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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.

Agency/Board/Commission:	Tennessee Housing Development Agency
Division:	Executive
Contact Person:	Bruce Balcom, Assistant Chief Legal Counsel
Address:	502 Deaderick Street, 3 rd Floor, Nashville, TN 37243-0200
Phone:	615-815-2026
Email:	BBalcom@thda.org

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:

ADA Contact:	Laura Swanson
Address:	502 Deaderick Street, 3 rd Floor, Nashville, TN 37243-0200
Phone:	615-815-2127
Email:	LSwanson@thda.org

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

Address 1:	502 Deaderick Street		
Address 2:	Ground Floor Hearing Room		
City:	Nashville		
Zip:	30243-0200		
Hearing Date :	09/28/2018		
Hearing Time:	9:00 AM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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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
0770-07-01	Public Records
Rule Number	Rule Title
0770-07-01-.01	Purpose and Scope
0770-07-01-.02	Definitions
0770-07-01-.03	Requesting Access to Public Records
0770-07-01-.04	Responding to Public Records Requests

0770-07-01-.05	Redaction
0770-07-01-.06	Access to Records
0770-07-01-.07	Fees and Charges and Procedures for Billing and Payment
0770-07-01-.08	Aggregation of Frequent and Multiple Requests
0770-07-01-.09	Failure to Inspect or to Pay for Copies

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.

Chapter 0770-07-01 Public Records is created with the following language in its entirety:

0770-07-01-.01 Purpose and Scope.

- (1) Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Rules for Tennessee Housing Development Agency ("THDA") are hereby adopted to provide economical and efficient access to public records as provided under the Tennessee Public Records Act ("TPRA").
- (2) The TPRA 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. Accordingly, the public records of THDA are presumed to be open for inspection unless otherwise provided by law.
- (3) Personnel of THDA, through the THDA Public Records Request Coordinator identified in this Rule below, shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Rule 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 THDA, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for THDA or to the Tennessee Office of Open Records Counsel ("OORC").

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, *et seq.* **Administrative History:**

0770-07-01-.02 Definitions

- (1) 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.
- (2) Public Records Request Coordinator or PRRC. The individual, or individuals, 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.
- (3) 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.
- (4) Requestor. A citizen of the State of Tennessee seeking access to a public record, whether for inspection or duplication.

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, *et seq.* **Administrative History:**

0770-07-01-.03 Requesting Access to Public Records

- (1) Public record requests, whether written or oral, shall be made to the PRRC, to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- (2) Public record requests must include the following information clearly and concisely expressed:

- (a) Name and Tennessee contact information (in order to provide any communication required under the TPRA);
 - (b) Detailed description of the records being requested, including type, timeframe, subject matter or key words, and any other information identifying the records;
 - (c) Statement whether the request is for inspection or receipt of copies or both; and
 - (d) Delivery preference if requesting copies.
- (3) Proof of Tennessee citizenship by presentation of a valid Tennessee driver license is required as a condition to inspect or receive copies of public records and must be presented with the request. To the extent that the requestor cannot provide government-issued photo identification, the PRRC may accept an alternative form of identification. The PRRC may waive the requirement of presentation of a driver license if the requestor has previously provided proof of Tennessee citizenship. Proof of citizenship for offenders currently housed in Tennessee state prisons will be confirmed through the Department of Corrections.
- (4) Requests for inspection shall be made:
- (a) in person at the office of the PRRC;
 - (b) by phone to the PRRC; or
 - (c) in writing sent or delivered to the PRRC.
- (5) Requests for copies, or requests for inspection and copies, shall be made in writing. A requestor shall use the THDA Public Records Request form which is available on the THDA website.
- (6) Requests not made in the appropriate manner, or not directed to the PRRC as provided herein, will not be accepted. Requests made via any method other than those prescribed herein will not be accepted.
- (7) The contact information for the PRRC is as follows:
- Bruce Balcom or Charity Miles Williams
 Andrew Jackson Building, 3rd Floor
 502 Deaderick Street
 Nashville, Tennessee 37243-0200
 615-815-2200
 615-916-5054 (Fax)
publicrecordsrequest@thda.org
- (8) Any changes to the contact information for the PRRC shall be posted on the THDA's website. The name of the person(s) currently serving as PRRC shall be posted on the THDA's website.

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, *et seq.* **Administrative History:**

0770-07-01-.04 Responding to Public Records Requests

- (1) The PRRC shall review public record requests and make an initial determination of the following:
- (a) Proof of Tennessee citizenship;
 - (b) Sufficiency of description of the records to allow specific identification;
 - (c) Whether the THDA is the custodian of the records; and
 - (d) Whether the records qualify as public records under the TPRA or are subject to a legal protection against access.
- (2) The PRRC shall acknowledge receipt of the request and take any appropriate actions.

- (3) If not practicable to provide the requested records promptly, the PRRC shall, within seven (7) business days from the receipt of the request, respond to the requestor with a completed Public Records Request Response form or email with equivalent information.
- (4) If a public record request is denied, the PRRC shall deny the request in writing, providing the basis for the denial.
- (5) 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 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 will contact the requestor to see if the request can be clarified or narrowed.
- (6) If requested records are published by THDA on its website, the PRRC may satisfy a public records request by referring the requestor to THDA's website. If a requestor desires paper copies of the records instead, THDA will provide the copies in compliance with this Rule.

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, *et seq.* **Administrative History:**

0770-07-01-.05 Redaction

- (1) If a record contains confidential information, or information that is not open for public inspection, the PRRC or the records custodian shall prepare a redacted copy prior to providing access.
- (2) Whenever a redacted record is provided, the PRRC shall provide the requestor with the basis for redaction, if requested by the requestor, without revealing confidential information.

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, *et seq.* **Administrative History:**

0770-07-01-.06 Access to Records

- (1) Inspection:
 - (a) There shall be no charge for inspection of public records.
 - (b) The location for inspection of open public records will be determined by the PRRC and shall occur during times in which THDA is otherwise open for business at the office location of the PRRC in Nashville.
 - (c) Under reasonable circumstances, the PRRC may require an appointment for inspection or may require inspection of records at an alternate location.
- (2) Copies:
 - (a) Copies will be available for pickup at a location specified by the PRRC.
 - (b) Upon payment for postage, copies will be delivered to the Requestor's home or business address by the United States Postal Service. Additional permitted means of delivery are UPS and FedEx, pre-paid label require
 - (c) Electronic records that can be sent in a single transmission will be sent by email.
 - (d) The PRRC may allow a requestor to make copies of inspected records with personal equipment at the inspection location, upon prior approval by the PRRC and payment in advance of any costs and fees incurred by THDA in preparing the records to be copied. A requestor will not be allowed to connect any personal equipment to any THDA end-point device or the network and will not be allowed to jeopardize the integrity or organization of the records.
- (3) Limitations on use of recording devices:

- (a) A requestor's use of electronic recording equipment shall be limited to devices which take images of the records requested. Requestor shall not be permitted to capture video of the interior of buildings where copies or inspections are being made. After being informed by staff that attempts to capture such video or images, continued efforts to take video or images of staff or the interior of the buildings will result in termination of the inspection or copying session. If making an inspection only, the use of personal recording devices shall not be permitted unless any costs and fees have been paid in advance as provided in 0770-07-01-.06(2)(d).

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, *et seq.* **Administrative History:**

0770-07-01-.07 Fees and Charges and Procedures for Billing and Payment

- (1) The PRRC will provide requestors with an itemized estimate of the charges prior to producing copies of records. Requestors must pre-pay the estimate before the records will be produced.
- (2) When fees for copies and labor do not exceed an amount established by THDA, the fees may be waived by the PRRC. Fees associated with aggregated record requests will not be waived.
- (3) Fees and charges for copies are as follows:
 - (a) Per page for letter and legal sized copies, at the safe-harbor amounts set forth in the OORC's Schedule of Reasonable Charges.
 - (b) Labor when time exceeds one (1) hour.
 - (c) If an outside vendor is used, the actual costs assessed by the vendor.
 - (d) For storage devices, such as flash drives, and other office items, the cost incurred by THDA.
 - (e) Any additional costs directly related to providing access to public records for the purpose of duplication by THDA or the requestor.
- (4) Requestors must pay by personal or cashier's check or money order payable to THDA and delivered as specified by the PRRC. If a requestor's check does not clear, THDA will not comply with any public record requests by that requestor until payment, including any processing fees related to the check, is received in full pursuant to Tenn. Code Ann. § 10-7-503(a)(7)(A)(vii)(b).

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, *et seq.* **Administrative History:**

0770-07-01-.08 Aggregation of Frequent and Multiple Requests

- (1) THDA will aggregate record requests for records of THDA in accordance with the Reasonable Charges for Frequent and Multiple Requests 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) Routinely released and readily accessible records shall be excluded from aggregation. Such records include materials posted by THDA on its website, or documents kept by THDA for general distribution to the public upon request such as brochures or reports generated for public distribution.

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, *et seq.* **Administrative History:**

0770-07-01-.09 Failure to Inspect or to Pay for Copies

- (1) If a requestor makes two (2) or more requests to view a Public Record within a six-month period and, for each request, the requestor fails to view the Public Record within fifteen (15) business days of receiving notification that the record is available to view, or misses two (2) or more scheduled appointments to view, THDA will not comply with any public records request from the requestor for a period of six (6) months from the date of the second request to view the Public Record unless the THDA determines failure to view the Public Record was for good cause.

- (2) If, after agreeing to pay an estimated cost prior to the production of copies, a requestor fails to pay the cost to produce the requested copies, THDA will not comply with any public record requests from the requestor until payment is received.

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, et seq. **Administrative History:**

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: August 3, 2018

Signature: _____

Name of Officer: Bruce Balcom

Title of Officer: Assistant Chief Legal Counsel

Subscribed and sworn to before me on: August 3, 2018

Notary Public Signature: Deborah S. Sanders

My commission expires on: September 20, 2021

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Filed with the Department of State on: _____

8/3/18

Tre Hargett

Tre Hargett
Secretary of State

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