

DEPARTMENTAL POLICY State of Tennessee Department of Commerce & Insurance	POLICY NUMBER:
	EFFECTIVE DATE: <i>June 30, 2017</i>
Approved by Commissioner: <i>Julie M. McPeak</i>	SUPERSEDES: All previous policies governing public records
SUBJECT: Public Records Access Request Policy	

I. RESPONSIBLE OFFICE:

Department wide policy for the administration of public records requests and responses.

II. AUTHORITY:

Tenn. Code Ann. § 10-7-503(g) and Tenn. Code Ann. § 10-7-501 et seq. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

III. PURPOSE:

Pursuant to Tenn. Code Ann. § 10-7-503(g), by July 1, 2017, every governmental entity subject to the Tennessee Public Records Act ("TPRA") (Tenn. Code Ann. §§ 10-7-501 et seq.), must establish a written public records policy properly adopted by the appropriate governing authority that includes: the process for requesting access to public records and any required form; the process for responding to requests and redaction practices; fees, if any, charged for copies and billing and payment procedures; and the name or title and contact information for public records request coordinator(s).

IV. APPLICATION:

This policy applies to all agencies, divisions, administrative offices, boards, commissions, and programs within and administratively attached to the Department of Commerce and Insurance.

V. POLICY:

It is the policy of the Department of Commerce and Insurance to provide economical and efficient access to public records as required under the TPRA, Tenn. Code Ann. §§ 10-7-501 et seq.

The TPRA provides that all state, county and municipal records shall, at all times during business hours, be open for personal inspection by any citizen of this state and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of the Department of Commerce and Insurance are presumed to be open for inspection unless an exemption is otherwise provided by law.

Personnel of the Department of Commerce and Insurance shall provide access and assistance in a timely and efficient manner to persons requesting access to public records. No provisions of this Policy shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Department of Commerce and Insurance, shall be protected as provided by current law. Concerns about the provisions or enforcement of this Policy should be addressed to the Public Records Request Coordinator ("PRRC") or to the Tennessee Office of Open Records Counsel.

This Policy is available for inspection and duplication in the Legal Division of the Department of Commerce and Insurance. This Policy is posted on the web at <https://tn.gov/commerce/>. This Policy shall be reviewed annually.

This Policy shall be applied consistently throughout the various administrative offices, division, agencies, boards, commissions, and programs within and administratively attached to the Department of Commerce and Insurance with the designated record custodian.

The Department of Commerce and Insurance will respond promptly to public record requests upon proof of Tennessee citizenship by presentation of a validly issued Tennessee driver's license or alternative acceptable forms of ID.

VI. DEFINITIONS:

Records custodian: The office, official or employee lawfully responsible for the direct custody and care of a public record. See Tenn. Code Ann. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.

Public records: As defined in Tenn. Code Ann. Section 10-7-503(a)(1)(A): "public record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files 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.

Public records request coordinator ("PRRC"): The individual who has, or individuals who have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. See Tenn. Code Ann. § 10-7-503(a)(1)(B). The PRRC may also be a records custodian.

Redacted record: A public record otherwise open for public inspection from which protected or confidential information is removed or made obscured prior to release or inspection.

Requestor: A Tennessee citizen requesting access to a public record, whether inspection or duplication.

VII. MAKING PUBLIC RECORDS REQUESTS:

- A. All public record requests shall be made to a PRRC, or designee, in order to ensure public record requests made pursuant to the TPRA are routed to the appropriate records custodian and fulfilled in a timely manner. All media requests should be made to the Department's Communications Director.
 1. Requests for inspection shall be made to a PRRC, or designee, or to the Legal Division of the Department of Commerce and Insurance at 500 James Robertson Parkway, Davy Crockett Tower, Nashville, Tennessee 37243. Phone, Fax or email submissions are accepted.
 - a. To the extent that a public records request is for inspection only, the Department employee involved should seek written confirmation from the requestor, even though this written confirmation cannot be made mandatory.
 - b. The Department employee shall create a contemporaneous written record of the received request and confirm in writing whether the requestor is a Tennessee citizen.
 2. Requests for copies shall be made in writing by the attached standard Public Records Request form (see:

<http://www.comptroller.tn.gov/openrecords/forms.asp> for the form template). In appropriate circumstances, a clear, documented email or other substitute writing may be sufficient. Fax and email submissions are accepted in addition to mailed or hand delivered written requests.

- a. "Standing" requests are not allowed; each request for inspection or copies must be received on an individual basis as set forth above.
3. Any Department employee receiving a public records request shall forward it within one (1) business day to the applicable Division's PRRC.
 4. Within one (1) business day, the applicable Division's PRRC will notify the Legal Division of any Public Records Request by emailing the Department's Open Records Contact and the Assistant General Counsel assigned to handle that Division's Public Records Requests. The scanned original request or the contemporaneous record of a verbal request for inspection shall be attached to the email.
 5. If the request is for certified records, the Assistant General Counsel will draft a Justification Memorandum and route the Memorandum through the appropriate Chief Counsel and Deputy General Counsel, General Counsel (if applicable) and the Commissioner, or designee, for certification.
 - a. Notwithstanding the language directly above, individual Divisions or Programs may wish to observe a procedure by which someone other than the Commissioner certifies the records at issue. The appropriate Deputy Commissioner or Assistant Commissioner can perform the action as a designee (Tenn. Code Ann. § 56-1-604); such delegation should be documented in writing and attached as Appendix A to this policy.

VIII. RESPONDING TO PUBLIC RECORDS REQUESTS:

A. PRRC

1. The PRRC shall review public record requests and make an initial determination of the following:

- a. If the requestor has provided evidence of Tennessee citizenship;
 - b. If the records requested are described with sufficient specificity to identify them; and
 - c. If the governmental entity is the custodian of the records requested.
2. The PRRC shall acknowledge receipt of the request and take the following appropriate action(s):
- a. Advise the requestor of this Policy and the elections made by the Department of Commerce and Insurance regarding:
 - i. Citizenship;
 - ii. Form(s) required for copies;
 - iii. Fees, labor, and waivers, if applicable; and
 - iv. Aggregation.
 - b. Deny the request in writing if an appropriate ground applies, such as the following:
 - i. Requestor is not a Tennessee citizen;
 - ii. Request lacks specificity (offer to assist in clarification);
 - iii. Exemption makes the record not subject to disclosure under the TPRA (provide the exemption in the denial);
 - iv. The record does not exist; or
 - v. The Department of Commerce and Insurance is not the custodian of the requested records.
 - (1) If the records relate to another governmental entity and the PRRC is aware of the correct governmental entity, advise the requestor of the correct governmental entity and PRRC for that entity, if known.
 - c. If appropriate, contact the requestor to see if the request can be narrowed; and

- d. Forward the records request to the appropriate records custodian and advise the requestor of such action.
3. The designated PRRC(s) for the Department of Commerce and Insurance are listed on Appendix B attached to this policy.
 - a. For questions about the TPRA process, contact:

Department of Commerce and Insurance
Legal Division
ATTN: Public Records Coordinator
500 James Robertson Parkway, Davy Crockett Tower
Nashville, Tennessee 37243
Telephone: (615) 741-3388 / Fax: (615) 741-4000

B. Records Custodian

1. Upon receiving a public records request, the records custodian shall make requested open public records available as promptly as practicable in accordance with Tenn. Code Ann. § 10-7-503.
2. If it is not practicable for the records custodian to promptly provide requested records because additional time is necessary to determine whether the requested records exist, to gain access to records, to determine whether the records are open, or for other similar reasons, then the records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Records Request Response based on the form developed by the Office of Open Records Counsel, attached hereto as Public Records Request Response Form (see: <http://www.comptroller.tn.gov/openrecords/forms.asp> for the form template).
 - a. If the records still cannot be produced within the time frame stated, then the Assistant General Counsel should send another letter prior to the expiration of the initial timeframe, stating when the requestor can expect the records.
3. If the records custodian denies a public record request, he or she shall deny the request in writing using the Public Records Request Response Form and provide the ground(s) for denial, including, but not limited to the following:
 - a. Requestor is not a Tennessee citizen;

- b. Request lacks specificity;
 - c. Exemption makes the record not subject to disclosure under the TPRA;
 - d. The record does not exist; or
 - e. The Department of Commerce and Insurance is not the custodian of the requested records.
4. If the records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records or additional time is necessary to prepare the records for access, the records custodian shall notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian should contact the requestor to see if the request can be narrowed.
5. If the records custodian discovers that records responsive to a records request were omitted, the records custodian shall contact the requestor concerning the omission and produce the records as quickly as practicable.
6. The appropriate Deputy General Counsel should be consulted by email, if the request involves, but not limited to, the following examples:
- a. Generalized questions on privilege;
 - b. Involves significant time and additional staff to review and produce records; or
 - c. Possible media attention and potential effect as to ongoing litigation.
- C. If a requestor makes two (2) or more requests to view a public record within a six-month period and for each request fails to view the public record within fifteen (15) business days of receiving notification that the record is available to view, the Department is not required to comply with any subsequent public records request from the requestor for a period of six (6) months from the date of the second request to view the public record unless the Department determines failure to view the public record was for good cause.
(Tenn. Code Ann. § 10-7-503(a)(7)(A)(vii), Effective July 1, 2017).

D. While citizenship is required, records may be released, notwithstanding lack of Tennessee citizenship, to a requestor who filed a complaint with the Department seeking a copy of that complaint, a requestor against whom a complaint has been filed seeking a copy of that complaint, or another state or federal agency conducting official business.

E. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the records custodian shall coordinate with the Legal Division for review and redaction of records. The records custodian and the PRRC may also consult with the Office of Open Records Counsel.
 - a. The Legal Division is responsible for redacting personally identifying information, legally privileged information, and confidential information.
2. When a redacted record is provided, records custodians shall provide the requestor with the basis for redaction. The basis given for redaction shall not disclose confidential information. The records custodian is not required to produce a privilege log.

IX. INSPECTION OF RECORDS:

- A. There is no charge for inspection of open public records.
- B. The location for inspection of records within the offices of the Department of Commerce and Insurance shall be specified by the records custodian.
- C. The records custodian may require an appointment for inspection or may require inspection of records at an alternate location under reasonable circumstances.
- D. A Department employee shall remain with the provided records at all times during an inspection by a requestor.

X. COPIES OF RECORDS:

- A. Copies will be available for pickup at the location specified by the records custodian.
- B. Upon payment for costs including postage, copies will be delivered to the requestor's home address by the U.S. Postal Service.
- C. A requestor shall not be allowed to make copies of records with personal equipment or utilize their own storage devices.

- D. The records custodian shall respond to a public record request for copies in the most economic and efficient manner practicable.
- E. The PRRC and the Assistant General Counsel will each be responsible for gathering the information needed to respond to the request.
- F. While identification of Tennessee citizenship should still be requested, records may be released notwithstanding lack of Tennessee citizenship to a person who filed a complaint with the Department seeking a copy of that complaint, a person against whom a complaint has been filed seeking a copy of that complaint, or another state or federal agency conducting official business

XI. FEES AND CHARGES:

- A. Prior to producing copies of records, a records custodian shall provide the requestor with an estimate of the charges (itemized by per page costs, labor, and other) to be assessed.
- B. When fees for copies and labor do not exceed \$10.00, the fees may be waived. Requests for waivers for fees above \$10.00 must be presented to the Deputy General Counsel who is authorized to determine if such waiver is in the best interest of the Department of Commerce and Insurance and for the public good.
- C. Fees and charges for copies are as follows (but no more than the safe harbor amount authorized by the Office of Open Records Counsel Schedule of Reasonable Charges unless a higher charge can be documented. See <http://www.comptroller.tn.gov/openrecords/forms.asp> for a Schedule of Reasonable Charges):
 - 1. \$0.15 per page for letter and legal sized black and white copies;
 - 2. \$0.50 per page for letter and legal sized color copies;
 - 3. Labor will be charged when time exceeds 1 hour;
 - 4. Other, if applicable (ex.: Archive retrieval costs; Delivery cost of records; Computer programs; etc.); and/or
 - 5. If an outside vendor is used, the actual costs assessed by the vendor.
- D. The records custodian may charge a requestor the hourly wage of the employee(s) reasonably necessary to produce the requested information after one (1) hour of work has been done by the custodian in producing

the requested material. The one-hour waiver applies to the higher-paid employee. If the highest paid employee spends less than one (1) hour on the request, then the balance of the hour shall roll to the next highest paid employee involved in the request until one full hour of credit has been given. Tenn. Code Ann. § 10-7-503(a)(7)(C).

- E. Payment in advance will be required when costs are estimated to exceed \$10.00.
 - 1. The Department's Open Records Contact will send any applicable invoice to the requestor. Only after payment is received, will the Department's Open Records Contact send the records.
- F. When a public records request to inspect is being processed, the Department employee(s) involved shall track costs in the event that the request later results in a request for copies, not merely an inspection.
- G. Payment is to be made in cash, by personal check, or by credit card payable to the Department of Commerce and Insurance presented to the records custodian and/or PRRC.
- H. For tracking purposes, the Department's Open Records Contact will turn the file over for closing and notify the Assistant General Counsel and PRRC that the request has been closed. A spreadsheet or computer case management system to track the timeliness of each request through the review and production process shall be maintained.
- I. If the Department receives a request for copies of a public record and the requestor fails to pay to the Department the cost for the production of such copies after copies have been produced, the Department is not required to comply with any public records request from the requestor until payment for such copies has been received; provided that, the requestor was given an estimated cost for producing the copies in accordance with Tenn. Code Ann. § 10-7-503(a)(7)(C)(ii) prior to the production of the copies and agreed to pay the estimated cost for such copies. (Tenn. Code Ann. § 10-7-503(a)(7)(A)(vii), Effective July 1, 2017).

PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: Tennessee Department of Commerce and Insurance

[Contact Information for the Public Records Request Coordinator]

From: [Requestor's Name and Contact Information (include an address for any TPRA required written response)]

Is the requestor a Tennessee citizen? Yes No

Request: Inspection (The TPRA does not permit fees or require a written request for inspection only.)

Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed \$ _____? If so, initial here: _____.

Delivery preference: On-Site Pick-Up USPS First-Class Mail
 Electronic Other: _____

Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

Signature of Requestor and Date Submitted

Signature of Public Records Request Coordinator and Date Received

PUBLIC RECORD REQUEST RESPONSE FORM

**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243**

[Date]

[Requestor's Name and Contact Information]:

In response to your records request received on [Date Request Received], our office is taking the action(s) indicated below:

The public record(s) responsive to your request will be made available for inspection:

Location: _____

Date & Time: _____

Copies of public record(s) responsive to your request are:

Attached;

Available for pickup at the following location:

_____ ; or
 Being delivered via: USPS First-Class Mail Electronically Other: _____.

Your request is denied on the following grounds:

- Your request was not sufficiently detailed to enable identification of the specific requested record(s). You need to provide additional information to identify the requested record(s).
- No such record(s) exists or this office does not maintain record(s) responsive to your request.
- No proof of Tennessee citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification.
- You are not a Tennessee citizen or have not submitted proof of Tennessee citizenship.
- You have not paid the estimated copying/production fees.
- The following state, federal, or other applicable law prohibits disclosure of the requested records:
_____.

It is not practicable for the records you requested to be made promptly available for inspection and/or copying because:

- It has not yet been determined that records responsive to your request exist; or
- The office is still in the process of retrieving, reviewing, and/or redacting the requested records.

The time reasonably necessary to produce the record(s) or information and/or to make a determination of a proper response to your request is: _____.

If you have any additional questions regarding your record request, please contact [Records Custodian or Public Records Request Coordinator].

Sincerely,

[Records Custodian or Public Record Request Coordinator]

[Name, Title, and Contact Information]

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Appendix A

[Divisions or Programs may wish to observe a procedure by which someone other than the Commissioner certifies the records at issue. The appropriate Deputy Commissioner or Assistant Commissioner can perform the action as a designee (Tenn. Code Ann. § 56-1-604); such delegation should be documented in writing and attached as an Appendix A to this policy.]

Appendix B – Public Records Request Coordinators

Unless otherwise noted, all requests may be made in writing to the attention of the Records Request Coordinator Listed below at:

<Records Request Coordinator>

<Program Name>

Re: Public Records Request

500 James Robertson Pkwy

Nashville, TN 37243-0565

Insurance Division

Examinations

Hanley Hammond

Insurance Financial Examiner 3

(615) 741-6796

hanley.hammond@tn.gov

Agency Licensing

Kim Biggs

Director

(615) 741-2693

kimberly.biggs@tn.gov

Financial Affairs

Phil Adams

Admission Analyst

(615) 741-1633

phil.adams@tn.gov

Captive Insurance

Michael Corbett

Director

(615) 741-3805

michael.corbett@tn.gov

TennCare Oversight

Elaine Moore

Administrative Services Assistant

(615) 532-1829

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elaine.moore@tn.gov

Consumer Affairs

Chris Hall
Consumer Protection Specialist
(615) 741-1275
chris.hall@tn.gov

Law Enforcement/Fire Prevention

Peace Officer Standards and Training Commission

Brian Grisham
Director
3025 Lebanon Pike
Nashville, TN 37214
(615) 741-4461
brian.grisham@tn.gov

Tennessee Law Enforcement Training Academy

Kelly Morgan
Executive Assistant
3025 Lebanon Pike
Nashville, TN 37214
(615) 741-4461
kelly.morgan@tn.gov

Fire Service & Codes Enforcement Academy

Randy Fox
TN Fire Service and Codes Enforcement Academy
2161 Unionville-Deason Road
Bell Buckle, TN 37020
(931) 294-4111
randy.fox@tn.gov

Fire Investigations Section

Steve Majchrzak
Assistant Commissioner for Fire Prevention
(615) 253-6846
steven.majchrzak@tn.gov

Fire Fighting Commission

Randy Fox
Director
TN Firefighting Commission
2161 Unionville-Deason Road
Bell Buckle, TN 37020
(931) 294-4140
randy.fox@tn.gov

Codes Enforcement and Modular Buildings

Chris Bainbridge
Director
(615) 741-7190
christopher.bainbridge@tn.gov

Electrical, Residential and Marina Inspection Services

Gary Farley
Director
(615) 741-7170
gary.farley@tn.gov

Permits & Licensing

Gary Farley
Director
(615) 741-7170
gary.farley@tn.gov

Manufactured Housing and Modular Buildings

Charles Chambers
Director
(615) 741-7192
charles.chambers@tn.gov

Securities Division

Perry Warden
Senior Securities Examiner
(615) 741-2947
perry.warden@tn.gov

911 Emergency Communications Board

Amber McDonald
Director of Government and External Affairs
(615) 253-3969
amber.mcdonald@tn.gov

Regulatory Boards Division

Accountancy

Wendy Garvin
Director
(615) 741-2550
reg.boards@TN.Gov

Alarm Systems Contractors, Locksmiths, Private Investigation & Polygraph Examiners, Private Protective Services

Cody Vest
Director
(615) 741-9771
reg.boards@TN.Gov

Architects and Engineers

John Cothron
Director
(615) 741-3221
reg.boards@TN.Gov

Motor Vehicle Commission

Paula Shaw
Director
(615) 741-2711
reg.boards@TN.Gov

Athletic Commission, Auctioneers, Beauty Pageants, Collection Service Board, Cosmetology, Barbers, Court Reporters, Credit Service Businesses, Debt Management Companies, Geologists, Home Inspectors, Land Surveyors, Real Estate Appraisers, Scrap Metal, Soil Scientists

Roxana Gumucio
Director
(615) 741-3611

reg.boards@TN.Gov

Contractors, Home Improvement Contractors, Limited Licensed Electricians,
Limited Licensed Plumbers

Carolyn Lazenby

Director

(615) 741-8307

reg.boards@TN.Gov

Funeral Directors & Embalmers, Burial Services

Robert Gribble

Director

(615) 741-5062

reg.boards@TN.Gov

Tennessee Real Estate Commission

Carter Lawrence

Assistant Commissioner for Regulatory Boards

(615) 253-4265

reg.boards@TN.Gov

Tennessee Corrections Institute

William Wall

Deputy Director

(615) 741-3816

william.wall@tn.gov

Media Requests

Kevin Walters

Communications Director

(615) 741-2241

kevin.walters@tn.gov

Open Records Contact

Carey Kefauver

Assistant General Counsel

(615) 741-8683

carey.kefauver@tn.gov