

**RULES
OF
THE TENNESSEE DEPARTMENT OF CORRECTION
ADMINISTRATIVE SERVICES DIVISION**

**CHAPTER 0420-01-03
CHARGES FOR PRODUCING COPIES OF PUBLIC RECORDS**

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0420-01-03-.01 PURPOSE. Following the publication of the Schedule of Reasonable Charges for Copies of Public Records developed by the Office of Open Records Counsel pursuant to Tenn. Code Ann. § 8-4-604(a), these Rules are promulgated for the purpose of establishing and implementing charges for producing copies of public records of the Tennessee Department of Correction. Other statutory provisions, such as Tenn. Code Ann. § 10-7-506(c), describe charges that may be assessed when specific records are requested for a specific use.

Authority: T.C.A. §§ 4-3-603, 4-3-606 and 10-7-503(a). **Administrative History:** Public necessity rule filed November 20, 2008; effective through May 4, 2009. Public necessity rule filed November 20, 2008 and effective through May 4, 2009 expired effective May 5, 2009; rule reverted to previous status. Original rule filed August 31, 2009; effective January 29, 2010.

0420-01-03-.02 DEFINITIONS.

- (1) "Labor" means the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.
- (2) "Labor threshold" means the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the Department in producing the records.
- (3) "Production costs" means all reasonable costs the Department incurred to produce the public records requested by the requesting party. Production costs include copying costs, labor costs, and delivery costs, as described in these Rules.
- (4) "Public record" means any record of the Department that is required to be open to inspection under the provisions of the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501 et seq.
- (5) "Public Records Designee" or "PRD" means the person at each institution or other unit of the Department who receives and coordinates public records requests and maintains documentation of public records requests, responses, and charges.
- (6) "Requesting party" means the person who requests to inspect or copy public records of the Department. To have access to public records, a requesting party must be a citizen of the State of Tennessee.

Authority: T.C.A. §§ 4-3-603, 4-3-606 and 10-7-503(a). **Administrative History:** Public necessity rule filed November 20, 2008; effective through May 4, 2009. Public necessity rule filed November 20, 2008

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and effective through May 4, 2009 expired effective May 5, 2009; rule reverted to previous status. Original rule filed August 31, 2009; effective January 29, 2010.

0420-01-03-.03 PRODUCTION COSTS. Except as otherwise provided in these Rules, the PRD shall charge the requesting party for production costs as defined in Rule 0420-01-03-.02(3). The production costs charged to the requesting party shall be reasonable. The Schedule of Reasonable Charges for Copies of Public Records, published by the Office of Open Records Counsel, will be used as a guideline to determine the amount a requesting party will be charged for producing copies of public records. The PRD shall utilize the most cost efficient method of producing copies of public records.

Authority: *T.C.A. §§ 4-3-603, 4-3-606 and 10-7-503(a).* **Administrative History:** *Public necessity rule filed November 20, 2008; effective through May 4, 2009. Public necessity rule filed November 20, 2008 and effective through May 4, 2009 expired effective May 5, 2009; rule reverted to previous status. Original rule filed August 31, 2009; effective January 29, 2010.*

0420-01-03-.04 COPYING COSTS. Copying costs include the costs related to making copies of the public records requested by the requesting party by photographic or other means of duplication.

- (1) The PRD shall assess a charge of \$0.15 per page for each standard 8 ½ x 11 or 8 ½ x 14 black and white copy produced.
- (2) If a public record is maintained in color, the PRD shall advise the requesting party that the record can be produced in color if the requesting party is willing to pay the higher charge for a color copy. If the citizen then requests a color copy, the PRD shall assess a copy charge of 50 cents per page for each 8 ½ x 11 or 8½ x 14 color copy produced.
- (3) The charge for a duplex copy shall be the same as the charge for two (2) separate copies.
- (4) If a copy of a public record is produced on a medium other than 8 ½ x 11 or 8 ½ x 14 paper, the PRD shall assess a copy charge equal to the actual cost of producing a copy of the public record, taking into consideration the amount of material, equipment costs, and the cost of the alternative medium.
- (5) If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is necessary to put the records in a readable and reproducible format or it is necessary to access backup files, the PRD shall charge the requesting party the actual costs incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.
- (6) Electronic records will be produced only in a read-only format.
- (7) If the PRD utilizes an outside vendor to produce copies of the requested records because the Department is legitimately unable to produce the copies, the cost charged by the vendor to the Department shall be recovered from the requesting party.
- (8) If the PRD is charged a fee to retrieve requested records from the Tennessee State Library and Archives or from any other entity having possession of requested records, the PRD shall charge the requesting party the cost charged the Department for retrieval of the records.

Authority: *T.C.A. §§ 4-3-603, 4-3-606 and 10-7-503(a).* **Administrative History:** *Public necessity rule filed November 20, 2008; effective through May 4, 2009. Public necessity rule filed November 20, 2008 and effective through May 4, 2009 expired effective May 5, 2009; rule reverted to previous status. Original rule filed August 31, 2009; effective January 29, 2010.*

0420-01-03-.05 LABOR COSTS. The PRD shall charge the requesting party the hourly wage of the employee(s) reasonably necessary to produce the requested records above the labor threshold defined in Rule 1720-01-11.02(2). The “hourly wage” is based upon the employee(s) base salary and does not include benefits. In calculating the labor costs to be charged to the requesting party, the PRD shall:

- (1) First, determine the number of hours each employee spent producing the requested public records;
- (2) Second, subtract the one (1) hour threshold from the number of hours the highest paid employee spent producing the request;
- (3) Third, multiply the total number of hours to be charged for the labor of each employee by that employee’s hourly wage; and
- (4) Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requesting party.

Authority: T.C.A. §§ 4-3-603, 4-3-606 and 10-7-503(a). **Administrative History:** Public necessity rule filed November 20, 2008; effective through May 4, 2009. Public necessity rule filed November 20, 2008 and effective through May 4, 2009 expired effective May 5, 2009; rule reverted to previous status. Original rule filed August 31, 2009; effective January 29, 2010.

0420-01-03-.06 DELIVERY COSTS. The PRD shall charge the requesting party for the costs incurred by the PRD in delivering the records to the requesting party, in addition to any other charge permitted by these Rules.

- (1) Delivery of copies of public records to the requesting party shall be by hand delivery when the requesting party returns to the PRD’s office to retrieve the requested records. If the requesting party chooses not to return to the PRD’s office to retrieve the copies, the PRD shall deliver records to the requesting party through the United States Postal Service.
- (2) In the discretion of the PRD, copies of public records may be delivered through other means, including electronically.

Authority: T.C.A. §§ 4-3-603, 4-3-606 and 10-7-503(a). **Administrative History:** Public necessity rule filed November 20, 2008; effective through May 4, 2009. Public necessity rule filed November 20, 2008 and effective through May 4, 2009 expired effective May 5, 2009; rule reverted to previous status. Original rule filed August 31, 2009; effective January 29, 2010.

0420-01-03-.07 PAYMENT OF PRODUCTION COSTS. If the requesting party requests copies of public records, the following provisions concerning payment of production costs shall apply:

- (1) The PRD shall provide the requesting party an estimate of the production costs before initiating the production of copies of the requested public records.
- (2) The PRD may require payment in full of all production costs before copies of public records are delivered or otherwise made available to the requesting party.
- (3) Production costs must be paid by cash or check. Cash payments must be for the exact amount of the production costs. Checks must be made payable to The Department of Tennessee for the exact amount of the production costs.
- (4) The PRD will provide a receipt to the requesting party upon receipt of payment of the production costs.

(Rule 0420-01-03-.07, continued)

Authority: T.C.A. §§ 4-3-603, 4-3-606 and 10-7-503(a). **Administrative History:** Public necessity rule filed November 20, 2008; effective through May 4, 2009. Public necessity rule filed November 20, 2008 and effective through May 4, 2009 expired effective May 5, 2009; rule reverted to previous status. Original rule filed August 31, 2009; effective January 29, 2010.

0420-01-03-.08 WAIVER OF PRODUCTION COSTS. Waiver of production costs for copies of public records shall be in accordance with the following provisions:

- (1) The PRD shall provide copies of public records without charge if all production costs, as defined in Rule 0420-01-03-.02(3), do not exceed Three Dollars (\$3.00).
- (2) The PRD shall provide copies of materials for meetings of the Board of Trustees and its committees without charge when requested contemporaneously with the meeting .
- (3) When the requesting party is a federal, state, or local government agency, the PRD shall provide the requested copies of public records without charge.
- (4) When the requesting party is a current employee of the Department, the PRD shall provide the requesting party copies of his/her employment records without charge.
- (5) The PRD may provide copies of the following records without charge if the Department will not incur significant production costs in providing the records: current enrollment data, basic budget information, history of the Department, biographical data for Department employees, Department policies and procedures, general facts and figures about the Department, and similar information.

Authority: T.C.A. §§ 4-3-603, 4-3-606 and 10-7-503(a). **Administrative History:** Public necessity rule filed November 20, 2008; effective through May 4, 2009. Public necessity rule filed November 20, 2008 and effective through May 4, 2009 expired effective May 5, 2009; rule reverted to previous status. Original rule filed August 31, 2009; effective January 29, 2010.

0420-01-03-.09 REQUESTS FOR COPIES FOLLOWING INSPECTION. The PRD shall not assess a charge to inspect public records, unless otherwise required by law. However, if the requesting party, after requesting to inspect public records, requests copies of public records, the PRD shall charge the requesting party for all production costs.

Authority: T.C.A. §§ 4-3-603, 4-3-606 and 10-7-503(a). **Administrative History:** Original rule filed August 31, 2009; effective January 29, 2010.