



OFFICE OF OPEN RECORDS COUNSEL

ANNUAL REPORT
MARCH 2016

Justin P. Wilson
Comptroller of the Treasury

Ann V. Butterworth
Open Records Counsel

Dear Governor and Members of the 109th General Assembly,

This annual report provides an overview of the Office of Open Records Counsel's activities over the past year. The Office of Open Records Counsel's report is offered in conjunction with the Advisory Committee on Open Government.

As reflected in the recent audit finding, the Office is struggling to fulfill its statutory responsibilities within the appropriated resources. The Office has been working with the Comptroller's Division of Technology Solutions to develop a new database which will help us to better track the inquiries and responses. It allows a seamless flow of online inquiries to the database and went live March 1, 2016. Additionally, the Office submitted to the Governor a request for two additional positions, which were not included in the Governor's 2016-2017 budget proposal.

Earlier this year, the Office distributed to you the report on fees for inspection of public records, posted on our [website](#). The report was prepared after holding public hearings across the state and surveying both citizens and record custodians. Thank you for the opportunity to undertake that effort on your behalf.

Thank you for your consideration of this report. I encourage you to contact the Office if I can be of assistance.

Ann V. Butterworth
Open Records Counsel

OFFICE RESPONSIBILITIES

The Office of Open Records Counsel is charged with the following responsibilities:

- ☉ Serve as a point of contact for questions and concerns regarding access to public records and regarding open meetings;
- ☉ Assist citizens in obtaining open public records;
- ☉ Promote education and awareness of Tennessee public records and open meetings laws;
- ☉ Collect data on open meetings inquiries and problems;
- ☉ Issue informal advisory opinions on open records issues; and
- ☉ Develop forms, schedules, policies, and guidelines for open record requests.

CONTACT INFORMATION

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For additional information about the Office and other related resources visit:

www.comptroller.tn.gov



HISTORY OF THE OFFICE

The 104th General Assembly enacted the Sunshine in Government Improvement Act of 2006 which created a special joint study committee on open government laws. The committee was charged with determining whether there was a need for revisions to the open government laws.

In 2007, the 105th General Assembly appropriated funding for the Office of Open Records Ombudsman under the purview of the Comptroller of the Treasury. The Office was opened in the fall of 2007 and in the following year, the General Assembly provided statutory authority for the Office of Open Records Counsel by enacting Public Chapter 1179, Acts of 2008. The legislation additionally created the Advisory Committee on Open Government, which is composed of appointed persons and ex officio members, to guide and advise the Office on open records and open meetings.

Today, the Office of Open Records Counsel strives to make government work better by helping citizens and government officials understand Tennessee's laws on public records and open meetings through presentations and educational outreach, resources posted on the web, and direct communications.

OPEN RECORDS QUESTIONS AND CONCERNS

What are “public records” in Tennessee?

The Tennessee Code defines "public records" very broadly, without regard to physical or electronic form or characteristics, as long as the records were “made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.” Tenn. Code Ann. Section 10-7-503(a)(1)(A). The TPRA does not require any records to be created or received. The TPRA does not distinguish between temporary and permanent records. The TPRA provides that if the record exists at the time of the request and is open for public inspection, access to the record must be provided promptly to a Tennessee citizen. Most record custodians are prepared to provide access to records created with the anticipation of being viewed by the public, such as minutes and reports. However, due to technology, many public records are being created without systems in place for the custodian to provide prompt public access, such as emails and text messages.

Where can I find what governs whether a public record is open or not?

All public records are open for inspection by Tennessee citizens “unless otherwise provided by law.” Tenn. Code Ann. Section 10-7-503(a)(2)(A). Although several exemptions are found in the Tennessee Public Records Act (Tenn. Code Ann. Sections 10-7-503 and -504), most exemptions are found throughout the Tennessee Code, federal law, state and federal rules and court decisions, as well as in common law. A records custodian must maintain as confidential records that have been closed for public inspection before providing access; this review or verification process impacts the promptness of access.

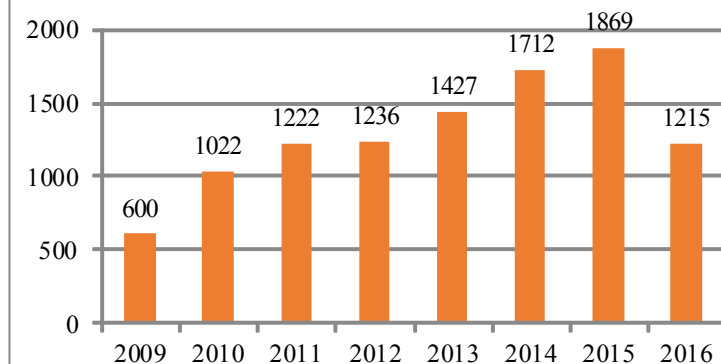
What limits a public records request?

There is no limitation in the Tennessee Public Records Act about the number of records requested, the frequency of requests, or the motivation of the requests. The Act does require the request to “be sufficiently detailed to enable the records custodian to identify” what records are being requested. Tenn. Code Ann. Section 10-7-503(a)(7)(B). If all responsive records cannot be made available promptly, the records custodian should provide the readily available records and then establish a schedule or process for making the remaining records available promptly thereafter. A records custodian cannot require a request for inspection only to be in writing but is authorized to require a request for copies to be in writing. Tenn. Code Ann. Section 10-7-503(a)(7)(A).

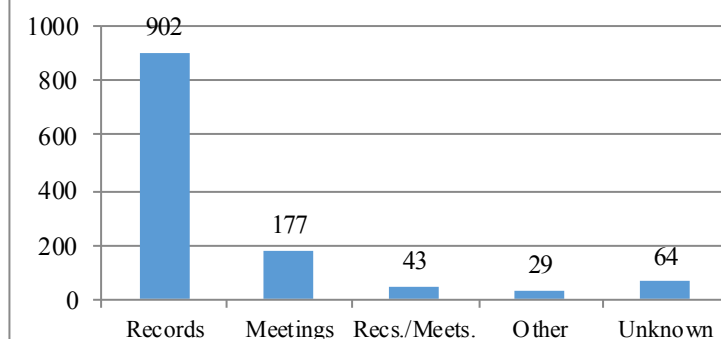
DATA ON INQUIRIES RECEIVED

**Note in FY 2015, the Office of Open Records Counsel adjusted its data tracking process. Most constituent contacts involve multiple issues. Historically, the office pulled each individual issue as a separate data entry. Currently, we group inquiries that arise from one issue together. Therefore, the numbers projected for this year and those submitted last year may not be comparable.*

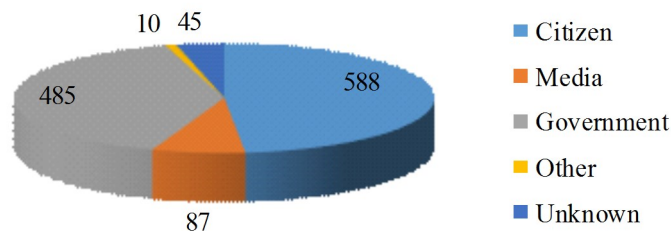
INQUIRIES BY YEAR



INQUIRIES BY TYPE



INQUIRIES BY AFFILIATION



OPEN MEETINGS QUESTIONS AND CONCERNS

Who has to comply with the “Sunshine Law”?

The “Sunshine Law”, or the Tennessee Open Meetings Act (Tenn. Code Ann. Sections 8-44-101 et seq.), is an act that prohibits members of a governing body from meeting and deliberating towards and/or making decisions on public business, unless the public receives adequate notice of the meeting. A governing body of a public entity is a multiple member entity created by state, county or municipal legislative action. Committees of governing bodies with the authority to make decisions for or recommendations to the governing body on policy or administration must also comply with the Act.

The Act does not grant the public a right to speak at or to participate in a meeting. The Act does grant the right to be present and to listen to the transaction of business. Other provisions of law may grant the public the right to speak to a governing body or may require a governing body to hold a public hearing at which the public may speak.

What is an “open meeting”?

“Meeting” is defined in part as “the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.” Tenn. Code Ann. Section 8-44-102(b)(2). The Act requires that the public be given adequate notice sufficiently in advance of the actual meeting in order to provide an opportunity to become aware and to attend. In very limited circumstances, a governing body may meet in a non-open session.

MOST FREQUENT OPEN MEETINGS QUESTIONS AND PROBLEMS

- Members of a governing body meet before a meeting and then vote at the meeting without public discussion revealing reasoning behind the decision making on the agenda items.
- Retreats or study sessions are held with notice of the gathering, but no minutes are kept of the discussion and decision making.
- Minutes in draft form are not made available for public inspection, and only approved and signed minutes are provided. Also, minutes are not prepared promptly after a meeting is held.
- The committees of boards or commissions do not comply with the Tennessee Open Meetings Act (no public notice given and no minutes prepared).
- Meetings are held in locations where it is difficult for the public to attend or to hear what is being said.
- Meeting agendas do not clearly indicate matters to be deliberated and decided.

2016 ADVISORY COMMITTEE ON OPEN GOVERNMENT

The 17 member Advisory Committee on Open Government provides advice and guidance to the Office.

2016 Committee Members

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| Lucian Pera | Tennessee Coalition for Open Government |
| Richard Hollow | Tennessee Press Association |
| Chad Jenkins | Tennessee Municipal League |
| David Connor | Tennessee County Services Association |
| Don Long (resigned 10/2015) | Tennessee School Board Association |
| Debbie Shedden (appointed 11/2015) | Tennessee School Board Association |
| Dick Williams | Common Cause |
| Vivian Underwood Shipe | League of Women Voters |
| Amy Griffin | Tennessee Hospital Association |
| Robb Harvey | Tennessee Association of Broadcasters |
| Monica Greppin-Watts | Tennessee Board of Regents |
| Blake Farmer | Society of Professional Journalists |
| David Moore | Tennessee Association of Chiefs of Police |
| Jerry Vastbinder | Tennessee Sheriffs’ Association |
| Fred Fields | AARP |

Ex Officio Committee Members

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| Sen. Ken Yager | Chair, Senate State & Local Government Committee |
| Rep. Bob Ramsey | Chair, House State Government Committee |
| Ms. Janet Kleinfelter | Deputy Attorney General |