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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Austin Peay State University
Division:	
Contact Person:	Corey Harkey
Address:	601 College Street, Clarksville, Tennessee 37044
Phone:	931-221-7584
Email:	harkeyc@apsu.edu

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Corey Harkey
Address:	601 College Street, Clarksville, Tennessee 37044
Phone:	931-221-7584
Email:	harkeyc@apsu.edu

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

Address 1:	Room 103 BC, Morgan University Center		
Address 2:	601 College Street		
City:	Clarksville		
Zip:	37044		
Hearing Date:	05/12/2021		
Hearing Time:	12:00 pm	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0240-05-04	Access to Public Records
Rule Number	Rule Title
0240-05-04-.01	Scope
0240-05-04-.02	Definitions
0240-05-04-.03	General Policy Statement

0240-05-04-.04	Requesting Accessing to Public Records
0240-05-04-.05	Responding to Public Records Requests
0240-05-04-.06	Redaction
0240-05-04-.07	Inspection of Records
0240-05-04-.08	Request for Copies of Records
0240-05-04-.09	Aggregation of Frequent and Multiple Requests

Rules
of
Austin Peay State University

Chapter 0240-05-06
Title IX Compliance

New Chapter

Division 0240-05 is amended by adding Chapter 04 Access to Public Records, a table of contents, and Rules .01 through .09, so that it shall read as follows:

Table of Contents

0240-05-04-.01 Scope
0240-05-04-.02 Definitions
0240-05-04-.03 General Policy Statement
0240-05-04-.04 Requesting Access to Public Records
0240-05-04-.05 Responding to Public Records Requests
0240-05-04-.06 Redaction
0240-05-04-.07 Inspection of Records
0240-05-04-.08 Request for Copies of Records
0240-05-04-.09 Aggregation of Frequent and Multiple Requests

0240-05-04-.01 Scope is added to Chapter 0240-05-04 Access to Public Records and shall read as follows:

0240-05-04-.01 Scope.

- (1) This rule does not apply to a student's request to see his/her own education records or to an employee's or former employee's reasonable requests to review or copy his/her own personnel file.
- (2) Proof of Tennessee citizenship for the purpose of access to public records is not proof of residency for the purpose of classifying students as in-state or out-of-state when assessing tuition and fees and for admission purposes.

Authority: T.C.A. §§ 10-7-503(g)(2) and 49-8-203(a)(4).

0240-05-04-.02 Definitions is added to Chapter 0240-05-04 Access to Public Records and shall read as follows:

0240-05-04-.02 Definitions.

- (1) Public Records: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official University business and required to be open to inspection under the provisions of Tennessee law.
- (2) Public Records Request Coordinator ("Coordinator"): The designated individual who has the responsibility to ensure Public Record requests are routed to the appropriate records custodian and are fulfilled in accordance with the Tennessee Public Records Act.
- (3) Records Custodian: The office, official, or employee lawfully responsible for the direct custody and care of a Public Record.
- (4) Requestor: A person seeking access to a Public Record, whether it is for inspection or duplication.

Authority: T.C.A. §§ 10-7-503(g)(2) and 49-8-203(a)(4).

0240-05-04-.03 General Policy Statement is added to Chapter 0240-05-04 Access to Public Records and shall read as follows:

0240-05-04-.03 General Policy Statement.

- (1) Austin Peay State University shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of Public Records as required by law.

Authority: T.C.A. §§ 10-7-503(g)(2) and 49-8-203(a)(4).

0240-05-04-.04 Requesting Access to Public Records is added to Chapter 0240-05-04 Access to Public Records and shall read as follows:

0240-05-04-.04 Requesting Access to Public Records.

- (1) Public Records requests should be directed to the Coordinator or his/her designee in order to ensure Public Records requests are routed to the appropriate Records Custodian and fulfilled in a timely manner.
- (2) Requestor may contact the Coordinator in person, by telephone, by email, or by mail.
- (3) Austin Peay State University will publish the name/title, telephone number, email address, and office location of the Coordinator on its website or similar publication.
- (4) Austin Peay State University will not require a Requestor to submit a request for inspection in writing, absent good cause. Request for copies, or requests for inspection and copies, must be made in writing.
- (5) Austin Peay State University will require proof of Tennessee citizenship by either a valid Tennessee driver's license or alternative acceptable form of identification as a condition to inspect or receive copies of Public Records.

Authority: T.C.A. §§ 10-7-503(g)(2) and 49-8-203(a)(4).

0240-05-04-.05 Responding to Public Records Requests is added to Chapter 0240-05-04 Access to Public Records and shall read as follows:

0240-05-04-.05 Responding to Public Records Requests.

- (1) The Coordinator shall, as necessary or appropriate:
 - (a) Request proof of Tennessee citizenship;
 - (b) Clarify the scope of the request;
 - (c) Advise the Requestor that APSU may charge for copies if the request exceeds the costs threshold allowed by its rule;
 - (d) Advise the Requestor that APSU is not the custodian of the record;
 - (e) Provide the records;
 - (f) Deny the request in writing, providing the appropriate basis, such as one of the following:
 1. The Requestor is not a Tennessee citizen or has not presented evidence of Tennessee citizenship;

2. The request lacks specificity;
 3. An exemption makes the record not subject to disclosure under the Tennessee Public Records Act;
 4. The records do not exist.
- (2) The Coordinator may deny the request provided the Coordinator has identified in writing the specific legal basis for the denial of the request.
 - (3) The Coordinator may, if appropriate, contact the Requestor to see if the request can be narrowed.
 - (4) If requested records are in the custody of a different governmental entity and the Coordinator knows the correct governmental entity, the Coordinator may direct the Requestor to the correct governmental entity.
 - (5) A Records Custodian must promptly forward a request to the Coordinator and assist the Coordinator in making the records available to the Requestor in a timely manner.
 - (6) All efforts will be made to promptly provide requested records. If additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open, to redact records; or for other similar reasons, then the Coordinator shall, within seven (7) business days from the receipt of the request, send the Requestor a completed Public Records Response Form.
 - (7) If the Coordinator reasonably determines production of records should be segmented because the Public Records Request is for a large volume of records, or additional time is necessary to prepare the records for access, the Coordinator shall notify the Requestor in writing that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the Coordinator may contact the Requestor to see if the request can be narrowed.
 - (8) If the Coordinator discovers records responsive to a records request were omitted, the Coordinator will notify the Requestor and produce the records as quickly as practicable.
 - (9) The University is not required to sort through files to compile information, create records, or recreate records that do not exist.

Authority: T.C.A. §§ 10-7-503(g)(2) and 49-8-203(a)(4).

0240-05-04-.06 Redaction is added to Chapter 0240-05-04 Access to Public Records and shall read as follows:

0240-05-04-.06 Redaction.

- (1) With the exception of records which are confidential in their entirety, if a record contains confidential information or information that is not open for public inspection, the Coordinator, with assistance from the Records Custodian, shall prepare a redacted copy of the record prior to providing access.
- (2) Whenever the Custodian provides a redacted record, the Coordinator will advise the Requestor of the general basis or bases for the redaction(s).

Authority: T.C.A. §§ 10-7-503(g)(2) and 49-8-203(a)(4).

0240-05-04-.07 Inspection of Records is added to Chapter 0240-05-04 Access to Public Records and shall read as follows:

0240-05-04-.07 Inspection of Records.

- (1) Austin Peay State University will not charge for inspection of Public Records.
- (2) Austin Peay State University will advise the Requestor of the location where the records may be inspected and may, under reasonable circumstances, require an appointment for inspection. Public Records will be open for inspection by citizens of Tennessee during business hours which shall be the business hours of the University's administrative offices. Inspection must be made in the presence of the Coordinator or Records Custodian, and custody of the original record is not to be relinquished.

Authority: T.C.A. §§ 10-7-503(g)(2) and 49-8-203(a)(4).

0240-05-04-.08 Request for Copies of Records is added to Chapter 0240-05-04 Access to Public Records and shall read as follows:

0240-05-04-.08 Request for Copies of Records.

- (1) The Coordinator will respond to a Public Records request for copies in the most economic and efficient manner practicable.
- (2) Copies will be available for pickup at a location specified by the Coordinator. At Requestor's request, and upon payment of postage, the Coordinator may mail the copies to the Requestor via US Mail.
- (3) The Coordinator will work to provide Requestors with an estimate of the charges to be assessed for copies and labor prior to producing copies of records. The Coordinator may require prepayment of such charges before producing the requested records.
- (4) Austin Peay State University will publish the per page copy charges and a schedule of other costs, and labor charges will be calculated and imposed as allowed by the Office of Open Records.
- (5) If fees for copies, labor, and postage do not exceed twenty-five dollars (\$25), APSU may waive those fees. Requests for waivers for costs that exceed \$25 must be presented to the Coordinator, who is authorized to determine if such waiver is in the best interest of APSU or for the public good. APSU will not waive fees associated with aggregated records requests.
- (6) Notwithstanding the form of the records, reproduction or copying of records shall be made in a form as best determined by the Coordinator or Records Custodian. 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 Coordinator may charge the Requestor 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.
- (7) A Requestor may use a personal cellphone to take pictures of records when the total amount of pages to be photographed does not exceed twenty (20) pages.
- (8) A Requestor must pay by cash or personal check made payable to APSU and presented to the Coordinator.

Authority: T.C.A. §§ 10-7-503(g)(2) and 49-8-203(a)(4).

0240-05-04-.09 Aggregation of Frequent and Multiple Requests is added to Chapter 0240-05-04 Access to Public Records and shall read as follows:

0240-05-04-.09 Aggregation of Frequent and Multiple Requests.

- (1) Austin Peay State University will aggregate record requests in accordance with the current Office of Open Records Schedule for Reasonable Charges for Frequent and Multiple Requests when more than four (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.
- (2) The Coordinator is responsible for making the determination that a group of individuals are working in concert. The Coordinator or Records Custodian must inform the individuals of the basis for the aggregation and that they have the right to appeal the decision to the Office of Open Records Counsel.

Authority: T.C.A. §§ 10-7-503(g)(2) and 49-8-203(a)(4).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: March 12, 2021

Signature: e/Corey Harkey

Name of Officer: Corey Harkey

Title of Officer: Interim General Counsel

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Tre Hargett
Secretary of State

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