



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
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Comptroller

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Mr. Stephen L. Crass
The Cleveland Daily Banner
P.O. Box 3600
Cleveland, Tennessee 37320

You have requested an opinion from this office that addresses the following issues:

When do records prepared by staff and mailed to members of a governing body as a part of a board packet become public record?

At what point does the public have the right to inspect or receive copies of these records?

I. Background

In your request for an opinion, you provide the following situation as the hypothetical upon which you base your questions:

A local board, subject to Tennessee law covering open records and open meetings sets a meeting date and time. Staff then prepares a packet for the board members that contains particulars about each item to be discussed during the public meeting. The packets are then mailed to each board member and contain monthly financial reports and copies of each item to be discussed and voted upon at the upcoming meeting. A public agenda is posted that provides the meeting date, time and location and non-specific information about agenda items - such as approval of minutes, old business, new business, financial reports, etc. Specific information about the items to be discussed and voted upon is not provided in the public agenda. At the public meeting, the board discusses items on the agenda without providing details of what they are discussing to the audience in attendance. Copies of financial reports and items on which the board votes are not provided to the audience in attendance. Specific information about what action the board takes is not released to the public at the meeting or following the meeting. This includes not releasing minutes of the meeting until they have been formally approved. The board releases the information only when the minutes of the meeting in question are formally approved at the next meeting, perhaps as long as one to two months later.

II. Analysis

Tenn. Code Ann. Section 10-7-503(a)(1) defines what constitutes a “public record” for purposes of this part of the Tennessee Public Records Act (hereinafter “TPRA”) and reads:

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

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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.

Tenn. Code Ann. Section 10-7-503(a)(2)(A) goes on to require that all public records, whether maintained by a state, county, and municipal governmental agency, be open for public inspection by a citizen of Tennessee during normal business hours, unless there is a provision within state law that makes the record or a portion thereof confidential.

In both of these provisions, the General Assembly has chosen to use the word “all” as a means of conveying the broad range of records that are accessible to citizens of Tennessee pursuant to the TPRA. In *Griffin v. City of Knoxville*, the Tennessee Supreme Court, quoting a lower court opinion, described the TPRA as “all encompassing legislative attempt to cover all printed matter created or received by government in its official capacity and whether intended to be retained temporarily or retained and preserved permanently.” *Griffin v. City of Knoxville*, 821 S.W. 2d 921, 923 (Tenn. 1991).

Based upon these two provisions, it is the opinion of this office that as soon as the records that you described where “made” by staff, they became public records. Unlike several other states, the public records act in Tennessee does not distinguish between records that are in final form versus draft form. Additionally, the TPRA does not require that any action relative to the records occur, such as the introduction or approval of the records at a meeting, prior to records being considered “public records.”

With regard to when records are to be made accessible to citizens of this state, it is the opinion of this office that a record custodian is required to make all records responsive to a public records request accessible to the requestor as promptly as possible. Tenn. Code Ann. Section 10-7-503(a)(2)(B) states that when a records custodian is able to promptly make requested records available he/she is required to do so, but in situation where that is not practicable, the records custodian has seven (7) business days to respond to the requestor by making the records available to the requestor, denying the request in writing with the legal basis for the denial cited or providing the requestor with a records production letter informing the requestor when the records will be available or when a determination as to the accessibility of the records will be made. As such, it is the opinion of this office that if a public record is readily accessible, does not require review and/or redaction prior to release, and staff is available to provide access to the requested records, it should be made available as soon after a request for access is made as possible. However, if a rational good faith basis exists for requested records not being made promptly available, a records custodian has seven (7) business days to respond to the requestor in accordance with Tenn. Code Ann. Section 10-7-503(a)(2)(B).

Based upon the abovementioned, it is the opinion of this office that if there is no confidential information within the board packets described in your hypothetical, a citizen would have the right to request to either inspect or receive a copy of the packet as soon as it was completed and access should be provided as promptly as possible thereafter, unless a rational good faith basis existed for the packet not being made available promptly.

Please feel free to call me at (615) 401-7891 if you have any further questions.

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