

# The Tennessee Public Records Act/ Office of Open Records Counsel: Presentation to COAT Convention

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October 15, 2008 in Memphis, TN  
Office of Open Records Counsel



# Background Information

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- ◆ The Tennessee Public Records Act was passed as a symbol of Tennessee's commitment to transparency and openness in government. Tennessee's commitment to transparency in government was first evidenced in the Tennessee Constitution (1796, 1870).
- ◆ Section 21 of Article II of the Constitution says, “[e]ach House [of the General Assembly] shall keep a journal of its proceedings, and publish it, except such parts as the welfare of the State may require to be kept secret. . . .”
- ◆ Section 22 of Article II says, “[t]he doors of each House and of committees of the whole shall be kept open, unless when the business shall be such as ought to be kept secret.”

# Tennessee Open Government Statutes

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- Tennessee Public Records Act, 1957  
(T.C.A. § 10-7-501 et seq.)
- Tennessee Open Meetings Act, 1974  
(T.C.A. § 8-44-101 et seq.)



# 2008 Open Records Legislation

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- ◆ PC 1179 establishes the Office of Open Records Counsel, specifies records custodian response time, fees for duplication, and makes other changes, effective July 1, 2008.
- ◆ PC 853 makes telephone and cell phone numbers and certain residential information of public employees confidential, effective on May 1, 2008.
- ◆ Additionally PC 923, effective July 1, 2008, allows Knox County government to utilize internet relay chat on a pilot project basis.  
<https://knoxgov.net/commission/commissionforum/>

# Stated Use and Purpose of Knox Forum:

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“On May 15, 2008, the Governor signed into law an amendment to the Public Meetings Act - Tenn. Code Ann. §§ 8-44-108(b) and 109. The Amendment enables the members of the Knox County Commission to communicate by electronic means under certain conditions, including the creation of a web site through which electronic communication by commissioners is conducted and is available for viewing by the public at all times and the archiving of the electronic communications to ensure that such electronic communications are publicly available for at least one (1) year after the date of the communication.

The Knox County Commission has exercised its option to communicate electronically in accordance with the Amended Public Meetings Act. Knox County has created this on line forum to allow Knox County Commissioners an opportunity to openly and transparently communicate electronically with other Commissioners in compliance with the Act. While only Knox County Commissioners may publish on the web site, the web site is designed so that citizens may read anything posted by any Commissioner at any time.

The postings on this forum are unedited. Once published, nothing can be deleted or edited in any fashion by Administrators or Commissioners and the postings become part of a stored record that will be available, by law, for a minimum of one (1) year after the date of the communication. Again, posting to this web site is strictly limited to the membership of the Knox County Commission.”

<https://knoxgov.net/commission/commissionforum/viewforum.php?f=2>



# Chat Examples

## Letter to Chairman Strickland

\_by **Elaine Davis** on Thu Jul 31, 2008 2:01 pm

Dear Chariman Strickland,

I am formally requesting that a special called meeting be held on Wednesday, August 6, 2008 at 9:30a.m. in the Main Assembly Room of the City-County building to discuss the mediation settlement and our contract with Natural Resources Recovery.

I believe in light of new information that has been received by commission this body needs to address the seriousness of these matters as soon as possible.

I ask that 9 other commissioners sign onto this letter thereby complying with our rules to convene a special called meeting.

Thank you.  
Elaine Davis

## Re: Letter to Chairman Strickland

\_by **Victoria DeFreese** on Thu Jul 31, 2008 3:50 pm

[quote="Elaine Davis"]Dear Chariman Strickland,

I am formally requesting that a special called meeting be held on Wednesday, August 6, 2008 at 9:30a.m. in the Main Assembly Room of the City-County building to discuss the mediation settlement and our contract with Natural Resources Recovery.

I believe in light of new information that has been received by commission this body needs to address the seriousness of these matters as soon as possible.

I ask that 9 other commissioners sign onto this letter thereby complying with our rules to convene a special called meeting.

Thank you.  
Elaine Davis[/quote]  
Victoria DeFreese

## Re: Letter to Chairman Strickland

\_by **Thomas Strickland** on Thu Jul 31, 2008 4:10 pm

Dear Commissioner Davis,

Thank you for the formal request. There will be a letter in the Commission office for Commissioners to sign for a special call meeting for the purpose of discussion and possible action regarding the agreement between Knox County and Natural Resource Recovery of Tennessee, LLC.

After ten Commissioners have signed on, I will set a date for the meeting.

Sincerely,

Thomas (Tank) Strickland

## Re: Letter to Chairman Strickland

\_by **Victoria DeFreese** on Thu Jul 31, 2008 11:34 pm

Chairman Strickland,

Why would this forum not suffice for 10 signers?

Surely we could all post our names here....this is sunshined...I believe the people desire to see who will sign and who will not sign. This forum is sunshined and archived.....very important parts of accountability.

Chairman, may I ask you to reconsider using this forum to collect the 10 signatures?

Most sincerely,  
Victoria DeFreese



# More Chat Examples

◆ **Protest of Process of Election of Committee Chairman**

by Richard Briggs on Fri Sep 05, 2008 12:55 am  
To Chairman Strickand

I wish to express my concern regarding the proceedings on August 29, 2008 after the election of the Chairman and Vice Chairman of the Knox County Commission. The Committee on Committees retired to deliberate in private on the assignment of commissioners to the various Committees of the Knox County Commission. The deliberations were not held in public as required under the Open Meetings Act and the Committee returned to the Assembly Room to announce their appointments.

The Finance and Intergovernmental Committees then “huddled” in private to select the Chairman, Vice Chairman, and Secretary of the Committees. The proceedings were not conducted in the customary open fashion for electing officers. I can speak only for the Finance Committee, but no explanation was offered to the process for the newly sworn in commissioners, no nominations solicited for the chairmanship, no discussion took place, and no vote taken by roll call.

For those of us recently elected, we ran on a platform of openness and accountability in government. I feel we have a mandate from the public to insist business is conducted in an open and fair manner and it will no longer be "business as usual." All commissioners, even the new ones, have the right to participate and understand the process. We will not tolerate the appearance or perception of impropriety. I have grave concerns that the deliberations mentioned above met neither the letter nor the spirit of the Open Meetings Act. No minutes were taken on the nominations of the officers for the committees and no record made of the vote - thus no accountability. . . .

◆ **Happy Birthday to someone**

by Mark Harmon on Sun Oct 05, 2008 1:25 pm  
Recently I received a birthday card, postmarked Oct. 1st, from the Tourism and Sports Corporation. It was particularly surprising in that my birthday is May 2nd. So, happy birthday to someone (Ivan Harmon? Mike Hammond?) to whom the sentiments probably were intended. All the best, Mark Harmon



# More Chat Examples

## Council to represent the Commission

\_by **Thomas Strickland** on Mon Aug 11, 2008 11:10 am

To all Commissioners,

I'm believing that all Commissioners have read their letter from our Council The Bosch Law Firm on the Hospitality/Grant Audits. I would like to hear from you on your thoughts about them meeting with you individually or in "executive session" or anything on your mind about the precedings.

Sincerely,  
Tank

## mail from Asst. DA John Gill, RE: Telephone Conversation

\_by **Paul Pinkston** on Fri Aug 01, 2008 10:18 pm

This is the e-mail from Asst. DA John Gill regarding our telephone conversation this morning. I hope this will give some insight to what is going on in the DA's Office. I was please that John called me about this. I hope this will clear up some of the questions that are being asked. When John stated that nothing moves as fast as we would like, I am aware that I want things to move and move fast. I appreciate all the efforts of the DA's Office and the work John has obviously put into this. Thank you John for the clarification.

From:"John Gill" <john.gill@knoxcounty.org>  
to:<cpink910@comcast.net>  
CC:"Charles Bowers" <chuckbowers@frontiernet.net>  
Subject:Limitation on ouster suits  
Date:Friday, August 01, 2008 1:10:28 PM  
[View Source]

Commissioner Pinkston: As one of the citizens we are assisting in your request to bring an ouster suit against the County Mayor, I wanted to be sure you understood that an ouster suit can not be brought for acts (or failure to act) that occur in previous terms of the office holder whose ouster is sought. Ouster is aimed at removal from office during the term in which the acts occur. As you know, we have been working very hard to bring

attorneys experienced in this area of the law to take over the ouster matter and any other issue that needs to be addressed relating to any improper handling of Knox County finances. I expect to be able to tell you, and the other citizens who have sought our assistance, by next week who that will be. I will be out of town several days next week in meetings to get this done. I believe we have exactly the right people coming in to handle these matters. And they hold the same view that you and the other citizens, our office and I think just about everyone else in the county, that these matters need to resolved as soon as possible for the benefit of everyone in Knox County.

Nothing ever moves as fast as we would like, but since the spring of this year we have been forwarding all the information and the audits that are available to the prosecutor in Memphis who is already working on some aspects of these matters. And for the past several weeks doing the same with the office that will take over all of the issues arising out of the audits and related allegations here. There has been substantial legal research and consultation done by the Knox County DA's office, the Memphis prosecutor and the other office that will be coming in next week. So no one has been sitting on their hands.

I will continue to keep you and the other citizens in the ouster matter advised and we always respond to any questions or concerns by you or the other County Commissioners. As in most matter, we do not talk a lot about them in the news media until after cases are concluded.

I hope this information is helpful to you.  
John W. Gill Jr., Special Counsel,  
Knox County District Attorney's Office



# Tennessee Public Records Act

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The Act begins with the general premise that all government records, whether state or local, are open for inspection by citizens of Tennessee.

Then, much like in the Constitutional provisions, exceptions are enumerated.



# Tennessee Public Records Act

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- ◆ T.C.A. § 10-7-503(a)(2)(A)  
*(as amended by Section 1 of PC 1179 effective July 1, 2008):*

**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**.

# Public Record Defined

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- ◆ 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.

*Section 1 of PC 1179 adds this definition to T.C.A. § 10-7-503(a)(1), which is substantially the definition found in T.C.A. § 10-7-301(6).*

# The Test

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- According to the Tennessee Supreme Court in *Griffin v. City of Knoxville*, the test for determining whether a record is public is “whether it was made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.” *Griffin v. City of Knoxville*, 821 S.W. 2d 921, 924 (Tenn. 1991).

# Examples of Public Records

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1. Financial or performance audits.
2. Work related emails, phone records, written correspondence.
3. Minutes and agendas of meetings of governing bodies.
4. Annual reports.
5. Recorded deeds and easements.
6. Employee files.
7. Budgets.
8. Building permits and property maps.
9. Policies and rules.

# Tennessee Public Records Act

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- ◆ Other provisions of law provide access to records
  - Open Meetings Law: T.C.A. § 8-44-104(a): “The minutes of a meeting of any such governmental body shall be promptly and fully recorded, *shall be open to public inspection, . . .*” (emphasis added)
  - T.C.A. §10-7-604 (1992): Copies of Open Appointment Annual Report “available for viewing by interested persons” and “at cost”.
- ◆ T.C.A. § 10-7-504 provides a list of records that are not open for public inspection; however this list is not exhaustive. Most of the exceptions to the Act are codified in various other parts of the Code.

# Exceptions to the TPRA

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## Examples of Exceptions to the TPRA:

1. All investigative records of the TBI, Office of Inspector General, all criminal investigative files of the Department of Agriculture and the Department of Environment and Conservation, and certain files from the Department of Safety are confidential. (T.C.A. § 10-7-504(a)(2)(A)).
2. The identifying information compiled and maintained by any governmental entity concerning a person who has obtained a valid order of protection document **may** be confidential if certain steps are followed. (T.C.A. § 10-7-504(a)(16)(B)).

# Exceptions to the TPRA

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3. The identifying information compiled and maintained by utility service provider concerning a person who has obtained a valid order of protection document **shall** be treated as confidential and not open to the public if certain steps are followed. (T.C.A. § 10-7-504(a)(15)(B)).
  - “Identifying information”: home and work addresses and telephone numbers, social security number and other information that could reasonably be used to determine physical location.
  - “Utility Service Provider”: “any entity, whether public or private, that provides electricity, natural gas, water, or telephone service to customers on a subscription basis, whether or not regulated by the Tennessee regulatory authority.”

# Exceptions to the TPRA

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4. The telephone number, address and any other information which could be used to locate the whereabouts of a domestic violence shelter or rape crisis center *may* be treated as confidential by a governmental entity, and *shall* be treated as confidential by a utility service provider as defined in subdivision (a)(15) upon the director of the shelter or crisis center giving written notice to the records custodian of the appropriate entity or utility that such shelter or crisis center desires that such identifying information be maintained as confidential. (T.C.A. §10-7-504(a)(17)).

# Exceptions to the TPRA

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5. The credit card number of persons doing business with the state or political subdivision thereof and any related personal information identification numbers (PIN) or authorization codes. (T.C.A. § 10-7-504(a)(19)).
  
6. All contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident. (T.C.A. § 10-7-504(a)(21)(A)(ii)).

# Exceptions to the TPRA

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7. Records of any employee's identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government employee assistance program.  
(T.C.A. § 10-7-504(d)).
  
8. Information that would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. For the purpose of this section, government property includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter.  
(T.C.A. § 10-7-504(i)).

# Exceptions to the TPRA

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9. The following records or information of any state, county, municipal or other public employee, or of any records of any governmental employee that are in the possession of a governmental entity or any person in its capacity as an employer that contain *home and cell phone numbers; residential information (including street address, city, state and zip code) for state employees and residential street address for county, municipal and other employees\**; bank account information; social security number; driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job; and the same information of immediate family members or household members.

(T.C.A. § 10-7- 504(f)(1)). \*PC853, effective May 1, 2008



# Exceptions to the TPRA

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10. Information and documents regarding any mental health service applied for or received by any person currently or in the past and any information directly or indirectly identifying the person receiving the service. (T.C.A. § 33-3-103).
11. Expunged records (T.C.A. § 40-32-101).
12. Information communicated to or obtained by an accountant as a result of the confidential nature of employment and/or information derived from professional employment is confidential. (T.C.A. § 62-1-116).

# Exceptions to the TPRA

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13. Taxpayer information submitted to the commissioner of the Department of Revenue (T.C.A. § 67-1-110).
14. All Department of Revenue statements, reports, returns, and audits of any person paying business tax are confidential, with limited exceptions. (T.C.A. § 67-4-722(c)(1)).
15. A part from a taxpayer's annual reporting schedule filed with the assessor, information required to be filed or submitted by a taxpayer with regard to an assessment of tangible personal property, or provided by a taxpayer in response to an audit or information request by assessing officials or their agents with regard to an assessment of tangible personal property, shall be confidential and shall not be disclosed by state or local officials, agents or employees. (T.C.A. § 67-5-402(a)).

# Exceptions to the TPRA

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16. Tenn. R. Crim. P. 16(a)(2) provides for the confidentiality of investigative files pertaining to pending or contemplated criminal action.

# Response to an Open Records Request

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- ◆ July 1, 2008 and forward:
  - Access granted to citizens of Tennessee.
  - No charge for inspecting or reviewing an open record at offices of records custodian.
  - May charge and receive upfront payment for copies (and for delivery charges, if any).
  - Custodian shall promptly make available for inspection

# Response to an Open Records Request

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- ◆ July 1, 2008 and forward:
  - When not practicable to promptly make available, may take up to 7 business days to:
    - ◆ Provide access to record;
    - ◆ Deny in writing (or on OORC form) access to record with explanation of basis for denial; or
    - ◆ Indicate additional time necessary to produce the record (OORC form mandatory).

# Response to an Open Records Request

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- ◆ July 1, 2008 and forward:
  - Custodian may require requestor to produce government issued photo id with address in order to inspect or to receive copies.
  - Request for copies may be required to be writing.
  - Request for inspection or copies “shall be sufficiently detailed to enable the custodian to identify the specific records”.
  - Custodian shall provide an estimate of reasonable costs to provide copies.

# Record Request Forms

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<http://www.comptroller.state.tn.us/openrecords/forms.htm>

- ◆ Inspection/Duplication Of Records Request
- ◆ Records Request Denial Letter
- ◆ Records Production Letter

## INSPECTION/DUPLICATION OF RECORDS REQUEST

**Requestor Instructions:** To make a request for copies of public records fill in sections 1-4. Do not sign and date the signature line until the records are received.

**Custodian Instructions:** For requests to inspect, the **records custodian** is to fill in sections 1-5 and 8. For requests for copies, the records custodian is to fill in sections 5-8. Do not sign and date the signature line until the records are delivered to the requestor.

**Note: Section 1 of Public Chapter 1179, Acts of 2008, amends Tenn. Code Ann. § 10-7-503(a) adding (7)(A) to provide that unless the law specifically requires such, a request to inspect is not required to be writing nor can a fee be assessed for inspection of records.**

(FRONT)

1. Name of requestor: \_\_\_\_\_

(Print or Type; Initials required for copy requests)

2. Form of identification provided:

Photo ID issued by governmental entity including requestor's address

Other: \_\_\_\_\_

3. Requestor's address and contact information: \_\_\_\_\_

4. Record(s) requested to be inspected/copied:

a. Previously inspected on \_\_\_\_\_ (date); Inspection waived

b. Type of record: Minutes Annual Report Annual Financial Statements  
Budget Employee file Other

c. Detailed Description of the record(s) including relevant date(s) and subject matter:

\_\_\_\_\_  
\_\_\_\_\_

5. Request submitted to: \_\_\_\_\_

(Name of Governmental Entity, Office or Agency)

a. Employee receiving request: \_\_\_\_\_

(Print or Type and Initial)

b. Date and time request received: \_\_\_\_\_

c. Response: Same day Other \_\_\_\_\_

### 6. Costs

a. Number of pages to be copied: \_\_\_\_\_ Estimated

b. b. Cost per page: \_\_\_\_\_

c. c. Estimate of labor costs to produce the copy (for time exceeding 5 hours):

\_\_\_\_\_ Labor at \$ \_\_\_\_\_ /hour for \_\_\_\_\_ hour(s).

Labor at \$ \_\_\_\_\_ /hour for \_\_\_\_\_ hour(s).

Labor at \$ \_\_\_\_\_ /hour for \_\_\_\_\_ hour(s).

d. Programming cost to extract information requested: \_\_\_\_\_

e. Method of delivery and cost: \_\_\_\_\_ Estimated

On-site pick-up U.S. Postal Service Other: \_\_\_\_\_

f. Estimate of total cost to produce request: \_\_\_\_\_

g. Estimate of total cost provided to requestor: in person by U.S.P.S.

by phone Other: \_\_\_\_\_

(BACK)

7. Form, Amount, Date of Payment:

a. Form of payment: Cash Check Other \_\_\_\_\_

b. Amount of payment: \_\_\_\_\_

c. Date of payment: \_\_\_\_\_

8. Date of Delivery: \_\_\_\_\_

\_\_\_\_\_  
Signature of Records Custodian Date

\_\_\_\_\_  
Signature of Requestor Date

Inspection/Duplication of Records Request Form Tenn. Code Ann. § 10-7-503(a)(7)(A) as amended by  
Section 1 of Public Chapter 1179, Acts of 2008

RECORDS REQUEST DENIAL LETTER

(Insert Agency Name and Address)

(Insert Date)

Dear Sir or Madam:

On (insert date) this Office received your open records request to inspect/receive copies of (insert type of records). After reviewing the request, this Office is unable to provide you with either all or part of the requested record(s). The basis for this denial is:

No such record(s) exists.

This office is not the records custodian for the requested record(s).

Additional information is needed to identify the requested record(s): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The following law (citation and brief description why access denied):

Tenn. Code Ann. Section: \_\_\_\_\_

Court Rule: \_\_\_\_\_

Common Law Provision: \_\_\_\_\_

Federal Law (HIPAA, FERPA, etc.): \_\_\_\_\_

If you have any additional questions please contact (insert contact person and phone number).

Sincerely,

(Record Custodian's signature and title with contact information)

## RECORDS PRODUCTION LETTER

(Insert Agency Name and Address)

(Insert Date)

Dear Sir or Madam:

On (insert date) this Office received your open records request to inspect/receive copies of (insert type of records). Section 1 of Public Chapter 1179, Acts of 2008 amends Tennessee Code Annotated § 10-7-503(a) and provides the following:

(2)(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. [emphasis added]**

This Office is currently in the process of retrieving, reviewing, and/or redacting the requested records. In accordance with the above-cited law, this letter is being sent to inform you that either the records you have requested to inspect/receive copies of will be available or a determination will be made regarding the accessibility of the requested records by (insert reasonably necessary time to produce the records). Additional time is necessary as it is a record custodian's responsibility under state law to ensure that any confidential information contained within the requested records has been removed prior to providing access to the records.

If you have any additional questions please contact (insert contact person and phone number).

Sincerely,

(Record Custodian's signature and title with contact information)

Records Production Letter Tenn. Code Ann. § 10-7-503(a)(2)(B)(iii) as amended by Section 1 of Public Chapter 1179, Acts of 2008

# Responding to an Open Records Request

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1. Be familiar with your office's policy and procedures for responding to a records request, including redaction practices.
2. Make sure that you are the correct record custodian for the record requested.
3. Work with requestor to be as specific as possible about the record being requested.

# Office of Open Records Counsel

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- ◆ PC 1179, effective July 1, 2008, provides statutory authority for the Office. The Office of Open Records Counsel was created “to answer questions and provide information to public officials and the public regarding public records”.
- ◆ The Office was established originally as the Office of Open Records Ombudsman under the purview of the Comptroller of the Treasury in the fall of 2007 with funding provided in the FY2008 budget.



# Office of Open Records Counsel

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The functions of the Office include:

1. Working to resolve issues (mediation) between citizens who have made open records requests and the local government records custodians.
2. Issuing informal advisory opinions to local government officials, members of the public, and the media regarding the TPRA as it applies to local governments.
3. Monitoring and commenting on proposed legislation that deals with open record or open meeting laws.



# Office of Open Records Counsel

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4. Collecting data on inquiries and problems pertaining to the Open Meetings laws.
5. Informing Tennesseans about the TPRA through speaking engagements and educational programs.
6. Reviewing open record policies of governmental entities to verify compliance with both the TPRA and current court opinions.
7. Reporting annually to the General Assembly and the Governor.



# Office of Open Records Counsel

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8. Establishing a schedule of reasonable fees for copies and duplication of public records, developing a safe harbor policy for records custodians who adhere to the policies and guidelines established by the OORC, and developing a policy for responding to frequent and multiple requests for access and copies.
9. Working with 13 member Advisory Committee on Open Government for guidance and advice. Jay West is member.
10. Educating citizens and public officials through establishment of educational programs and materials about Tennessee's Open Meetings laws.



# Opinions of Office of Open Records Counsel (as of 10/6/08)

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- ◆ <http://comptroller.state.tn.us/openrecords/opinion.htm>
- 08-01: Fee components and duplication
- 08-02: Interplay of litigation with TPRA
- 08-03: Audio recordings of commission meetings
- 08-04: Juvenile traffic offense
- 08-05: Cell phone records
- 08-06: On-site computer access

## Opinions of OORC (continued)

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- 08-07: Format of Public Record Requested
- 08-08: Effective date of Public Chapter 853
- 08-09: Public records request for emails
- 08-10: Access to public records and review of copying policy
- 08-11: Access to constituent communications by local government official
- 08-12: Specificity and computer access

# Schedule of Reasonable Charges (Overview)

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- ◆ Public Chapter 1179 required the OORC to develop a Schedule of Reasonable Charges (hereinafter “schedule”) and on October 1, 2008, the OORC released the schedule.
- ◆ The schedule may be used by records custodians as a guideline to charge citizens requesting copies or duplication of public records under the TPRA.
- ◆ For those records custodians who choose not to adopt the schedule, any charges assessed for copies or duplication of public records must reflect the actual cost to the entity producing the requested material.
- ◆ A records custodian can assess less than the charges reflected in the schedule and/or have a higher labor threshold without having to provide justification for those charges.
- ◆ The schedule also provides that any or all of the charges provided for in the schedule can be waived, so long as the waiver is done pursuant to a rule authorized by the entity’s governing authority.

# Schedule of Reasonable Charges Overview (cont.)

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- ◆ The schedule does not make a distinction regarding the purpose for which the records or information was requested, because the TPRA does not make those distinctions, except in very limited circumstances and when those types of records are requested the charges for reproduction of the records or duplication should be based upon a specific statutory provision. (See T.C.A. § 10-7-506(C)).
- ◆ The schedule does not provide a flat fee for records produced on a medium other than 8 ½ x11 or 8 ½ x14 paper. If a record or duplication is produced on medium such as a DVD, CD, or audio tape, the records custodian is permitted to charge the requestor the actual cost of the medium.
- ◆ Throughout the schedule emphasis is placed on the fact that records custodians are to use the most cost efficient method of producing the requested records and/or information.

# Copying Charges per the Schedule

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- ◆ A records custodian may assess a charge of 15 cents per page for each standard 8 ½ x11 or 8 ½ x14 black and white copy produced. A records custodian may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies.
- ◆ If a public record is maintained in color, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy. If the requestor then requests a color copy, a records custodian may assess a charge of 50 cents per page for each 8 ½ x11 or 8 ½ x14 color copy produced.

# Additional Production Charges

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- ◆ The presumption is that records will be delivered to a requestor at the records custodian's office; however when a requestor is unable to physically appear in person, the records custodian can charge the requestor the actual cost incurred in mailing the records.
- ◆ A records custodian is only required to use the United States Postal Service for delivery when a requestor is not returning to the records custodian's office to retrieve the records; however it is within the discretion of the records custodian to deliver the records through other means, which would include electronic delivery.
- ◆ When a records custodian uses an outside vendor to produce the requested copy or duplication because the records custodian is legitimately unable to produce the requested material in his/her office, the charges assessed by the vendor to the entity may be recovered from the requestor.
- ◆ When records have to be retrieved from archives or any other entity having possession of the documents and the records custodian is assessed a fee for the retrieval, that charge may also be recovered from the requestor.

# Labor Charges per the Schedule

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- ◆ Labor is defined as the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.
- ◆ The schedule permits a records custodian to charge for labor after one (1) hour is spent producing the requested material.
- ◆ If labor is assessed, that charge should be based upon the hourly rate of those employees reasonable necessary to produce the requested material, after one (1) hour.
- ◆ If more than one employee is necessary to produce the requested material, the one (1) hour of labor that cannot be assessed it to be subtracted from the total number of hours the highest paid employee spends on the request.

# OORC Contact Information

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For question regarding local government open records issues or to set up a time for us to come and speak about the TPRA, call Ann Butterworth or Elisha Hodge at (615) 401-7891 or email us at

[open.records@state.tn.us](mailto:open.records@state.tn.us) .

Our website is

<http://comptroller.state.tn.us/openrecords/> .



# Office Location

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Office of Open Records Counsel  
Comptroller of the Treasury  
State of Tennessee  
Suite 1700\*, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243  
*(\*moving to Suite 1600 November, 2008)*

