



# OFFICE OF OPEN RECORDS COUNSEL



## ANNUAL REPORT



March 2020

**Justin P. Wilson**  
*Comptroller of the Treasury*



**Jason E. Mumpower**  
*Deputy Comptroller*

Governor and Members of the 111th General Assembly:

This report provides an overview of the Office of Open Records Counsel's activities since March 2019.

During the past year, the Office of Open Records Counsel resolved over 1,100 inquiries submitted by citizens, media, and public officials regarding Tennessee's public records and open meetings laws. The Office also engaged in considerable educational outreach, conducting 30 training sessions across the state as well as training all executive branch employees as part of the Governor's Executive Order No. 3 to further openness, transparency, and accountability.

The Office continued to assist governmental entities with the implementation of local public records policies required by Public Chapter 722, Acts of 2016, which must set forth: the process for making requests to inspect public records or receive copies of public records; the process for responding to requests, including redaction practices; and a statement of fees charged for copies of public records and procedures for billing and payment. The Office also released an informal advisory opinion on June 4, 2019 regarding whether email communications among members of a governing body may violate the Tennessee Open Meetings Act and whether the Tennessee Open Meetings Act prohibits a governing body from denying individuals access to public meetings. A copy of the opinion is available on the Office's website at [tncot.cc/OORC](https://tncot.cc/OORC).

On January 30, 2018, the Office released a report of exceptions that make certain public records confidential and exempt from disclosure under the Tennessee Public Records Act. In June 2019, the Office updated this report to reflect an additional 23 new and amended exceptions added during the first session of the 111th General Assembly. A database of the exceptions is available online at [tncot.cc/exceptions](https://tncot.cc/exceptions).

We are proud of the Office's accomplishments over the past year, and we look forward to continuing to make government work better by providing assistance to and educating public officials and citizens on matters related to open records and open meetings in Tennessee. 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 General 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 in the Office 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 (TPRA) 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 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:

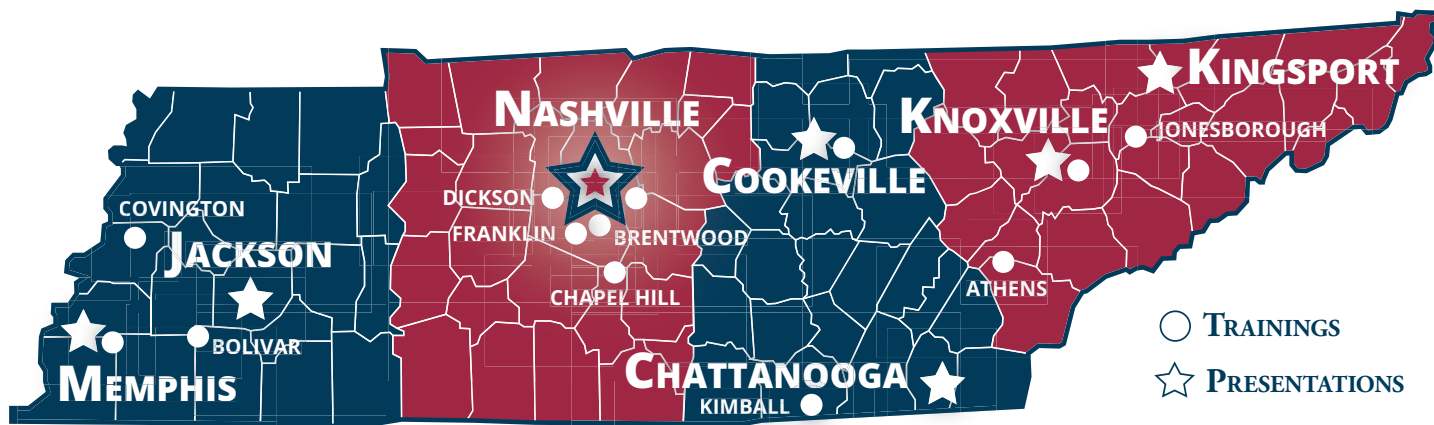
- Serve as a point of contact for questions and concerns regarding public records and open meetings;
- Assist citizens with public records requests;
- Assist public officials with responses to public records requests;
- Promote education and awareness of Tennessee's public records and open meetings laws;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



## PUBLIC RECORDS & OPEN MEETINGS TRAINING

In October 2019, the Office of Open Records Counsel hosted seven two-hour presentations across the state for government employees, elected officials, media, and any other individuals who were interested in learning more about Tennessee's public records and open meetings laws. The presentations were in high demand, with approximately 130 attendees in each session and many sessions meeting the maximum capacity of attendees. The Office plans to host additional training presentations in 2020, and there is already a waiting list of about 100 individuals who would like to attend this year's training.

In addition to the statewide presentations, the Office conducted 23 training sessions requested by various governmental entities and associations across the state, including Tennessee county boards of equalization, the City of Covington Utility Department, Hardeman County, the McMinn-Meigs County Bar Association, the Tennessee Association of Chiefs of Police, the Tennessee Association of County Election Officials, the Tennessee Association of Utility Districts, the Tennessee Bar Association, the Tennessee Court Clerk's Association, the Tennessee Municipal Electric Power Association, the Tennessee Press Association, the Tennessee Risk Management Association, and the Tennessee Sheriffs' Association.



## OPEN RECORDS QUESTIONS & CONCERNS

### What are “public records” in Tennessee?

Tennessee law defines “public record” broadly, without regard to physical or electronic form or characteristics, as any record that 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 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 exemptions 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).

## 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 TOMA.

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.

### 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 individuals an opportunity to become aware of and attend the meeting.

### What are some current open meetings issues in Tennessee?

Recently, the Office of Open Records Counsel noticed the following issues related to open meetings issues in Tennessee:

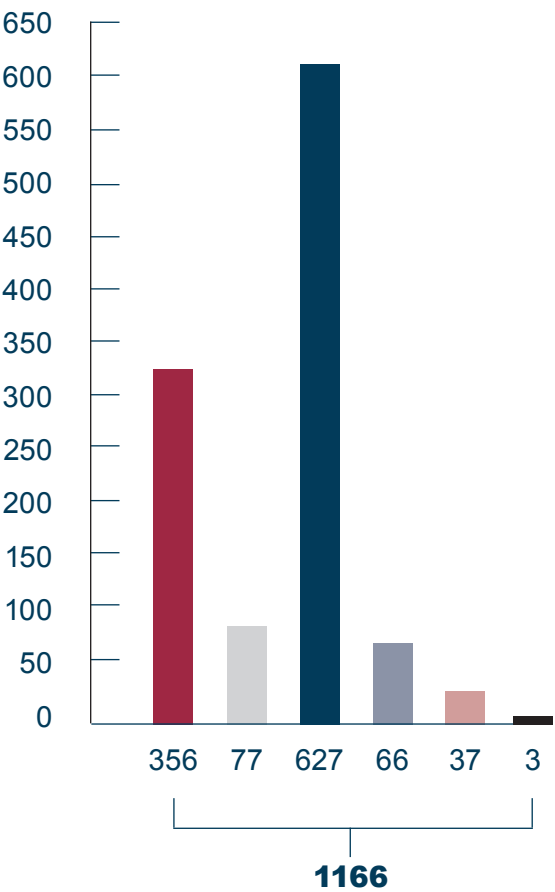
- Committees of governing bodies not properly providing public notice of meetings and preparing meeting minutes.
- Meeting agendas not clearly describing matters to be deliberated and decided.
- Governing bodies not providing the public with meeting materials.
- Governing bodies discussing matters during executive session that should only be discussed during an open public meeting.



# OPEN MEETINGS INQUIRY STATISTICS

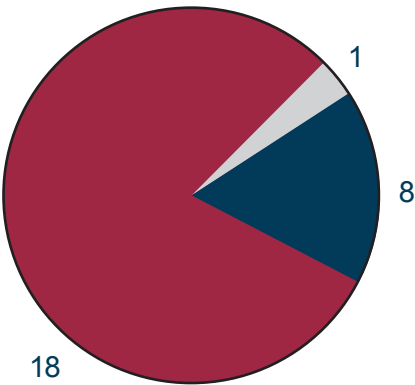
INQUIRIES BY CATEGORY	
Records Inquiry	913
Records Request	37
Mediation Request	1
Meetings Inquiry	102
Meeting Complaints	27
Records/Meetings	8
Records Policy Inquiry	11
Presentation Request	26
Other	41
TOTAL	1166

ALL INQUIRIES BY AFFILIATION

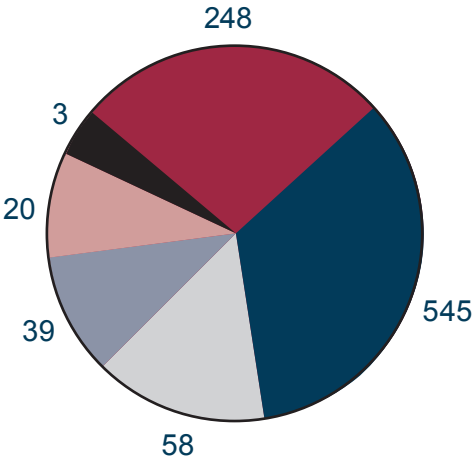


- CITIZENS
- MEDIA
- LOCAL GOVERNMENT
- STATE GOVERNMENT
- OUT OF STATE
- UNKNOWN

MEETING COMPLAINTS



RECORDS INQUIRIES BY AFFILIATION



## 2020 ADVISORY COMMITTEE ON OPEN GOVERNMENT

The 17-member Advisory Committee on Open Government (ACOG) provides advice and guidance to the Office of Open Records Counsel.

### 2020 COMMITTEE MEMBERS

**Adam Yeomans**

Tennessee Coalition for Open Government

**Kathryn Strong**

County Officials Association of Tennessee or  
Tennessee County Services Association

**Jack McElroy**

Tennessee Press Association

**Ken Krushenski**

Tennessee Municipal League

**Debbie Shedden**

Tennessee School Board Association

**Perry McDonald**

League of Women Voters

**Carey Whitworth**

University of Tennessee

**Jeff Hughes**

Tennessee Association of Chiefs of Police

**Dick Williams**

Common Cause

**Amy Garner**

Tennessee Hospital Association

**Dan Haskell**

Tennessee Association of Broadcasters

**Harold Beaver**

AARP

**Tony Gonzalez**

Society of Professional Journalists

**Mike Breedlove**

Tennessee Sheriffs' Association

### EX OFFICIO COMMITTEE MEMBERS

**Senator Steve Dickerson** | *Chair*

Senate State & Local  
Government Committee

**Representative Kelly Keisling** | *Chair*

House State  
Government Committee

**Ms. Janet Kleinfelter** | *Senior Deputy*

Tennessee Attorney General  
and Reporter

**Office of Open Records Counsel**  
Tennessee Comptroller of the Treasury  
Cordell Hull Building  
425 Fifth Avenue North  
Nashville, TN 37243

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Office: 615.401.7891  
Fax: 615.741.1551  
E-mail: [Open.Records@cot.tn.gov](mailto:Open.Records@cot.tn.gov)

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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)*

