



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
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**Justin P. Wilson
Comptroller**

July 2, 2014

Mr. Alex Friedmann
Via email: afriedmann@prisonlegalnews.org

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

When making a public records request, who has the burden of proving the requestor is a Tennessee citizen -- the requestor or the government agency that is responding to the request?

Analysis

Tenn. Code Ann. Section 10-7-503(a)(2)(A) requires that all public records be open for personal inspection by a citizen of Tennessee during normal business hours, unless the records are confidential. In 2008 when the Tennessee Public Records Act (hereinafter "TPRA") was amended, language was added to Tenn. Code Ann. Section 10-7-503 that reads:

The records custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, that includes the person's address. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.¹

This language was added to the TPRA to give record custodians the ability to verify, through government issued photo identification that includes an address, that the person making the public records request is a Tennessee citizen. Based upon the language above, it is the opinion of this office that if a governmental entity requires a requestor to present government issued photo identification with an address on it prior to accessing public records, the requestor has the initial burden of proving that he/she is a Tennessee citizen by providing the requested identification. However, once the requested identification is

¹ See Tenn. Code Ann. Section 10-7-503(a)(7)(A).

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provided by the requestor, it is the opinion of this office that the burden then shifts to the governmental entity to prove that the identification provided is not valid. If the governmental entity can establish that the identification that was provided is not valid, it is the opinion of this office that the burden then shifts back to the requestor to prove that he/she is a Tennessee citizen.²

Conclusion

For the reasons set out above, it is the opinion of this office that the initial burden of establishing that a requestor is a Tennessee citizen is the requestor's burden to meet, if government issued photo identification with an address on it is requested by the governmental entity as proof of citizenship. Once the requestor provides the requested identification, the burden then shifts back to the governmental entity to establish that the identification provided is not valid. If the governmental entity establishes that the identification provided is not valid, the burden then shifts back to the requestor to establish that he/she is a Tennessee citizen.

Elisha D. Hodge
Open Records Counsel

² It is the opinion of this office that if a governmental entity is going to ask a requestor for additional identification, that request has to be based upon more than just a suspicion that the identification that was initially provided is not valid. The governmental entity needs to have some type of concrete evidence that the identification is not valid. The evidence could include the fact that the identification is expired, is a forgery, or does not contain an actual residential address.