

**RULES
OF
THE TENNESSEE DEPARTMENT OF TRANSPORTATION**

**CHAPTER 1680-04-02
INSPECTION AND COPYING OF PUBLIC RECORDS**

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1680-04-02-.01 PURPOSE.

- (1) The Tennessee Public Records Act provides that public 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.
- (2) The purpose of these rules is to establish procedures to accommodate requests from the public to inspect or obtain copies of public records maintained by the Tennessee Department of Transportation, to the extent that such public records are open to inspection by citizens of the State of Tennessee under the Tennessee Public Records Act, while at the same time preserving the confidentiality of confidential records or confidential information as provided in State or Federal law.
- (3) Pursuant to T.C.A. § 10-7-503(g), these rules provide for:
 - (a) The process for making requests to inspect public records or receive copies of public records and a copy of any required request form;
 - (b) The process for responding to requests, including redaction practices;
 - (c) A statement of any fees charged for copies of public records and the procedures for billing and payment; and
 - (d) The name or title and the contact information of the individual or individuals within the Department designated as the public records request coordinator.
- (4) Consistent with the Tennessee Public Records Act and these rules, TDOT personnel shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions in these rules 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 this Department, shall be protected as provided by current law.
- (5) Concerns about the implementation of these rules should be addressed to the Public Records Request Coordinator for TDOT or to the Office of Open Records Counsel.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503, 10-7-503(g), and 10-7-506. **Administrative History:** Original rule filed February 26, 2007; effective May 12, 2007. Repeal filed July 17, 2017; effective October 15, 2017. New rules filed November 6, 2018; effective February 4, 2019.

1680-04-02-.02 DEFINITIONS.

- (1) "Department" or "TDOT" means the State of Tennessee Department of Transportation.

(Rule 1680-04-02-.02, continued)

- (2) "Office of Open Records Counsel" or "OORC" means the office established under T.C.A. §§ 8-4-601, et seq., within the Office of the State of Tennessee Comptroller of the Treasury.
- (3) "Public Records" means 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.
- (4) "Public Records Request Coordinator" or "PRRC" means the individual, or individuals, designated in Rule 1680-04-02-.03 who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with T.C.A. §§ 10-7-503, et seq., of the Tennessee Public Records Act. The PRRC may also be a records custodian.
- (5) "Records Custodian" means the office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.
- (6) "Requestor" means a person seeking access to a public record or public records, whether it is for the purpose of inspection or duplication.
- (7) "Tennessee Public Records Act" or "TPRA" means the State law codified in T.C.A. §§ 10-7-501, et seq., regarding access to public records.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503, 10-7-503(g), and 10-7-506. **Administrative History:** Original rule filed February 26, 2007; effective May 12, 2007. Repeal filed July 17, 2017; effective October 15, 2017. New rules filed November 6, 2018; effective February 4, 2019.

1680-04-02-.03 REQUESTING ACCESS TO PUBLIC RECORDS.

- (1) Public record requests, except those requests generated by the news media, should generally be made, or referred, to the Public Records Request Coordinator, or his or her designee, in order to ensure that 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.
- (2) The designated PRRC for TDOT is the General Counsel; provided, however, that responsibilities of the PRRC under this rule 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

- (3) All news media requests for information and documents shall be directed to TDOT's Community Relations Division, which may be contacted at:

Community Relations Division
Tennessee Department of Transportation
7th Floor, James K. Polk Building

(Rule 1680-04-02-.03, continued)

505 Deaderick Street
Nashville, Tennessee 37243
Telephone: (615) 741-7736

- (4) 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 provided in the Appendix or any other written form of communication such as mail or email. There shall be no charge for inspection of public records.
- (5) 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 provided in the Appendix 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 Rule 1680-04-02-.07.
- (6) Proof of Tennessee citizenship may be required as a condition to inspect or receive copies of public records. Any questions regarding proof of Tennessee citizenship should be directed to the Public Records Request Coordinator.
- (7) Public Records and Information Available on TDOT's Internet Website.
 - (a) TDOT posts notices of scheduled public meetings and hearings on its internet website at <https://www.tn.gov/tdot/transportation-quick-links/upcoming-events.html>.
 - (b) In addition, TDOT makes a wide variety of TDOT forms, documents, publications, and resources available to the public via TDOT's internet website at <https://www.tn.gov/tdot>, and particularly through the Index of Services at <https://www.tn.gov/tdot/find-local-information111.html>. Examples of files that are available online include, without limitation, TDOT's Long Range Transportation Plan, Statewide Transportation Improvement Program (STIP), and current Three-Year Comprehensive Multimodal Program (3-Year Plan); information on current transportation projects (by Region); weekly lane closure information; current traffic conditions (TDOT SmartWay); information regarding project funding programs and other transportation programs administered by TDOT; state, county, and city maps; roadway inventory data; bridge inventory and appraisal reports; standard roadway and structures drawings; various procedural manuals and guidelines; standard specifications for road and bridge construction; construction contract and prequalification forms; Disadvantaged Business Enterprise (DBE) information; construction contract bid letting information; prequalification procedures and current advertisements for consultant services; and information on how to obtain various types of permits from TDOT, including permits for driveways, outdoor advertising, overweight/overdimensional vehicle movements, and utility installations.
 - (c) Individual TDOT divisions may have their own online written forms for requesting copies of particular types of records for which they are the records custodian.
 - (d) To the extent that such online files are accessible to members of the public who have no business or official relationship with TDOT, the files are made available for informational purposes only. TDOT makes no warranty of any kind, express or implied, regarding these files and specifically makes no warranty that any of these files are fit for any other use or particular purpose. The user of such files assumes all risk and liability for any losses, damages, claims or expenses resulting from the use or possession of any files provided by TDOT.
 - (e) Further, by making records available for inspection online, TDOT does not waive any restrictions on the use of such records that may be applicable under law, including without limitation 23 U.S.C. § 409, which prohibits certain types of federal-aid safety

(Rule 1680-04-02-.03, continued)

project related records from being subject to discovery or admitted into evidence in any civil action for damages.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503, 10-7-503(g), and 10-7-506. **Administrative History:** Original rule filed February 26, 2007; effective May 12, 2007. Repeal filed July 17, 2017; effective October 15, 2017. New rules filed November 6, 2018; effective February 4, 2019.

1680-04-02-.04 RESPONDING TO PUBLIC RECORDS REQUESTS.

(1) Public Record Request Coordinator

- (a) The PRRC, or an employee under the supervision of the PRRC, will review public record requests and make an initial determination of the following:
1. If TDOT is the custodian of the records;
 2. If the requestor provided evidence of Tennessee citizenship (if required) or whether such proof should be required; and
 3. If the records requested are described with sufficient specificity to identify them.
- (b) 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:
1. Advise the requestor of any determinations made regarding proof of Tennessee citizenship (if required); form(s) required for copies; copy fees and labor threshold and waivers, if applicable; and aggregation of multiple or frequent requests;
 2. 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 Tennessee Public Records Act or other provision of law making the requested record confidential or not subject to public disclosure;
 3. If appropriate, contact the requestor to see if the request can be clarified or narrowed;
 4. Forward the records request to the appropriate records custodian at TDOT; or
 5. 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.

(2) Records Custodian

(Rule 1680-04-02-.04, continued)

- (a) Upon receiving a specific public records request, a records custodian shall promptly make the requested public record or records available, if practicable, 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.
 - (b) 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:
 - 1. To determine whether the requested records exist;
 - 2. To search for, retrieve, or otherwise gain access to records;
 - 3. To determine whether the records are open or confidential;
 - 4. To redact records; or
 - 5. For other similar reasons.
 - (c) 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 subparagraph (1)(b) of this rule, using the Public Records Request Response Form or other written communication.
 - (d) 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.
 - (e) If a records custodian or the 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.
- (3) Confidential Records and Redaction
- (a) 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 these rules 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.
 - (b) 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

(Rule 1680-04-02-.04, continued)

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.

- (c) 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.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503, 10-7-503(g), and 10-7-506. **Administrative History:** Original rule filed February 26, 2007; effective May 12, 2007. Repeal filed July 17, 2017; effective October 15, 2017. New rules filed November 6, 2018; effective February 4, 2019.

1680-04-02-.05 INSPECTION OF RECORDS.

- (1) There shall be no charge for inspection of public records.
- (2) The location for inspection of records within TDOT's offices will be determined by either the PRRC or the records custodian.
- (3) 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.
- (4) The Tennessee Public Records Act grants Tennessee citizens the right to access open public records that exist at the time of the request. Nothing in the TPRA or these rules 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.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503, 10-7-503(g), and 10-7-506. **Administrative History:** Original rule filed February 26, 2007; effective May 12, 2007. Repeal filed July 17, 2017; effective October 15, 2017. New rules filed November 6, 2018; effective February 4, 2019.

1680-04-02-.06 COPIES OF RECORDS.

- (1) 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 1680-04-02-.04.
- (2) 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.
- (3) 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.
- (4) 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, nor shall any requestor be allowed to use a personal photocopier or scanner to make photocopies, download electronic or digital records, reproduce computer disks, or otherwise mechanically reproduce any TDOT record; provided, however, that:
 - (a) A requestor may use a personal camera or cell phone to take a photograph of a page or frame of a record, or may make personal notes or manually copy the contents of a TDOT record, so long as the integrity of the record is maintained; and
 - (b) A person may use his or her own equipment to download and print, for personal information or fair use purposes, any TDOT document that is accessible to the public on TDOT's internet website. See Rule 1680-04-02-.03, paragraph (7), regarding access to and use of TDOT records available online.

(Rule 1680-04-02-.06, continued)

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503, 10-7-503(g), and 10-7-506. **Administrative History:** Original rule filed February 26, 2007; effective May 12, 2007. Repeal filed July 17, 2017; effective October 15, 2017. New rules filed November 6, 2018; effective February 4, 2019.

1680-04-02-.07 FEES AND CHARGES FOR PRODUCING COPIES OF PUBLIC RECORDS.

- (1) Records custodians or the PRRC shall provide requestors with an itemized estimate of the fees and charges prior to producing copies of records. After the copies have been made, the records custodian or PRRC shall itemize the fees and charges and send an invoice to the requestor. Pre-payment of the copy costs shall be required before producing copies of the requested records.
- (2) The PRRC or a records custodian may waive payment of copy fees and labor charges under any of the following circumstances:
 - (a) The applicable fees and charges do not exceed \$5.00;
 - (b) The records are provided to federal, state, or local governmental agencies or officials;
 - (c) The records are provided to a person or entity that will use the records to perform work for or on behalf of TDOT; or
 - (d) The records pertain to the acquisition of real property from a person or entity and are provided to that person or entity.

- (3) Fees for making copies are as follows:

<u>Record page size</u>	<u>Fee (black and white)</u>	<u>Fee (color)</u>
8 ½" x 11" or 8 ½" x 14" (letter or legal size)	\$0.15 per page	\$0.50 per page
11" x 17" or 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.

- (4) In addition to the copy fees described in paragraph (3) above, labor charges for the time, in hours, to produce copies of records shall be imposed whenever 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.
- (5) If the copies of the requested records are delivered by mail, the costs of delivery, including postage, shall be included in the copy charge.
- (6) At TDOT's discretion, an outside copying vendor may be used to make copies of the requested records. If so, an employee of TDOT shall transport the records to and from the vendor and maintain custody of the records at all times. The requestor shall pay the actual costs assessed by the vendor and any applicable employee labor charges as provided in paragraph (4) above.

(Rule 1680-04-02-.07, continued)

- (7) 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.
- (8) If TDOT maintains the requested public record(s) in an electronic format, copies of the record(s) may be provided to the requestor in an electronic format, as follows:
 - (a) The record(s) may be downloaded to a flash drive or compact disc (or equivalent) provided by TDOT. The requestor shall be charged for the flash drive or compact disc (or equivalent) at the current cost to TDOT. Downloading to a flash drive or compact disc (or equivalent) from outside TDOT will not be allowed.
 - (b) If the requested record exists in an electronic format that may be transmitted by email, there will no copy fee for transmitting the record.
 - (c) 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 paragraph (4) above.
- (9) TDOT may aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the Office of Open Records Counsel 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.
- (10) Payment shall be remitted by check or money order made payable to the State of Tennessee Department of Transportation.

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503, 10-7-503(g), and 10-7-506. **Administrative History:** Original rule filed February 26, 2007; effective May 12, 2007. Repeal filed July 17, 2017; effective October 15, 2017. New rules filed November 6, 2018; effective February 4, 2019.

1680-04-02-.08 APPENDIX: FORMS.

The following forms may be used, but are not required, to request inspection or copies of public records and to respond to public records requests, respectively:

- (1) Public Records Request Form:

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(Rule 1680-04-02-.08, continued)

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

(Rule 1680-04-02-.08, continued)

(2) Public Records Request Response Form:

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 (if required). Your request will be reconsidered upon presentation of an adequate form of identification.
 - You are not a Tennessee citizen (if required).
 - 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:

_____.

(Rule 1680-04-02-.08, continued)

Sincerely,

[Records Custodian or PRRC/Name and Contact Information]

Authority: T.C.A. §§ 4-3-2303(2), 10-7-503, and 10-7-506. **Administrative History:** Original rule filed November 6, 2018; effective February 4, 2019.