



# OFFICE OF OPEN RECORDS COUNSEL



## ANNUAL REPORT



March 2021

**Jason E. Mumpower**  
*Comptroller of the Treasury*



**Justin P. Wilson**  
*Comptroller Emeritus*

Governor and Members of the 112th General Assembly:

This report provides an overview of the Office of Open Records Counsel's activities over the past year.

The Office of Open Records Counsel faced many new challenges while assisting citizens and local governmental entities with continued access to public records and public meetings during the coronavirus pandemic this year. The Office worked closely with the Governor's Office on the issuance of executive orders allowing local governing bodies to conduct public meetings via electronic means. We then issued guidance for local government entities regarding the requirements of those orders and assisted local governments with procedural issues that arose when they conducted meetings via Zoom, Webex, Facebook, and other electronic platforms. The Office also assisted citizens and local governmental entities with unique issues associated with obtaining access to public records when government offices across the state were physically closed. We ultimately resolved more than 1,100 inquiries from citizens, members of the media, and public officials regarding Tennessee's public records and open meetings laws over the past year.

In September 2020, the Office updated the report on exceptions to the Tennessee Public Records Act ("TPRA") to reflect an additional 10 new or amended exceptions passed during the second session of the 111th General Assembly. A database of the exceptions is available online at [tncot.cc/exceptions](http://tncot.cc/exceptions). Because the pandemic prevented the Office from hosting in-person trainings across the state, in October 2020, we instead hosted three state-wide virtual trainings for government employees, elected officials, members of the media, and any others who were interested in learning more about Tennessee's public records and open meetings laws. The training sessions were popular, with approximately 100 attendees per session. Given the considerable interest statewide, the Office plans to provide this training again in 2021.

In addition to the statewide training, the Office conducted 12 virtual training sessions for various governmental entities and associations across the state, including the Tennessee Association for Public Purchasing, Middle Tennessee Association of Public Purchasing, Tennessee Emergency Number Association, Nashville Bar Association, Tennessee Court Clerks Association, County Officials Association of Tennessee, Comptroller's Division of State Audit, Knox County, Hardeman County, and Chester County.

We are proud of the Office's accomplishments over the past year, and we look forward to continuing to make government work better by assisting and educating public officials and citizens with respect to open records and open meetings. Thank you for your consideration of this report. Please feel free to contact our Office if we can be of any assistance.



A handwritten signature in black ink, appearing to read "Lee Pope".

**Lee Pope**  
*Open Records Counsel*



A handwritten signature in black ink, appearing to read "Rachel Buckley".

**Rachel Buckley**  
*Assistant Open Records Counsel*

## HISTORY OF THE OFFICE

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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, resources posted on the Office website, and direct communication and interaction with citizens and government officials across the state.

## OFFICE RESPONSIBILITIES

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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.



# OPEN RECORDS QUESTIONS & CONCERNS

## What are “public records” in Tennessee?

The Tennessee Code Annotated defines “public record” 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 entity.” Tenn. Code Ann. § 10-7-503(a)(1)(A). The Tennessee Public Records Act (“TPRA”) does not require records to be created, and it 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. Tenn. Code Ann. § 10-7-503(a)(2)(B).

## What governs whether a public record is open?

All public records are presumed open for inspection by Tennessee citizens “unless otherwise provided by state law.” Tenn. Code Ann. § 10-7-503(a)(2)(A). Although many exceptions are set forth in the TPRA, most exceptions are found elsewhere throughout the Tennessee Code Annotated, the United States Code Annotated, state and federal rules of procedure, as well as in common law. While records custodians have a duty to provide access to public records promptly, they also have a duty to maintain the confidentiality of records that are not open to public inspection.

## Who has the right to request records under the Tennessee Public Records Act?

The right to inspect public records is granted to “any citizen of this state.” Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, a records custodian has discretion to “require any person making a request to view or make a copy of a public record to present a government-issued photo identification, if the person possesses photo identification, that includes the person’s address.” Tenn. Code Ann. § 10-7-503(a)(7)(A)(vi). Governmental entities should determine whether they will require proof of citizenship or respond to requests from non-Tennessee citizens and include such determinations in their written public records policies. Tenn. Code Ann. § 10-7-503(g)(1).

## Are there limitations on public record requests?

The TPRA does not limit the number of public records a citizen may request, the frequency of such requests, or the motivation behind the requests. However, the TPRA does require requests to “be sufficiently detailed to enable the governmental entity

to identify the specific records for inspection and copying.” Tenn. Code Ann. § 10-7-503(a)(4). If responsive records cannot be made promptly available, governmental entities should furnish the requestor, in writing, the time reasonably necessary to produce the records, or complete a records request response form. Although governmental entities cannot require a request for inspection only of records to be made in writing, they may require requests for copies to be made in writing. Tenn. Code Ann. § 10-7-503(a)(7)(A) and (g)(1).



# 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 toward and/or making decisions on public business, unless the public receives adequate notice of the meeting and the meeting is open to the public. A governing body of a public entity is a multi-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 TOMA.

While TOMA does not grant the public a right to speak at, or to participate in, a meeting, it does grant the right to be present and to listen to the transaction of business. Other laws or local bylaws 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.” Tenn. Code Ann. § 8-44-102(b)(2). TOMA requires adequate public notice of any “meeting” of a governing body. Such notice should be sufficient to provide interested citizens a reasonable opportunity to become aware of and attend the meeting.

## Open meetings issues in Tennessee

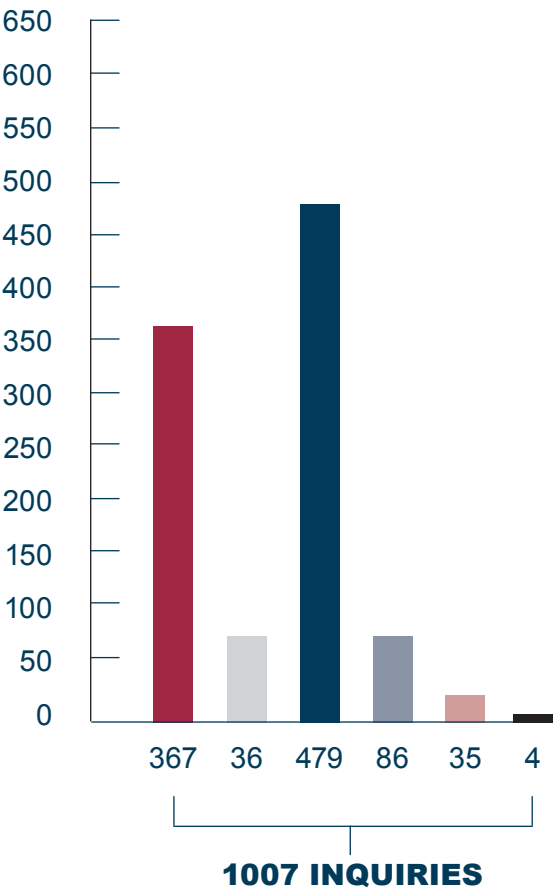
- Members of a governing body meeting before a properly noticed meeting and voting at meetings without full open discussion of agenda items.
- Committees of governing bodies not providing public notice of meetings and not preparing meeting minutes.
- Governing bodies discussing matters during executive session that should only be discussed during an open public meeting.



# OPEN MEETINGS INQUIRY STATISTICS

INQUIRIES BY CATEGORY	
Records Inquiry	639
Records Request	41
Mediation Request	3
Meetings Inquiry	179
Meeting Complaints	80
Records/Meetings	11
Records Policy Inquiry	8
Presentation Request	12
Other	34
TOTAL	1007

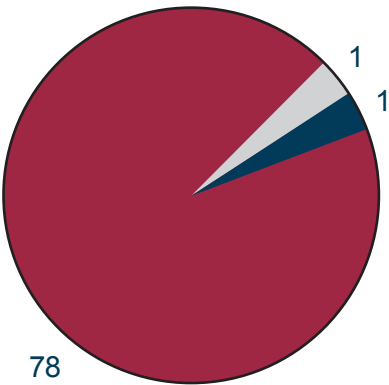
ALL INQUIRIES BY AFFILIATION



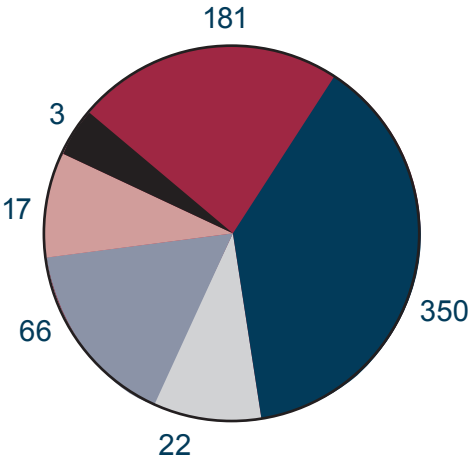
AFFILIATION KEY

- CITIZENS
- MEDIA
- LOCAL GOVERNMENT
- STATE GOVERNMENT
- OUT OF STATE
- UNKNOWN

MEETING COMPLAINTS BY AFFILIATION



RECORDS INQUIRIES BY AFFILIATION



## ADVISORY COMMITTEE ON OPEN GOVERNMENT

The 17-member Advisory Committee on Open Government (“ACOG”) provides advice and guidance to the Office. Over the past year, the members of ACOG provided valuable input and advice on potential legislation.

### 2021 COMMITTEE MEMBERS

**Adam Yeomans**

Tennessee Coalition for Open Government

**Jack McElroy**

Tennessee Press Association

**Shauna Billingsley**

Tennessee Municipal League

**Leah May Dennen**

Tennessee County Officials Association

**Brett Henley**

Tennessee School Board Association

**Dick Williams**

Common Cause

**Joy Fulkerson**

League of Women Voters

**Amy Garner**

Tennessee Hospital Association

**Dan Haskell**

Tennessee Association of Broadcasters

**Carey Whitworth**

University of Tennessee

**Steven Cavendish**

Society of Professional Journalists

**Jeff Hughes**

Tennessee Association of Chiefs of Police

**Mike Breedlove**

Tennessee Sheriffs' Association

**Harold Beaver**

AARP

### EX OFFICIO COMMITTEE MEMBERS

**Senator Richard Briggs** | *Chair*

Senate State & Local Government Committee

**Representative Kelly Keisling** | *Chair*

House State Government Committee

**Ms. Janet Kleinfelter** | *Deputy Attorney General*

Attorney General Designee

**Lee Pope** | *Open Records Counsel*  
**Rachel Buckley** | *Assistant General Counsel*

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*For additional information about the  
Office of Open Records Counsel  
and other related resources, visit:  
[www.comptroller.tn.gov/openrecords](http://www.comptroller.tn.gov/openrecords)*

