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Lee Pope, Office of Open Records Counsel

Sept. 28, 2018

Dear Lee,

On Dec. 6, 2017, I requested an informal advisory opinion under §T.C.A. 8-5-610(b). On Dec. 24, your office declined and responded that “in light of potential for legislation, our office believes it would be prudent to refrain from issuing an informal advisory opinion at this time.”

As you know, no legislation was filed. I am renewing my request for an informal advisory opinion on this topic. A statewide audit that we published in May has indicated increasing confusion. The law requires that the Office of Open Records Counsel “shall” issue informal advisory opinions, to any member of the public and the media, and that such opinion be posted on your website.

Here are the questions - the same as we had asked on Dec. 6, 2017.

1 - Does the law allow a records custodian to prohibit citizens from using a camera to take pictures of public records “in all cases” where the law gives the citizen a “right to inspect” such records under the plain language of §T.C.A. 10-7-506(a) of the Tennessee Public Records Act.

2 - The Model Policy created by the Office of Open Records Counsel seems to give records custodians open-ended discretion to allow or not allow the use of personal devices:

“A requester will [not] be allowed to make copies of records with personal equipment. [Indicate under what circumstances, if any, the Governmental Entity will permit requestors to make their own copies or provide their own storage devices.]”

What standard must be used to exercise that discretion? And under what circumstances should or could taking an image of the record be allowed?

Deborah Fisher, Executive Director, TCOG

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“To preserve and improve access to public information”