

RESOLUTION NO. 2017-213

A RESOLUTION ADOPTING A PUBLIC RECORDS POLICY AS REQUIRED BY TENNESSEE CODE ANNOTATED § 10-7-503(g)

WHEREAS, pursuant to Tenn. Code Ann. § 10-7-503(g), the city shall establish a written public records policy properly adopted by the board of mayor and aldermen by July 1, 2017; and

WHEREAS, the policy adopted shall not impose requirements on those requesting records that are more burdensome than state law;

WHEREAS, the policy shall include (1) The process for making requests to inspect public records or receive copies of public records and a copy of any required request form; (2) The process for responding to requests, including redaction practices; (3) A statement of any fees charged for copies of public records and the procedures for billing and payment; and (4) The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator; and

WHEREAS, the governing body of the city desires to comply with the recent change in state law as it pertains to records management.

WHEREAS, the policy will apply to those employees working under the supervision of the board of mayor and aldermen or the city manager, along with the boards and commissions of the city; provided, however, it is not applicable to the board of education, the Kingsport Housing and Redevelopment Authority or the Industrial Development Board of the City of Kingsport, Tennessee.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That in compliance with Tenn. Code Ann. § 10-7-503(g) (2016) there is hereby adopted the Public Records Policy for the City of Kingsport, Tennessee, including Public Records Request Form A and Public Records Response Form B as follows:

PUBLIC RECORDS POLICY FOR THE CITY OF KINGSPORT, TENNESSEE

This policy is applicable to all employees working under the supervision of the board of mayor and aldermen or the city manager. It is also applicable to the boards and commissions of the city; provided, however, it is not applicable to the board of education, the Kingsport Housing and Redevelopment Authority or the Industrial Development Board of the City of Kingsport, Tennessee.

Tenn. Code Ann. § 10-7-503, *et seq.*, commonly called the Tennessee Public Records Act (hereinafter the "Act") 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. Tenn. Code Ann. § 10-7-503(a)(2)(A).

As required by law personnel of the city shall timely provide access and assistance to citizens of Tennessee requesting to view or receive copies of public records.

No provision of this policy shall be construed to impose requirements on those requesting records that are more burdensome than state law. The integrity and organization of public records, as well

as the efficient and safe operation of the city shall be protected as provided by current law. Concerns about this policy should be addressed to the Public Records Request Coordinator for the city or to the Tennessee Office of Open Record Counsel ("OORC").

This policy is available for inspection and duplication in the office of the city recorder. This policy shall be applied consistently throughout the various offices, departments, and/or divisions of the city.

ARTICLE 1 DEFINITIONS

Sec. 1.1 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.

Sec. 1.2 *Public records* means "[a]ll 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; and does not include the device or equipment, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment, that may have been used to create or store a public record or state record." Tenn. Code Ann. § 10-7- 503(a)(1)(A) (2016).

Sec. 1.3 Public records request coordinator means any individual, or individuals, designated in Section 2.1 of this policy whose role it is to ensure that *public records requests* are routed to the appropriate records custodian and that requests are fulfilled in accordance with Tenn. Code Ann. § 10-7-503(a)(1)(B). The public records request coordinator may also be a records custodian.

Sec. 1.4 Requestor means a person seeking access to a public record, whether it is for inspection or duplication.

ARTICLE 2 REQUESTING ACCESS TO PUBLIC RECORDS

Sec. 2.1 Pursuant to Article X, Sec. 3 of the Charter of the City of Kingsport the City Recorder is the official custodian of public records. The public records request coordinator ("PRRC") is the City Recorder or designee. The City Recorder has designated the City Clerk/Deputy City Recorder to act as the PRRC and the contact information for the City Clerk/Deputy City Recorder is City of Kingsport, Tennessee, 225 West Center Street, Kingsport, Tennessee 37660, telephone number (423) 229-9000, email address angiemarshall@kingsporttn.gov.

Sec. 2.2 All public record requests shall be made to the PRRC or designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.

Sec. 2.3 Requests for in person inspection of records only cannot be required to be made in writing, although it may be requested by the PRRC. The PRRC will request a mailing or email address from the requestor for providing any written communication required under the Act.

Sec. 2.4 Requests for in person inspection may be made either orally or in writing using Public Records Request Form A, attached hereto, developed by the OORC, given to the City Clerk/Deputy City Recorder, City of Kingsport, 225 West Center Street, Kingsport, Tennessee 37660, telephone (423) 229-9400, and email address angiemarshall@kingsporttn.gov.

Sec. 2.5 Requests for copies or requests for inspection and copies shall be made in writing using, Public Records Request Form A, attached hereto, developed by the OORC, and delivered in person or by mail to the City of Kingsport, 225 West Center Street, Kingsport, Tennessee 37660, Attn: City Clerk/Deputy City Recorder, or by email to angiemarshall@kingsporttn.gov.

Sec. 2.6 The records custodian may require a requester to present proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or other photo identification, if the person possesses a photo identification, issued by a governmental entity that includes the requestor's address. If a requestor does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian as a condition to inspect or receive

copies of public records.

ARTICLE 3 RESPONDING TO PUBLIC RECORDS REQUESTS

Sec. 3.1 Public Record Request Coordinator

Sec. 3.1.1 to ensure that no confidential information is released for inspection and to ensure compliance with the Act, all requests for inspection or copying of public records must be made to the PRRC. Any employee receiving a request for inspection or copies of public records will promptly send the request to the PRRC and allow the PRRC to process the request. The PRRC will 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 the city is the custodian of the records.

Sec. 3.1.2 The PRRC will acknowledge receipt of the request and take any of the following appropriate action(s):

- (a) Advise the requestor of this Policy and the requirements regarding:
 - (1) Proof of Tennessee citizenship (If appears clear that the requestor is not a citizen of Tennessee, i.e. the requestor makes a request for copies and the address is out of state or the requestor is not a natural person, the PRRC may deny the initially deny the request, explain the requirement of citizenship and allow the requestor the opportunity to provide proper proof of citizenship);
 - (2) Form(s) required for copies;
 - (3) Fees (and labor threshold and waivers, if applicable); and
 - (4) Aggregation of multiple or frequent requests.
- (b) If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:
 - (1) The requestor is not, or has not presented evidence of being, a Tennessee citizen;
 - (2) The request lacks specificity;
 - (3) An exemption makes the record not subject to disclosure under the Act;
 - (4) The city is not the custodian of the requested records; or
 - (5) 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 personnel in the city.
- (e) If requested records are in the custody of a different governmental entity and the PRRC knows the correct governmental entity, the PRRC should advise the requestor of the name of the governmental entity and the PRRC for that entity, if known.

Sec. 3.1.3 If the PRRC is uncertain whether an applicable exemption applies, PRRC may consult with the PRRC, the city attorney or the OORC.

Sec. 3.2 Records Custodian

Sec. 3.2.1 Upon receiving a public records request from the PRRC, the records custodian or designee shall promptly make available for inspection any records not specifically exempt from disclosure in accordance with Tenn. Code Ann. § 10-7-503. If the records custodian is uncertain whether an applicable exemption applies, the records custodian may consult with the PRRC, the city attorney, or through the PRRC, with the OORC.

Sec. 3.2.2 In the event it is not practicable to promptly provide the requested record that not exempt from disclosure then the records custodian will, within seven (7) business days from the records custodian's receipt of the request:

- (a) Make the information available to the requestor;

(b) Deny the request in writing or by completing a Public Records Request Response Form B, attached hereto, developed by the OORC, and the response shall include the basis for the denial; or

(c) Furnish the requestor a completed Public Records Request Response Form B, attached hereto, stating the time reasonably necessary to produce the record or information.

Sec. 3.2.3 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 use the Public Records Request Response Form B 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.

Sec. 3.2.4 If the 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.

Sec. 3.3 Redaction

Sec 3.3.1 If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare, if possible, a redacted copy and the redacted record shall be made available for inspection and copying. If questions arise concerning redaction, the records custodian should coordinate with the city attorney or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC.

Sec. 3.3.2 Whenever a redacted record is provided, the records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

Sec. 3.3.3 Information made confidential by state law shall be redacted whenever possible, and the redacted record shall be made available for inspection and copying. The redaction of confidential information shall not constitute the creation of a new record. Costs associated with redacting records, including the cost of copies and staff time to provide redacted copies, shall be borne as provided by law.

ARTICLE 4 INSPECTION OF RECORDS

Sec. 4.1 There shall be no charge for inspection of public records, except costs associated with redacting records, including staff time to provide redacted copies, shall be borne as provided by law.

Sec. 4.2 The PRRC or the records custodian will determine the location for inspection of records within the offices of the city. All inspections of records must be performed under the supervision and presence of the records custodian or designee.

Sec. 4.3 When a reasonable basis exists, the PRRC or the records custodian may require an appointment for inspection.

ARTICLE 5 COPIES OF RECORDS

Sec. 5.1 Upon completion of the copying of the records requested and payment for all costs, the requestor may pick up a copy of the records at the office of the PRRC. Upon request by the requestor and the payment for postage, delivery of the records by can be made via USPS First-Class Mail. It is within the discretion of the PRRC to agree to deliver copies of records by other means, including electronically, and to access the costs related to such deliver.

Sec. 5.2 At the discretion of the PRRC, and depending on the size and location of the requested record, requestors may be permitted to make copies of records with his or her personal equipment, provided it will not damage the records and provided the copying does not require anything to be is

attached or connected, by wire, wireless or otherwise, to any computer belonging to the city. Requestors may purchase storage devices from the city upon which the records will be downloaded by the city.

ARTICLE 6 FEES AND CHARGES AND PROCEDURES FOR BILLING AND PAYMENT

Sec. 6.1 The records custodian shall provide requestors with an itemized estimate of the charges prior to producing copies of records and will require pre-payment of the estimated charges before producing the requested records.

Sec. 6.2 When fees for copies do not exceed \$1.00, the fees may be waived.

Sec. 6.3 Fees and charges for 8½" x 11" or 8½" x 14" copies are \$0.15 per page black and white copies, and \$0.50 per page for colored copies. A charge for two separate pages will be imposed for each single duplex copy. If a public record is maintained in color but can be produced in black and white, the records custodian shall advise the requester that the records can be produced in color, if the requester is willing to pay a charge higher than that of a black-and-white copy.

Sec. 6.4 There is no charge for the first hour of labor necessary to produce the requested records. This is known as the "labor threshold". The records custodian shall charge for labor exceeding the labor threshold. Labor is the time, in hours, reasonably necessary to produce requested records, including the time spent locating, retrieving, owning, redacting, and producing records. The hourly wage of employer is based upon the hourly wage of the employee and does not include benefits. If the employee is not paid on an hourly basis, the hourly wage determined by dividing the employee's annual salary by the required hours to work per hour. In calculating labor charges, the records custodian should determine the total amount of labor for each employee and subtract below the threshold from the labor of the highest-paid employee(s). The records custodian should then multiply the amount of labor for each employee by each employee's hourly wage to calculate the total amount of labor charges associated with the request.

Sec. 6.5 Additional charges other than copying and labor shall include the actual out of pocket cost of any other medium upon which a record/information is being produced; charges to deliver copies via USPS first-class mail or other delivery method requested by the requestor; and charges permitted by Tenn. Code Ann. § 10-7-506(c). When providing electronic records, the records custodian may charge per page cost only when paper copies that do not already exist are required to be produced in responding to the request, such as when the record must be printed to be redacted.

Sec. 6.6 If an outside vendor is used, the actual costs assessed by the vendor to the city shall be a charge payable by the requestor.

Sec. 6.7 Payment for estimated charges and actual charge must be made by cash or check payable to the City of Kingsport and presented to the PRRC.

Sec. 6.8 Payment in advance will be required when costs are estimated to exceed \$1.00.

Sec. 6.9 Aggregation of Frequent and Multiple Requests

Sec. 6.9.1 The city 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 the requests are aggregate or that a group of individuals are working in concert. The PRRC or the records custodian will inform the requester(s) of the decision to aggregate or that they have been deemed to be working in concert. The PRRC will inform such requestor(s) of the right to appeal the decision to the OORC.

Sec. 6.9.2 If more than four (4) requests are received within a calendar month the request will be aggregated, and the requestor shall be charged a fee for any and all labor that is reasonably necessary to produce the copies of the requested records. Once the aggregation threshold is reached, the records custodian is no longer required to deduct the labor threshold set forth above in section 6.4 or any other minimum charge per request threshold that would ordinarily be waived.

Sec. 6.9.3 Requests for current records that are routinely released and readily accessible, such as agendas or minute meetings, are exempt from aggregation and are not counted in determining whether more than four (4) requests are received within a calendar month.

Sec. 6.9.4 Records requests will be aggregated at the city level.

PUBLIC RECORDS REQUEST FORM A

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: City Clerk/Deputy City Recorder, City of Kingsport, Tennessee, 225 West Center Street, Kingsport, Tennessee 37660

From: _____
Requestor's Name and Contact Information, including an address to receive any 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: Electronic On-Site Pick-Up USPS First-Class Mail 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 & Date Submitted

Signature of Public Records Request Coordinator & Date Received

1 Note, Tenn. Code Ann. § 10-7-504(a)(20)(C) permits charging for redaction of private records of a utility.

PUBLIC RECORD REQUEST RESPONSE FORM B

Requestor's Name and Contact Information _____ Date _____

In response to your records request received on _____ this office is taking the action(s)¹ indicated below:

The public record(s) responsive to your request will be made available for inspection:¹
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 the undersigned.

Sincerely,

Angela Marshall
City Clerk/Deputy City Recorder
City of Kingsport
225 West Center Street
Kingsport, Tennessee 37660

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


SECTION II. That if any section, paragraph, or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions hereof.

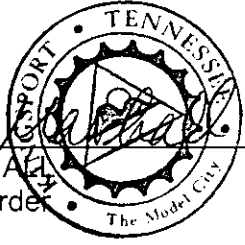
SECTION III. That this resolution shall remain in effect until repealed, amended or superseded by the board of mayor and aldermen.

SECTION IV. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 16th day of May, 2017.

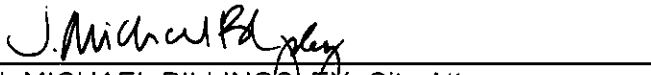
ATTEST:


ANGELA MARSHALL
Deputy City Recorder




JOHN CLARK, Mayor

APPROVED AS TO FORM:


J. MICHAEL BILLINGSLEY, City Attorney