



OFFICE OF OPEN RECORDS COUNSEL

ANNUAL REPORT

MARCH 2017

Justin P. Wilson
Comptroller of the Treasury

Governor and Members of the 110th General Assembly:

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

During the past year, the Office endeavored to make progress responding to the increasing volume of open records and open meetings inquiries submitted by citizens and public officials across the state. On March 1, 2016, the Office launched a new database to provide better tracking and improved responsiveness to open records and open meetings inquiries. The new database allows users to submit online inquiries directly through the Office website, and the information is seamlessly populated directly into the database. The Office also utilized additional funding appropriated by the General Assembly to hire a new Deputy Open Records Counsel, Lee Pope, who joined the Office on October 3, 2016. Prior to joining the Comptroller's Office, Mr. Pope served as an Assistant Attorney General as well as the Assistant Director and General Counsel for the Tennessee Emergency Communications Board. The Comptroller's Office is excited to have Mr. Pope on our team as we strive to expand the Office of Open Records Counsel's outreach.

On January 20, 2017, the Office released a model public records policy for government entities subject to the Tennessee Public Records Act. All government entities are required by Public Chapter 722, Acts of 2016, to adopt their own public records policies by July 1, 2017. Additionally, governmental entities must designate a public record request coordinator to ensure public record requests are routed to the appropriate records custodian and that requests are fulfilled in accordance with the law. The Office released the model policy after consulting with the Advisory Committee on Open Government and receiving public comments from other interested groups and organizations, citizens, and government officials from across the state. The Office also released updated policies, guidelines, and forms in conjunction with the release of the model policy to further assist with the handling of open records requests.

During the 109th General Assembly, the House State Government Committee referred legislation regarding law enforcement body-worn cameras to the Office for the Advisory Committee on Open Government to study and make recommendations addressing public records issues. The Office worked with the ex-officio legislative members of the Advisory Committee, Chairmen Bob Ramsey and Ken Yager, who led the committee in addressing these concerns. A report containing the Advisory Committee's responses was prepared by Chairman Ramsey's office and is currently available for your review.

We are proud of the accomplishments the Office of Open Records Counsel made over the past year, and we look forward to further improvements to make government better with respect to open records and open meetings in the year to come. Thank you for your consideration of this report. Please feel free to contact our office if we can be of any assistance.

Ann V. Butterworth
Open Records Counsel

Lee Pope
Deputy 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 public records and open meetings;
- Assist citizens and public officials with requests for public records;
- Promote education and awareness of Tennessee's public records and open meetings laws;
- Collect data on open meetings inquiries and problems;
- Issue informal advisory opinions; and
- Develop forms, schedules, policies, and guidelines for open record requests.

HISTORY OF THE OFFICE

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

In 2007, the 105th General Assembly appropriated funding for the Office of Open Records Ombudsman, which opened in the fall of 2007 under the purview of the Comptroller of the Treasury. In the following year, based on the recommendations of the special joint committee, the General Assembly amended the Tennessee Public Records Act and provided statutory authority for the Office of Open Records Counsel by enacting Public Chapter 1179, Acts of 2008. The legislation also 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 issues.

Today, the Office of Open Records Counsel strives to make government work better by helping citizens and government officials better understand Tennessee's laws on public records and open meetings through educational outreach, posting resources on the Office website, and through direct communication and interaction with citizens and government officials across the state.

OPEN RECORDS QUESTIONS & CONCERNS

What are “public records” in Tennessee?

The Tennessee Code defines "public record" very broadly, without regard to physical or electronic form or characteristics, as long as the record is “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). The Tennessee Public Records Act (“TPRA”) does not require any records to be created or received, and 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 it is open for public inspection, access to the record must be provided promptly to a Tennessee citizen.

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.” See Tenn. Code Ann. § 10-7-503(a)(2)(A). Although many exemptions are set forth in the TPRA, Tenn. Code Ann. § 10-7-503, et seq., most exemptions are found elsewhere throughout the Tennessee Code, Federal Code, state and federal rules of procedure, court decisions, as well as in common law. Records custodians in Tennessee have a duty to maintain the confidentiality of records closed for public inspection before providing access; this review or verification process impacts the promptness of access.

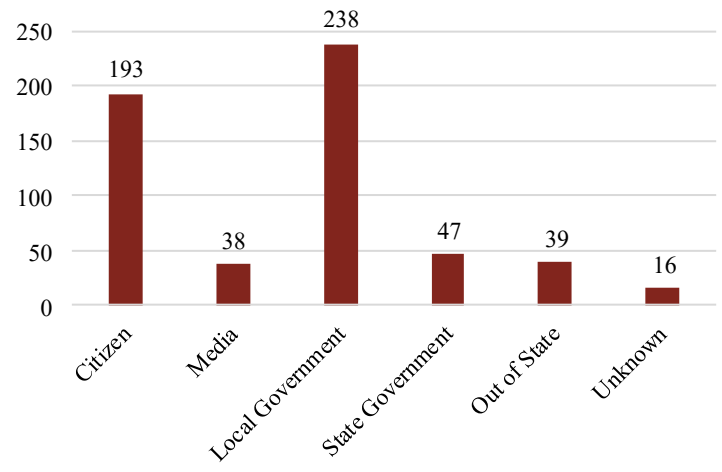
Who is a citizen?

The right to inspect public records is granted to “any citizen of this state.” See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, a records custodian has discretion to “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.” See Tenn. Code Ann. § 10-7-503(a)(7)(A). The decision whether to require proof of citizenship, or to respond to requests made by non-Tennessee citizens, should be made by the governmental entity and should be included in its written public records policy. See Tenn. Code Ann. § 10-7-503(g)(1).

What limits public records requests?

The TPRA does not limit the number of public records that may be requested, the frequency of requests, or the motivation of the requests. However, the Act does require the request to “be sufficiently detailed to enable the records custodian to identify” what records are being requested. See Tenn. Code Ann. § 10-7-503(a)(7)(B). If all responsive records cannot be made promptly available, 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 if required by the entity’s public records policy. See Tenn. Code Ann. § 10-7-503(a)(7)(A) and (g)(1). .

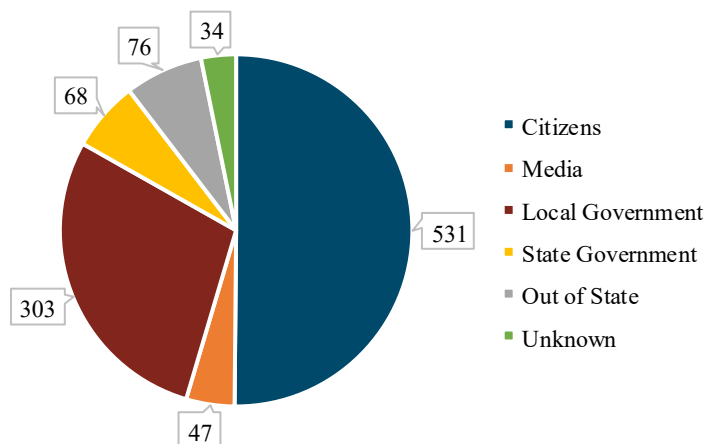
RECORDS INQUIRIES



INQUIRIES BY CATEGORY

Meetings Complaints (25 Governing Bodies)	215
Meetings Inquiries	60
Meetings & Records	32
Records Inquiries	571
Mediations	2
Presentations	15
TPRA Requests	85
Public Records Policy Inquiries	9
Other	70
TOTAL INQUIRIES 1,059	

INQUIRIES BY AFFILIATION



OPEN MEETINGS QUESTIONS & CONCERNS

Who must comply with the “Sunshine Law”?

The “Sunshine Law,” or the Tennessee Open Meetings Act (“TOMA”), Tenn. Code Ann. § 8-44-101 et seq., 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, a governing body on policy or administration must also comply with the Act. TOMA does not grant the public a right to speak at, or to participate in, a meeting. TOMA does grant the right to be present and to listen to the transaction of business. Other provisions of law may grant the public a 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.” See Tenn. Code Ann. § 8-44-102(b)(2). TOMA also requires adequate public notice prior to any meeting subject to the Act, which is notice sufficient to provide interested individuals an opportunity to become aware of and attend the meeting. There are very limited circumstances in which a governing body may not meet in an open meeting.

Frequent open meeting inquiries and problems

- Members of a governing body meet before a meeting and then vote at the meeting without public discussion revealing the reasoning behind decision making on 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.
- Committees of governing bodies do not comply with the Tennessee Open Meetings Act, such as providing public notice of the meetings and preparing meeting minutes.
- 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.

MEETING COMPLAINTS	
Citizens	202
Media	2
Local Government	5
State Government	0
Out of State	1
Unknown	5
TOTAL: 215	

2017 ADVISORY COMMITTEE ON OPEN GOVERNMENT

The 17-member Advisory Committee on Open Government (“ACOG”) provides advice and guidance to the Office. We appreciate the contributions made by Mr. Fred Fields (AARP), Chief David Moore (TACP), Mr. David Connor (TCSA), Mr. Richard Hollow (TPA), Mr. Chad Jenkins, and Mr. Lucian Pera (TCOG), whose service on ACOG ended in 2016.

2017 Committee Members

Adam Yeomans (appointed 10/2016)	Tennessee Coalition for Open Government
Jack McElroy (appointed 10/2016)	Tennessee Press Association
Maya Siggers (appointed 10/2016)	Tennessee Municipal League
Kathryn Strong (appointed 10/2016)	County Officials Association of Tennessee
Debbie Shedden	Tennessee School Board Association
Dick Williams	Common Cause
Vivian Underwood Shipe	League of Women Voters
Amy Garner	Tennessee Hospital Association
Robb Harvey	Tennessee Association of Broadcasters
Heather Stewart (appointed 8/2016)	Tennessee Board of Regents
Blake Farmer	Society of Professional Journalists
Jeff Hughes (appointed 8/2016)	Tennessee Association of Chiefs of Police
Jerry Vastbinder	Tennessee Sheriffs’ Association
Dennis Weber	AARP

Ex Officio Committee Members

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

Ann V. Butterworth, Open Records Counsel
Lee Pope, Deputy Open Records Counsel

CONTACT INFORMATION

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For additional information about the Office
 and other related resources visit:
www.comptroller.tn.gov/openrecords

