



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
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Comptroller

Ms. Susan E. McGannon
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Legal Department
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March 25, 2009

You have requested an opinion from this Office regarding the method by which the seven (7) business day time frame set forth in Tenn. Code Ann. Section 10-7-503(a)(2)(B) is to be calculated by a records custodian responding to a request made under the Tennessee Public Records Act. You have requested that the opinion specifically address the computation of time as well as what constitutes a "business day" when a governmental entity (such as a police department) has personnel on duty 24 hours a day, seven (7) days a week.

Tenn. Code Ann. Section 10-7-503(a)(2)(B) reads as follows:

(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.

Computation of time is governed by Tenn. Code Ann. Section 1-3-102 which reads as follows:

The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded.

Therefore, for purposes of computing the seven (7) business day requirement set forth above, the day on which the records custodian receives a request is not included as one of the seven (7) business days. The response is due by the close of business on the seventh (7th) business day after the date on which the request was received.

Neither "business day" nor "business hour" is defined within the Tennessee Public Records Act. However, Tenn. Code Ann. Section 10-7-503(a)(2)(A) states that public records shall be available for inspection "at all times during **business hours**, which for public hospitals shall be during the business hours of their administrative offices . . ." (emphasis added). Tenn. Code Ann. Section 4-4-105 provides that the state departments are to be open for the transaction of public business each day except Saturday, Sunday, and legal holidays. [Note, HB0419/SB0318 (signed by the Governor March 10, 2009) permits the Governor to close state departments due to reductions in funding levels despite the directive in this section.] No similar statutory provision establishing the work week applies to local governments.

It is the opinion of this Office that "business day" for purposes of determining a records custodian's response is presumed to be Monday through Friday, excluding legal holiday and excluding days the administrative offices are closed for business, whether due to funding or to routine practice, unless the governmental office has expressly established otherwise. Therefore, unless the police department has expressly established business hours on Saturday or Sunday for the administrative office with responsibility for public records, the response to a request received on a Monday is due by close of business on the following Wednesday, assuming no legal holidays fall on a weekday and assuming the police department's administrative office is open each weekday.

Please feel free to call either myself or Elisha Hodge at (615) 401-7891 if you have any further questions.

Sincerely,

Ann V. Butterworth
Director