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Sequence Number: 08-01-18

Notice ID(s): 2864

File Date: 8/2/18

## 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>	Tennessee Department of Safety & Homeland Security
<b>Division:</b>	Administrative
<b>Contact Person:</b>	Kyle Turner, Assistant General Counsel
<b>Address:</b>	312 Rosa L. Parks Avenue, 25 <sup>th</sup> Floor, Nashville, TN 37243
<b>Phone:</b>	615-251-5123
<b>Email:</b>	<a href="mailto:Safety.OpenRecords@tn.gov">Safety.OpenRecords@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>	Robin Beamon
<b>Address:</b>	1150 Foster Avenue, Nashville, TN 37243
<b>Phone:</b>	615-251-5251
<b>Email:</b>	<a href="mailto:Robin.Beamon@tn.gov">Robin.Beamon@tn.gov</a>

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

Address 1:	William R. Snodgrass Tennessee Tower, Nashville Room
Address 2:	312 Rosa L. Parks Avenue, 3 <sup>rd</sup> Floor
City:	Nashville
Zip:	37243
Hearing Date :	09/24/18
Hearing Time:	2:00pm
	<input checked="" type="checkbox"/> X CST/CDT <input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

Interested parties may submit written comments on or before September 24, 2018, by mail or email to the following address:

Kyle Turner, Assistant General Counsel  
Tennessee Department of Safety & Homeland Security  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 25th Floor  
Nashville, TN 37243  
[Safety.OpenRecords@tn.gov](mailto:Safety.OpenRecords@tn.gov)

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

- ☒ X Amendment  
☒ X 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
1340-08-01	Rules and Regulations for Access to Public Records
Rule Number	Rule Title
1340-08-01-.01	Purpose
1340-08-01-.02	Definitions
1340-08-01-.03	Requesting Access to Public Records
1340-08-01-.05	Responding to Public Records Requests
1340-08-01-.06	Inspection of Records
1340-08-01-.07	Copies of Records
1340-08-01-.08	Fees, Charges, and Procedures for Billing and Payment
1340-08-01-.09	Aggregation of Frequent and Multiple Requests

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).

RULES  
OF  
THE TENNESSEE DEPARTMENT OF SAFETY  
ADMINISTRATIVE DIVISION

CHAPTER 1340-8-1  
RULES AND REGULATIONS FOR ACCESS TO PUBLIC RECORDS

**1340-08-01-.01 PURPOSE.**

To establish the procedures for requesting access to Public Records of the Tennessee Department of Safety & Homeland Security and for bulk sales of data to authorized persons.

**Authority:** T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712. **Administrative History:** Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.

**1340-08-01-.02 DEFINITIONS.**

- (1) **Inspection:** The visual review of requested records, without the making of copies, whether by the TDOSHS or Requestor, by any means, that does not require a charge to view. An inspection can be converted into copies upon payment of proper charges.
- (2) **Public Records Request Coordinator (PRRC):** The individual, or individuals, designated in 1340-08-01-.05(1)(c) 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 TPRA. See T.C.A. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.
- (3) **Public Records:** 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. See T.C.A. § 10-7-503(a)(1)(A).
- (4) **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.
- (5) **Requestor:** A person seeking access to a public record, whether it is for inspection or duplication.

- (6) T.C.A: Tennessee Code Annotated
- (6) TDOSHS: The Tennessee Department of Safety & Homeland Security.
- (7) TPRA: Tennessee Public Records Act, T.C.A. § 10-7-501 et seq.
- (8) Unclaimed Request: Any request which has not been inspected, picked up, or otherwise obtained by the requestor more than thirty (30) days after the date the requestor was notified that the records were available for inspection or copies were ready to be picked up.

**Authority:** T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712. **Administrative History:** Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.

#### **1340-018-01-.03 REQUESTING ACCESS TO PUBLIC RECORDS.**

- (1) Public record requests shall be made to the Public Records Request Coordinator (PRRC) or designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- (2) Proof of Tennessee citizenship is required as a condition to inspect or receive copies of public records.
  - (a) Proof of citizenship can be furnished by:
    - (i) Presentation of a valid Tennessee driver's license, or other state issued photographic ID that includes the requestor's Tennessee address at the time of the request;
    - (ii) Submission of a request on business letterhead with the business' address in Tennessee. Records will be sent to the Tennessee address on the letterhead and not to any other address; or
    - (iii) Presentation of a valid Tennessee driver license or other state issued photographic ID that includes the requestor's Tennessee address prior to the inspection of records or a requestor obtaining the records in person.
  - (b) The Department reserves the right to request additional ID if the validity of the business address or the identification presented is in question. The Department will notify a requestor in writing, when possible, of the need for additional documentation.
  - (c) The Department may also ask the person to allow the Department to verify the address through the Department's driver license system if the person does not wish to provide a copy of the driver license or other ID.
- (3) Inspections
  - (a) Requests for inspection only cannot be required to be made in writing. The PRRC should request a mailing or email address from the requestor for providing any written communication required under the TPRA.
  - (b) Requests for inspection may be made orally or in writing using the Public Records Request Form (SF-1565) located at [www.Tn.Gov/safety/openrecords](http://www.Tn.Gov/safety/openrecords), by:
    - (i) mail or in person to 312 Rosa L. Parks Avenue, 25th Floor, Nashville, TN 37243;
    - (ii) phone at 615-251-5166; or
    - (iii) e-mail to [Safety.OpenRecords@tn.gov](mailto:Safety.OpenRecords@tn.gov).

(c)

- (i) Requests to inspect personnel files or disciplinary files of law enforcement personnel will require the Tennessee Department of Safety Request for Personnel File Inspection/Copies Form (SF-1079), to be provided prior to inspection in order to comply with T.C.A. §10-7-503(g). The form is located at [www. tn.gov/safety/openrecords](http://www.tn.gov/safety/openrecords)
- (ii) While requests may be made in person, requested files may not be readily available. The requestor may be asked to schedule an inspection time in order for the TDOSHS to locate, review, and, if necessary, redact any and all requested files.
- (iii) The law enforcement officer whose file has been requested will be provided notice of who requested the file as required by T.C.A. § 10-7-503(g).

(4) Requests for copies or for inspection and copies

- (a) Requests for copies, or requests for inspection and copies, shall be made in writing using the Public Records Request Form (SF-1565) located at [www.Tn.Gov/safety/openrecords](http://www.Tn.Gov/safety/openrecords).
- (b)
  - (i) Requests to inspect or for copies of personnel files or disciplinary files of law enforcement personnel will require the Tennessee Department of Safety Request for Personnel File Inspection/Copies Form (SF-1079), to be provided prior to inspection or production of files in order to comply with T.C.A. §10-7-503(g). The form is located at [www. tn.gov/safety/openrecords](http://www. tn.gov/safety/openrecords)
  - (ii) While requests may be made in person, requested files may not be readily available. The requestor may be asked to schedule an inspection time in order for the TDOSHS to locate, review, and, if necessary, redact any and all requested files.
  - (iii) The law enforcement officer whose file has been requested will be provided notice of who requested the file as required by T.C.A. § 10-7-503(g).
- (c) Requests can be made by:
  - (i) mail to 312 Rosa L. Parks Avenue, 25th Floor, Nashville, TN 37243;
  - (ii) phone at 615-251-5166; or
  - (iii) e-mail to [Safety.OpenRecords@tn.gov](mailto:Safety.OpenRecords@tn.gov).

(5) Statistical data of the TDOSHS is available online for the categories listed below.

- (a) Checkpoint Locations: <http://www.tennessee.gov/safety/article/checkpoints>
- (b) Crash Data: <http://www.tennessee.gov/safety/article/crashdata>
- (c) THP Activity: <http://www.tennessee.gov/safety/article/thpactivity>
- (d) Handgun Carry Permits: <http://www.tennessee.gov/safety/article/handgun>
- (e) Driver License: <http://www.tennessee.gov/safety/article/driverlicense>
- (f) Special Reports: <http://www.tennessee.gov/safety/article/specialreports>
- (g) Historical Data: <http://www.tennessee.gov/safety/article/historical>



**Authority:** T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712. **Administrative History:** Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.

**1340-08-01-.05 RESPONDING TO PUBLIC RECORDS REQUESTS.**

- (1) Public Record Request Coordinator (PRCC):
  - (a) The PRRC shall review public record requests and make an initial determination of the following:
    1. If the requestor provided evidence of Tennessee citizenship;
    2. If the records requested are described with sufficient specificity to identify them; and
    3. If the TDOSHS is the custodian of the records.
  - (b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
    1. Advise the requestor of this rule and the elections made 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.
    2. If appropriate, deny the request in writing, providing the appropriate ground such as one (1) of the following:
      - (i) The requestor is not, or has not presented evidence of being, a Tennessee citizen;
      - (ii) The request lacks specificity. The TDOSHS may work with requestors to clarify the request;
      - (iii) An exemption makes the record not subject to disclosure under the TPRA, and inform the requestor of the specific exemption;
      - (iv) The TDOSHS is not the custodian of the requested records; and/or
      - (v) The records do not exist.
    3. If appropriate, contact the requestor to see if the request can be narrowed.
    4. Forward the records request to the appropriate records custodian in the TDOSHS.
    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.
  - (c) The designated PRRCs are listed online at <https://www.tn.gov/safety/publicsafety/openrecords.html>.

- (d) The PRRC(s) shall report to the governing authority on an annual basis about the Governmental Entity's compliance with the TPRA pursuant to this policy and shall make recommendations, if any, for improvement or changes to this policy.
- (2) Records Custodian:
- (a) Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with T.C.A. §10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, TDOSHS Legal counsel, or the Attorney General's office.
  - (b) 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 are open; to redact records; or for other similar reasons, then a records custodian or PRRC shall, within seven (7) business days from the date TDOSHS receives the request, send the requestor a completed Public Records Request Response located at [https://www.tn.gov/content/dam/tn/safety/documents/Public\\_Records\\_Response.pdf](https://www.tn.gov/content/dam/tn/safety/documents/Public_Records_Response.pdf).
  - (c) If a records custodian denies a public record request, he or she shall deny the request in writing as provided in Rule 1340-08-01-.05(b)(2) using the Public Records Request Response.
  - (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 use the Public Records Request Response 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.
  - (e) If a 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.
- (3) Redaction:
- (a) If a record contains confidential information or 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 should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the Office of Attorney General and Reporter.
  - (b) Whenever a redacted record is provided, a 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.

**Authority:** T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712. **Administrative History:** Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.

#### **1340-08-01-.06 INSPECTION OF RECORDS.**

- (1) There shall be no charge for inspection of open public records.
- (2) Inspection of records shall take place at the TDOSHS office where the records are normally maintained, unless circumstances require otherwise. The location for inspection of records within the appropriate TDOSHS office shall 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.
  - (a) Due to staffing and security measures in place, appointments will be needed for inspections at the locations listed below:
    - (i) Knoxville Legal Office, Strawberry Plains Pike, Knoxville
    - (ii) Nashville Legal Office, Foster Avenue, Nashville
    - (iii) Memphis Legal Office, Macon Road, Memphis
    - (iv) Human Resources, Foster Avenue, Nashville
    - (v) Any records located in the Tennessee Tower, Rosa L. Parks Avenue, Nashville
- (4) The requestor will be informed of the location for inspection and if an appointment is needed at the time the requestor is notified that the records are available for inspection.
- (5) If, after viewing the records, a requestor wishes to obtain copies, the TDOSHS shall calculate the cost based on the copy and labor charges for the entire request and, if the requestor does not wish to obtain all records produced, shall pro-rate the charges on a per page basis.
- (6)
  - (a) A requestor will not be allowed to make copies of records with personal equipment, including, but not limited to, personal copier or scanners.
  - (b) A requestor may use a personal cellphone to take still pictures or video of records when the total amount of pages of the entire request is equal to or less than 25 pages.

**Authority:** T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712. **Administrative History:** Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.

#### **1340-08-01-.07 COPIES OF RECORDS.**

- (1) A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- (2) Copies will be available for pickup at a location specified by the records custodian.
- (3) Mailing:
  - (a) Upon advanced payment for postage, or submission of a prepaid envelope, copies will be delivered to the requestor's Tennessee home address by the United States Postal Service.
  - (b) Copies may also be provided by Federal Express upon submission of a prepaid envelope, prepaid mailing label, or billing account number.
  - (c) Copies may be provided by UPS upon submission of a prepaid envelope or mailing label.
- (4) If the total cost for labor and copying is less than \$10.00, the records may be submitted electronically to the requestor's e-mail address, if provided.
- (5) Records which include personally identifiable information cannot be sent by email.
- (6) Requests which contain allowable personally identifiable information (PII) will only be provided by Secure File Transfer Protocol (SFTP), if provided electronically.

(7)

- (a) A requestor will not be allowed to make copies of records with personal equipment, including, but not limited to, personal copier or scanners.
- (b) A requestor may use a personal cellphone to take still pictures or video of records when the total amount of pages of the entire request is equal to or less than 25 pages.

**Authority:** T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712. **Administrative History:** Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.

**1340-08-01-.08 FEES, CHARGES, AND PROCEDURES FOR BILLING AND PAYMENT.**

- (1) Fees and charges for copies of public records should not be used to hinder access to public records. Unless otherwise required by statute, no charges will be assessed for copies and duplicates unless total cost of both copying and labor is more than \$10.00.
- (2) Records custodians shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.
- (3) When fees for copies and labor do not exceed \$10.00, the fees will be waived. Fees associated with aggregated records requests will not be waived. Fees set by statute cannot be waived.
- (4) Fees and charges for copies shall be based on the most current version of the Schedule of Reasonable Charges, issued by the Office of Open Records Counsel, available at <http://www.comptroller.tn.gov/openrecords/forms.asp>.
- (5) Other:
  - (a) \$5.00 for each Moving Violation Record/driver history per T.C.A. §55-50-204.
  - (b) \$5.00 for each Affidavit for proof of insurance per T.C.A. §55-50-204.
  - (c) \$4.00 for unredacted crash reports per T.C.A. §55-12-108. Redacted crash reports are fifteen cents (\$0.15) per page.
  - (d) Unredacted Crash Videos/DVDs with photos taken by the Investigating Trooper shall be provided for free, if the requestor is authorized to receive unredacted material under state or federal law.
  - (e) Crash Videos/DVDs with photos taken by the Investigating Trooper that are required to be redacted per state or federal law will be charged at actual cost, including the cost of any redaction done by a third party vendor.
  - (f) Paper copies of Crash photos taken by the Investigating Trooper shall be made available at a charge of fifteen cents (\$0.15) per page.
  - (g) Bulk requests for driver license data shall be charged per Rule 1340-08-01-.04
  - (h) Individual Blood Alcohol Reports shall be provided for free.
  - (i) Individual Toxicology Reports shall be provided for free.
  - (j) Paper copies of Vehicular Homicide Reports shall be made available at a charge of fifteen cents (\$0.15) per page. There shall be no labor charge for copying these reports.
  - (k) Unredacted Critical Incident Response Team ("CIRT") Videos/DVDs shall be provided for free if the requestor demonstrates they are authorized to receive unredacted material under state or federal law



- (i) Redacted CIRT Videos/DVDs with photos taken by CIRT will be charged at actual cost, including the cost of any redaction done by a third party vendor.
  - (m) Paper copies of CIRT photos taken by CIRT shall be made available at a charge of fifteen cents (\$0.15) per page. There shall be no labor charge for copying these reports.
  - (n) E-Crime Reports (SF-1496) shall be provided for free.
  - (o) Incident Reports (SF-1493) shall be provided for free.
  - (p) Offense Reports (SF-1492) shall be provided for free.
  - (q) Labor when time exceeds one (1) hour.
  - (r) If an outside vendor is used, the actual costs assessed by the vendor.
- (6) Payment is to be made by personal check, cashier's check, or money order payable to the Department of Safety & Homeland Security and presented to either the PRRC or the records custodian.
- (7) Advance payment:
- (a) Payment in advance of half of the estimated amount will be required when costs are estimated to exceed \$100.00.
  - (b) Payment in advance of the full estimated amount will be required when the TDOSHS is using an outside vendor to complete the request. The TDOSHS will notify the requestor in advance of preparing the records that an outside vendor is being used and the estimated amount from the vendor.
- (8) The Commissioner or the PRRC, as the Commissioner's designee, may, on a case by case basis, reduce any part of the fees calculated under this policy or waive any fee upon a written request for waiver or reduction.
- (a) Fees set by statute or charged by an outside vendor shall not be reduced or waived.
  - (b) The waiver or a reduction of any fees is in the sole discretion of the Commissioner or PRRC, is not subject to judicial review, and does not establish any precedent.
- (9) Retention of Requests:
- (a) If a request, either for copies or inspection, is unclaimed for thirty (30) days after the TDOSHS notified the requestor, in writing, of the completion of the request and any charges, the TDOSHS shall send a letter to the requestor, in writing, notifying the requestor that:
    - 1. The records are available and the location; and
    - 2. If the records remain unclaimed for an additional thirty (30) days from the date of the letter, the requestor will need to submit a new request for the records, and the new request may result in a new fee being charged.
  - (b) At the end of the second thirty (30) day period, any original records shall be returned to their location and any copies made shall be destroyed by the TDOSHS. If the original requestor submits a second request prior to the destruction of any copies, the TDOSHS shall charge the original cost for the copying and labor, in addition to any fees that might be required if the second request seeks additional materials.

- (c) If the request was to inspect and only a telephone number was provided, the TDOSHS shall telephone the requestor and make notes regarding any conversation, and shall save such notes as part of the request.
- (10) Lack of Payment or Lack of Inspection
- (a) If a person makes two (2) or more requests to view a public record within a six-month period and, for each request, the person fails to view the public record within fifteen (15) business days of receiving notification that the record is available to view, TDOSHS is not required to comply with any public records request from the person for a period of six (6) months from the date of the second request to view the public record unless the governmental entity determines failure to view the public record was for good cause; and
  - (b) If a person makes a request for copies of a public record and, after copies have been produced, the person fails to pay to TDOSHS the cost for producing such copies, the TDOSHS is not required to comply with any public records request from the person until the person pays for such copies; provided, that the person was provided with an estimated cost for producing the copies in accordance with state law and these rules prior to producing the copies and the person agreed to pay the estimated cost for such copies.

**Authority:** T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712. **Administrative History:** Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.

#### **1340-08-01-.09 AGGREGATION OF FREQUENT AND MULTIPLE REQUESTS.**

- (1) The TDOSHS 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).
- (2) Aggregation:
  - (a) The level at which records requests will be aggregated is at the agency level.
  - (b) 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 individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

**Authority:** T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712. **Administrative History:** Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.

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: 8/2/18

Signature: Lizabeth Hale

Name of Officer: Lizabeth Hale

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 8/2/18

Notary Public Signature: Jamie Wright

My commission expires on: 11-8-21

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Filed with the Department of State on: 8/2/18

Tre Hargett

Tre Hargett  
Secretary of State

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