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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.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Intellectual and Developmental Disabilities
<b>Division:</b>	
<b>Contact Person:</b>	Richard R. Prybilla
<b>Address:</b>	315 Deaderick Street, UBS Tower, 8 <sup>th</sup> Floor, Nashville, TN
<b>Phone:</b>	615-532-6526
<b>Email:</b>	<a href="mailto:Richard.R.Prybilla@tn.gov">Richard.R.Prybilla@tn.gov</a>

*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:*

<b>ADA Contact:</b>	Vickey Coleman
<b>Address:</b>	315 Deaderick Street, UBS Tower, 8 <sup>th</sup> Floor, Nashville, TN
<b>Phone:</b>	901-356-6324
<b>Email:</b>	<a href="mailto:Vickey.Coleman@tn.gov">Vickey.Coleman@tn.gov</a>

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

Address 1:	DIDD Middle Tennessee Regional Office, One Cannon Way Bldg., Basement		
Address 2:	275 Stewarts Ferry Pike, Payne Conference Room		
City:	Nashville		
Zip:	37214		
Hearing Date:	07/06/2020		
Hearing Time:	1:00 p.m. – 2:30 p.m.	X_CST/CDT	__EST/EDT

**Additional Hearing Information:**

**Alternate Hearing Option (Only If the In-Person Hearing is Prohibited by Executive Order)**

**If physical congregating in groups of 10 or more persons is prohibited by Executive Order or social distancing phase-in guidance issued by Governor Lee, then the hearing will not be held at the location above but will, instead, be held electronically by WebEx at the same date and time provided above. In that event, you may join by going to this link:**

<https://tngov.webex.com/webappng/sites/tngov/meeting/info/160699696947408566?MTID=m24f8a05dcd0c0dfa063369bea7e5bfc6>

Meeting number (access code): 612 107 255

Meeting password: h2hVg9WYUE3

or join by phone

Tap to call in from a mobile device

[+1-415-655-0003](tel:+14156550003) US TOLL

**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
0465-01-04	Public Records
Rule Number	Rule Title
0465-01-04-.01	Purpose and Application
0465-01-04-.02	Effective Date
0465-01-04-.03	Legal Basis
0465-01-04-.04	Definitions
0465-01-04-.05	Access to Public Records
0465-01-04-.06	Requesting Access to Public Records
0465-01-04-.07	Responding to Public Records Requests
0465-01-04-.08	Records Custodian
0465-01-04-.09	Redaction
0465-01-04-.10	Inspection of Records
0465-01-04-.11	Copies of Records
0465-01-04-.12	Fees and Charges
0465-01-04-.13	Aggregation of Frequent and Multiple Requests

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

0465-01-04-.01 Purpose and Application.

The purpose of these rules is to establish a process and procedures, pursuant to T.C.A. §§ 10-7-503(g) and 10-7-504, to provide economical and efficient access to public records of the Department of Intellectual and Developmental Disabilities (“DIDD” or “department”), in compliance with the Tennessee Public Records Act (“TPRA”), except as otherwise provided by law. These rules apply to employees of DIDD and any citizen of Tennessee requesting public records of DIDD.

Authority: T.C.A. §§ 4-3-2708, 10-7-503, 10-7-504, 33-1-303, and 45 C.F.R. Part 164, Subpart E. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

0465-01-04-.02 Effective Date.

The effective date of the rules set forth in this chapter shall be \_\_\_\_\_.

Authority: T.C.A. § 4-5-207. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

0465-01-04-.03 Legal Basis.

As directed by the Legislature, by January 1, 2019, state agencies and departments shall promulgate rules regarding public records in compliance with T.C.A. § 10-7-503(g).

Authority: T.C.A. § 10-7-503(g). Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

0465-01-04-.04 Definitions.

(1) The following terms as used in these rules shall have the meanings described below:

- (a) “Office of Open Records Counsel” (OORC) means the office of the Tennessee Comptroller of the Treasury serving citizens, media, and governmental entities as a resource for issues concerning Tennessee’s public records laws.
- (b) “Public 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 DIDD.

- (c) "Public Records Request Coordinator" (PRRC) means the DIDD employee who has the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA and these rules. The Public Records Request Coordinator may also be a records custodian.
- (d) "Records Custodians" means the employees of DIDD lawfully responsible for the direct custody and care of public records. The records custodians are not necessarily the original preparers or receivers of the records.
- (e) "Requestor" means a person seeking access to a public record, whether it is for inspection or duplication.
- (f) "Tennessee Public Records Act" (TPRA) means the statutes codified at T.C.A. §§ 10-7-501, et seq.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

#### 0465-01-04-.05 Access to Public Records.

- (1) DIDD public records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state or federal law.
- (2) Personnel of DIDD shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of these rules shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of DIDD, and the persons it supports, shall be protected as provided by current law.
- (3) These rules shall be applied consistently throughout the various offices, departments, and/or divisions of DIDD, except that records requests directed to DIDD's Office of General Counsel will be handled in accordance with applicable law and procedural rules pertaining to privileged communications.

Authority: T.C.A. §§ 10-7-503, 33-1-303, and 45 C.F.R. Part 164, Subpart E. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

#### 0465-01-04-.06 Requesting Access to Public Records

- (1) Public record requests shall be made to the PRRC or his/her designee in order to ensure that public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- (2) A request to view public records may be made to the PRRC orally or in writing using the "DIDD Public Records Request Form" found on the DIDD website. The form may be mailed to the PRRC's mailing address, or emailed, or faxed to the PRRC at DIDD's Central Office. The PRRC may request contact information from the requestor for the purpose of providing any written communication required under the TPRA.
- (3) Requests for copies, or requests for inspection and copies, shall be made to the PRRC in writing using the form referred to above.
- (4) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or, in the discretion of the PRRC, alternative acceptable form of ID showing the requestor's address) is required as a condition to inspect or receive copies of DIDD public records.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

#### 0465-01-04-.07 Responding to Public Records Requests.

- (1) Public Records Request Coordinator (PRRC)

- (a) DIDD's designated PRRC is the person whose name and contact information appears on the DIDD Public Records Request Form. Contact information for the PRRC may also be found on DIDD's website.
- (b) The PRRC shall review public record requests and make an initial determination of the following:
  - 1. If the requestor provided evidence of Tennessee citizenship;
  - 2. If the records requested are described with sufficient specificity to identify them; and
  - 3. If DIDD is the custodian of the requested records.
- (c) The PRRC shall acknowledge receipt of a records request by appropriate means and take any of the following appropriate actions:
  - 1. Advise the requestor of these rules and requirements regarding:
    - (i) Evidence of Tennessee citizenship;
    - (ii) The form required to request copies;
    - (iii) Fees; and
    - (iv) Aggregation of multiple or frequent requests.
  - 2. If appropriate, deny the request in writing within seven (7) business days of receipt of the request, using the "DIDD Public Records Request Response Form", found on the DIDD website, providing the grounds for the denial, such as one or more of the following:
    - (i) The requestor has not presented evidence of Tennessee citizenship;
    - (ii) The request lacks specificity;
    - (iii) A specified exemption, or state or federal law makes the record not subject to disclosure under the TPRA;
    - (iv) DIDD is not the custodian of the requested records; or
    - (v) The records do not exist.
  - 3. If appropriate, contact the requestor to see if the request can be narrowed.
  - 4. Forward the records request to the appropriate DIDD records custodian.
  - 5. If requested records are in the custody of a different government department or agency, and the PRRC knows the correct governmental entity, the PRRC will provide that information to the requestor with contact information for the PRRC for that entity, if known.

Authority: T.C.A. §§ 10-7-503, 33-1-303, and 45 C.F.R. Part 164, Subpart E. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

0465-01-04-.08 Records Custodian.

- (1) Upon receiving a public records request, a DIDD records custodian shall promptly make requested public records not specifically exempt from disclosure available as required by T.C.A. § 10-7-503(a)(2). The custodian may notify the requestor of the time and place of inspection or availability of copies of the records for pickup using the DIDD Public Records Request Response Form or by other means. The custodian may also furnish copies of the requested records, subject to the payment of fees and charges, by sending them to the requestor along with the Public Records Request Response Form.

- (2) If the records custodian is uncertain that an applicable exemption or state or federal law prohibiting disclosure applies, the custodian may consult with the PRRC or DIDD's Office of General Counsel.
- (3) If it is not practicable to promptly make available for inspection or furnish copies of requested records, because 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 protected from disclosure, to redact records, or for other similar reasons, then the PRRC or records custodian shall, within seven (7) business days from receipt of the request by the PRRC, send the requestor the Public Records Request Response Form indicating the reason for the delay and an estimate of the time that will be necessary to produce the records or determine the proper response to the request.
- (4) A denial by the records custodian shall be in writing, made within seven (7) business days from receipt of the request by the PRRC using the Public Records Request Response Form.
- (5) If a records custodian, in consultation with the PRRC and/or Office of General Counsel, reasonably determines that production of requested records should be segmented because the records request is for a large volume of records, or that additional time is necessary to prepare the records for access, the records custodian shall use the Public Records Request Response Form to notify the requestor that production of the records will be in segments or groups and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the PRRC or records custodian should contact the requestor to see if the request can be narrowed.
- (6) If a records custodian discovers records responsive to a prior records request were omitted, he/she should contact the requestor concerning the omission and produce the records as soon as practicable.

Authority: T.C.A. §§ 10-7-503, 33-1-303, and 45 C.F.R. Part 164, Subpart E. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

0465-01-04-.09 Redaction.

- (1) If a DIDD record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access or copies. If questions arise concerning redaction, the records custodian should coordinate with the PRRC or Office of General Counsel regarding review and redaction of records. If necessary, DIDD's attorneys may consult with the Office of Open Records Counsel (OORC) or with the Office of Attorney General and Reporter regarding this or other issues concerning records requests.
- (2) Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

Authority: T.C.A. §§ 10-7-503, 33-1-303, and 45 C.F.R. Part 164, Subpart E. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

0465-01-04-.10 Inspection of Records.

- (1) There shall be no charge for inspection of open public records.
- (2) The location for inspection of DIDD records shall be determined by the PRRC or the records custodian.
- (3) The PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.
- (4) During the inspection, the requestor shall have the right to make copies and take photographs or photostats of complete or partial records. However, DIDD will not certify the accuracy of copies, photographs, or photostats made with the requestor's personal equipment, such as a printer, a cell phone, or a copy machine.

Authority: T.C.A. §§ 10-7-503 and 10-7-506. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

0465-01-04-.11 Copies of Records.

- (1) The PRRC and/or records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- (2) Copies will be available for pickup at a location specified by the PRRC or records custodian.
- (3) Copies will be mailed to the requestor's address by U. S. Mail on request, and upon payment by the requestor of estimated postage charges and fees for copies and labor, unless other arrangements have been made in advance for billing the requestor for such fees or charges. Copies may also be emailed to the requestor on request, and upon payment of fees for copies and labor. If electronic copies are provided on a flash drive or other storage device, the requestor may be charged the department's out-of-pocket cost for such device.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

0465-01-04-.12 Fees and Charges.

- (1) Excessive fees and charges for copies of public records should not be used to hinder access to public records.
- (2) Records custodians shall provide requestors with a good faith estimate of the fees and charges prior to producing the requested records.
- (3) When fees and charges for copies and labor do not exceed \$50, the fees may be waived. Requests for waivers for fees above \$50 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of DIDD and for the public good. Fees associated with aggregated records requests will not be waived.
- (4) Fees and charges for copies and labor are as follows:
  - (a) \$0.15 per page for letter and legal size black and white copies.
  - (b) \$0.50 per page for letter and legal size color copies.
  - (c) Labor charges when time exceeds one (1) hour for time reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, reproducing, redacting, or scanning records, will vary depending on the hourly rates of the employee(s) doing the work and may include the time of an attorney reasonably necessary to review records and redactions to ensure compliance with confidentiality requirements of state and federal law.
  - (d) If an outside vendor is used, the actual costs assessed by the vendor.
  - (e) No duplication costs will be charged for requests resulting in ten (10) or fewer pages of records. No duplication costs will be charged for records provided electronically except when paper copies that did not already exist are required to be created in responding to the request, such as when a record must be printed to be redacted.
  - (f) Payment is to be made by check or money order payable to DIDD and mailed or hand delivered to DIDD Fiscal and Administrative Services.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

0465-01-04-.13 Aggregation of Frequent and Multiple Requests.

- (1) DIDD will aggregate records requests in accordance with the "Reasonable Charges for Frequent and Multiple Requests" policy promulgated by the OORC, which may be found on the DIDD website, when four or more requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.
- (2) Requests for any DIDD records, regardless of the type of records requested or whether the request is


directed to, or specifies that the records requested pertain to, a local, regional or central office of the department, may be aggregated.

- (3) The PRRC is responsible for making the determination that a group of individuals is working in concert. The PRRC or the records custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.
- (4) Once the aggregation threshold is reached, the exemption for labor charges up to one hour specified in Rule 0465-01-04-.12(4) above does not apply for the second and subsequent requests.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed \_\_\_\_\_, effective \_\_\_\_\_.

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: 5/13/2020

Signature: 

Name of Officer: Richard R. Prybilla

Title of Officer: Deputy General Counsel

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Tre Hargett  
Secretary of State

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