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File Date: 7/31/18

## Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

|                                 |   |
|---------------------------------|---|
| <b>Agency/Board/Commission:</b> | Department of Revenue   |
| <b>Division:</b>                | Legal   |
| <b>Contact Person:</b>          | Lauren Fields, Assoc. Gen. Counsel  |
| <b>Address:</b>                 | Andrew Jackson Building, 500 Deaderick St., 11 <sup>th</sup> Nashville TN 37242 |
| <b>Phone:</b>                   | (615) 741-2348  |
| <b>Email:</b>                   | <a href="mailto:Lauren.Fields@tn.gov">Lauren.Fields@tn.gov</a>                  |

*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

|                     |  |
|---------------------|--|
| <b>ADA Contact:</b> | Abigail Sparks   |
| <b>Address:</b>     | Andrew Jackson Building, 500 Deaderick Street, 11 <sup>th</sup> Floor<br>Nashville, TN 37242 |
| <b>Phone:</b>       | (615) 532-8956   |
| <b>Email:</b>       | <a href="mailto:Abigail.Sparks@tn.gov">Abigail.Sparks@tn.gov</a>                             |

**Hearing Location(s)** (for additional locations, copy and paste table)

|                |   |   |                                  |
|----------------|---|---|----------------------------------|
| Address 1:     | Andrew Jackson Building, 500 Deaderick Street |   |                                  |
| Address 2:     | Ground Floor Hearing Room – Room 201          |   |                                  |
| City:          | Nashville, TN                                 |   |                                  |
| Zip:           | 37242   |   |                                  |
| Hearing Date : | 09/24/18                                      |   |                                  |
| Hearing Time:  | 9:00 a.m.                                     | <input checked="" type="checkbox"/> CST/CDT | <input type="checkbox"/> EST/EDT |

**Additional Hearing Information:**

Please allow enough time to go through security upon entering the building. A state-issued ID is required.

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to the hearing to:

Lauren Fields, Assoc. General Counsel and Asst. Director – Legal  
500 Deaderick Street, 11<sup>th</sup> Floor  
Nashville, TN 37242

Or via email to [Lauren.Fields@tn.gov](mailto:Lauren.Fields@tn.gov). Written comments are due by close of business (4:30 p.m. CST) on 09/24/18.

**Revision Type (check all that apply):**

☐ Amendment  
☒ New  
☐ Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

| Chapter Number | Chapter Title           |
|----------------|-------------------------|
| 1320-01-01     | Administration          |
| Rule Number    | Rule Title              |
| 1320-01-01-.30 | Public Records Requests |
|                |                         |
|                |                         |

| Chapter Number | Chapter Title |
|----------------|---------------|
|                |               |
| Rule Number    | Rule Title    |
|                |               |
|                |               |
|                |               |

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to

[http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines\\_September2016.pdf](http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf).

Authority: T.C.A. §§ 10-7-501, 10-7-503, 55-25-101 et seq., 67-1-102, 67-1-1701 et seq.

Chapter 1320-01-01  
Administration  
New

Rule 1320-01-01-.30 is added as follows:

1320-01-01-.30 Public Records Requests

(1) Definitions as used in this rule:

- A. Office of Open Records Counsel ("OORC"): The office established pursuant to T.C.A. §§ 8-4-601 et seq., or any successor office or entity.
- B. Personal Information: The term "personal information" shall have the same meaning as defined under T.C.A. § 55-25-103 of the Tennessee Uniform Motor Vehicle Records Disclosure Act.
- C. Public Records: The term "public record" shall have the same meaning as defined under T.C.A. § 10-7-503(a)(1)(A) of the Tennessee Public Records Act.
- D. Public Records Request Coordinator ("PRRC"): The individual, or individuals, designated in Section (3) of this rule 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 ("TPRA"). The PRRC may also be a records custodian.
- E. Records Custodian: 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.
- F. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.
- G. Return: The term "return" shall have the same meaning as defined under T.C.A. § 67-1-1701.
- H. Tax administration information: The term "tax administration information" shall have the same meaning as defined under T.C.A. § 67-1-1701.
- I. Tax information: The term "tax information" shall have the same meaning as defined under T.C.A. § 67-1-1701.
- J. Taxpayer identity: The term "taxpayer identity" shall have the same meaning as defined under T.C.A. § 67-1-1701.
- K. Tennessee Public Records Act ("TPRA"): The Tennessee Public Records Act as codified in Title 10, Chapter 7, of the T.C.A.

(2) Records Presumed to be Open for Inspection Unless Otherwise Provided by Law

- A. The public records of the Tennessee Department of Revenue are presumed to be open for inspection unless otherwise provided by law. In accordance with the TRPA, nothing in this rule shall be construed as requiring the Department to sort through files to compile information or to create or recreate a record that does not exist.
- B. This rule shall not be construed to broaden or narrow the scope of exceptions to the TPRA, including confidentiality laws codified in Title 10, Title 55, Title 67, or elsewhere.
- C. A taxpayer's returns, taxpayer identity, and tax information are confidential and are not available to the general public through a public records request. Requests for copies of returns, tax information, a

taxpayer's identity, or tax administration information will be denied unless an exception to Tennessee's confidentiality laws applies.

- D. A person's personal information associated with motor vehicle records is confidential and is not available to the general public through a public records request. Requests for personal information contained in motor vehicle records will be denied unless an exception to Tennessee's confidentiality laws applies.

### (3) Requesting Access to Public Records

- A. Public record requests shall be made to the PRRC or the PRRC's designee or via online submission, if that option is available, in order to ensure that requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- B. The PRRC shall be the department's acting Public Information Officer or designee. The PRRC shall be reached by email at [TNRevenue.PublicRecords@tn.gov](mailto:TNRevenue.PublicRecords@tn.gov) or by mail to:

Attn: Public Records Request Coordinator  
Tennessee Department of Revenue  
Andrew Jackson Building, 11th Floor  
500 Deaderick Street  
Nashville Tennessee 37242.

- C. Requests for inspection of records are not required to be made in writing. However, the PRRC may request a mailing or email address from the requestor in order to provide any written communications required under the TPRA.
- D. Requests for copies of records shall be made in writing to the PRRC, and may be made using the attached Public Records Request Form. The Department of Revenue may modify or update the request form as needed.
- E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of identification) may be required as a condition to inspect or receive copies of public records.
- F. A taxpayer is not required to submit a public record request to obtain copies of the taxpayer's own returns or tax information.

### (4) Process for Responding to Public Records Requests

#### A. Public Record Request Coordinator

1. Upon receipt of a public record request, the PRRC shall acknowledge receipt of the request. The PRRC shall promptly forward the request to the Department's General Counsel and/or designated staff attorney, who shall make an initial determination of the following:
  - a. Whether the requested records are described with sufficient specificity to identify it;
  - b. Whether the requested records come within the scope of an exception to the TPRA; and
  - c. Whether the Tennessee Department of Revenue is the custodian of the requested records.
2. Following review of the public record request by legal counsel, the PRRC may take any of the following action(s), as appropriate:
  - a. If the requested record is not described with sufficient specificity to identify it, contact the requestor to see if the request can be amended;
  - b. Contact the requester to obtain proof of Tennessee citizenship;

- c. Contact the requester to obtain proof that the requestor is authorized to access requested records that come within the scope of an exception to the TPRA;
  - d. 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;
  - e. Inform the requester of any form(s) required to request copies of records;
  - f. Inform the requester of any applicable fees, including labor thresholds and waivers; and
  - g. Inform the requester that the Department intends to aggregate multiple or frequent requests, as set out further in this rule.
3. If appropriate, after the review of records pursuant to Section (4)B of this rule, the PRRC shall deny the public record request in writing and provide a brief explanation of the grounds for denial, such as one of the following:
- a. The requestor is not, or has not presented evidence of being, a Tennessee citizen.
  - b. With respect to requests for records that are within the scope of an exception to the TPRA, the requestor has not presented sufficient proof that the requestor is authorized to access the records.
  - c. The request lacks specificity.
  - d. The Tennessee Department of Revenue is not the custodian of the requested records.
  - e. The records do not exist.
4. If appropriate, after the review of records pursuant to Section (4)B of this rule, the PRRC shall promptly provide to the requester all records to which an exception to the TPRA does not apply.

#### B. Review of Records

- 1. The PRRC will promptly forward the records request to the appropriate records custodian(s) in the Tennessee Department of Revenue. Upon receiving a public records request, the records custodian shall promptly gather the records and provide them to the PRRC for review. The PRRC will review the records in consultation with the Department's legal counsel to make a final determination as to whether the requested records come within the scope of an exception to the TPRA.
- 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 come within the scope of an exception to the TPRA; to redact records; or for other similar reasons, then the PRRC shall, within seven (7) business days from the receipt of the request, send the requestor a written response as to why it is not practicable to promptly provide the requested records.
- 3. If the PRRC denies a public record request, the PRRC shall deny the request in writing as provided in this rule.
- 4. If the PRRC 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 PRRC shall notify in writing 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 PRRC should contact the requestor to see if

the request can be narrowed.

5. If a records custodian later discovers records responsive to a records request that were omitted from the response, the PRRC 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 PRRC shall prepare a redacted copy prior to providing access. However, if a record constitutes a return, tax information, taxpayer identity, or tax administration information, the PRRC shall prepare a redacted copy only if legal counsel for the Tennessee Department of Revenue determines that providing a redacted record would not be in violation of T.C.A. § 67-1-1702. If questions arise concerning redaction, the records custodian should coordinate with the Department's legal counsel or other appropriate parties regarding review and redaction of records. The PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.
2. Whenever a redacted record is provided, the PRRC should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

#### (5) Inspection of Records

- A. The location for inspection of records within the offices of the Tennessee Department of Revenue shall be determined by the PRRC in consultation with the appropriate records custodian.
- B. 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.

#### (6) Copies of Records

- A. The PRRC shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- B. Copies will be available for pickup at a location specified by the PRRC.
- C. Upon payment for postage, copies will be delivered to the requestor's primary address by the United States Postal Service.
- D. Scanned copies (e.g., PDFs) of the requested records are available upon request and will be delivered to the requestor's email address, as specified in the written request.
- E. A requestor will not be allowed to make copies of records with personal equipment.

#### (7) Fees and Charges and Procedures for Billing and Payment

- A. Fees and charges for copies of public records shall not be used to hinder access to public records.
- B. There shall be no charge for mere inspection of public records. Any charges for producing copies of records shall be in conformity to this rule.
- C. The PRRC shall provide requestors with an itemized estimate of any charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.
- D. When fees for copies and labor do not exceed \$25.00, the fees may be waived. Requests for waivers for fees above \$25.00 must be presented to the Commissioner of Revenue or his delegate, who is authorized to determine if such waiver is in the best interest of the Tennessee Department of Revenue and for the public good.
- E. Fees and charges for copies are as follows:



1. \$2.00 per tax return
  2. \$1.00 per motor vehicle record
  3. \$1.50 per certified motor vehicle record
  4. \$0.15 per page for letter- and legal-size black and white copies.
  5. \$0.50 per page for letter- and legal-size color copies.
  6. Labor when time exceeds 25 hours.
  7. If an outside vendor is used, the actual costs assessed by the vendor.
- F. Payment may be made in cash, by personal check, cashier's check or by credit card. Checks must be payable to the Tennessee Department of Revenue.
- G. Payment in advance may be required in all situations.
- H. Aggregation of Frequent and Multiple Requests
1. The Tennessee Department of Revenue may aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than four requests are received within a calendar month (either from a single individual or a group of individuals deemed working in concert).
  2. If aggregating:
    - a. The level at which records requests will be aggregated is by agency.
    - b. The PRRC in consultation with legal counsel is responsible for making the determination that a group of individuals are working in concert. The PRRC 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.

(8) Forms for Requesting Inspection/Copies of Records and Responding to Requests

- A. Forms are not required in all instances for requesting inspection or copies of public records; provided that, the PRRC may require forms to provide timely and efficient access and assistance to requestors.
  - B. If the PRRC determines a form is necessary to timely and efficiently process a request for copies or inspection of public records, the form shall be as provided in this rule.
  - C. If the PRRC determines a form is necessary to timely and efficiently provide a response to a request for copies or inspection of public records, the PRRC may develop a form for response.
- (9) With the assistance of General Counsel, the PRRC shall report to the Tennessee Department of Revenue's Internal Audit and Consulting Services Division, on an annual basis, regarding the Tennessee Department of Revenue's compliance with the TPRA for the preceding fiscal year and shall make recommendations, if any, for improvement or changes to this rule.

Authority: T.C.A. §§ 10-7-501, 10-7-503, 67-1-102, 67-1-1701 et seq., 55-25-101 et seq.

## 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.

This form is not necessary to obtain a taxpayer's own tax information, which may be obtained by submitting a written request to the Records Custodian of the Tennessee Department of Revenue, Andrew Jackson Building, 500 Deaderick Street, Nashville, Tennessee, 37242

This form is not necessary to obtain motor vehicle records, which, subject to Tennessee's confidentiality laws, may be obtained by submitting a Vehicle Information Request form available at <https://www.tn.gov/assets/entities/revenue/attachments/f1313801Fill-in.pdf>.

**To:** Tennessee Department of Revenue, Public Records Request Coordinator

**From:** \_\_\_\_\_

**Is the requestor a Tennessee citizen?** ☐ Yes ☐ No

**Request:** ☐ Inspection  
☐ Copy/Duplicate (Note: Fees may apply)

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:** ☐ On-Site Pick-Up  
☐ USPS First-Class Mail  
☐ Electronic

### 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.

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\_\_\_\_\_  
Signature of Requestor

\_\_\_\_\_  
Date Submitted

\_\_\_\_\_  
Signature of Coordinator

\_\_\_\_\_  
Date Received



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I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 7/31/18

Signature: Kristin Husat

Name of Officer: Kristin Husat

Title of Officer: Asst Commissioner + General Counsel

Subscribed and sworn to before me on: 7-31-18

Notary Public Signature: Tammy Crook

My commission expires on: 9-20-2021



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Filed with the Department of State on: \_\_\_\_\_

7/31/18

Tre Hargett

Tre Hargett  
Secretary of State

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