

DATE: May 17, 2019

SUBJECT: New Administrative Rule- Access to Public Records

ACTION RECOMMENDED: Adoption

BACKGROUND INFORMATION

In 2016, the General Assembly passed Public Chapter 722, which updated the Tennessee Public Records Act. The Act required all governmental entities to adopt a written public records policy by July 1, 2017. PC 722 also directed the Office of Open Records Counsel, a division of the Comptroller of the Treasury, to publish best practice guidelines and a model public records policy for agencies to use when developing their own policy and procedures.

THEC developed a policy based on the model policy and best practices published by the Office of Open Records Counsel. Policy LR6.0 was adopted by the Commission on May 11, 2017.

In 2018, the General Assembly passed Public Chapter 712, which required agencies to promulgate rules based on the Tennessee Public Records Act.

Staff monitored the development of public records rules by other state agencies as they were presented in the General Assembly's Government Operations Committee hearings. Draft rules were developed based on the Public Records Act, taking into account the intent of the legislature, as it was clearly expressed by the Committee during these hearings.

A public Rulemaking Hearing was held on February 15, 2019. No members of the public attended and no comments were submitted. No modifications have been made to the draft rules since the hearing.

RECOMMENDATION

Staff recommends that the Commission:

1. Adopt Chapter 1540-01-11 as Rulemaking Hearing Rules; and,
2. Authorize the Executive Director to make any necessary technical corrections to these rules including changes suggested by the Tennessee Attorney General.

**RULES
OF
TENNESSEE HIGHER EDUCATION COMMISSION**

**CHAPTER 1540-01-11
ACCESS TO PUBLIC RECORDS**

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1540-01-11-.01 PURPOSE AND SCOPE.

- (1) The purpose of these rules is to establish procedures regarding public records requests received by the Tennessee Higher Education Commission, and to provide economical and efficient access to Public Records subject to the Tennessee Public Records Act or "TRPA" in Tennessee Code Annotated § 10-7-501, et seq.

Authority: T.C.A. §§ 10-7-503 and 10-7-506.

1540-01-11-.02 DEFINITIONS.

- (1) "Commission" means the Tennessee Higher Education Commission.
- (2) "Office of Open Records Counsel" or "OORC" means the State of Tennessee Office of Open Records Counsel, established pursuant to T.C.A. § 8-4-601 et. Seq., or any successor office or entity.
- (3) "Public 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, not otherwise protected by law or exempt from disclosure under the Tennessee Public Records Act.
- (4) "Public Records Request Coordinator" or "PRRC" means any individual within the Tennessee Higher Education Commission whose role it is to ensure public records requests are routed to the appropriate Records Custodian and are fulfilled in accordance with Tennessee Public Records Act.
- (5) "Records Custodian" means any office, official, or employee of the Tennessee Higher Education Commission 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" is a person seeking access to a public record, whether it is for inspection or duplication.
- (7) "TPRA" is the Tennessee Public Records Act in T.C.A. § 10-7-501, et seq.

Authority: T.C.A. §§ 10-7-503 and 10-7-506.

1540-01-11-.03 REQUESTING ACCESS TO PUBLIC RECORDS.

- (1) The Commission shall provide access to its Public Records to any citizen of Tennessee.
- (2) A Requestor may request access to Public Records maintained and received by the Commission by making a request in person, by telephone, mail, or email. All public record requests should be directed to the Commission's PRRC. Any employee of the Commission who receives what they believe may be a public records request, formal or informal, shall immediately notify the PRRC.
- (3) Requests for inspection are not required to be made in writing. Requests for inspection may be made in-person at the Commission's office, by telephone, or in writing by mail or email. Email requests shall be sent to THEC.TSAC.PublicRecords@tn.gov.
- (4) A Requestor shall make a request for copies of Public Records in writing to the PRRC using the Commission's Public Records Request Form, which can be found on the Commission's website. The request for copies may be submitted by mail to the attention of the PRRC at the Commission's current mailing address, or by email to THEC.TSAC.PublicRecords@tn.gov.
- (5) Any request for inspection or copying of a Public Record shall be sufficiently detailed to enable the Commission to identify the specific records for inspection or copying.
- (6) A Requestor may assert Tennessee citizenship by presenting valid government-issued photo identification that includes the Requestor's address (or alternative acceptable form of identification). The PRRC may waive the requirement of having the Requestor present government-issued photo identification if the Requestor has previously provided proof of Tennessee citizenship or if it can be verified that the Requestor is a Tennessee citizen by information contained in the public domain, or by other reliable means.
- (7) The designated PRRC is the Commission's Deputy General Counsel, and may be reached at the Commission's offices of record in Nashville or THEC.TSAC.PublicRecords@tn.gov.

Authority: T.C.A. §§ 10-7-503 and 10-7-506.

RULE 1540-01-11-.04 RESPONDING TO PUBLIC RECORDS REQUESTS.

- (1) Upon receipt of a public records request, the PRRC shall review the request, consult with the appropriate Records Custodian as needed, and make an initial determination of the following:
 - a. If the Requestor provided sufficient evidence of Tennessee citizenship pursuant to Rule 1540-01-11-.03(6);
 - b. If the records requested are described with sufficient specificity to identify them; and
 - c. If the Commission is the custodian of the Public Records.
- (2) The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
 - a. Advise the Requestor of these Rules regarding:
 - i. Proof of Tennessee citizenship;
 - ii. Form(s) required for copies;

- iii. Fees (and labor threshold and waivers, if applicable); and
 - iv. Aggregation of multiple or frequent requests.
 - b. Denial of the request as outlined in Rule 1540-01-11-.04(3);
 - c. If appropriate, contact the Requestor to determine if the request can be narrowed.
 - d. Upon acknowledgement of receipt of the request, immediately forward the records request to the Records Custodian.
- (3) If appropriate, the Commission will deny the request in writing using the Commission's Public Records Request Response form, providing the ground for denial which may include, but shall not be limited to:
 - a. The Requestor is not a Tennessee citizen;
 - b. The request lacks specificity, in which case the PRRC shall offer to assist in clarification;
 - c. The record request is exempt from disclosure under the TPRA. The PRRC shall provide the applicable exemption in the written denial.
 - d. The Commission is not the custodian of the requested records. If the requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, the PRRC will advise the Requestor of the correct governmental entity;
 - e. The record(s) requested do not exist.
- (4) The PRRC shall coordinate with the appropriate Records Custodian to promptly make public records available in accordance with T.C.A. § 10-7-503. If not practicable to promptly provide the requested records or the records need to be segmented because of the large volume of records to be provided, then the PRRC, or Records Custodian as designee, shall, within seven (7) business days from the receipt of the request, send the Requestor a completed Public Records Request Form notifying them of such, and that a records production schedule will be provided as expeditiously as practicable. Any segmentation of records must be authorized by the PRRC or the Commission's General Counsel's Office.
- (5) If a Public Record contains information not subject to disclosure under the TPRA, the Commission shall prepare a redacted copy of the Public Record prior to providing access. Whenever a redacted record is provided, the Commission should provide the Requestor with the basis for redaction. Any redaction must be authorized by the PRRC or the Commission's General Counsel's office.
- (6) If the PRRC or Records Custodian discovers records responsive to a records request were omitted, the PRRC, or Records Custodian as designee, will contact the Requestor concerning the omission and produce the records as quickly as practicable.
- (7) The Records Custodian shall provide the requested records to the PRRC once compiled. The PRRC will coordinate delivery of the records to the Requestor for pickup, by mail to the Requestor's home address or other acceptable address within Tennessee, or by electronic delivery to an email provided by the Requestor.

Authority: T.C.A. §§ 10-7-503 and 10-7-506.

1540-01-11-.05 INSPECTION OF PUBLIC RECORDS.

- (1) There shall be no charge for inspection of open public records.
- (2) The location for inspection of public records within the Commission's offices should be determined by either the PRRC or the Records Custodian.
- (3) Public records may be inspected during regular business hours. 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.

Authority: T.C.A. §§ 10-7-503 and 10-7-506.

1540-01-11-.06 CHARGES, PAYMENT, AND WAIVERS.

- (1) The Commission shall not use fees and charges for copies of public records to hinder citizen access to public records. The Commission shall make reasonable efforts to provide copies of requested records in a manner that will minimize or eliminate cost to the Commission and the Requestor. The Commission's schedule of fees and charges shall not exceed the amounts authorized by the OORC Schedule of Reasonable Charges and shall be published on the Commission's website.
- (2) The PRRC or Records Custodian shall provide Requestor with an itemized estimate of charges prior to producing copies of records and may require pre-payment of such charges before producing requested records. Payment is to be made by personal check or money order, payable to the Tennessee Higher Education Commission, and presented to the Records Custodian or PRRC.
- (3) If an outside vendor is used to duplicate records, the actual costs assessed by the vendor will be added to any other applicable charges incurred by THEC.
- (4) The Commission may waive or reduce any part of the fees calculated under these rules upon a written determination that such waiver or reduction would be in the best interests of the public.

Authority: T.C.A. §§ 10-7-503 and 10-7-506.

1540-01-11-.07 AGGREGATION OF FREQUENT AND MULTIPLE REQUESTS.

- (1) The Commission will aggregate record requests when more than four (4) requests are received by the Commission within a calendar month (either from a single individual or a group of individuals deemed to be working in concert).
- (2) If aggregating, the level at which records requests will be aggregated is the agency-level, encompassing all divisions of the Commission.
- (3) The PRRC is responsible for making the determination a group of individuals are working in concert. The PRRC or Records Custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.
- (4) Routinely released and readily accessible records excluded from aggregation include, but are not limited to any record regularly maintained by the Commission in electronic format, not requiring redaction or other modification, delivered to the requestor via electronic means.

Authority: T.C.A. §§ 10-7-503 and 10-7-506.