

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE SERVICES DIVISION**

**CHAPTER 1240-09-01
ACCESS TO PUBLIC RECORDS OF THE DEPARTMENT OF HUMAN SERVICES**

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1240-09-01-.01 PURPOSE AND SCOPE.

These rules are promulgated for the purpose of providing procedures to allow access to records of the Tennessee Department of Human Services that are subject to the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq., and are promulgated for the additional purpose of implementing and establishing fees to be charged for reproduction of records or for the development of records in a specific format.

Authority: T.C.A. §§4-5-201 et seq., 71-1-105; 10-7-503 and 10-7-506; *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001).
Administrative History: Original rule filed December 2, 2002; effective February 15, 2003.

1240-09-01-.02 DEFINITIONS.

- (1) "Commissioner" is the executive officer in charge of the Tennessee Department of Human Services.
- (2) "Commissioner's Designee" means Deputy Commissioner, Assistant Commissioners, Staff Attorneys, Directors, Program Managers and/or Counselors of the Department of Human Services.
- (3) "Labor" means the time reasonably necessary for the Department's staff to produce the requested records and includes the time spent locating, reviewing, including the time required to assess the costs necessary for reproduction, redacting and reproducing the records.
- (4) "Non-routine Copy" is a copy, whether of paper or of electronically stored data, which requires more than minimal staff assistance, i.e., odd or oversize pages, bound documents, or manipulation of electronically stored data. Any records, even if stored electronically or magnetically, shall be deemed to be non-routine copies if it is necessary for Department personnel or contractors to print the copies of the record by means of a separate screen-print for each individual page of the record.
- (5) "Public Record"
 - (a) "Public Record" means any record of the Department that is deemed to be open to inspection of the public pursuant to the provisions of the defined in T.C.A. § 10-7-503(a)(1): The terms "public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(Rule 1240-09-01-.02, continued)

- (b) The term "Public Record" does not include any data in any record, or any portion of a record, that is:
 - 1. protected as confidential or privileged pursuant to any state or federal law, regulation, court order or court rule; or
 - 2. protected as privileged under any statutory or common law privilege; or
 - 3. protected as any attorney work product; or
 - 4. protected by the attorney/client or any other professional privilege, or
 - 5. reasonably expected by its disclosure to reveal the name or location of a source that is protected by state or federal law or regulation as part of any statutory or regulatory requirements for reporting of abuse, neglect or harm, or that is protected by state or federal law or regulation as part of any statutory or regulatory requirement for the purpose of protecting any person from the threat of domestic violence.

- (6) "Record"
 - (a) The term "Record" includes, for purposes of this Chapter, any data and/or documents developed and maintained by the Department, or that have been received and are maintained by the Department, during the normal course of the Department's business activities.
 - (b) "Records" subject to this Chapter may be maintained on paper, magnetically, or electronically, on a single computer or computer system, whether on disk, tape or otherwise.

- (7) "Records custodian" means the office, official or employee lawfully responsible for the direct custody and care of a public record maintained by the Department of Human Services and is not necessarily the original preparer or producer of the record. The Department of Human Services may have more than one designated records custodian.

- (8) "Redacted record" means a public record otherwise open for public inspection from which protected information has been removed or obscured prior to release or inspection.

- (9) "Requestor" means a Tennessee citizen requesting access to or a copy of a public record.

- (10) "Routine Copy" means a paper copy of a record which, to be made, requires minimal staff assistance, i.e., pages which are either 8½ x 11 or 8½ x 14 and can be automatically printed from electronically stored records or automatically fed into a standard copier.

- (11) "Safe Harbor" means a presumption of reasonableness of the costs for records reproduction for a public records custodian who adheres to the policies and guidelines established by the Office of Open Records Counsel (OORC). Under this presumption, any fee related to the production of a copy or duplication that is charged by an entity required to provide access to public records pursuant to the Tennessee Public Records Act is presumed to be reasonable if the entity adopts and implements either the OORC Schedule of Reasonable Charges or adopts charges pursuant to a separate schedule developed in accordance with the provisions of the OORC Schedule of Reasonable Charges. The aggregation of frequent and multiple requests for copies of public records and the labor fees charged as the result of that

(Rule 1240-09-01-.02, continued)

aggregation are presumed to be reasonable if the entity adopts and implements the OORC Frequent and Multiple Request Policy or a separate policy developed in accordance with the provisions of the OORC Frequent and Multiple Request Policy.

Authority: T.C.A. §§4-5-201 et seq.; 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506; 10-7-506(a); 10-7-503 and 71-1-105; 71-1-105(4) and (12) *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001). **Administrative History:** Original rule filed December 2, 2002; effective February 15, 2003. Amendments filed December 10, 2009; effective March 10, 2010.

1240-09-01-.03 REQUESTS FOR ACCESS TO RECORDS.

- (1) Processing of Requests to View Public Records.
 - (a) An in-person request for access to public records of the Department shall be made during the regular business hours of the Department from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
 - (b) All requests for access to public records of the Department made in-person, or by any other means, shall be directed to the Records Custodian, State Office of the Department of Human Services, 400 Deaderick Street, 15th floor, Nashville, Tennessee 37243.
 - (c) All requests for access to the Department's public records shall identify with reasonable specificity the record, set or system of records which is requested.
 - (d) Requests will be processed on a first-come, first-served basis; provided, that the Commissioner, or the Commissioner's designee, may at any time alter this provision when circumstances warrant.
- (2) Prior Review and Assessment for Confidential, Privileged or Protected Material/Non-Routine Requests.
 - (a) Review, Assessment and Redaction of Records.
 1. Before providing access to the requested record, the Department's staff shall review as quickly as reasonably possible the requested records that have been located consistent with the availability of appropriate staff and with regard to the scope of the records request, and make an assessment of the status of the records, the scope of the requested access and the time required for a response.
 2. Upon review, the Department's staff will redact any data or information prior to release of the record, or portion of the record, that it determines has, or may have, confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.
 - (b) If the Department determines that none of the provisions of subparagraph (c) below apply and access can otherwise be provided immediately, it shall do so.
 - (c) If it appears from the Department's review and assessment that access to the record, or the system of records, cannot be provided immediately because:
 1. Additional time is required to locate and retrieve the records because the records are not stored on the site or cannot be located;

(Rule 1240-09-01-.03, continued)

2. The record or records require redaction of confidential, privileged or otherwise protected material;
3. The record is subject to current use as part of an on-going investigation and cannot be provided without interrupting or jeopardizing the investigation and/or its timeliness, or the unavailability of the record to the Department's staff will jeopardize the health, safety or welfare of the persons the investigation is intended to protect or the persons involved in the investigation;
4. A computer or computer system that contains the record is unable to be accessed, is undergoing maintenance or re-programming for any Departmental program purposes, and/or cannot be accessed without substantially interfering with the delivery of services to the public or without damage to the integrity, operability or functioning of any computer or computer system;
5. Production of the record or records will require development of a program or application to provide access to, or a readable format for access to, electronic or magnetic sources of the record or records; or
6. For any reason, then the Department shall inform the requestor of the assessment and the approximate time required to comply with the request and provide a summary of the basis for the assessment regarding access to the records.

Authority: T.C.A. §§4-5-201 et seq.; 4-5-202; 8-4-604(a)(3); 71-1-105; 10-7-503; 10-7-504(a)(7); 10-7-506; 10-7-506(a); 71-1-105(4) and (12); *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001). **Administrative History:** Original rule filed December 2, 2002; effective February 15, 2003. Amendments filed December 10, 2009; effective March 10, 2010.

1240-09-01-.04 REQUESTS FOR REPRODUCTION OF RECORDS.

- (1) Processing of Requests for Copies of Public Records.
 - (a) An in-person request for copies of public records of the Department shall be made during the regular business hours of the Department from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
 - (b) All requests for copies of public records of the Department made in-person, or by any other means, shall be directed to the Records Custodian, State Office of the Department of Human Services, 400 Deaderick Street, 15th floor, Nashville, Tennessee 37243.
 - (c) All requests for copies of the Department's public records must be made in writing to the Records Custodian of the Department of Human Services, and shall identify with reasonable specificity the record, set or system of records which is requested.
 - (d) Records requests will be processed on a first-come, first-served basis; provided, that the Commissioner, or the Commissioner's designee, may at any time alter this provision when circumstances warrant.
- (2) Prior Review and Assessment for Confidential, Privileged or Protected Material/Non-Routine Copy Requests.

(Rule 1240-09-01-.04, continued)

- (a) Review, Assessment and Redaction of Records for Copy Request.
 - 1. Before reproducing copies of the requested record, the Department's staff shall review as quickly as reasonably possible the requested records that have been located consistent with the availability of appropriate staff and with regard to the scope of the records request, and make an assessment of the status and scope of the copy request and the time and costs required to locate, retrieve, review, redact, and reproduce the records.
 - 2. Upon review, the Department's staff will redact any data or information prior to release of the record, or portion of the record, that it determines has, or may have, confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.
- (b) If the Department determines that none of the provisions of subparagraph (c) apply and copies can otherwise be provided immediately, it shall do so. If the reproduction of copies of the records is requested and the request involves the reproduction of "routine" copies, it shall inform the requesting person and shall make such records available to the requesting person as soon as reasonably possible.
- (c) If it appears from the Department's assessment that reproduction of the record, or the system of records, cannot be provided immediately because:
 - 1. Additional time is required to locate and retrieve the records because the records are not stored on the site or cannot be located;
 - 2. The record or records require redaction of confidential, privileged or otherwise protected material;
 - 3. The record is subject to current use as part of an on-going investigation and cannot be provided without interrupting or jeopardizing the investigation and/or its timeliness, or the unavailability of the record to the Department's staff will jeopardize the health, safety or welfare of the persons the investigation is intended to protect or the persons involved in the investigation;
 - 4. A computer or computer system that contains the record is unable to be accessed, is undergoing maintenance or re-programming for any Departmental program purposes, and/or cannot be reproduced without substantially interfering with the delivery of services to the public or without damage to the integrity, operability or functioning of any computer or computer system;
 - 5. Reproduction of the record or records will require development of a program or application to provide copies, in a readable format from, electronic or magnetic sources of the record or records, or that the person or entity has requested copies of the record in a specific format, and that such program, application or format does not currently exist; or
 - 6. For any reason, then the Department shall inform the requestor of the assessment and the approximate time required to comply with the request, the costs to provide reproduction of the records and provide a summary of the basis for the assessment regarding the costs of reproducing the records.

(Rule 1240-09-01-.04, continued)

Authority: T.C.A. §§4-5-201 et seq., 4-5-202; 8-4-604(a)(3); 10-7-503; 10-7-504(a)(7); 10-7-506; 10-7-506(a); 71-1-105; 71-1-105(4) and (12); *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001). **Administrative History:** Original rule filed December 2, 2002; effective February 15, 2003. Amendments filed December 10, 2009; effective March 10, 2010.

1240-09-01-.05 FEES AND COSTS FOR REPRODUCTION OF RECORDS.

- (1) The Records Custodian may assess a charge of fifteen cents (\$0.15) per page for each routine, standard 8½ x 11 or 8½ x 14 black and white copy produced. The Records Custodian may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies. The Department may charge for all costs for reproduction of the record for the person or entity that has made the records request, whether the record is determined to be "routine" or "non-routine". Copies of sizes other than 8½ x 14 may be charged at fifty cents (\$.50) per page, or, if higher, the actual costs.
- (2) If a public record is maintained in color, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy, and if the equipment is available to the Department to reproduce the copy in color. If the requestor then requests a color copy, a records custodian may assess a charge of fifty cents (\$.50) per page for each 8½ x 11 or 8½ x 14 color copy produced, or, if higher, the actual costs.
- (3) The Department shall not be required to reproduce copies on two (2) sides unless the equipment at the reproduction site is designed to automatically produce a two (2) sided copy on a single piece of paper.
- (4) Copies, exclusive of labor, made on electronic media shall be charged at a minimum of One Dollar (\$1.00) for any CD, DVD, or floppy disk if these media are available.
- (5) Magnetic copies, if available, shall be charged at a minimum of One Hundred Dollars (\$100.00) per magnetic tape containing 20 gigabytes.
- (6) The costs of reproduction shall include the following:
 - (a) Department staff labor, paper and other products and rental fees, including, but not limited to, the costs of:
 1. Staff labor costs utilized in locating, retrieving, reviewing redacting, and reproducing the record, including labor and other costs utilized in reviewing and assessing the estimated cost to reproduce the record; and
 2. Paper or other products such as, but not limited to, copy toner or toner cartridges, inks, electronic or magnetic media including, but not limited to compact disks, DVDs, floppy disks, etc., or any per copy charges incurred by the Department on any rented equipment.
 - (b) Development of Computer Programs and Applications, including, but not limited to:
 1. Creation of a new or modified computer program or computer application that is necessary to put the records in a readable and reproducible format or in a specific reproducible format that is requested by the person or entity seeking copies of the record; and

(Rule 1240-09-01-.05, continued)

2. In such case, the costs of staff, contractor, or consultant specialist time required for the production of the program or application and the costs of any new or modified software or hardware necessary for the production of the records may also be charged by the Department as costs of reproduction of the record.
 - (c) The costs for delivering the records by mail or any other delivery services or any other mechanisms or processes, electronic, magnetic or otherwise.
 - (d) Any other costs associated with actually reproducing the requested records, including all charges by vendors and contractors utilized to access or reproduce the records.
 - (e) The records custodian shall utilize the most cost efficient method of producing the requested records.
- (7) Calculation of Department Staff Labor Costs.
- (a) Department staff labor costs shall be charged at either the hourly rate, for the staff person's position as set by the Department of Human Resources, or, if paid on a salary basis based on the annual salary, excluding the first hour of labor and benefits, including the cost of any overtime that is necessary to reproduce the record.
 - (b) The hourly rate is that established by the Department of Human Resources for that staff person's position. If the staff person is paid on a salary basis, the rate paid is that based upon the annual base salary of the employee(s) excluding benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual base salary by the required hours to be worked per year which will be Nineteen Hundred Fifty (1,950) hours for full-time employees. For example, an employee who is expected to work a Thirty-Seven and One-Half (37.5) hour work week and receives Thirty-Nine Thousand Dollars (\$39,000) in salary on an annual basis will be deemed to be paid Twenty Dollars (\$20) per hour.
 - (c) When the aggregate number of requests made by a requestor within a calendar month exceeds four (4), the requestor will be charged a fee for any and all labor that is reasonably necessary to produce the copies of the requested records after informing the requestor that the aggregation limit has been met.
- (8) Contractor or Consultant Costs.
- The costs of a contractor or consultant's time shall be charged at the unit rates charged to the Department pursuant to the Department's existing contract or any contract made necessary due to the copy request.
- (9) Specialist Costs.
- The costs of a specialist's time shall be charged at the costs invoiced to the Department for the services provided that are related to the reproduction of the record.
- (10) Copying by Requesting Person or Entity.
- (a) The Commissioner, or the Commissioner's designee, may, in his or her discretion, permit the requestor to supply the necessary equipment and supplies to make the requested copies where the records are housed or located for purposes of the records request, and all, or a portion, of the fees required by this Chapter may, in his or her discretion, be waived by the Department, but no record shall be permitted to be

(Rule 1240-09-01-.05, continued)

removed from the Department's offices for this purpose without written approval by the Commissioner or the Commissioner's designee.

- (b) The Department may provide any personnel to observe the copying process permitted by this paragraph to protect the integrity of the records, and the costs of staff time necessary for this purpose may be charged pursuant to this Chapter.

Authority: T.C.A. §§4-5-201 et seq.; 4-5-202; 8-4-604(a)(3); 10-7-503; 10-7-504(a)(7); 10-7-506; 10-7-506(a); 71-1-105; 71-1-105(4) and (12); *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001). **Administrative History:** Original rule filed December 2, 2002; effective February 15, 2003. Amendment filed December 10, 2009; effective March 10, 2010.

1240-09-01-.06 PAYMENT FOR RECORDS.

- (1) Prior to copies being made, or prior to developing a specific format for the reproduction of records, payment in full must be made to the Department, unless the payment is waived or delayed pursuant to rule 1240-09-01-.07 below.
- (2) Payment for the costs of reproducing records shall be made only by cashier's check, money order, or other reliable means as determined by the Department.
- (3) The cashier's check or money order shall be made payable to the Treasurer, State of Tennessee, and delivered to the Records Custodian.

Authority: T.C.A. §§4-5-201 et seq.; 4-5-202; 8-4-604(a)(3); 10-7-503; 10-7-504(a)(7); 10-7-506; 10-7-506(a); 71-1-105; 71-1-105(4) and (12); *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001). **Administrative History:** Original rule filed December 2, 2002; effective February 15, 2003. Amendment filed December 10, 2009; effective March 10, 2010.

1240-09-01-.07 WAIVER OF FEES.

- (1) The Commissioner or the Commissioner's designee may waive the applicable fees for copies as defined above when the amount for such copies is equal to or less than One Dollar (\$1.00). Costs for reproduction of records above One Dollar (\$1.00) shall be charged as otherwise required by this Chapter, unless waived pursuant to this Section.
- (2) The Commissioner or the Commissioner's designee may allow payment to be delayed under such circumstances as the Commissioner or the Commissioner's Designee may, in his or her discretion, determine is appropriate.
- (3) If the Commissioner or the Commissioner's designee determines that the person who seeks copies of these public records is indigent under Federal poverty guidelines, then the Commissioner or the Commissioner's designee may waive the applicable fees.
- (4) Excessive or unreasonable requests for waivers, or requests that can otherwise be reasonably construed as an attempt to avoid the intended compensation for copies that exceed One Dollar (\$1.00), as described in Paragraph (1), may be denied.
- (5) The Commissioner or the Commissioner's designee, may, in his or her discretion, provide copies of rules, policy, state or federal programs, guidance documents, public reports, etc., without charge:

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- (a) for general public information or announcement purposes to applicants for, or recipients of, services from the Department's programs, or to provide information to such persons or their representatives in response to case-specific situations;
- (b) to legislative, judicial or administrative bodies or tribunals as part of providing general or specific information or clarification regarding the Department's programs or activities or in response to a case-specific request relative to applicants for, or recipients of, services from the Department or its employees, or for any other purpose;
- (c) to other state, county or local agencies, their investigative, administrative, enforcement, regulatory, audit or law enforcement agencies, or for any other purpose;
- (d) to advocacy groups, as determined by the Department, for persons served by the Department, to provide information or clarification, regarding Department programs or activities involving the Department's programs and policies;
- (e) to federal law enforcement, audit, program, administrative or regulatory agencies, or for any other purpose, or
- (f) if necessary to comply with any provisions of federal or state laws, court orders, regulations or policy directives.

Authority: T.C.A. §§4-5-201 et seq., 71-1-105; 10-7-503 and 10-7-506; *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001).

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