

 <p>DEPARTMENTAL POLICY State of Tennessee Department of Transportation</p>	Policy Number: <u>101-06</u>
	Effective Date: June 20, 2017
Approved By: 	Supersedes: N/A
SUBJECT: <u>Inspection and Copying of Public Records</u>	

RESPONSIBLE OFFICE: Legal Division; Community Relations Division

AUTHORITY: T.C.A. §10-7-503(g). 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.

PURPOSE: In accordance with T.C.A. §10-7-503(g), the purpose of this policy is to establish a written public records policy governing the inspection and copying of public records. This policy is intended to supersede Rules of the Tennessee Department of Transportation, Chapter 1680-4-2, Inspection and Copying of Department Records.

APPLICATION: This policy applies to all Tennessee Department of Transportation employees.

DEFINITIONS:

A. **Records Custodian:** The office, official or employee lawfully responsible for the direct custody and care of a public record. *See* T.C.A. §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, recordings, or other material, regardless of physical form or characteristic, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. *See* T.C.A. 10-7-503(a)(1)(A).

C. Public Records Request Coordinator (“PRRC”): The individual, or individuals, designated in Section I.B. of this Policy who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the Tennessee Public Records Act, T.C.A. §10-7-503, *et seq.* (“TPRA”). *See* T.C.A. §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 records whether it is for inspection or duplication.

POLICY:

Pursuant to T.C.A. §10-7-503(g), the following Public Records Policy for the Tennessee Department of Transportation (“TDOT”) is hereby adopted by the Commissioner of Transportation to provide economical and efficient access to public records as provided under the Tennessee Public Records Act (“TPRA”) in T.C.A. §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* T.C.A. §10-7-503(a)(2)(A). Accordingly, the public records of TDOT are presumed to be open for inspection unless otherwise provided by law.

Personnel of TDOT shall timely and efficiently 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 open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of TDOT, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator (“PRRC”) for TDOT or to the Tennessee Office of Open Records Counsel (“OORC”).

This Policy is available for inspection and duplication at TDOT Headquarters in Nashville, Tennessee, and at each regional office in Jackson, Nashville, Chattanooga and Knoxville. This Policy is also found online at: www.tn.gov/tdot/topic/transportation-legal-public-records-requests. This Policy shall be applied consistently throughout the various offices, departments, and/or divisions of TDOT.

PROCEDURES:

I. REQUESTING ACCESS TO PUBLIC RECORDS

A. Public record requests, except those requests generated by the news media, should generally be made, or referred, to the Public Records Request Coordinator (“PRRC”) or his/her designee, in order to ensure public records requests are routed to the appropriate records custodian and fulfilled in a timely manner. A simple request to

inspect or duplicate a readily available public record may be made to, and handled by, the applicable records custodian.

B. The designated PRRC for TDOT is the General Counsel; provided, however, that responsibilities of the PRRC under this Policy may be delegated to one or more employees under the supervision of the PRRC. The PRRC may be contacted at:

Office of General Counsel
Tennessee Department of Transportation
3rd Floor, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243
Telephone: (615) 741-2941
Email: TDOT.RecordsRequest@tn.gov

C. All news media requests for information and documents shall be directed to TDOT's Community Relations Division, which can be contacted at:

Community Relations Division
Tennessee Department of Transportation
7th Floor, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243
Telephone: (615) 741-7736
Email: BJ.Doughty@tn.gov

D. Requests for inspection of public records may be made orally or in writing but shall not be required to be made in writing. Requestors may use the Public Records Request Form attached or any other written form of communication such as mail or electronic mail. There shall be no charge for inspection of public records.

E. Requests for copies, or requests for inspection and copies, of public records shall be made in writing. Requestors may use the Public Records Request Form attached or any other written form of communication such as mail or electronic mail. There shall be a charge for producing copies of public records, in accordance with Sections IV. and V.

F. Proof of Tennessee citizenship may be required as a condition to inspect or receive copies of public records.

II. RESPONDING TO PUBLIC RECORDS REQUESTS

A. Public Record Request Coordinator

1. The PRRC, or an employee under the supervision of the PRRC, will review public record requests and make an initial determination of the following:

(a) If TDOT is the custodian of the records;

(b) If the requestor provided evidence of Tennessee citizenship; and

(c) If the records requested are described with sufficient specificity to identify them.

2. The PRRC, or an employee under the supervision of the PRRC, shall acknowledge receipt of the request and take any of the following appropriate actions:

(a) Advise the requestor of this Policy and any determinations made regarding proof of Tennessee citizenship, form(s) required for copies, fees (and labor threshold and waivers, if applicable), and aggregation of multiple or frequent requests;

(b) If appropriate, deny the request in writing, in whole or in part, providing the appropriate ground as enumerated in TDOT's Public Records Request Response Form or other written communication, including any of the following:

(i) Lack of evidence of Tennessee citizenship (if required);

(ii) Lack of specificity in the request;

(iii) Non-existence of the requested records;

(iv) Lack of custody or control over the requested records; or

(v) An exemption under the TPRA or other provision of law making the requested record confidential or not subject to public disclosure;

(c) If appropriate, contact the requestor to see if the request can be narrowed;

(d) Forward the records request to the appropriate records custodian at TDOT; or

(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.

B. Records Custodian

1. Upon receiving a specific public records request, a records custodian shall promptly make the requested public record or records available in accordance with T.C.A. §10-7-503. If the request involves multiple records from one or more offices within TDOT that cannot be readily identified, located, and provided to the requestor, or if the records custodian is uncertain whether an applicable exemption applies, the records custodian shall immediately refer the request to the PRRC.

2. The PRRC shall, within seven (7) business days from the receipt of the request, send the requestor a completed Public Records Request Response Form, or other written communication, if it is not practicable to provide requested records promptly because additional time is necessary:

- (a) To determine whether the requested records exist;
- (b) To search for, retrieve, or otherwise gain access to records;
- (c) To determine whether the records are open or confidential;
- (d) To redact records; or
- (e) For other similar reasons.

3. If a records custodian believes that a public records request, or a part of the request, should be denied, he or she shall inform the PRRC who shall determine whether to deny the request, in whole or part, in writing as provided in Section II.A.2.(b) using the Public Records Request Response Form or other written communication.

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 refer the requests to the PRRC, and the PRRC shall use the Public Records Request Response Form or other written communication 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 or PRRC should contact the requestor to see if the request can be narrowed.

5. If a records custodian or PRRC discovers records responsive to a records request were omitted, the records custodian or PRRC will contact the requestor concerning the omission and produce the records as quickly as possible.

C. Confidential Records and Redaction

1. If the PRRC determines that the requested records are considered confidential or privileged records under Federal or State law and are not available for public inspection, the PRRC shall communicate such determination to the requestor in writing. However, nothing in this Policy shall be construed to require TDOT to generate a detailed description of each confidential record withheld from inspection, such as may be required with respect to the production of documents in discovery under the Tennessee Rules of Civil Procedure.

2. If a requested record contains confidential 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 shall coordinate with the PRRC, legal counsel, or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC or with the Office of the Attorney General and Reporter.

3. Whenever a redacted record is provided, a records custodian or PRRC shall provide the requestor with the basis for redaction. The basis given shall be general in nature and not disclose confidential information.

III. INSPECTION OF RECORDS

- A. There shall be no charge for inspection of public records.
- B. The location for inspection of records within TDOT's offices will be determined by either the PRRC or the records custodian.
- C. Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.
- D. The TPRA grants Tennessee citizens the right to access open public records that exist at the time of the request. Nothing in the TPRA or this Policy shall be construed as requiring a records custodian or the PRRC to sort through files to compile information or to create or recreate a record that does not exist.

IV. COPIES OF RECORDS

- A. A records custodian or the PRRC shall promptly respond to a request for copies of public records in accordance with the procedures set forth in Section II.
- B. Copies will be available for pickup at a location specified by the records custodian or the PRRC or may be delivered to the mailing address specified by the requestor.
- C. At the discretion of the PRRC, commercial copy services may be used for copying a large volume of public records. In such event, the requestor shall be responsible for the commercial copying costs.
- D. TDOT, or its contractors or agents, shall maintain custody of its records at all times. A requestor shall not be allowed to take custody of any TDOT record or use a personal photocopier, personal computer, or other personal equipment of any kind to make photocopies, download electronic or digital records, reproduce computer disks, or otherwise mechanically reproduce any TDOT record; provided, however, that this shall not be construed to prohibit a requestor from making personal notes or manually copying the contents of a TDOT record.

V. FEES AND CHARGES AND PROCEDURES FOR BILLING AND PAYMENT

- A. Records custodians or the PRRC shall provide requestors with an itemized estimate of the charges prior to producing copies of records. After the copies have been made, the records custodian or PRRC shall itemize the copy charges and send an invoice to the requestor. Pre-payment of the copy charges shall be required before producing copies of the requested records.

B. When fees for copies and labor do not exceed \$5.00, TDOT may waive those fees if requested.

C. Fees and charges for copies are as follows:

<u>Record page size</u>	<u>Cost (black and white)</u>	<u>Cost (color)</u>
8 ½" x 11" & 8 ½" x 14" (letter/legal size)	\$0.15 per page	\$0.50 per page
11" x 17" & 12" x 18"	\$1.00 per page	\$1.50 per page
24" x 36"	\$2.00 per page	\$4.00 per page
> 24" x 36"	\$.75/sq.ft.	\$1.50/sq.ft.

D. In addition to the copy charge described in Section V.C. above, labor charges for the time, in hours, to produce copies of records shall be imposed when the time exceeds one (1) hour. Labor charges shall be calculated by multiplying the base hourly wage rate of each employee by the time each employee spends in identifying, locating, and copying the records, minus the first hour of the most highly paid employee.

E. If the copies of the requested records are delivered by mail, the costs of delivery, including postage, shall be included in the copy charge.

F. If an outside copying vendor is used, the requestor shall pay the actual costs assessed by the vendor.

G. If the requested records are in the custody of and produced by a TDOT contractor or consultant, the requestor shall pay the total labor and copying costs billed to TDOT by the contractor or consultant.

H. Electronic copies of public records may be provided if the documents already exist in an electronic format and may be downloaded to a CD disk or flash drive. If provided, electronic copies shall be charged at a rate of \$10.00 per CD disk or flash drive, if available. If the requested records exist in an electronic format that may be transmitted by electronic mail, there will no copy charge for the transmission. If the time required to identify, locate, and download or transmit the requested electronic records exceeds one hour, the production of the copies shall be subject to the labor charge described in Section V.D. above.

I. TDOT will aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than four (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian must inform the individual that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

J. Payment shall be remitted by check or money order made payable to the State of Tennessee Department of Transportation.

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: Public Records Request Coordinator
Office of General Counsel
Tennessee Department of Transportation
3rd floor, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243

From: _____

Is the requestor a Tennessee citizen? Yes No

Request: Inspection
 Copy/Duplicate.

If costs for copies are assessed, the requestor will receive an estimate. Delivery will be made by first class mail unless the requestor specifies otherwise.

Records Requested:

Provide a detailed description of the record(s) requested including type of record(s), timeframe or dates for the record(s) sought and subject matter or key words related to the record(s). Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your 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

Signature of PRRC and Date

PUBLIC RECORDS REQUEST RESPONSE FORM

Office of General Counsel
Tennessee Department of Transportation
3rd floor, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243

[Date]

[Requestor's Name and Contact Information]:

In response to your public records request received on _____, our office is taking the action(s) as indicated below:

- The public records responsive to your request will be made available for inspection:

Location: _____ Date/Time: _____

- Copies of public records responsive to your request are:

- Attached;

- Available for pickup at the following location:

- Being delivered via U.S. Mail or other method: _____

- Your request is being denied on the following grounds:

- Your request was not sufficiently detailed to enable identification of the specific requested records. You need to provide additional information to identify the records.

- No such records exist or this office does not maintain records responsive to your request.

- No proof of TN 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 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
 - TDOT is still in the process of retrieving, reviewing and/or redacting the requested records.

The time reasonable necessary to produce the records 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:

Sincerely,

[Records Custodian or PRRC/Name and Contact Information]