller's Office) "to improve the quality of life for all Tennesseans by making government work better."

RESPONSIBILITIES

The responsibilities of the Office include:

- o answering questions and providing information to public officials and the public regarding public records [Tenn. Code Ann. Section 8-4-601(a)];

- answering questions and issuing “informal advisory opinions as expeditiously as possible to any person including local government officials, members of the public and the media” [Tenn. Code Ann. Section 8-4-601(b)];
- informally mediating and assisting “with the resolution of issues concerning open records laws codified in Title 10, Chapter 7” [Tenn. Code Ann. Section 8-4-601(c)];
- “collecting data on open meetings law inquiries and problems” [Tenn. Code Ann. Section 8-4-601(a)];
- “providing educational outreach on the open records laws codified in Title 10, Chapter 7, and the open meetings laws codified in Title 8, Chapter 44” [Tenn. Code Ann. Section 8-4-601(a)] and “establishing educational programs and materials regarding open meetings laws in Tennessee, to be made available to the public and to public officials” [Tenn. Code Ann. Section 8-44-109(e)];
- providing staffing to the Advisory Committee on Open Government;
- guiding and assisting the Advisory Committee on Open Government in reviewing and commenting on “any proposed legislation regarding the open meetings laws codified in Title 8, Chapter 44, and the open records laws codified in Title 10, Chapter 7” [Tenn. Code Ann. Section 8-4-603(a)];
- reporting with the Advisory Committee on Open Government “to the general assembly and to the governor by March 1 of each year” [Tenn. Code Ann. Section 8-4-603(b)];
- establishing a schedule of reasonable charges for copies of public records, to be reviewed at least annually [Tenn. Code Ann. Section 8-4-604(a)(1)];
- establishing a separate policy related to reasonable charges for frequent and multiple requests for copies of public records [Tenn. Code Ann. Section 8-4-604(a)(2)];
- establishing a safe harbor policy for records custodians adhering to policies and guidelines of the Office [Tenn. Code Ann. Section 8-4-604(a)(2)]; and
- developing records request response forms (request for copies, denial of access/copies, and records production letter) Tenn. Code Ann. Section 10-7-503(a)(2)(B) and (7)(A)].

ORGANIZATION CHART

The Office has three positions: Director, Open Records Specialist, and Executive Secretary 2. Although the support staff position was authorized for Fiscal Year 2008-09, no additional funds were appropriated to the Office to fund the position which is currently vacant. The Office relies upon assistance from the Office of the Comptroller of the Treasury for administrative support.

OPERATIONS

The Office is currently located on the 16th Floor of the James K. Polk Building, 505 Deaderick Street, Nashville (having moved from the 17th Floor in November 2008). The current contact information for the Office is:

Office of Open Records Counsel
1600 James K. Polk Building
Nashville, TN 37243-1402
(615) 401-7891 Phone
(866) 831-3750 Toll-free phone
(615) 532-9237 Fax
open.records@tn.gov

WEBSITE

The enabling legislation requires the Office to have an internet presence. Tenn. Code Ann. Section 8-4-601(b) requires the Office to post to its website all informal advisory opinions that are issued. Tenn. Code Ann. Section 8-4-604(b) requires the Office's policies and guidelines to be available on the internet. The home page for the Office is www.tn.gov/comptroller/openrecords/index.htm. The informal advisory opinions are posted at www.tn.gov/comptroller/openrecords/opinions.htm. The forms, policies, and guidelines are posted at www.tn.gov/comptroller/openrecords/forms.htm. See Attachment F.

ACTIVITIES

The Office has provided advice and guidance orally and in writing to the public, representatives of state and local government, and members of the news media. In March 2008, the Office held an in-person informal mediation regarding a dispute between a representative of the media and a local government. All other open records disputes have been mediated through phone calls and e-mail. From April 1, 2008 (the date of the prior report of the Office to the Governor and the Speakers of the House and Senate) through February 2009, the Office has:

- responded to more than 600 inquiries (see "Recurring Issues/Concerns below and Attachment C for a summary of the Open Meetings inquiries and problems);
- issued 16 informal advisory opinions (see Attachment D for a list of the opinions);
- made 34 presentations to various groups and organizations (see Attachment E for a list);
- made two radio appearances;
- appeared in two court cases (Sumner and Murfreesboro); and
- developed four forms, one schedule [of Reasonable Charges], two policies, and one set of guidelines (see Attachment F for a more complete list).

RECURRING ISSUES/CONCERNS

The Office has responded to more than 600 inquiries posed by phone, email, mail and in person. Approximately half of the inquiries have come from representatives of

governments or records custodians. The remaining inquiries have come predominately from citizens and then the media (including bloggers). After the passage of Public Chapter 1179 through the end of 2008, many inquiries were posed with regard to appropriate charges for copies. Inquiries whether or not access is available to a public record under the Tennessee Public Records Act and whether or not a legal basis exists for denial of a request for records have remained steady.

The following are recurring issues and concerns that have come to the attention of the Office of Open Records Counsel:

- The Tennessee Public Records Act (“TPRA” or the “Act”) does not provide guidance as to who should be considered the “records custodian” of a public record, for purposes of determining either the correct location for submitting a records request or the person or entity responsible for responding to the request. See Attachment G.
- The TPRA is not consistent in the use of “records”, “file”, and “information” with regard to what a citizen has a right to inspect. It is often difficult to reconcile issues regarding a citizen’s right of access with the fact that a records custodian has no obligation to create a new record. See Attachment G.
- The exemptions to the TPRA are not easily located.
- The TPRA specifically prohibits charging a fee for inspection of public records under the Act. Often times, a records custodian must expend considerable staff time preparing the records for inspection, including incurring out of pocket costs related to redacting information. If the requestor does not request copies, none of the costs related to preparing records for inspection, including duplication costs, can be recovered.
- Many Tennessee citizens exercising rights under the TPRA believe that, as taxpayers, they have already paid the salaries of individuals responding to their public records requests, as well as for the costs of duplication (such as paper, copying equipment, computers) and should not be charged for exercising their rights.
- With the exception of GIS information, the TPRA does not distinguish the fees that can be charged for copies of public records based on the intended use of the record. A records custodian is not authorized to charge differently for copies of public records which have commercial value, such as in accident or incident reports, when the records will be used commercially.
- A Tennessee citizen has the right of personal inspection of a public record. A non-Tennessee citizen can circumvent the law by having a Tennessee citizen (whether or not on a compensated basis) either inspect or purchase copies of the public record on his or her behalf.

- Exceptions to the TPRA with respect to the same type of record (or information) often vary depending upon the identity of the records custodian (for example, audit files, investigatory files, or social security numbers).
- The TPRA does not limit the number, frequency, or size of requests that a citizen may make. If a records custodian provides a records production letter indicating that access or denial cannot be achieved within the seven business day requirement, the Act does not impose a time frame on the custodian's obligation to satisfy the request.
- The TPRA does not exempt most drafts or work-in-progress.
- The TPRA does not prohibit the use of the Act to obtain records in lieu of discovery when the requestor is engaged in (civil or criminal) litigation with the government.
- The TPRA affords some protection to the records of law enforcement personnel and additional protection to undercover officers. Other governmental employees hold jobs that place them at risk of retaliation and potential harm (for example, government attorneys, DCS employees, agency investigators), however, the personnel records of those public employees are not afforded the same protection given to the records of law enforcement officers.

PUBLIC CHAPTER NO. 1179

SENATE BILL NO. 3280

By McNally, Haynes, Burchett, Tracy, Williams, Watson

Substituted for: House Bill No. 3637

By McDaniel, Eldridge, DuBois

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 4; Title 8, Chapter 44 and Title 10, Chapter 7, relative to open government.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 10-7-503, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a)(1) As used in this part and Title 8, Chapter 4, Part 6, "public record or records" or "state record or records" means 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.

(2)(A) 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 Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

(B) The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall within seven (7) business days:

(i) Make such information available to the requestor;

(ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or

(iii) Furnish the requestor a completed records request response form developed by the office of open

records counsel stating the time reasonably necessary to produce such record or information.

(C)(i) Until the office of open records counsel develops a schedule of reasonable charges in accordance with § 8-4-604(a), a records custodian may require a requestor to pay the custodian's actual costs incurred in producing the requested material; provided that no charge shall accrue for the first five (5) hours incurred by the records custodian in producing the requested material. Such actual costs shall include but not be limited to:

(a) The making of extracts, copies, photographs or photostats; and

(b) The hourly wage of employee(s) reasonably necessary to produce the requested information.

(ii) When such schedule of reasonable charges is developed, the provisions of subsection (a)(7)(C)(1) shall become effective.

(iii) Following the development of the schedule of reasonable charges by the office of open records counsel, the office of open records counsel shall notify the Tennessee Code Commission and when the code commission receives such notice this subdivision (C) shall no longer apply and the language in this subdivision (C) shall be repealed and deleted by the code commission as volumes are replaced or supplements are published.

(3) Failure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the right to bring an action as provided in § 10-7-505.

(4) This section shall not be construed as requiring a governmental entity or public official to sort through files to compile information; however a person requesting such information shall be allowed to inspect the non-exempt records.

(5) This section shall not be construed as requiring a governmental entity or public official to create a record that does not exist; however the redaction of confidential information from a public record or electronic database shall not constitute a new record.

(6) A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.

(7)(A) A records custodian may not require a written request or assess a charge to view a public record unless otherwise required

by law. However, a records custodian may require a request for copies of public records to be in writing or that such request be made on a form developed by the office of open records counsel. Such custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, which includes the person's address. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.

(B) Any request for inspection or copying of a public record shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied.

(C)(1) A records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested material and to assess such reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.

(2) The records custodian shall provide a requestor an estimate of such reasonable costs to provide copies of the requested material.

SECTION 2. Tennessee Code Annotated, Section 10-7-505(b), is amended by adding the language "or circuit court" immediately after the language "chancery court" in the first sentence.

SECTION 3. Tennessee Code Annotated, Section 10-7-505(b), is further amended by adding the language "or circuit court" after the language "chancery court" every time it appears in the second sentence.

SECTION 4. Tennessee Code Annotated, Section 10-7-505(g), is amended by adding the following language at the end of the subsection:

In determining whether the action was willful the court may consider any guidance provided to the records custodian by the office of open records counsel as created in Title 8, Chapter 4.

SECTION 5. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following as a new section thereto:

§ 8-44-109.

(a) The municipal technical advisory service (MTAS) for municipalities and the county technical assistance service (CTAS) for counties, in order to provide guidance and direction, shall develop a program for educating their respective public officials about the open meetings laws codified in this chapter, and how to remain in compliance with such laws.

(b) The Tennessee School Board Association shall develop a program for educating elected school board members about the open meetings laws and how to remain in compliance with such laws.

(c) The utility management review board shall develop a program for board members of water, wastewater and gas authorities created by private act or under the general law and of utility districts in order to educate such board members about the open meetings laws and how to remain in compliance with such laws.

(d) The state emergency communications board created by § 7-86-302 shall develop a program for educating emergency communications district board members about the open meetings laws and how to remain in compliance with such laws.

(e) The office of open records counsel established in Title 8, Chapter 4, shall establish educational programs and materials regarding open meetings laws in Tennessee, to be made available to the public and to public officials.

SECTION 6. Tennessee Code Annotated, Title 8, Chapter 4, is amended by adding the following sections as a new part thereto:

8-4-601.

(a) There is created the office of open records counsel to answer questions and provide information to public officials and the public regarding public records. The role of such office shall also include collecting data on open meetings law inquiries and problems and providing educational outreach on the open records laws codified in Title 10, Chapter 7, and the open meetings laws codified in Title 8, Chapter 44.

(b) 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. State officials shall continue to consult with the office of the attorney general and reporter for such opinions. Any opinion issued by the office of open records counsel shall be posted on the office's Web site.

(c) The office of open records counsel is hereby authorized to informally mediate and assist with the resolution of issues concerning the open records laws codified in Title 10, Chapter 7.

8-4-602.

(a) There is created an advisory committee on open government to provide guidance and advice for the office of open records counsel.

(b)(1) The advisory committee shall consist of ten (10) members to be appointed for a term of four (4) years; provided that the four (4) members listed in subdivisions (b)(1)(A)-(E) shall be appointed for an initial term of four (4) years and the four (4) members listed in subdivisions (b)(1)(F)-(J)

shall be appointed for an initial term of two (2) years. The advisory committee shall be made up of one (1) member from each of the following groups who will be appointed by the comptroller from a list of three (3) nominees submitted from each group:

(A) One (1) member from the Tennessee Coalition for Open Government;

(B) One (1) member from the Tennessee Press Association;

(C) One (1) member from the Tennessee Municipal League;

(D) One (1) member from either the Tennessee County Services Association or the County Officials Association of Tennessee;

(E) One (1) member from the Tennessee School Boards Association;

(F) One (1) member from Common Cause;

(G) One (1) member from the League of Women Voters;

(H) One (1) member from public hospitals submitted by the Tennessee Hospital Association;

(I) One (1) member from the Tennessee Association of Broadcasters; and

(J) One (1) member representing the Tennessee board of regents or the University of Tennessee.

(2) The advisory committee shall also consist of the chairs of the House and Senate State and Local Government Committees and the attorney general or the attorney general's designee.

(c) The non-legislative members shall not receive compensation for serving on the committee but shall be reimbursed for attendance at meetings in accordance with the comprehensive travel regulations promulgated by the Commissioner of Finance and Administration and approved by the attorney general.

8-4-603.

(a) The advisory committee, with the guidance and assistance of the office of open records counsel, may review and provide written comments on any proposed legislation regarding the open meetings laws codified in Title 8, Chapter 44, and the open records laws codified in Title 10, Chapter 7.

(b) The office of open records counsel and the advisory committee shall provide a report to the general assembly and to the governor by March 1 of each year.

8-4-604.

(a) The office of open records counsel shall establish:

(1) A schedule of reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5. In establishing such a schedule, the office of open records counsel shall consider:

(A) Such factors as the size, by population, of the county or municipality; the complexity of the request; the number of man hours involved in retrieving the documents, redacting confidential information from the documents, and any other costs involved in preparing the documents for duplication; the costs of duplication; the costs of mailing such documents if the requestor is not returning to retrieve the requested documents; and any other costs which the office of open records counsel deems appropriate to include in such charge; and

(B) The principles presented by the study committee created by Chapter 887 of the Public Acts of 2006:

(i) The state policies and guidelines shall reflect the policy that providing information to the public is an essential function of a representative government and an integral part of the routine duties and responsibilities of public officers and employees;

(ii) That excessive fees and other rules shall not be used to hinder access to non-exempt, public information;

(iii) That, in accordance with § 10-7-503(a)(7)(A), no charge shall be assessed to view a public record unless otherwise required by law;

(iv) That the requestor be given the option of receiving information in any format in which it is maintained by the agency, including electronic format consistent with Title 10, Chapter 7, Part 1; and

(v) That when large-volume requests are involved, information shall be provided in the most efficient and cost-effective manner, including but not limited to permitting the requestor to provide copying equipment or an electronic scanner.

The schedule established pursuant to this subsection(a) shall be revised at least annually.

(2) A separate policy related to reasonable charges which a records custodian may charge for frequent and multiple requests for public records.

(3) A safe harbor policy for a records custodian who adheres to such policies and guidelines established by the office of open records counsel.

(b) The office of open records counsel shall make such policies and guidelines available on the Internet.

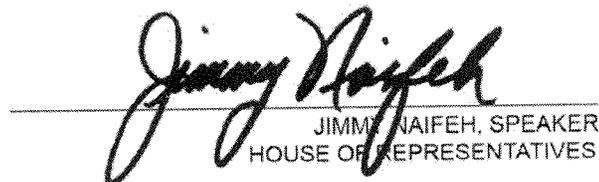
(c) Such policies and guidelines shall not be deemed to be rules under the provisions of Title 4, Chapter 5.

SECTION 7. This act shall take effect July 1, 2008, the public welfare requiring it.

PASSED: May 20, 2008

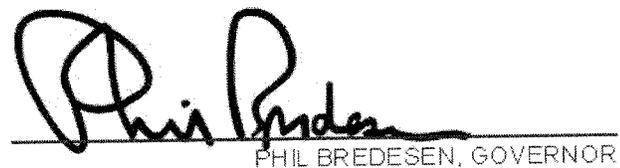


RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of June 2008



PHIL BREDESEN, GOVERNOR

<u>Organization</u>	<u>Member</u>	<u>Term End June 30</u>	<u>Gender</u>	<u>Race</u>	<u>Grand Div</u>	<u>Study Com</u>
Chair, Senate State and Local Government Committee	Ketron, Senator Bill	Ex Officio	M	C	M	
Chair, House State and Local Government Committee	Todd, Representative Curry	Ex Officio	M	C	W	
Tennessee Attorney General and Reporter	Kleinfelder, Assist AG Janet	Ex Officio	F	C	M	
Tennessee Coalition for Open Government	Bowles, Dorothy	2012	F	C	E	
Tennessee Press Association	Gibson, Frank	2012	M	C	M	
Tennessee Municipal League	Jenkins, Chad	2012	M	C	M	
Tennessee County Services Association or County Officials Association of Tennessee	West, Jay	2012	M	C	M	
Tennessee School Board Association	Martin, Amy	2012	F	C	E	Y
Common Cause	Williams, Dick	2010	M	C	M	Y
League of Women Voters	Parsley, Margie	2010	F	C	M	
Tennessee Hospital Association	Dawson, Joseph	2010	M	C	E	
Tennessee Association of Broadcasters	Cutler, Mike	2010	M	C	M	
Tennessee Board of Regents or The University of Tennessee	Modisher, Chris	2010	F	C	M	
F=5/ M=8 C=13 E=3/M=9/W=1						
Chair, House State and Local Government Committee	Jones, Rep. Ulysses	07/08-01/09	M	B	W	Y
League of Women Voters- alternate	Poulson, Judy	08/08-01/09	F	C	E	

Question	Response
Is a work session an "open meeting"? What can be done if you believe the governing body approves inaccurate minutes	If meeting other than information only, then is subject to notice requirements, etc. of Open Meetings Law. TCA 8-44-104 requires minutes be "promptly and fully recorded".
Who enforces OM law? What if government official threatens job if report violation?	TCA 8-44-106: court has jurisdiction over OML violations upon application by citizen. OML not cover if employee reports violation.
Did an open meetings violation occur when two or three board members of a local governing body met with a state senator and solicited his support for a candidate running for the board?	While this meeting does not appear to have violated the Open Meetings Act because no decision was made by the board members nor did deliberation occur on a matter that was before the board, it is obvious a meeting took place prior to the meeting with the senator where the board members did decide on the candidate they were going to support and how they were going to present this to the senator. The violation occurred during that meeting.
Does the Open Meetings Act give citizens the right to participate in and comment at a public meeting?	The Open Meetings Act gives citizens the right to be present at a public meeting, but there is nothing in the Open Meetings Act that gives citizens the right to comment or otherwise participate in a public meeting.
Did a violation of the Open Meetings Act occur when a letter was sent to the mayor who presides over the Board of Mayor and Aldermen from an alderman recommending that a matter before the BMA be withdrawn until issues relative to the matter were resolved? Did a violation occur when the mayor and an alderman had a chance meeting and the alderman asked a question about a matter before the BMA and the mayor provided him background information on the issue but nothing more?	While it seems that both of these situations violate the spirit of the law, it seems that neither violate the letter of the law. The law prohibits members of a governing body from meeting outside of public view to deliberate towards or make a decision on an issue before the public body. While the letter was clearly sent to influence the mayor's decision on the matter, the alderman and the mayor never exchanged correspondence on the issue and at no point did the Mayor respond in any manner at all. With regards to the chance meeting, chance meetings are not considered public meetings; however, the law clearly prohibits decisions being made or deliberations towards a decision being conducted during a chance meeting. The conversation that was described seems to have been informational in nature as opposed to deliberations, but depending on how questions were asked and the manner they were answered an informational exchange could be construed as deliberations.

<p>Can a sitting commissioner contact other commissioners one on one when seeking a public office to be filled by vote of the governing body? TCA 5-5-111</p>	<p>Still meet definition of governing body (8-44-102) yet 5-5-111 clearly prohibits voting so not a discussion between two voting members; law changed to not require commissioner to resign prior to vote on filling position; she should NOT participate in discussion even if asked. To not allow her to communicate on the same basis as other candidates would effectively require her to resign from her position.</p>
<p>Tennessee Wildlife Resources Agency/TN Wildlife Resources Commission- are they subject to open meetings? Was public notice required for decision on site of firing range? Was OML violated when Commission did not vote to relocate range?</p>	<p>TWRA not subject, TWRC is subject OML. No apparent violation of OML law; determination of site of firing range within discretion of TWRA. Commission was not obligated under OML to allow citizen to present grievance.</p>
<p>Was County Commissioner's communications with other commissioners regarding appointment to judgeship a violation of the open meetings law? (wants to discuss the commissioner who called other commissioner and solicited their vote for a judgeship.) They are interested in possibly pursuing this as a violation of the Open Meetings Act.</p>	<p>No, not directly addressed in law; matter of discussion not one that she could vote upon; 5-5-111, amended by PC871, Acts 2008, not require resignation, but not allowed to vote; 8-44-102(b)(1)(A); governing body: "The members of any public body which consists of two (2) or more members, with the authority to make decisions for" - on this matter no authority to make decision.</p>
<p>Metro Planning Commission held a public hearing, but did not allow all persons present to speak on issue. Chairman cut off speakers saying traffic concerns were being brought up, allowed three more speakers. Believes that at least 20 people were prevented from speaking. Believes citizens rights are constantly being ignored in public hearings.</p>	<p>Closing a public hearing not a violation of the Open Meetings Law.</p>

ATTACHMENT D

OPINIONS OF OFFICE OF OPEN RECORDS COUNSEL

www.tn.gov/comptroller/openrecords/opinions.htm

- 08-01 Fee components and duplication
- 08-02 Interplay between litigation and the Tennessee Public Records Act
- 08-03 Access to audio recordings of commission meetings
- 08-04 Access to juvenile traffic offense records
- 08-05 Access to cell phone records of public employees
- 08-06 On-site computer access in county government offices
- 08-07 Format of a public records request
- 08-08 Effective date of Public Chapter 853
- 08-09 Access to the emails of public employees
- 08-10 Access to public records and review of a copying policy for compliance with the Tennessee Public Records Act
- 08-11 Access to constituent communications received by an appointed /elected local government official
- 08-12 Specificity and Computer Access
- 08-13 FACTA and the Tennessee Public Records Act
- 08-14 Access to Attorney-Client Communications and Charges for Labor Related to Inspection
- 09-01 Access to Courtroom Surveillance Footage
- 09-02 GIS Data

PRESENTATIONS

ATTACHMENT E

DATE	PROGRAM	LOCATION	Presenters	Present
4/29/2008	COT Division of State Audit	Nashville	EH	
5/3/2008	League of Women Voters- Annual Meeting	Lebanon-	AB	
5/13/2008	Johnson City Senior Citizen Ctr	Johnson City	AB	
5/15/2008	AOC- Clerks of Court	Nashville- Maxwell House	EH	
5/22/2008	TN Digital Summit	Nashville- Doubletree	EH/AB	
6/9/2008	TN State Veterans Homes Board-staff	Humboldt- TSVHB	AB	
6/9/2008	Rotary Club	Jackson- Doubletree	AB	
6/12/2008	AOC- Clerks of Court	Gatlinburg- Park Vista	EH	
6/16/2008	Nashville School of Law/ Administrative Law Class	Nashville- NSL 100 Oaks	EH/AB	
6/23/2008	TN Municipal League	Memphis	EH	
7/1/2008	AOC- Clerks of Court	Nashville	EH	
8/7/2008	TN Association of Utility Districts	Gatlinburg- Park Vista	AB	
8/14/2008	CJE Enterprise- Lunch and Learn: Public Records	Chattanooga	EH	
8/14/2008	Nashville Bar Association/Government Law Update	Nashville- Sheraton	AB	
9/12/2008	Clerks of Court	Paris Landing- State Park	EH	
9/25/2008	Lorman Seminar on Public Records	Knoxville- Holiday Inn	EH/AB	
9/26/2008	COT- Municipal Audit	Nashville- Ellington Ag	EH	AB
10/14/2008	TN Department of General Services- Records Management	Nashville-	EH	
10/15/2008	County Officials Association of TN- Annual Meeting	Memphis	EH/AB	
10/22/2008	TN Department of Human Resource	Nashville	EH	AB
10/30/2008	TN Government Finance Officers Association- Annual Meeting	Franklin- Marriott	EH/AB	
11/3/2008	COT- Senior Management Team	Nashville- Public Library	EH/AB	
11/14/2008	TN Association of Utility Districts	Gatlinburg- Park Vista	AB	
11/18/2008	Inns of Court	Nashville- University Club	EH/AB	
11/25/2008	TN Board of Probation and Parole	Nashville- Pkwy Towers	EH	
12/2/2008	COT- Bond Finance	Nashville- JKPolk	EH/AB	
12/3/2008	TN Municipal Electric Power Association- Member Meeting	Franklin- Marriott	AB	
12/5/2008	TN Association of Utility Districts	Nashville- Opryland Radisson	AB	
12/5/2008	TN Claims Commissioners	Nashville- AJ SOB	EH/AB	
1/12/2009	TN Association of Licensed Private Invest.	Brentwood	AB	
1/15/2009	City of Athens- Police and HR	Athens	EH	
2/6/2009	TN Valley Public Power Association	Murfreesboro	AB	EH
2/17/2009	Senate State and Local Government	Nashville	AB/EH	
2/24/2009	House State and Local Government	Nashville	AB/EH	

FORMS, SCHEDULE, POLICIES, and GUIDELINES

RECORDS REQUEST FORMS

The Inspection/Duplication Of Records Request is the form which can be used by both requestors and records custodians. Note, when a request is made under the Tennessee Public Records Act, the Act does **not** authorize custodians either: (1) to require requests for inspection of public records to in writing, or (2) to assess a charge for inspection. However, other provisions of law **may** permit or require such written request or charge. The Act does authorize a records custodian to require requests for **copies** of records to be in writing (or to be made on the form developed by the Office of Open Records Counsel) and to require payment of costs for the copies. Records custodians who require written requests for copies are encouraged to customize this form to conform to their specific office and make the form readily available for use.

The Records Request Denial Letter is the response form sent by a records custodian to a requestor to deny a records request for inspection or access or for copies of public records. The written denial must disclose the legal basis for the denial. Although a written denial is required by the Act, a records custodian is not required to use the exact form developed by the Office of Open Records Counsel.

The Records Production Letter is the response form to be used by a records custodian when the record cannot be made available within seven (7) business days. The Act requires records custodians to use the exact form developed by the Office of Open Records Counsel.

Schedule of Reasonable Charges relates to charges which a records custodian may charge for copies of public records requested pursuant to the Act.

Frequent and Multiple Requests for Copies Policy permits aggregation of requests for purposes of calculating labor charges.

Notice of Aggregation Form is the form to be used when aggregating requests by more than one requestor pursuant to the Policy for Frequent and Multiple Requests for Copies.

Safe Harbor Policy establishes a presumption of compliance with the Act for custodians following OORC Schedule of Reasonable Charges and Frequent and Multiple Requests Policy.

Best Practices Guidelines serve as a resource for records custodians but are nonbinding. Records Custodians must follow the Act.

Tennessee Public Records Act, Tenn. Code Ann. Sections 10-7-501 et seq.

Public record

"`public record or records` or `state record or records` " [10-7-503(a)(1)]
"information" [10-7-503(a)(2)(B)(i)+(4)+(5)]
"record or information" [10-7-503(a)(2)(B)(iii)]
"requested material" [10-7-503(a)(7)(C)]
"any state, county, or municipal record" [10-7-505(a)]
"documents" [10-7-505(e)]
"public records or writing" [10-7-508(a)]
"records, documents or physical evidence" [10-7-510(a)]

Responsible for public record:

"those in charge of such records" [10-7-503(a)(2), (f)]
"custodian of a public record" [10-7-503(a)(2)]
"lawful custodian of such records" and authorized deputy [10-7-506(a)]
"records custodian" [10-7-503(a)(2)+(7) and 10-7-505(g), 504(a)(15)]
"public official" [10-7-503(a)(4)+(5), 504(f)]
"head of a governmental entity" [10-7-503(b)]
"agency head or a representative of the agency" [10-7-508(b)]
"custodian" [10-7-503(c)]
"official or designee of the official" [10-7-505(a), (c)]

"governmental agency" [10-7-503(a)(1)]
"governmental entity" [10-7-503(a)(4)+(5)+(6), (b), 505(g)][*Note, has a specific definition for 10-7-504(a)(16)+(21) and (i) as "state of Tennessee, and any county, municipality, city or other political subdivision of the state of Tennessee"]
"state or any agency, institution, or political subdivision thereof" [10-7-512(a)]
"agencies" [10-7-504(b)]

Public Chapter 1179 in establishing the Office of Open Records Counsel [Tenn. Code Ann. Sections 8-4-601 et seq.] and the Open Meetings Law [Tenn. Code Ann. Section 8-44-101 et seq.]

"public officials" [8-44-109(a)+(e), 8-4-601(a)]
"local government officials" [8-4-601(b)]
"records custodian" [8-4-604(a)(1), (2)+(3)]
"public officers and employees" [8-4-604(a)(1)]
"agency" [8-4-604(a)(1)]
"governing body" [8-44-102]
"governmental body" [8-44-103+104]

Existing 8-4-109 references "governmental entity" "created under and by virtue of the statutes of the state of Tennessee which handles public funds when such audit is deemed necessary or appropriate by the comptroller of the treasury."