

Notice  
of  
Rulemaking Hearing

Tennessee Department Of Finance And Administration

There will be a hearing before the Tennessee Department of Finance and Administration to consider the promulgation of rules pursuant to Tennessee Code Annotated Sections 4-5-202, 4-3-1001, 10-7-503 and 10-7-506. This hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated Section 4-5-204 and will take place in the Multi-Media Room of the William Snodgrass Tennessee Tower Building located at 3rd Floor, 312 8th Avenue North, in Nashville, Tennessee at 9:00 a.m., Central Time, on the 16 day of August, 2007.

If any individual with a disability wishes to participate in this rulemaking process or review this filing of Notice of Rulemaking and may need assistance to do so, the individual should contact the Department of Finance and Administration to discuss any auxiliary aids or services that may be needed to facilitate participation or review. Such contact may be in person, by writing, telephonically or otherwise, and should be made as far in advance of the rulemaking hearing date or the date the party intends to review the filings as possible, to allow time for the Department of Finance and Administration to provide such aid or service. The Department urges that no less than fifteen (15) days notice be given. Initial contact may be made with Renee Jackson at 21st Floor, 312 8th Avenue North, Nashville, Tennessee, (615) 741-1343.

For a copy of this notice, contact April Mayambu at Suite 2100, 312 8th Avenue North, William R. Snodgrass Tennessee Tower, Nashville, Tennessee 37243, (615) 741-0320.

Substance of Proposed Rules

The Tennessee Department of Finance and Administration

Administration Division

Chapter 0620-03-10

Access to Public Records of the Department of Finance and Administration

New Rules

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0620-03-10-.01 Purpose and Scope

- (1) These rules are promulgated for the purpose of providing procedures to allow access to records of the Tennessee Department of Finance and Administration 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.; §§ 4-3-1001 et seq.; §§ 10-7-503 and 10-7-506; *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); Op. Tenn. Atty. Gen. 01-021 (Feb. 8, 2001).

0620-03-10-.02 Definitions

- (1) "Commissioner" is the executive officer in charge of the Tennessee Department of Finance and Administration.
- (2) "Commissioner's Designee" means Deputy Commissioner, Assistant Commissioners, Attorneys, or Division Directors of the Department of Finance and Administration.
- (3) "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.
- (4) "Public Record"
  - (a) "Public Record" means, for purposes of this Chapter, any record of the Department that is deemed to be open to inspection of the public pursuant to the provisions of the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq., and pursuant to court order and case law interpreting the Act.
  - (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 law or regulation, or federal law or regulation, or under any court order; 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.
- (5) "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.
- (6) "Routine Copy" is 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. Any records, even if stored electronically or magnetically, shall not be deemed routine copies if it is necessary to print the copies of the record by means of a separate screen-print for each individual page of the record.

Authority: T.C.A. §§ 4-5-201 et seq.; §§ 4-3-1001 et seq.; §§ 10-7-503 and 10-7-506; *Tennessee v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); Op. Tenn. Atty. Gen. 01-021 (Feb. 8, 2001).

0620-03-10-.03                      Requests for Access to Records

- (1) A request for access to public records 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.
- (2) Requests may be made orally or in writing to the office of the Commissioner, or to the Assistant Commissioner of the Division of Administration and Resource Development and Support, and shall identify with reasonable specificity the record, set or system of records which is requested. 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. The Department is not required to provide access on a schedule set unilaterally by the requester. If the request for records is not specific, the Department will not begin complying with the request until the request is amended to provide reasonable specificity.
- (3) Prior Review and Assessment for Confidential, Privileged or Protected Material/Non-Routine Requests.
  - (a) Review, Assessment and Redaction for Access to Records Requests.
    - 1. Before providing access to the requested record, the Department's staff shall review the requested record or records as quickly as reasonably possible, 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 and the scope of the requested access.
    - 2. Upon review, the Department's staff may redact any such data or information prior to release of the record, or portion of the record, that it has reason to believe 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 after this review and assessment that none of the provisions of subparagraph (c) below apply and access can otherwise be provided immediately, it shall do so at a reasonable time and place without undue delay.-
  - (c) If it appears from the Department's review and assessment that access to the record, or the system of records, cannot be made available for inspection 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 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. There is a shortage of personnel to provide access to the records and/or escort the requester to or through secured areas of Department facilities at the time of the request.
7. For any other reason,

then Department shall inform the requesting person of the assessment and the approximate time required in complying with the request and a summary of the basis for the assessment regarding access to the records. The Department shall provide an approximate time which is reasonable under the circumstances disclosed in the response. This approximate time may be amended by the Department if unforeseen circumstances prevent the Department from complying with the original response time.

- (4) If the requested material has been posted on the Internet, and this material can be accessed and reviewed by the general public without payment of a subscription or access fee for the web site, the Department may satisfy its obligations to make this material available for inspection by providing the complete internet address. However, the State may not rely on this provision if the requester demonstrates to the State's satisfaction that access to the Internet would be unduly burdensome.
- (5) The Department is not obligated to provide access to any record that is not maintained by the Department, but is maintained by another State or federal agency, governmental entity, or private contractor.

Authority: T.C.A. §§ 4-5-201 et seq.; §§ 4-3-1001, et seq.; §§ 10-7-503 and 10-7-506; *Tennessee v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001).

- (1) A request for copies of public records 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.
- (2) Requests may be made orally or in writing to the office of the Commissioner, or to or to the Assistant Commissioner of the Division of Administration and Resource Development and Support, and shall identify with reasonable specificity the record, set or system of records which is requested. 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.
- (3) Prior Review and Assessment for Confidential, Privileged or Protected Material/Non-Routine Copy Requests.
  - (a) Review, Assessment and Redaction of Records for Copy Request.
    1. Before reproducing copies of the requested record, the Department's staff shall review the requested record or records as quickly as reasonably possible consistent with the availability of appropriate staff and with regard to the scope of the records request and shall make an assessment of the status and scope of the copy request and the difficulty and costs for copies of, or for preparing, any records to determine if the request will require that "routine" or "non-routine" copies, as defined in Section 0620-03-10-.02, or a combination thereof, be provided.
    2. Upon review, the Department's staff may redact any such data or information prior to release of the record, or portion of the record, that it has reason to believe has or that 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 within a reasonable time, 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 within a reasonable time
  - (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;
6. The unavailability of personnel and/or equipment to conduct the copying work;  
or
7. For any other reason,

then the Department shall inform the requesting person of the assessment and the approximate time required and costs involved in complying with the request and a summary of the basis for the assessment regarding the reproduction of copies of the records. This approximate time may be amended by the Department if unforeseen circumstances prevent the Department from complying with the original response time.

- (4) If the requested material has been posted on the Internet, and this material can be accessed and reviewed by the general public without payment of a subscription or access fee for the web site, and there is no restriction on printing materials from that website, the Department may satisfy its obligations to make this material available for inspection by providing the complete internet address. However, the State may not rely on this provision if the requester demonstrates to the State's satisfaction that making copies from the Internet would be unduly burdensome.
- (5) The Department is not obligated to provide copies of any record that is not maintained by the Department but is maintained by another State or federal agency, governmental entity, or private contractor.

Authority: T.C.A. §§ 4-5-201 et seq.; §§ 4-3-1001 et seq.; §§ 10-7-503 and 10-7-506; *Tennessee v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001).

0620-03-10-.05 Fees and Costs for Reproduction of Records

- (1) Routine paper copies shall be charged at a minimum of Fifteen Cents (\$0.15) per one-sided page and Twenty Cents (\$.20) for a two-sided copy.
- (2) Non-Routine paper copies shall be charged at a minimum of Fifty Cents (\$0.50) per one-sided page and Sixty Cents (\$.60) for a two-sided copy.
- (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) Electronic copies shall be charged at a minimum of Ten Dollars (\$10.00) per CD, 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.

- (6) 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". The costs of reproduction shall include the following:
- (a) Department staff time, paper and other products and rental fees, including, but not limited to, the costs of:
    - (i) Staff time utilized in researching, retrieving and/or copying the record;
    - (ii) Paper or other products such as copy toner or toner cartridges, inks, electronic or magnetic media including, but not limited to compact 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,:
    - (i) 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;
    - (ii) 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, electronic, magnetic or otherwise; and
  - (d) Any other costs associated with actually reproducing the requested records, except those out-of-pocket or staff time costs associated with locating or gathering the records.
- (7) Department Staff Time Charges.
- (a) Staff time of any Department staff shall be charged at the hourly rate for the staff person's position plus 28% for 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 Personnel for the staff person's position, or the rate determined by dividing the staff person's gross monthly salary by one hundred, sixty-two and one-half (162.5) hours, whichever is greater.
- (8) Contractor or Consultant Costs.
- (a) 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.
- (a) 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 requesting person 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 Section may, in his or her discretion, be waived by the Department, but no record shall be permitted to be 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 Section.

Authority: T.C.A. §§ 4-5-201 et seq.; §§ 4-3-1001 et seq.; §§ 10-7-503 and 10-7-506; *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); Op. Tenn. Atty. Gen. 01-021 (Feb. 8, 2001).

0620-03-10-.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 Section 0620-03-10-.07 below.
- (2) Payment shall be made for payment of the costs of reproducing records only by cashier's check or money order.
- (3) The cashier's check or money order shall be made payable to the Treasurer, State of Tennessee, and be delivered to the Department contact responsible for reproducing the record.

Authority: T.C.A. §§ 4-5-201 et seq.; §§ 4-3-1001 et seq.; §§ 10-7-503 and 10-7-506; *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); Op. Tenn. Atty. Gen. 01-021 (Feb. 8, 2001).

0620-03-10-.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 Ten Dollars (\$10.00). Costs for reproduction of records above Ten Dollars (\$10.00) 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 Ten Dollars (\$10.00), 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:
- (a) for general public information or announcement purposes regarding the Department's programs or opportunities to provide services, 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 for any other 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 federal law enforcement, audit, program, administrative or regulatory agencies, or for any other purpose, or
  - (e) if necessary to comply with any provisions of federal or state laws, court orders, regulations or policy directives.
- (6) A person seeking waiver of fees must produce such documentation or other proof as is reasonable to establish the basis for waiver, such as indigency, or status as a government employee. A person asserting that production of records is required by court order must provide a copy of that order or other reasonable proof.

Authority: T.C.A. §§ 4-5-201 et seq.; §§ 4-3-1001 et seq.; §§ 10-7-503 and 10-7-506; *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); Op. Tenn. Atty. Gen. 01-021 (Feb. 8, 2001).

This notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of June, 2007. (FS 06-26-07, DBID 654)