

The Tennessee Public Records Act
and
The Office of Open Records
Counsel:
A Presentation to the Nashville Bar
Association

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Office of Open Records Counsel

Background Information

- 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

- 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

- 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 (signed by the Governor and 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.

Tennessee Public Records Act

- 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

- T.C.A. § 10-7-503 (*pre July 1, 2008*):
Except as provided in § 10-7-504(f), **all** state, county and municipal records and all records maintained by the Tennessee performing arts center management corporation, except any public documents authorized to be destroyed by the county public records commission in accordance with § 10-7-404, shall at all times, **during business hours**, 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**.

Tennessee Public Records Act

- T.C.A. § 10-7-503(a)(2)(A) (*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

- “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.”

T.C.A. § 10-7-301(6) *[also, Section 1 of PC 1179 adds definition to T.C.A. § 10-7-503(a)(1)]*

The Test

- 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

1. Executions for levies or garnishments.
2. Arrest records/divorce records.
3. Civil and criminal case dispositions.
4. Governmental personnel records.
5. Financial or performance audits.
6. Work related emails, phone records.
7. Minutes and agendas of meetings of governing bodies or entities, such as a county commission or a hospital authority.
8. Annual reports or fiscal year audits.
9. Recorded deeds and mortgages.
10. Employee files.
11. Budgets.
12. Building permits and property maps.

Tennessee Public Records Act

- 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

Examples of Exceptions to the TPRA:

1. The medical records of any patient in a governmental hospital or medical facility and the medical records of any person receiving medical treatment at the expense of the government are confidential. (T.C.A. § 10-7-504(a)(1)).
2. 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)).

Exceptions to the TPRA

3. The records of students in public educational institutions are confidential. (T.C.A. § 10-7-504(a)(4)(A))
4. All investigative records and reports of the internal affairs division of the department of correction or the department of children's services. (T.C.A. § 10-7-504(a)(8)).
5. Personal information contained in motor vehicle records shall be treated as confidential and shall only be open for public inspection in accordance with the provisions of title 55, chapter 25. (T.C.A. § 10-7-504 (a)(12)).

Exceptions to the TPRA

6. All riot, escape and emergency transport plans which are incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the department of correction or under private contract are confidential. (T.C.A. § 10-7-(a)(14)).
7. 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

8. 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

9. Computer programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, or higher education institutions shall not be open to public inspection. (T.C.A. § 10-7-504 (a)(18)).

10. 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)).

Exceptions to the TPRA

11. 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)).

12. 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)).

Exceptions to the TPRA

13. 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

14. 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).
15. T.C.A. § 36-1-102(6)(B) makes adoption records confidential; but see also T.C.A. § 36-1-127.
16. Juvenile court files and records, except those dealing with traffic offenses, are only open to inspection by a limited number of individuals. (T.C.A. § 37-1-153).
17. Fingerprints and photographs of juvenile offenders are confidential except in very limited circumstances. (T.C.A. § 37-1-155(b)(5)).

Exceptions to the TPRA

18. All documents relative to the placement, plan, or care of any child in the custody of the Department of Children's Services, foster care, or any other agency providing care. (T.C.A. § 37-2-408(a)).
19. Any and all records as well as the identity of any minor who petitions the court for an abortion (T.C.A. § 37-10-304).
20. Expunged records (T.C.A. § 40-32-101).

Exceptions to the TPRA

21. 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).
22. The records of a polygraph given administered by law enforcement (T.C.A. § 62-27-124(c)).
23. The patient records of a physician are confidential. (T.C.A. § 63-2-101).

Exceptions to the TPRA

23. Taxpayer information submitted to the commissioner of the Department of Revenue (T.C.A. § 67-1-110).
24. 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)).
25. 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

26. 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

- Previously:
 - Access granted to citizens of Tennessee.
 - No charge for inspecting or reviewing an open record at offices of records custodian.
 - Access to be provided during business hours, with “reasonable time” to take actions to protect confidential or restricted information.
 - May charge and receive upfront payment for copies (and for delivery charges, if any).

Response to an Open Records Request

- After July 1, 2008:
 - Custodian may take up to 7 business days to:
 - Provide access to record;
 - Deny in writing access to record with explanation of basis for denial; or
 - Indicate additional time necessary to produce the record.
 - Custodian may require requestor to produce photo id with address in order to inspect or to receive copies.
 - Request for copies may be required to be writing.
 - Request for copies “shall be sufficiently detailed to enable the custodian to identify the specific records”.

Responding to an Open Records Request

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

Office of Open Records Counsel

- The Office of Open Records Counsel was created to serve as an intermediary between local government officials and citizens who are dealing with open record issues.
- The Office was set up under the purview of the Comptroller of the Treasury in the fall of 2007 with funding provided in the FY2008 budget.
- PC 1179, effective July 1, 2008, provides statutory authority for the Office.

Office of Open Records Counsel

The functions of the Office currently include:

1. Working to resolve issues between citizens who have made open records request and the local government entity that has either delayed granting access or denied access to the records.
2. Issuing opinions to local government entities regarding whether certain records are open for public inspection or are confidential, and therefore not open for public inspection.
3. Monitoring legislative bills that deal with open record issues.

Office of Open Records Counsel

The functions of the Office (continued):

4. Collecting data on inquiries and problems pertaining to the Open Meetings Act.
5. Educating Tennessee through speaking engagements about the TPRA.
6. Reviewing open record policies of governmental entities to verify compliance with both the TPRA and current court opinions.

Office of Open Records Counsel

Additional functions of the Office include:

- Issuing opinions as expeditiously as possible to local government officials, the public and the media regarding whether certain records are open for public inspection or are confidential, and therefore not open for public inspection; and posting the opinions on the web.
- Development of forms to be used by records custodians.
- Educating citizens and public officials through establishment of educational programs and materials about Tennessee's Open Meetings laws.

Office of Open Records Counsel

Additional functions of the Office include:

- Establishing a schedule of reasonable fees for copies and duplication of public records, developing best practice for access to open records (including various forms), and developing a policy for responding to frequent and multiple requests for access and copies.
- Working with 13 member Advisory Committee on Open Government for guidance and advice. [Meeting tomorrow August 15,2008.]

Opinions of Office of Open Records Counsel

- <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
 - 08-07: Format of Public Record Requested
 - 08-08: Effective date of Public Chapter 853
 - 08-09: Public records request for emails

Opinions of OORC continued

- 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

OORC Contact Information

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 .

Our website is

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

Office Location

Office of Open Records Counsel
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State of Tennessee

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*(*moving to Suite 1600 late summer 2008)*