STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

May 30, 2018

Opinion No. 18-23

Duties Under Tennessee Public Records Act

Question 1

Does a state or local government official have any statutory duty to identify and make available for inspection or copying records of court or administrative proceedings in response to a written or oral request?

Opinion 1

If the state or local government official is the records custodian of the requested public records, then Tennessee's Public Records Act generally requires that, if practicable, the records custodian make the public records available for inspection during normal business hours, unless a state law provides otherwise with respect to the openness of the requested records.

Question 2

Does a state or local government official have any statutory duty to provide certified copies of public records in response to a written or oral request?

Opinion 2

No. Tennessee's Public Records Act does not require a records custodian to provide certified copies of public records in response to an oral or written request.

ANALYSIS

Tennessee's Public Records Act provides that "all state, county and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Tenn. Code Ann. § 10-7-503(a)(2)(A). The Act specifically requires a records custodian to "promptly make available for inspection any public records not specifically exempt from disclosure" unless it is not practicable to do so. Tenn. Code Ann. § 10-7-503(a)(2)(B). If it is not practicable to promptly make the record available for inspection, the records custodian is required to respond within seven business days by either making the records available to the requestor, by denying the request in writing and including the basis for the denial, or informing the requestor of the estimated time reasonably necessary to produce the requested records. Id. A "records custodian" is defined as "any office, official, or

employee of any governmental entity lawfully responsible for the direct custody and care of a public record." Tenn. Code Ann. § 10-7-503(a)(1)(C).

Accordingly, if a state or local government official is lawfully responsible for the direct custody and care of records of court or administrative proceedings, then the Tennessee's Public Records Act generally requires that, if practicable, the official make such records available for inspection during normal business hours, unless a state law provides otherwise with respect to the openness of the requested records. Tennessee courts have recognized that state law includes state statutes (e.g., Tenn. Code Ann. § 10-7-504); the Tennessee Rules of Civil and Criminal Procedure (*Arnold v. City of Chattanooga*, 19 S.W.3d 779 (Tenn. Ct. App. 2000); *Appman v. Worthington*, 746 S.W.2d 165 (Tenn. 1987)); the Supreme Court Rules (*Coats v. Smyrna/Rutherford County Airport Authority*, 2001 WL 1589117 (Tenn. Ct. App. Dec. 13, 2001)); and the common law (*Swift v. Campbell*, 159 S.W.3d 565 (Tenn. Ct. App. 2005)). In addition, Tennessee courts have recognized that federal law can provide exceptions to Tennessee's Public Records Act by virtue of the Supremacy Clause of the United States Constitution. *See Seaton v. Johnson*, 898 S.W.2d 232 (Tenn. Ct. App. 1995). To the extent any state or federal law provides otherwise with respect to the openness of a record, then the Public Records Act does not require the records custodian to make that record available for public inspection.

The Public Records Act does not, however, require a public official "to sort through files to compile information" or "to create a record that does not exist." Tenn. Code Ann. § 10-7-503(a)(4) and (5).

The Public Records Act also does not require a records custodian to provide certified copies of public records in response to a written or oral request, and we are not aware of any other statute requiring a state or local government official to provide certified copies of public records. Tennessee Code Annotated § 8-21-401(i)(5) does authorize the clerks of all general sessions, juvenile, probate, circuit, and chancery courts to a charge a fee of five dollars ($5.00) for "making certification and seal."

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