



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
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September 23, 2015

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Re: TPRA Request from Nonprofit Corporation

Dear Sirs:

You have separately contacted the Office of Open Records Counsel seeking advice concerning a response to a Tennessee Public Records Act ("TPRA") request received by your respective school systems from the American Center for Law & Justice ("ACLJ"). By letters dated September 16, 2015 the ACLJ made TPRA requests for copies of various items as specified in twelve paragraphs. The letters state that the requests are made on behalf of ACLJ, identified as a nonprofit law firm. Throughout the letters, it is stated that the requests are being made by ACLJ. The letters request copies to be sent to ACLJ at an address in Franklin, Tennessee, to the attention of an individual. The letters ask for fee waivers based on Tenn. Code Ann. Section 10-7-506(c)(1).

The TPRA provides the right of inspection to Tennessee citizens. 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 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

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

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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. This Office in Op. Tenn. ORC 11-12 (November 9, 2012) opined:

Because a corporation does not have the ability to provide a government issued photo identification with an address on it², it is the opinion of this office that for purposes of the Act, the term "citizen" does not include corporations. However, it is also the opinion of this office that when an individual who is making a request on behalf of a corporation is able to produce government issued photo identification that includes a Tennessee address, any record that is responsive to the request and is not confidential is required to be made accessible to the requestor.

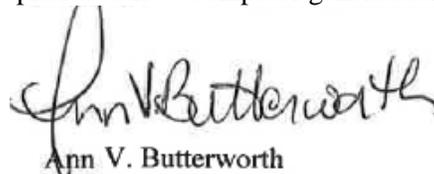
The intent of the sentence beginning "However" is to clarify that that the records custodian would not be able to deny a TPRA request from a Tennessee citizen on the basis that the requested records will ultimately be given to others who do not have direct rights under the TPRA.

As per its website, the ACLJ "is a d/b/a for Christian Advocates Serving Evangelism, Inc., a tax-exempt, not-for-profit, religious corporation" based in Washington, DC. The ACLJ is neither a Tennessean nor a citizen and has no rights afforded under TPRA. Even though only Tennessee citizens have the right to receive a response under the TPRA in Tenn. Code Ann. Section 10-7-503(a)(2)(B), it is a good practice to send a written denial. The TPRA does not prohibit a records custodian from making available to a requestor who is not a Tennessee citizen any public record that is open for inspection. This is a discretionary determination that should be consistent with any rules adopted and be equally applied. Tenn. Code Ann. Section 10-7-506(a) authorizes custodians to adopt and enforce reasonable rules governing duplication and copying.

As to the request for a waiver of fees, a record custodian is not obligated to impose fees for copies or duplicates of open records. Tenn. Code Ann. Section 10-7-503(a)(7)(C) requires custodians who do require payment of reasonable costs incurred in the duplication to assess the costs in accordance with the Schedule of Reasonable Charges (pursuant to Tenn. Code Ann. Section 8-4-604). The Schedule of Reasonable Charges provides:

A records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity's properly adopted written policy.

The reference to Tenn. Code Ann. Section 10-7-506(c)(1) is not relevant in this situation as it applies in instances where the record reproduced is a "computer generated map or other similar geographic data".



Ann V. Butterworth
Open Records Counsel

² Tenn. Code Ann. Section 10-7-503(a)(7)(A) also permits other forms of identification that are acceptable to the governmental entity to be provided when the requestor does not have government issued photo identification that contains a Tennessee address.