



**STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY  
OFFICE OF OPEN RECORDS COUNSEL**

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**Ann Butterworth  
Open Records Counsel**

January 15, 2016

Representative Steve McDaniel

Senator Jim Tracy

Members of the 109<sup>th</sup> General Assembly

Re: Fees for Inspection of Public Records

Honorable Members of the 109<sup>th</sup> General Assembly:

On behalf of the Office of Open Records Counsel (OORC) and at the request of the sponsors of HB0315/SB0328, I submit to you the Office of Open Records Counsel's report on the issues surrounding fees for inspection of open public records to assist you with making policy decisions regarding the statutory requirements for inspection of open public records under the Tennessee Public Records Act (TPRA).

The bill, a link to which is included in the report, would have authorized but not required a custodian to:

- require that a request to view a record be placed in writing; and
- assess a reasonable charge to produce a record for viewing, based on the actual incurred cost.

The bill required the first hour of labor and the first 25 pages of copies associated with producing the record to be provided free of charge. The bill directed the OORC to expand the Schedule of Reasonable Charges to be used as a guideline for charges, not only for copies but also for inspection. The bill was taken off notice in both the House and the Senate in order for the OORC to report to the General Assembly no later than January 15, 2016 on the issues related to inspection.

The OORC, with advice and guidance from the Advisory Committee on Open Government (ACOG), developed online surveys for citizens and for governmental entities, which were completed by 407 citizens and 253 government respondents respectively. A link to the summaries of the responses is included in the report.

The OORC, with advice and guidance from ACOG, developed the following questions:

1. Should the TPRA permit record custodians to charge for inspection of public records?
2. If charges for inspection are permitted, should charges for inspection be governed in a manner similar to charges for duplication (Schedule of Reasonable Charges)? If not, why not?
3. If charges for inspection are permitted, should any public records such as meeting minutes, agendas, and audit reports be exempted from inspection charges? Why?
4. If charges for inspection are permitted, should the factors listed in Tenn. Code Ann. Section 8-4-604 related to charges for copies be considered for inspection? If not, why not?
5. What amendments or changes should be made to the current Schedule for Reasonable Charges related to duplication of records? Why?

The OORC, in conjunction with the ACOG, held public hearings to discuss the questions. Comments on the questions were received both in writing through email (222 submissions) and orally at public hearings held across the state in:

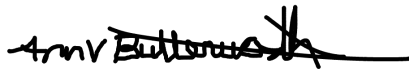
- Knoxville on September 15, 2015 (34 speakers);
- Nashville on September 16, 2015 (23 speakers); and
- Jackson on September 17, 2015 (13 speakers).

The summarized survey results, the submitted comments, and the audio files of the hearings were made available on the OORC website (Links to this information are included in the report).

The public's participation and comments in the surveys and hearings indicate an overwhelming concern, by citizens and government representatives, to maintain, and a desire to increase, transparency of government. It was an honor to have undertaken this task on your behalf, which could not have been accomplished without assistance from the Office of Comptroller of the Treasury and guidance from the ACOG. A list of the members of the ACOG and of the employees in the Office of the Comptroller, who assisted in this effort, is included in the report.

If additional information or further study is needed, please contact the Office of Open Records Counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann V. Butterworth", with a long horizontal flourish extending to the right.

Ann V. Butterworth  
Open Records Counsel

Enclosure: Report

**Report to the General Assembly**

*Issues Surrounding Fees for the Inspection  
of Open Public Records*



**Office of Open Records Counsel**

**Office of the Comptroller of the Treasury**

**January 15, 2016**

In evaluating whether or not to change Tennessee's law and to allow fees to be imposed related to inspection of open public records, the General Assembly may wish to consider the following:

- Governmental transparency is an essential cornerstone;
- There are costs to retrieve and redact records under the Tennessee Public Records Act; and
- Records management practices differ across the State.

### CURRENT LAW

Tennessee's law on citizens' access to open public records, which is commonly referred to as the Tennessee Public Records Act (TPRA) is found in Tennessee Code Annotated Sections 10-7-501 et seq.<sup>1</sup> In 2008 the General Assembly established the Office of Open Records Counsel (OORC) and the Advisory Committee on Open Government (ACOG)<sup>2</sup>.

Tennessee Code Annotated Section 10-7-503 defines public records very broadly<sup>3</sup> as material which is "made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency."<sup>4</sup> The TPRA establishes a presumption that public records will be "open" or that access to the record, whether for inspection or for receipt of a copy, will be granted "unless otherwise provided by law." Section 10-7-503 goes on to require the custodian of the record to respond promptly to a Tennessee citizen's request for access to the record.<sup>5</sup> The request must "be sufficiently detailed" to allow the custodian to identify the specific records.<sup>6</sup>

The TPRA does not limit the number, frequency, or size of requests that a citizen may make.<sup>7</sup> Before providing access to a public record, a custodian is obligated to determine whether or not other provisions of law have made the record not open. Many statutory provisions include penalties for disclosure of confidential information.<sup>8</sup> According to Title 10, chapter 7, "[i]nformation made confidential by this chapter shall be redacted whenever possible, but the costs associated with redacting records or information, including the cost of copies and staff time to provide redacted copies, shall be borne as provided by current law."<sup>9</sup> Nearly all redaction costs related to inspection are borne by the custodian.

Under the TPRA, a custodian is expressly forbidden from imposing a fee on a citizen to view an open public record or requiring a request to view a record to be made in writing, unless required to do so by another provision of law.<sup>10</sup> Both the Office of the Attorney General and Reporter for the State of Tennessee and the OORC have opined that the following boldfaced language does not authorize the assessment of document or information preparation costs in the case of inspection when copies are not requested:<sup>11</sup>

[A custodian is permitted, although not required,] "to require a requestor to pay for the custodian's **reasonable costs incurred in producing the requested materials** and to assess the reasonable costs in the manner established by the office of open records counsel pursuant to Section 8-4-604."

A custodian is required to provide the requestor an estimate of the costs.<sup>12</sup>

In 2008 the General Assembly directed the OORC to consider several factors when establishing the schedule of reasonable charges for TPRA requests for copies of open public records. Such factors included the size of the

entity by population, the complexity of the request, and the hours involved in retrieving records and redacting the appropriate information. The OORC was also encouraged to consider the principles presented by the study committee that was created by the Acts 2006, Ch. 887. In the 2008 amendment establishing the OORC, the General Assembly indirectly acknowledged that records are stored and maintained without redaction and that labor will have to be expended to retrieve and to redact the records. The General Assembly authorized custodians to impose on citizen requestors the financial responsibility for the costs of producing records, including redaction, but only when a copy of the record is requested.<sup>13</sup>

## ISSUES SURROUNDING INSPECTION OF PUBLIC RECORDS

In an effort to gather a wide range of viewpoints, the OORC, with guidance from ACOG, solicited comments from both citizens and governmental entities. The process included online surveys and public hearings (which were held in each of the three Grand Divisions). The following emerged from the responses received that through that process. Each section includes a sample of the representative [comments received on inspection of records. The full list of comments](#) are available on the [OORC's website](#). Please refer to Attachment 1 for a list of helpful links and Attachment 3 for a list of the members of the ACOG as well as a list of members of the Office of the Comptroller who assisted with the study.

### **Citizens, as well as government representatives, support governmental transparency.**

The overwhelming response from participants, whether self-identified as a citizen or as affiliated with a governmental entity, is that governmental transparency is essential.

“Keep the records free and easily accessible, our liberty and freedoms depend on it.”  
caulkins@comcast.net [page 306]

“But conclusions and proof . . . (in some cases) guilt or innocence, indeed, life and death hinge on consistent, accurate, reliable, official records. We couldn't confidently report on a crime, crash, arrest, election, birth or death without seeing something in writing. . . . Records are our tools . . . every bit as much as the notebook, camera, tape recorder and computer.

. . .

If government adds fees as an obstacle to look at those records... or keep them hidden away . . . the cost of that kind of secrecy is high.” Demetria Kaladimos WSMV [page 298]

This premise is reflected in the current statutory directive that “providing information to the public is an essential function of a representative government and an integral part of the routine duties and responsibilities of public officers and employees; . . . excessive fees and other rules shall not be used to hinder access to nonexempt public information”.<sup>14</sup>

“Charging fees to view the records would limit access to those records to those who can afford to view them, and such limitations would be antithetical to our democracy.” Delta Anne Davis, Southern Environmental Law Center [page 433]

“It [charging for inspection] would, in effect, create a new exemption to the Tennessee Public Records Act: A record is exempt if you cannot afford the fee set by the government official to see it.” Deborah Fisher, Tennessee Coalition for Open government [page 412]

“Free examination of public records is one of the things which provides equal access to our government for rich and poor. It is fundamental to equal opportunity. Only a small percentage of citizens use the public records but when they do, it is most often deeply important. Like public libraries, schools, and streets, public records access is a building block for a healthy democratic government that needs to be paid for by public funds.” Anne Garcia Garland [page 79]

“Free access to public records is one of the bedrocks of our democratic republic.” Janella Carpenter [page 116]

Transparency is necessary for developing and maintaining the public trust. It is a cornerstone of government and must be strongly protected. This view was voiced by both frequent TPRA requestors and those who had not yet exercised their rights under the Act. Custodial actions and processes that delay or impede access to public records engender a perception that something is being deliberately hidden.

“Charging for access to knowledge is tantamount to hiding that knowledge from the people who cannot or will not pay for something they already are entitled to by virtue of paying taxes.” Pandora Vreeland [page 113]

“The state is attempting to hide records they do not want the citizens of Tennessee to see.” Sue Murrian [page 126]

“Charging for public records sounds like someone is desperately trying to hide what they are doing. Hardly anyone trusts anymore for this very reason. Tax payers already fund enough. Stop needless spending and there wouldn't be a problem to start with” argomelissa@gmail.com [page 327]

“Not now and not until tools exist to prevent fees or fee estimates from being elevated to discourage citizens from making requests or preventing anyone from getting records. Currently exorbitant, excessive labor charges are being used to deny political opponents obviously-public records.” Frank Gibson, Tennessee Press Association [page 426]

**Many citizens believe the term “public record” means that the information or record has already been paid for by the public through their tax dollars and therefor is owned by the public; requiring payment for inspection and charging for governmental staff time would be in effect double billing.**

Another popular position was that governmental entities should not be allowed to charge for staff time that has already been funded.

“The State is already being paid to file and produce those records upon request. They are ‘our’ records, not the governments. We are paying to see those records by taxes.

We are paying the state employees [to] keep the records on file and to produce the records when asked.” [paulw@dtccom.net](mailto:paulw@dtccom.net) [page 320]

Many believe that charging for inspection has the potential for unbudgeted, excess funds creating slush funds.<sup>15</sup>

“To allow such fee charging would create another coffer subject to misuse by the extra staff required to implement and could hinder those with limited means to protect themselves re: records created about them.” Franklin D. Stidham [page 138]

The TPRA grants all Tennessee citizens the right to access open public records of any governmental entity, without consideration of taxpayer status or the requestor’s connection to the entity. Funding sources for governmental entities vary and may include taxes, revenues, user fees, grants, and donations. Many governmental entities are not staffed with full-time employees or officials. The records custodian(s) for each of these entities is not permitted to treat a request from a Tennessee citizen who is not a resident of that community or not a customer any differently than that from a Tennessee citizen who has paid taxes, fees or other payments to that governmental entity.

**Most comments received expressed a viewpoint opposing any fees for inspection.**

“I am asking that there be no charge to citizens to look at public records.” Bob Miles [page 329]

“Please do not start charging to look at records. Those of us who do genealogy cannot afford to pay just to look up information on our ancestors.” Patricia Treadwell [page 336]

“This is not the democratic way. This is an affront to our open democratic government, and I am totally against this! As are my friends as well as my husband. Please do not let this become the law.” [Carol Burger, p. 390]

“The solution to the problem is to raise the budget for the records department to cover ONLY the cost of the requests. The department head should be able to provide the cost involved, and have the legislators figure out how to pay for it. By doing so, the access to government records will remain transparent, the government will remain accountable, and We the People will remain free.” Bob Crigger [page 338]

“I support free access to any and all public records and oppose any measure that would stand in the way of that unfettered free access. We as taxpayers have an absolute right to all public records.” William Gary Crump [page 359]

**A minority of commenters believed costs related to *preparing* records for inspection (retrieval, review, and redaction) should be allowed to be passed on to the requestor.**

"I write in support of the proposed legislation to allow for reasonable fees/labor to be charged for open records requests. Some people may be unaware that not only governments receive open records request[s]; charter schools like Intrepid do as well. However, charter schools, unlike some state or local governments, cannot simply refer the request to an office that handles it. Rather, the charter school must divert scarce resources to handle the request, which depending on the nature of the request may be quite expensive." Ryan Holt [page 346]

"Opponents of the possible changes seem to think in terms of a citizen making a limited request for a readily identifiable document that could be produced with little effort. I am not in favor of charging for this sort of request. However, there are many egregious requests being made, which current public record law does not seem to address adequately." David Sanders [page 378]

**Participants agree that requests under the TPRA vary in size, complexity, and sophistication.<sup>16</sup>**

"A requestor made a public records request on January 20, 2015. The Board provided . . . an estimated cost for copies of \$549.63. By emails . . . the requestor changed the January 20, 2015 request for copies to a request to examine. . . . this same requestor had made 44 public records requests. . . . Given the number of outstanding requests and the size and scope of the requests, the Board determined that the request to examine should be made available in installments pursuant to the Best Practices developed by the Office of Open Records Counsel. The first installment was available to the requestor on May 15, 2015. As of the date of this response, i.e. August 27, 2015, the requestor has not reviewed this first installment. The requestor has made 4 additional public records requests since May 6, 2015." Sandy Garrett, Tennessee Board of Professional Responsibility [survey response]

"Her records request included 14 total search terms with only five of those related to her family members. The additional search terms generated a large volume of responsive records. As an example, . . . was a search term . . . returned 100,001 hits. . . . Again, the additional search terms returned 250,000 responsive records that were not related to her family." William Squires, Williamson County Schools [page 368]

"I understand that there are those who may create a burden for government with nuisance records requests, but I would submit they are a small minority of those seeking records. And I would submit that may be a necessary cost of preserving open government. Open government is a bit like the First Amendment rights of free speech and freedom of the press – it can be uncomfortable and messy at times. But the alternatives are much, much worse, with the government restricting what we can say, publish and know about its actions." Steve Coffman [pages 341-342]

"As stewards for its ratepayers and their electric rates, a municipal electric system will typically want to recover costs it incurs from outside entities. The utility wants to be a transparent entity, but it must be able to recover costs so that all ratepayers do not subsidize a utility doing work for only a small number of large requests for records inspections.

. . .



If allowed to recover the costs for the inspection of records, costs should only be recovered for large requests.” Dan Elrod, Tennessee Municipal Electric Power Association [pages 419, 420]

**Overall, participants felt that the process for inspection, as well as for receipt of copies, of open public records needs improvement.**

One commenter (Ms. Laura Baigert) cited the [Better Government Association](#)’s 2013 Integrity Index which ranked Tennessee 38<sup>th</sup> out of the 50 states with respect to citizen access to public records, focusing on three topics: procedures, barriers, and penalties. The ranking and assessment was “based on the ability of average citizens to obtain documents about their government with the least amount of government interference and the least number of bureaucratic hurdles.”<sup>17</sup>

The current practices for creation, receipt, storage and management of public records in Tennessee generally do not appear to anticipate timely, prompt compliance with the TPRA.

“Imposing a fee would be a step in the wrong direction. Even today citizens are sometimes made to feel that they are the ‘enemy’ when they request public records. Instead of creating a new barrier with a fee, we need to be looking for ways to remove existing bureaucratic obstacles.

We all need to work at creating a climate where members of the public and government officials realize we are on the same team and wear the same color jersey.” Helen Burns Sharp [page 366]

“We also think there are better ways to reduce the cost of fulfilling public records requests that don't require blocking citizen access to records. We believe the best place to start is to examine processes, and to use proven techniques to eliminate waste and inefficiency. . . .

We need to take a serious look at fixing current problems in our laws and the Schedule before coming up with new fees that will create even more. Changes should be made to the Schedule of Reasonable Charges to address the abuses taking place in the system now when citizens want copies of public records. . . .

We also believe that because the cost of redaction is driving up the cost of copies of records, the Office of Open Records Counsel should take proactive measures to study and reduce the need for expensive redaction, including encouraging different methods or using available technology to reduce the cost. Technology is already used in private industry to assist in redactions.”

Deborah Fisher, Tennessee Coalition for Open Government [pages 413, 415, 416]

Many commenters indicated a need to make more records available on the internet thereby increasing transparency and eliminating inspection issues.<sup>18</sup> However, the law currently does not relieve the custodian from being obligated to allow personal inspection of an open public record in the offices of the custodian “at all times during business hours”, even if the record is readily available on the internet.<sup>19</sup>

“It’s time for a new paradigm. Except for records made confidential by law, all governmental records created in electronic digital form should be made available to the public at the time of creation via the Internet. Third party entities can index or provide search functions for public inquires. If personal assistance is needed, research librarians in our public libraries are trained in such pursuits and already are in place to provide such help. The era for government employees to spend time identifying, finding,

and providing responses to specific requests for public records should be drawing to a close.” Ken Welch [pages 339-340]

“There are thousands of individuals at all levels of government creating and maintaining records, but the technology is available to make the creation, storage, and access to our public records easier and more efficient for all parties, custodians and citizen non-custodians alike. Remotely or electronically, citizens should be able to access public records quickly and to their hearts content. It is time to think about moving public records access discussions into the realm of readily available technological reality and it is time to acknowledge that placing custodians in the business of designing, implementing, and collecting an information tax would do nothing to support our goal of a transparent and open government.” Pamela Weston [page 391]

### **POLICY CONSIDERATIONS**

The governmental entities that are subject to the TPRA vary in type, structure, size, staffing levels, sophistication of available technology, and funding sources. At the local government level, there are more than 342 municipalities, 106 municipal-related entities, 95 counties, 268 county related entities, 183 utility districts, 206 school systems (including 50 charter schools), and 88 housing authorities in Tennessee. There are many other related entities, including boards and commissions, whose members are volunteer citizen appointees. At the State level, there are the three branches of government with related departments and entities, two systems of public higher education, and related boards and commissions.

Embracing the premise of governmental transparency as an essential cornerstone does not keep a governmental entity from having issues with providing that transparency. Advances in technology have substantially increased the number and type of public records being created as well as the number of public record requests being made. In 1957 when the TPRA was first enacted<sup>20</sup>, Tennessee governmental entities did not have computers, email systems, or cell phones and did not produce and store files electronically.<sup>21</sup> Not all governmental entities have kept up with technology and there is not a requirement that governmental entities provide and utilize an e-mail system or a website.<sup>22</sup>

Upon receiving a request for access, a custodian must take actions to determine whether or not the records:

- exist in the possession or control of the custodian at the time of the request,
- meet the definition of a public record, and
- fall under any provision in the law that closes the record from public access under the TPRA.

Locating records is made difficult by the lack of consistent records creation and storage and of compliance with record retention schedules. Most governmental entities do not have clear standards for naming or tagging electronic records or a process for updating the format in which records are stored.

One factor that increases the burden on a records custodian in locating records for inspection is the inconsistency and complexity of the law. The TPRA does not provide guidance as to who should be considered

the “records custodian” of a public record, for the purposes of determining the correct location for submitting a records request and the person or entity responsible for responding to the request. The TPRA is not consistent in the use of certain terms, such as “records”, “file”, and “information” with regard to that which a citizen has a right to inspect.

The law currently states that a governmental entity or public official is not required to sort through files to compile information and is not required to create a record that does not already exist<sup>23</sup>; yet, the maintenance and storage of information electronically has blurred the concepts of searching for and creating records.

After locating the records, the custodian must review and redact them. A records custodian is obligated to withhold access to confidential records and information. Provisions that make records or information not open under the TPRA are not just found in Section 10-7-504 but are scattered throughout the Code. In February of 1988 the House Committee on Open Records submitted its report to the Judiciary Committee which listed only eighty-nine (89) separate exceptions to the TPRA.<sup>24</sup> Today there are over 350 exceptions to the TPRA found in the state and federal constitutions, statutes, rules and regulations, judicial opinions and court rules, and common law.

Governmental entities do not appear routinely to:

- redact records at the time of receipt or creation, in anticipation of a TPRA request, or
- perform reviews of existing records to verify if there have been changes in the law since the creation or receipt of the record.

This places a records custodian in a reactive, rather than proactive, stance in responding to a TPRA request and increases the time for response. The TPRA currently allows custodians to charge for labor related to the production of copies. There is no disagreement that the effort and labor taken to prepare records for inspection is the same when records are being prepared for copying. The disagreement is over who should shoulder the costs of that effort and labor, especially when the record in question is not received or created with a primary purpose for general access (such as internal, administrative records compared to annual reports).

As an example of the impact of this cost assignment, a police department subpoenas a large security video file from a health care facility for review for possible criminal activity that may have been captured on the file. The department does not have the capacity internally to redact the file and will be required to contract externally for the redaction. If inspection only is requested, who should pay the costs of the external vendor?<sup>25</sup> Custodians reported that upon receiving estimates for copies, requestors have changed the request to inspection only. Changing a request from copy to inspection changes which party shoulders the cost of, but does not change the need for, redaction of that record. Note that the General Assembly has authorized record custodians to require a requestor who seeks inspection of utility records to pay the cost of redaction when private records of the utility must be redacted.<sup>26</sup>

When inspection of original versions of records is granted, a records custodian often has to supervise the inspection by the requestor in order to maintain the integrity of the records (such as insuring that the files are not mixed up or damaged). However, instances have been reported where the supervision is intimidating.

Although stated in reference to the provision of copies that the process and practices be “reasonable” and not “hinder access to nonexempt public information”, the same applies to inspection.<sup>27</sup>

It is difficult for a governmental entity to anticipate the volume or complexity of TPRA requests. Governmental entities do not appear to budget separately for the cost of compliance with the TPRA and many revenue sources, such as the real estate property tax, cannot be amended midyear. In some cases prompt response to a request for access cannot be made within existing resources without disruption of other work responsibilities.

The question is not whether or not there should be transparency; the question is how to fund that transparency. What is the appropriate apportionment of the cost of the inspection of open public records? If the cost of inspection (in full or in part) is to be shifted to the requestor, then can the inspection fees be calculated and assessed in a manner that does not add an undue burden or road block to access and fairly balances the fiscal impact of the inspection request?

With few exceptions, under current law, the cost of preparing records for access can only be recouped if copies are requested and then processed by the custodian. If the cost of preparing records for inspection is not shifted to requestors, and the cost of preparation of the records remains with the governmental entity, then what changes can be made to improve the process for inspection and for the preparation of records? The OORC offers the following as potential changes that could be considered.

- Records management:
  - Provide incentives for best practices.<sup>28</sup>
  - Adjust/clarify documentation and retention requirements.<sup>29</sup>
  - Prescribe permitted use of e-mail “in connection with the transaction of official business”.
- TPRA:
  - Make definitions uniform.
  - Define responsibility within record custodian hierarchy.
  - Clarify “in connection with the transaction of official business by any governmental agency”.
  - Provide guidance for custodians when responding to requests that are large and complex or that take more than seven (7) business days for response.
  - Clarify distinction between discovery requests and TPRA requests.
- New legislative initiatives:
  - Affirm the public need for creation or receipt of additional records/information in light of privacy and security concerns.
  - Consider cost of records storage, maintenance, and production for inspection.
  - Anticipate rapid and continuous changes in technology impacting how the records are received, created, and accessed.
  - Address confidentiality of any information to be created or received, and add a cross-reference to Tenn. Code Ann. Section 10-7-504.

Attachment 1: Hyperlinks

Attachment 2: Examples of Extensive Requests

Attachment 3: ACOG and Office of the Comptroller

Attachment 4: 1988 Report of the Committee on Open Records

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<sup>1</sup> Many other provisions of law provide access to records based on factors other than on Tennessee citizenship, such as access to Vital Records of marriage and death certificates.

“Regulations under the Clean Air Act provide for similarly broad access by the public to agency records, including, for example, records relating to state implementation plans and new stationary source permits. These regulations and the Clean Air Act itself envision that relevant documents will be made available to the public for its review.”

Delta Anne Davis, Southern Environmental Law Center [page 434]

<sup>2</sup> Tenn. Code Ann. Sections 8-4-601 et seq.

<sup>3</sup> Tenn. Code Ann. Section 10-7-503(a)(1)(A) states that “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”. Examples of requested records are meeting minutes, employee files, correspondence (including letters, emails, and faxes), expenditure records, and traffic incident reports. The fastest growing types of public records did not exist in 1957, the year of enactment of the TPRA, including emails and text messages. The increased use and dependency on technology has increased the number and type of records. The General Assembly held a hearing this fall regarding videos and records captured by law enforcement body cameras.

[[http://tnga.granicus.com/MediaPlayer.php?view\\_id=306&clip\\_id=11085&meta\\_id=222838](http://tnga.granicus.com/MediaPlayer.php?view_id=306&clip_id=11085&meta_id=222838)]

Conversations and communications that previously occurred in person or were not included in formal letter correspondence are now routinely effected by emails and texts, creating records. Records are creating records: VOIP systems convert voice messages into text (usually inaccurate) and email both the sound file and the text.

<sup>4</sup> Tenn. Code Ann. Section 10-7-503(a)(1)(A). The TPRA does not define “in connection with the transaction of official business.” It is clear that a public record does not have to have been made or received on official governmental equipment and that the equipment itself is not a public record. For example, a tape recording made by an employee of a conversation held during work hours with a supervisor out of concern for future job retribution and for his own use was determined not to be a public record. However, a recording of a public meeting made by a governmental employee responsible for the production of the meeting minutes would be a public record.

<sup>5</sup> If it is not “practicable” for a prompt response, then the custodian must respond within seven business days (whether by providing a denial, access, or written advice as to a delay in the response to the request). Tenn. Code Ann. Section 10-7-503(a)(2). Some custodians misunderstand this provision, skipping over the requirement for prompt response and defaulting to a seventh (7<sup>th</sup>) business day response.

<sup>6</sup> Tenn. Code Ann. Section 10-7-503(a)(7)(B).

<sup>7</sup> Tenn. Code Ann. Section 8-4-604(a)(2) directs the OORC to develop a “policy related to reasonable charges that a records custodian may charge for frequent and multiple requests for public records”.

<sup>8</sup> For example, as related to adoption records, Tenn. Code Ann. Section 36-1-125(d) provides that “[u]nauthorized disclosure of any records, studies or information protected as confidential under this

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part is a Class A misdemeanor. Unauthorized disclosure of such records for personal gain or for a malicious purpose is a Class E felony.”

<sup>9</sup> Tenn. Code Ann. Section 10-7-503(c)(2). The TPRA provides that requiring a custodian to redact confidential information is not requiring the custodian to create a new record. Tenn. Code Ann. Section 10-7-503(a)(5).

<sup>10</sup> Tenn. Code Ann. Section 10-7-503(a)(7)(A). An example of payment for redaction required by statute is found in Tenn. Code Ann. Section 10-7-504(a)(20)(C) which states that “[t]he entity requesting the records shall pay all reasonable costs associated with redaction of materials.”

<sup>11</sup> Tenn. Code Ann. Section 10-7-503(a)(7)(C)(1). This section refers to the manner established by the OORC under the authority of Tenn. Code Ann. Section 8-4-604, which section does NOT provide the OORC the authority to establish fees for inspection, only to establish a schedule of reasonable charges to be used by custodians as a guideline for charges that may be imposed on requests for copies of public records pursuant to the TPRA. In an email dated October 9, 2013, Ms. Elisha Hodge, the prior Open Records Counsel, stated that she had listened to all 17 tapes at the Tennessee State Library and Archives relative to Public Chapter 1179, Acts of 2008. She reported that the majority of the discussion and work on the legislation occurred in the House. During discussion, members commented that the fees under consideration were for copies. No mention or comment was made that fees could be charge for producing records for inspection and it was stated that records would be inspected at no cost. She concluded that “[e]verything in the legislative history ties the ability to charge to a request for copies.”

<sup>12</sup> Tenn. Code Ann. Section 10-7-503(a)(7)(C). Note that many additional statutory authorizations for copies of specific records exist, such as the \$0.50 copying fee for county clerks that is authorized in Tenn. Code Ann. Section 8-21-701(12).

<sup>13</sup> Public Chapter 1179, Acts of 2008.

<sup>14</sup> Tenn. Code Ann. Section 8-4-604(a)(1)(A)(ii)(a) & (b).

<sup>15</sup> This concern also applies to charges for labor and the copies related to redaction collected when copies are requested. It appears that the legislative intent behind allowing charges for labor related to preparation of records for copying was to address requests that take more than an hour to prepare, with the assumptions that response to requests of a smaller size are included within budgets and staffing and that response to larger requests would take staff away from regular job responsibilities which would not be reasonable to anticipate in budgeting or staffing. The OORC, working with the ACOG, will consider this matter in the review of the Schedule of Reasonable Charges to see if a safe harbor can be established for labor such as has been established for the per page copying charge.

<sup>16</sup> Attachment 2 at the end of this report provides examples of large, complex records requests.

<sup>17</sup> BGA-Alper Services Integrity Index, page 11; <http://www.bettergov.org/bga-alper-integrity-index>

<sup>18</sup> With reference to the Tennessee Department of Environment and Conservation’s making records available online, the Tennessee Clean Water Network stated that they “believe this approach represents a best practice that should be emulated by other state agencies: it saves time for public officials by reducing the need to respond to multiple records requests and provides free, instantaneous access to the public.”

<sup>19</sup> Tenn. Code Ann. Section 10-7-503(a)(2)(A). Concerns expressed about relieving in person inspection are based on a lack of internet access and unreliability of service. Also, not all documents that are made available on the internet are ADA accessible.

<sup>20</sup> Public Chapter 285, Acts of 1957.

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<sup>21</sup> Note, Section 10-7-506(a) refers to “Photostats”, or paper negative copies produced by a trademarked camera system. This differs from xerography.

[http://www.xerox.com/downloads/usa/en/innovation/innovation\\_storyofxerography.pdf](http://www.xerox.com/downloads/usa/en/innovation/innovation_storyofxerography.pdf)

<sup>22</sup> Many government officials and employees use email systems such as “Yahoo” and “G-mail” “in connection with the transaction of official business”, thereby creating public records which are not under the control of the governmental entity. Also, many entities rely on third-parties, such as chambers of commerce, to provide a web presence.

<sup>23</sup> Tenn. Code Ann. Section 10-7-503(a)(4) & (5).

<sup>24</sup> The Report of the Committee on Open Records submitted in accordance with House Resolution 33, Acts of 1987, is attached as Attachment 4.

<sup>25</sup> The police department held in a closed criminal file 14 hours of unredacted security video footage from a health care facility; the video was obtained pursuant to a subpoena as part of a criminal investigation. The requestor wanted a copy of the video which required redaction before release to the public. The initial estimate from an outside vendor for redaction of that video was \$85,000; the requestor then changed the request to a request for inspection only. The police department was under the same obligation as the health care provider as to the right of privacy afforded under Tenn. Code Ann. Sections 68-11-1502 and -1503. After the complainant who appeared in the video waived her right of privacy, the entity allowed the requestor to view the portion of the video related to the allegation deemed relevant by the police department which did not need redaction. The requestor continued to request to inspect the remainder of the video. A second estimate from a firm in middle Tennessee for the redaction of patient images in the full video ranged from \$26,000 - \$35,000 but was conditioned on the actual quality and type of video. The request was withdrawn.

<sup>26</sup> Tenn. Code Ann. Section 10-7-504(a)(20)(C).

<sup>27</sup> Tenn. Code Ann. Sections 10-7-506 (reasonable related to copies) and 8-4-604 (consideration for the Schedule of Reasonable Charges).

<sup>28</sup> See Tenn. Code Ann. Section 8-21-401(o): “fees shall be set in an amount necessary to defray the expenses associated with implementation and maintenance of the electronic filing and document retrieval system”.

<sup>29</sup> Should there be different standards between state, county and municipal record retention for like records? What records need to be created or “in connection with the transaction of official business by any governmental agency”?

## **ATTACHMENT 1**

Home page for the Office of Open Records Counsel:

<http://www.comptroller.tn.gov/openrecords/>

HB0315/SB0328:

<http://www.capitol.tn.gov/Bills/109/Bill/HB0315.pdf>

Summary of Citizen Survey results:

[www.comptroller.tn.gov/openrecords/pdf/20151001SummaryDataSurvey-Citizen.pdf](http://www.comptroller.tn.gov/openrecords/pdf/20151001SummaryDataSurvey-Citizen.pdf)

Summary of Governmental Entities Survey results:

<http://www.comptroller.tn.gov/openrecords/pdf/20151001SummaryDataSurvey-GovernmentalEntity.pdf>

Information and Guidelines for Public Hearings:

<http://www.comptroller.tn.gov/openrecords/pdf/20150812PublicHearingsRegardingReviewOfPublicRecords.pdf>

Comments received:

[http://www.comptroller.tn.gov/openrecords/pdf/20150812-0930\\_OORC\\_AllComments.pdf](http://www.comptroller.tn.gov/openrecords/pdf/20150812-0930_OORC_AllComments.pdf)

Knoxville Public Hearing audio:

<https://www.youtube.com/watch?v=CeeWXcK-n-o&feature=youtu.be>

Nashville Public Hearing audio:

<https://www.youtube.com/watch?v=PylAhlelbwI>

Jackson Public Hearing audio:

<https://www.youtube.com/watch?v=n0wc5zyz3KY>



## ATTACHMENT 2

### Examples of Large Requests

#### Examples:

Due to voluminous requests, both in the frequency and scope, and in order to protect the integrity of original documents, the city must hire additional staff to assist in preparing documents, and monitoring the inspection. The City did not have sufficient staff to provide for all of the work required to prepare records for inspections. In many instances, in order to provide the records in a timely manner employees are forced to work evenings and/or weekends on regular duties to make up for the time spent on records requests during the work day. The exempt employees are not paid for this additional work. Over a 17 month period, the City received 674 emails from two individuals alone regarding records requests. That is nearly 40 requests per month on average just for two people. Only one of them is a city resident. Each request can take anywhere from 10 to 100 labor hours to prepare. Despite the hundreds and hundreds of labor hours spent preparing records for inspection, the requester is under no obligation to ever show up and inspect even the first page of the records, and in the event they do show up, will thumb through the first few pages for a few minutes then leave. . While the city strongly believes in transparency and access to records, there must be a change in the law to prohibit or minimize repetitive, voluminous requests. If that is through a fee for labor to prepare for inspection, limiting the volume of a single request, limit the the number of monthly request by a single individual, subsequent request be denied until prior requests have been inspected, a time table requiring a minimum time per page be spent reviewing the records prepared or pay a preparation fee, or by some other means, a change is needed.

9/4/2015 5:03 PM

The Board respects the public's right to access information and records regarding the attorney disciplinary process maintained by the Board of Professional Responsibility of the Supreme Court of Tennessee. The Board's duty of transparency must be balanced with the Board's competing duty to safeguard confidential information as specified in Tenn. Sup. Ct. Rule 9, Section 32. The Board's concern with the current law is that most requestors of Board records are attorneys being investigated and/or prosecuted by the Board who may be attempting to misdirect, obstruct and/or delay the Board's work. Since 2010, the Board of Professional Responsibility has received 138 public records requests. One-hundred and eighteen (118) of these 138 public records requests were made by requestors and/or their agents being investigated and/or prosecuted by the Board of Professional Responsibility. Many of these requests by attorneys being investigated and/or prosecuted were serial requestors: in 2011-2012, requestor H.M. made 12 public records requests; in 2012-2013, J.R. and/or his agent made 17 public records requests; in 2012-2013, C.R. made 11 public records requests; and in 2012-2015, Y.S. made 52 public records requests. Eight (8) of these 138 public records requests were made by complainants dissatisfied with the Board's investigation of their complaints. Only thirteen (13) of the 138 requests were from the media for public records. Of those 13 media requests, Board staff responded to 8 requests completely by information available on the Board's website. Exorbitant amounts of time spent by Board staff to review documents and respond to requests by vexatious attorneys being investigated and/or prosecuted diverts the Board's resources from accomplishing its mission of protecting the public and assisting lawyers in administering the Court's disciplinary process.

8/27/2015 3:44 PM

NES understands that openness in government is in the best interest of all and is committed to abiding by the public records law in spirit and practice. NES has an established policy and process in place to handle requests and readily provides information requested by the media, law firms, law enforcement, government agencies and individuals. Of the hundreds of records that NES processes on an annual basis, a small number of individuals abuse the privilege of free inspection by submitting broad requests that are burdensome to research, collect and make available for inspection. One request is submitted for inspection, but the request is composed of thousands of records that make up the larger request. Examples include: "all easements and pole numbers in zip code 37072," and "cell phone records for every employee." While the number of requestors who abuse the inspection provision are few, their requests are costly to ratepayers because it takes a large amount of staff time and resources to research, compile, and make the records available in a format suitable for inspection. The requestor spend a fraction of the time

reviewing the records that require many hours of staff time to compile. To mitigate the cost to ratepayers, NES suggests not charging labor for inspection requests that are for specific records. For single requests that are, in actuality, composed of thousands of individual records, NES suggests that the first 3 hours of the labor cost to research, collect and make the records available for inspection be free of charge, and that the requestor be charged labor costs to produce the records for inspection after 3 hours. NES has, and will continue, to support the public records law. NES believes that charging for the inspection of broad records requests, that include thousands of individual requests in one, is in the best interest of ratepayers and the public. Thank you for your consideration of this change.

8/26/2015 4:58 PM

Christian Alexander, Editor  
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Knoxville, Tn 37923  
editor@backroomknox.com

May 26, 2015

Office of Open Records Counsel  
505 Deaderick Street, Suite 1700  
James K. Polk Building  
Nashville, Tennessee 37243-1402

FOIA REQUEST | Fee waiver requested | Expedited processing requested

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request electronic copies of the following:

1. Provide all records regarding the bidding process for the new Tennessee State logo.
2. Provide all records for the Request for Proposals RFP for the new Tennessee State logo.
3. Provide all records regarding the first contact between the state of Tennessee and GSandF.com
4. Provide all records of the names, positions and departments of staff who were involved in the creation of the new Tennessee State logo-**from the first mention of a new logo to the final design.**
5. Provide records of the name of **any** person as well as **public, private and government entities** involved in the creation and input in the development of this logo.
6. Provide all records of communication between the state of Tennessee (including agents, employee and staff members) **to and from** GSandF.com from 2010 to 2015
7. Provide all records created by those persons and entities for the above #5 and #6 request
8. Provide all records of the names and positions of all staff members that were involved in the **final approval** of the new logo.
9. Provide all records regarding **input from the public and communication with the public** regarding the new Tennessee State logo.
10. Provide records of all communications between the state of Tennessee staff and GSandF.com, logo related or not, including text, Facebook or any other electronic or documented record, not included in the above requests.
11. Provide the date and time of each communication with GSandF.com (GISH, SHERWOOD & FRIENDS, INC.)
12. Provide all records of design iterations (including sketches) of logos presented to the state of Tennessee, **including but not limited to GSandF.com designs**
13. Provide records of all design revisions regarding the State of Tennessee State logo.
14. Provide records of project management regarding the design of the Tennessee State logo.
15. Provide all invoices from GSandF.com for the past ten years, even if not logo related
16. Provide records on billing and invoices regarding the states previous logo
17. Provide all records that show how the logo fee was paid (amounts, dates departments, budget location of withdrawal).
18. Provide all records as to what year and month the logo was started and finalized.

19. Provide all records regarding the opposition to the Final design and final price from State of Tennessee staff.
20. Provide the number of complaints to the State of Tennessee regarding the State logo design or price
21. Provide all records regarding vetting and choosing the GsandF.com for the State of Tennessee logo project.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities regarding State logos, graphic design, choosing a design firm and allowing the public to be a part of that process. There have been thousands of public complaints as well as a change.org petition that has met three of its progressive petition goals regarding the logo. The new logo has also had some national attention. Our office contacted the private entity doing business with the state, but they have refused to answer any questions. It appears the logo in question was designed with no public input. It also appears that the logo may be copied from another client of the same company that the state of Tennessee is using.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request. My name is Christian Alexander and my number is 865-809-8610

Please provide expedited processing of this request which concerns a matter of urgency. As a journalist, I am primarily engaged in disseminating information. The public has an urgent need for information about the processes involving a large amount of money for what the public feels it had no input, is not worth the amount paid, as well as the logo having similarities to the LP building products logo, which is also a client of GsandF. The time sensitivity of this requested valid because Bill Haslam has been quoted that he is going to implement the new logo into the states stationary very soon. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

I look forward to your reply within 7 business days, as the statute requires.

Thank you for your assistance.

Sincerely,  
Christian Alexander

### **ATTACHMENT 3**

#### **Advisory Committee on Open Government**

Sen. Ken Yager Committee	Chair, Senate State and Local Government
Rep. Bob Ramsey	Chair, House State Government Committee
Janet Kleinfelter	Tennessee Attorney General and Reporter
Lucian T. Pera	Tennessee Coalition for Open Government
Richard Hollow	Tennessee Press Association
Chad Jenkins	Tennessee Municipal League
David Connor	Tennessee County Services Association
Don Long (resigned 10/19/15)	Tennessee School Board Association
Debbie Shedden (appointed 11/24/15)	Tennessee School Board Association
Dick (Richard H.) Williams	Common Cause
Vivian Underwood Shipe	League of Women Voters
Amy Griffin	Tennessee Hospital Association
Robb Harvey	Tennessee Association of Broadcasters
Monica Greppin-Watts	Tennessee Board of Regents
Blake Farmer	Society of Professional Journalists
David Moore	Tennessee Association of Chiefs of Police
Jerry Vastbinder	Tennessee Sheriffs' Association
Fred Fields	AARP

#### **Office of the Comptroller of the Treasury**

Jason Mumpower, Chief of Staff  
Lauren Plunk, Deputy Chief of Staff  
Ann Butterworth, Open Records Counsel  
Nicole Shaffer  
John Dunn  
Rudy Basaldua  
Russell Moore  
Linda Wesson  
Susan Mattson

ATTACHMENT 4

REPORT OF THE COMMITTEE ON

OPEN RECORDS

HOUSE RESOLUTION 33

657  
145  
120  
954 (1937)

The Committee on Open Records was established pursuant to House Resolution 33, adopted by the House of Representatives on April 15, 1987. Judiciary Committee Chairman Frank Buck appointed Rep. Jerry Cross, Rep. Ed Moody, Rep. Chris Turner, Rep. Karen Williams and Rep. Bill Purcell to the Committee, requesting that Rep. Purcell serve as Chairman.

The Committee held 10 days of public hearings from August of 1987 through February 2, 1988. The findings of the Committee are set forth herein and submitted to the Judiciary Committee as required by the Resolution.

OVERVIEW

The Open Records Act is a simple and direct mandate to state and local governments to allow the people access to the work of those governments. For the now more than thirty years (30) since passage of this legislation, Tennessee has remained strongly in the company of those states which believe the people's business should be made open and available to the people.

Tennessee has also recognized that while our policy should always be weighted toward disclosure, there are some instances where individual privacy concerns or important governmental interests appear to override the presumption of access. As a result, with the passage of the Open Records Act the legislature simultaneously enacted provisions for confidential records which were to remain exceptions to the broad mandate of disclosure. These first exceptions are now codified at T.C.A. 10-7-504.

Throughout the three decades during which this state has operated under our Open Records Act, the basic mandate of T.C.A. 10-7-503 has remained inviolate. However, during this time a number of additional exceptions have been created. The Committee first undertook to catalogue these exceptions, a task not previously undertaken. A compilation of agency reports and computer search identified eighty-nine (89) separate exceptions. (This list is attached as an Appendix to this report).

Having first determined the state of the law, the Committee moved forward "with its basic mandate," . . . to determine if and how the law can be improved." In fulfilling this responsibility the Committee heard from numerous state agencies, local agencies, and private individuals and groups. The Committee received the comment of anyone who asked to be heard and at every meeting invited testimony or comment from any and all who were present. A final review of the law and its exceptions was undertaken, as the result of which the Committee submits this report together with its legislative proposals.

### FINDINGS AND RECOMMENDATIONS

The Committee found that a strong and clear mandate for open records remained vital to responsible government. While there continue to be agencies and officials who fail to comply with the law, government and its employees at all levels are largely aware of the requirements of the law and are generally complying with these requirements. Nonetheless, several legislative initiatives and concerns are indicated.

#### Enforcement

At the time of the passage of the Act the law included a misdemeanor penalty for its violation. This penalty was applicable to both wrongful withholding of information requested under the Act, as well as the improper release of information designated as confidential. At the time of the passage of the judicial review procedures set out at T.C.A. 10-7-505, the criminal sanctions were abandoned.

While the Committee understands the many reasons why criminal sanctions may now not be most useful in insuring compliance with all of the requirements of the law, the Committee was concerned that there is now no explicit sanction for failure to follow the law. The Committee believes it is most important that compliance with the law be continually monitored to determine whether sanctions may again be necessary.

The Committee did find that it would be very beneficial for the law to provide for an award of reasonable attorneys fees where an individual was successful in challenging the withholding of a public record. Recognizing that there may not always be clear authority for the official charged with maintaining the record, the Committee recommends the trial court be given discretion to award fees where the withholding is in wilful violation of the law. The Committee has proposed legislation.

#### Department of Correction

The Committee is of the opinion that more access to the records of prisons and prisoners would be appropriate for the same reasons all other agencies' records are open. Therefore, the Committee recommends the opening of investigatory records upon the completion of the investigations and broader access to inmate records, with the authority being left in the Commissioner to delete identifying information where necessary to protect the safety of staff or inmates. The Committee has proposed legislation.

#### Department of Economic and Community Development

The Committee understands the important work of this Department and the need to be competitive with other states and governments. However, the Committee believes that the proper concerns of the Department and its business contacts can be protected without preserving the complete blanket of secrecy now allowed by law. The Committee has proposed legislation.

#### Library Records

The Attorney General has opined that constitutionally protected rights of privacy now surmount application of the Open Records Act to lending and other records of libraries. Nonetheless, librarians from across the state have expressed need for clear legislative direction in order to respond to regular attempts to review these records. The Committee has proposed legislation.



### Personnel Records

The Department of Personnel testified that they were functioning without difficulty under the law as presently applicable to them. However, the Department expressed great concern that Civil Service exams and similar testing instruments are now exposed to release under the law. The Committee believes these tests and their answers should be confidential for so long as necessary to protect the integrity of the test. The Committee has proposed legislation.

The Committee has also been made aware of general public concerns that applicants for state jobs are discouraged from seeking employment by the open access to applications provided by the law. The Committee has proposed no legislation. We do feel that this issue merits further thoughtful consideration to resolve the dilemma of balancing the applicant's right of privacy against the public's need to know, before the job is filled, who may or will fill a public job.

### Board of Claims

The Committee noted that the law now allows the Board of Claims to block access to public records which would otherwise be available were no claim anticipated. The Committee found that the Board's concerns could be better met by notice procedures which did not close state records. Legislation is proposed.

### Department of Health and Environment

This Department has a number of exemptions, most related to public health matters which implicate issues of personal privacy.

While most all such exclusions have long histories and continuing validity, the Committee did feel that the fact of a birth or death and date should be in the public domain. The Committee has proposed legislation.

The Committee also recommends abolition of the provision allowing the location of water wells to be confidential, an archaic provision without modern support. The Committee has proposed legislation.

### Law Enforcement Records

During the pendency of these hearings, the Supreme Court of Tennessee issued its decision in Appman and Moncier v Worthington, decided November 23, 1987.

The Court has now spoken to some of the questions left unresolved at the time of the decision of Memphis Publishing vs Holt, 710 S.W.2d 513 (Tenn. 1986). While the Committee does not now believe legislation is indicated, there will need to be careful continuing scrutiny of this area to assure that further judicial definition of the Supreme Court's opinions does not erode the present assurance of access to those records which have for so long been within the public domain. No legislation is now proposed.

### Local Boards and Commissions

The Committee received testimony from the Hamilton County Air Pollution Control Board indicating their concern regarding certain proprietary information which may be shared with the Board by industries they regulate. The Committee understood the problems faced by the Board but did not feel that concerns presently justified a broad exclusion for local agency records.

CONCLUSION

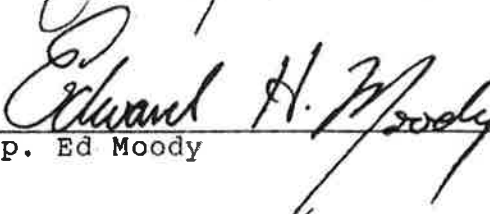
The Committee on Open Records submits this final report together with its proposed legislation for the review of the Judiciary Committee and consideration by the General Assembly.

Our thanks to Mr. Tom Tigue and the staff of the Office of Legal Services for their support throughout this process.

Respectfully submitted,

  
Rep. Bill Purcell, Chairman

  
Rep. Jerry Cross

  
Rep. Ed Moody

  
Rep. Chris Turner

  
Rep. Karen Williams

Statutory Exceptions to the Tennessee Open Records Act

Prepared by the Office of Legal Services  
with Assistance from the Office of the Attorney General

November 24, 1987

<u>Code Cite</u>	<u>Records Closed</u>
1. TCA 2-11-202(5)	Report of an election law violations investigation conducted by the Coordinator of Elections.
2. TCA 3-10-108	Certain information stored or processed in legislative computer system.
3. TCA 3-12-105	Work papers of Office of Legal Services for the General Assembly.
4. TCA 3-14-109	Work papers of Office of Program Evaluation within General Assembly.
5. TCA 4-3-712	Proprietary information acquired by the Energy Division of the Department of Economic and Community Development.
6. TCA 4-5-218	Permits deletion of confidential portions of agency documents and records.
7. TCA 4-6-140	Permits Commissioner of Correction to make certain records of inmates accessible only by his consent.
8. TCA 4-17-109	Certain documentary materials made or received by member or employee of Tennessee Economic Development Corporation.
9. TCA 8-3-104(10)	Permits Governor to determine what records relating to the executive branch that are maintained by the Secretary of State require secrecy.
10. TCA 8-4-404	Information received pursuant to Comptroller's toll free hotline for detecting improper actions by employees of community grant agencies.
11. TCA 8-6-407	All documents, records, or tangible objects obtained by the Attorney General and Reporter pursuant to his investigative authority.
12. TCA 9-8-307	All records relating to a claim against the state prior to its final adjudication by the Claims Commission.

Open Records Exceptions - Cont'd.

<u>Code Cite</u>	<u>Records Closed</u>
13. TCA 9-19-109	Identity of owner of any public obligation.
14. TCA 10-7-503	Permits head of governmental entity to promulgate rules to maintain the confidentiality of records concerning adoption proceedings.
15. TCA 10-7-504(a)(1)	Medical records of patients in state hospitals or medical facilities or receiving medical treatment at state expense.
16. TCA 10-7-504(a)(2)	Investigative records of TBI, criminal investigative files of motor vehicle enforcement division of Department of Safety relating to stolen vehicles or parts, and all files of the drivers' license issuance division of the Department of Safety relating to bogus licenses issued to undercover agents.
17. TCA 10-7-504(a)(3)	Records in possession of the Military Department involving state or national security.
18. TCA 10-7-504(a)(4)	Records of students in public educational institutions.
19. TCA 10-7-504(a)(5)	Records in possession of the office of Attorney General and Reporter relating to a pending or contemplated legal or administrative proceeding in which such office may be involved.
20. TCA 10-7-504(a)(6)	State agency records containing opinions of value of real and personal property intended to be acquired for public purposes prior to final acquisition.
21. TCA 10-7-504(a)(7)	Proposals for service contracts and sealed bids for the purchase of goods and services until the contract is fully executed or awarded.
22. TCA 10-7-504(a)(8)	Certain sensitive records of the department of Economic and Community Development pertaining to proprietary information of industrial and commercial enterprises.
23. TCA 10-7-504(a)(9)	Investigative records of the internal affairs division of the Department of Correction.
24. TCA 12-4-414	Payroll records submitted to the Prevailing Wage Commission of the Department of Labor pursuant to the Prevailing Wage Act.

# Open Records Exceptions - Cont'd

<u>Code Cite</u>	<u>Records Closed</u>
25. TCA 13-27-113	Information submitted to or compiled by the <b>Tennessee Competitive Export Corporation</b> pertaining to commercially sensitive information.
26. TCA 17-5-303	Complaints of judicial disability to the <b>Court of the Judiciary</b> .
27. TCA 17-5-304	Charges presented and statements filed with the <b>Court of the Judiciary</b> concerning the misconduct of a judge.
28. TCA 33-3-104(10)	Records identifying a present or former patient or resident treated for mental illness or mental retardation.
29. TCA 36-1-129	Records relating to an adoption proceeding after the final order of adoption or dismissal is entered.
30. TCA 37-1-409	Reports of harm and the identity of the reporter of child abuse.
31. TCA 37-1-612	Records concerning reports of child sexual abuse and all records generated as a result of such reports.
32. TCA 37-2-408	Records prepared in connection with the planning, placement or care of a child in foster care.
33. TCA 37-2-411	Records obtained by the <b>Department of Human Services</b> for preparation of the annual report on foster care.
34. TCA 38-7-116	Results of blood tests ordered by the <b>District Attorney General</b> on fire death victims.
35. TCA 39-4-203	Physicians' records of abortions and their report of abortions performed to the <b>Commissioner of Health and Environment</b> .
36. TCA 40-28-119	<b>Permits Parole Board</b> to promulgate rules relative to the confidentiality of records of parolees.
37. TCA 41-21-224	<b>Wardens</b> written notice to sheriff, chief of police and district attorney general concerning release of inmates.
38. TCA 45-2-103(a)(3)(F)	Information obtained by the <b>Commissioner of Financial Institutions</b> when acting upon application for change of control of a bank.

Open Records Exceptions - Cont'd.

<u>Code Cite</u>	<u>Records Closed</u>
39. TCA 45-2-1603	Information obtained by <b>bank examiner</b> when examining the affairs of a bank.
40. TCA 45-3-807	Allows <b>savings and loan association</b> to decline to disclose its records except under certain circumstances.
41. TCA 45-3-814	Information obtained by <b>bank examiner</b> when examining the affairs of a savings and loan association.
42. TCA 45-7-117	Reports of investigation and examination conducted by <b>Commissioner of Financial Institutions</b> on issuers of money orders.
43. TCA 47-18-106(g)	Information received at the request of the <b>Consumer Affairs Division</b> pursuant to enforcement of the Tennessee Consumer Protection Act.
44. TCA 47-23-101	Information concerning insurance required to be kept on real estate.
45. TCA 48-2-118(a)(1)(A)	Information obtained through private investigation by <b>Commissioner of Commerce and Insurance</b> to determine if a violation of the Tennessee Securities Act has occurred.
46. TCA 50-3-304	Name of employee giving notice to <b>Commissioner of Labor</b> of possible violation of Occupational Safety and Health Act.
47. TCA 50-3-504	Trade secrets or other privileged information disclosed to employee of <b>Department of Labor</b> pursuant to enforcement of Occupational Safety and Health Act.
48. TCA 50-3-914	Information containing or revealing trade secrets obtained by the <b>Commissioner of Labor</b> while enforcing the occupational safety and health laws.
49. TCA 50-3-2013	Information containing or revealing trade secrets obtained by the <b>Commissioner of Labor</b> while enforcing the Hazardous Chemical Right to Know Law.
50. TCA 50-7-701	Information obtained by the <b>Commissioner of Labor</b> while enforcing the Employment Security Law.
51. TCA 55-10-114	Accident reports made by a person or garage to the <b>Department of Safety</b> .

Open Records Exceptions - Cont'd.

<u>Code Cite</u>	<u>Records Closed</u>
52. TCA 56-3-111	Report of insurance companies to the Board of Medical Examiners concerning medical malpractice settlements in excess of a certain amount.
53. TCA 56-6-604	Trade secrets including the identity of policyholders contained in records maintained by administrators of life or health insurance policies.
54. TCA 56-9-131	Records of the insurer and other documents pertaining to a delinquency proceeding by the Commissioner of Commerce and Insurance against a domestic insurer.
55. TCA 56-11-203(b)(2)	Identity of lender where loan is consideration for merger or acquisition of control of an insurance holding company.
56. TCA 56-11-204(c)	Information submitted in the pre-acquisition notification that may be filed when there is a change in control of an insurer authorized to do business in this state.
57. TCA 56-11-208	Information obtained by the Commissioner of Commerce and Insurance pursuant to an examination of the financial condition of an insurer.
58. TCA 60-1-504(b)(4)	Data maintained by the State Geologist on the drilling of mineral test holes for a period of 6 months.
59. TCA 60-1-505	All information pertaining to the application for and issuance of permits for mineral test holes maintained by the Oil and Gas Board.
60. TCA 62-6-124	Financial statements submitted by contractors to the Board for Licensing Contractors.
61. TCA 62-20-119	Financial information submitted to the Collection Service Board by an applicant for or license holder.
62. TCA 62-27-124(c)	Records obtained by law enforcement officers during official polygraph examinations.
63. TCA 63-1-117	Identifying information of complainant and medical records concerning an allegation against a practitioner of the healing arts to the Division of Health Related Boards until introduced at disciplinary proceedings.



Open Records Exceptions - Cont'd.

<u>Code Cite</u>	<u>Records Closed</u>
64. TCA 63-5-131	Information furnished to and conclusions of a Dental Peer Review Committee proceeding.
65. TCA 63-6-219	Information furnished to and conclusions of a Medical Review Committee proceeding.
66. TCA 63-12-110	Information received by the Board of Veterinary Medical Examiners through inspections and investigations.
67. TCA 65-3-109	Contracts, leases or engagements obtained by the Public Service Commission while engaged in regulation of the railways.
68. TCA 67-1-1702	Returns and tax information filed with or in the possession of the Commissioner of Revenue.
69. TCA 67-1-1705(c)	Investigative records of the special investigations unit of the Department of Revenue relating to potential criminal prosecutions of persons for violation of the tax laws.
70. TCA 67-4-722	Statements, reports or returns of taxpayers and all audits of their records and files.
71. TCA 67-8-109	Permits Commissioner of Revenue to determine what portions of his records concerning transfer taxes should remain closed.
72. TCA 67-8-404	Permits Commissioner of Revenue by rule to determine what portion of his records concerning inheritance taxes are closed.
73. TCA 68-1-108	Individual medical information contained in UB-82 claims data filed by health insurance entities with the Commissioner of Health and Environment.
74. TCA 68-1-1006	Data obtained from the reports required by the Tennessee Cancer Reporting System Act of 1983.
75. TCA 68-3-205	Permits Commissioner of Health and Environment to determine by rule what portion of vital records is confidential.
76. TCA 68-10-101	Reports made by physicians to the Commissioner of Health and Environment concerning the diagnosis or treatment of venereal disease.

Open Records Exceptions - Cont'd.

<u>Code Cite</u>	<u>Records Closed</u>
77. TCA 68-11-210(a)(5)	Joint Commission on Accreditation of Hospital's report concerning the accreditation of a hospital or nursing home.
78. TCA 68-23-217	Information received by the Commissioner of Health and Environment pursuant to the Atomic Energy and Nuclear Materials Act that is defined by regulation as proprietary.
79. TCA 68-29-107	Reports made by medical laboratories to the Commissioner of Health and Environment concerning infectious diseases.
80. TCA 68-46-109	Permits Solid Waste Disposal Control Board to establish procedures to insure the confidentiality of proprietary information furnished pursuant to the Hazardous Waste Management Act.
81. TCA 69-3-113	Secret formulae or proprietary manufacturing processes obtained by the Commissioner of Health and Environment pursuant to enforcement of the Water Quality Control Act.
82. TCA 69-11-103	The location of a water well in the report of the well driller supplied to the Commissioner of Health and Environment.
83. TCA 71-1-118	Prohibits copying of the list of public welfare recipients maintained by the Commissioner of Human Services.
84. TCA 71-3-119	List, names of or any information concerning persons applying for or receiving AFDC.
85. TCA 71-5-304	Requires Department of Human Services to prevent unauthorized disclosure of information concerning food stamp recipients.
86. TCA 71-6-118	Identity of person reporting abuse or neglect under the Adult Protection Act.
87. Rules of the Court of the Judiciary # 7	Matters that come before the Court of the Judiciary.
88. Rules of Juvenile Procedure # 33	Predisposition reports prepared on a juvenile.
89. Rules of the Supreme Court # 9, Sec. 25	Proceedings involving allegations of misconduct by or the disability of an attorney until a certain time.

