

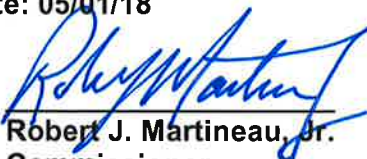


TDEC-P-01-Public Records-090117

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION'S POLICY ON RESPONDING TO REQUEST TO ACCESS AND OBTAIN COPIES OF PUBLIC RECORDS

DISCLAIMER: This document is policy only and does not create legal rights or obligations. It is intended to provide the Department's staff guidance on how to apply decisions, procedures and practices pertaining to the internal operation or actions of the Department. Decisions affecting the public, including the regulated community, in any particular case will be made applying applicable laws and regulations to the specific facts.

Effective Date: 05/01/18

Signatures: 
Robert J. Martineau, Jr.
Commissioner


Jenny L. Howard
General Counsel

Purpose:

Pursuant to Tenn. Code Ann. § 10-7-503(g), 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 by July 1, 2017. The policy adopted shall not impose requirements on those requesting records that are more burdensome than state law and shall include:

- The process for requesting access to public records and any required form(s);
- The process for responding to requests, including redaction practices;
- A statement of any fees charged for copies of public records and the procedures for billing and payment; and
- The name or title and contact information of the individual or individuals designated as the Public Records Request Coordinator(s).

This document serves as the written Public Records Policy for the Tennessee Department of Environment and Conservation ("TDEC"). This document does not create legal rights or obligations beyond those in the TPRA and TDEC's rules and regulations.

POLICY:

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy is hereby adopted by the TDEC Commissioner for TDEC to provide access to public records as provided under the Tennessee Public Records Act ("TPRA") in 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 TDEC will be open for inspection by Tennessee citizens unless otherwise provided by law.

Personnel of TDEC shall timely provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Policy shall be used to hinder access to TDEC's public records. However, the integrity and organization of public records, as well as the efficient and safe operation of TDEC, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for TDEC or to the Tennessee Office of Open Records Counsel ("OORC").

This Policy is available for inspection and duplication at TDEC Information Services Division, 312 Rosa L. Parks Ave., 2nd floor, Nashville, TN. This Policy is also available on TDEC's website, <http://www.tennessee.gov/environment/>. This Policy shall be reviewed every two years.

This Policy shall be applied consistently throughout the various offices and divisions of TDEC.

I. Definitions:

- A. 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.
- B. Public Records: 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. See Tenn. Code Ann. § 10-7-503(a)(1)(A).
- C. Public Records Request Coordinator: The individual designated in Section III, A.3 of this Policy who has 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 Public Records Request Coordinator may also be a records custodian.

- D. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

II. Requesting Access to Public Records

- A. Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or her designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- B. Requests for inspection may be made orally or in writing using the attached Form A to TDEC's PRRC, whose contact information is provided below in Section III.A.3.
- C. Requests for copies, or requests for inspection and copies, shall be made in writing. Requesters should complete and submit the attached Form A to TDEC's PRRC, whose contact information is provided below in Section III.A.3.
- D. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of ID) is required as a condition to inspect or receive copies of TDEC's public records.
- E. Many of TDEC's public records are available via online data viewers. Potential requestors are encouraged to check these data viewers for the availability of desired public records before submitting a public records request. The data viewers are available here: <http://www.tennessee.gov/environment/article/tdec-dataviewers>

III. Responding to Public Records Requests

A. Public Record Request Coordinator

1. The PRRC shall review public record requests and make an initial determination of the following:
 - a. If the requestor provided evidence of Tennessee citizenship;
 - b. If the records requested are described with sufficient specificity to identify them; and
 - c. If TDEC is the custodian of the records.
2. The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
 - a. Advise the requestor of the requirements for obtaining public records, if such requirements have not been met.

- b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:
 - i. The requestor is not, or has not presented evidence of being, a Tennessee citizen.
 - ii. The request lacks specificity to identify the requested records for inspection or copying.
 - iii. An exemption or other law makes the record not subject to disclosure under the TPRA. The specific exemption or law will be provided to the requestor, in accordance with the TPRA.
 - iv. TDEC is not the custodian of the requested records.
 - v. The records do not exist.
- c. If appropriate, contact the requestor to see if the request can be narrowed.
- d. Forward the records request to the appropriate records custodian in TDEC.
- e. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC for that entity if known.

3. The designated PRRC is:

- a. Name: Casey Mahoney
- b. Contact information: TDEC Information Services Division, 312 Rosa L. Parks Ave., 2nd floor, Nashville, TN 37243; 615-532-8964; TDEC.Public.Records.Request@tn.gov

B. Records Custodian

1. Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If the records custodian is uncertain as to whether an applicable exemption or other law would apply to make requested records confidential, the custodian will consult with the PRRC.
2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then a records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form which is attached as Form B, based on the form developed by the OORC.

3. If a records custodian intends to deny a public record request, he or she shall coordinate with the PRRC and, after review and approval by the PRRC, deny the request in writing as provided in Section III.A.2.b using the Public Records Request Response Form.
4. If a 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 use the Public Records Request Response Form to 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 a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian should coordinate with the PRRC.
2. If electronic records must be printed to be redacted, TDEC will charge for per-page copies, in accordance with Tenn. Comp. R. & Regs. 0400-01-01-.01.

IV. Inspection of Records

- A. There shall be no charge for inspection of TDEC's public records.
- B. The PRRC or records custodian shall promptly respond to a public records request for inspection. The time and location for inspection of records within the offices of TDEC should be coordinated with the PRRC or records custodian.

V. Copies of Records

- A. The PRRC or records custodian shall promptly respond to a public records request for copies.
- B. Copies will be available for pickup at a location specified by the records custodian or PRRC.
- C. Upon payment for postage, copies will be delivered to the requestor's address by the United States Postal Service.

VI. Fees and Charges and Procedures for Billing and Payment

- A. TDEC will charge a requestor a reasonable charge for production costs, including labor, duplication, and delivery, in accordance with Tenn. Comp. R. & Regs. 0400-01-01-.01.
- B. If a public record has “commercial value”, as that term is defined in Tenn. Code Ann. § 10-7-506(c), TDEC will charge a requester an additional fee that shall be assessed in accordance with the procedure set out in Tenn. Comp. R. & Regs. 0400-01-01-.02.
- C. Records custodians or the PRRC shall provide requestors with an itemized estimate of the charges prior to producing copies of records and will require pre-payment of such charges before producing requested records.
- D. Fees and charges for copies are as follows:
 - 1. \$0.15 per page for letter- and legal-size black and white copies.
 - 2. \$0.50 per page for letter- and legal-size color copies.
 - 3. The actual, out-of-pocket costs of flash drives or similar devices on which electronic copies are provided.
 - 4. Labor when time exceeds 1 hour.
 - 5. If an outside vendor is used, the actual costs assessed by the vendor.
- D. Full payment in advance will be required when costs are estimated to exceed \$10. The records custodian or PRRC will coordinate with the requestor to secure payment before the production is delivered or otherwise made available.

Revision History

Revision Number	Date	Brief Summary of Change
0	06/30/17	Original document
1	09/01/17	Change of designated PRRC
2	05/01/18	Addition of records with commercial value

FORM A



PUBLIC RECORDS REQUEST

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access records made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity 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: Records Request Coordinator, Tennessee Department of Environment and Conservation, 312 Rosa L. Parks Ave., 2nd floor, Nashville, TN 37243 or email to: TDEC.Public.Records.Request@tn.gov

From: _____
Requestor's Name and Contact Information

Is the requestor a Tennessee citizen? Yes No

Proof of Tennessee citizenship is required for access to TDEC's public records. Please include a copy of your Tennessee driver's license (or alternative acceptable form of identification) with your request.

Request: Inspection
 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 production 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
CN-

FORM B



PUBLIC RECORD REQUEST RESPONSE
Tennessee Department of Environment and Conservation

Date: _____

Requestor's Name and Contact Information: _____

In response to your records request received on _____, our office is taking the action(s)¹ 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.
 - 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,

Name, Title, and Contact Information

¹ If all requested records do not have the same response, so indicate.