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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:	Department of Labor and Workforce Development
Division:	Bureau of Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Dr. 1-B
Phone:	615-532-0179
Email:	troy.haley@tn.gov

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:	Troy Haley
Address:	220 French Landing Dr. 1-B, Nashville, TN 37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

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

Address 1:	Tennessee Room		
Address 2:	220 French Landing Drive, 1-A		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	08/30/2018		
Hearing Time:	10:00 am	<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
0800-02-29	Inspection and Copies of Public Records
Rule Number	Rule Title
0800-02-29-.01	Purpose and Scope
0800-02-29-.02	Definitions

0800-02-29-.03	Requesting Access to Public Records
0800-02-29-.04	Responding to Public Records Requests
0800-02-29-.05	Inspection of Records
0800-02-29-.06	Copies of Records
0800-02-29-.07	Fees and Charges and Procedures for Billing and Payment
0800-02-29-.08	Specific Exemptions

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

New Rules

Chapter 0800-02-29 Inspection and Copies of Public Records

0800-02-29-.01 Purpose and Scope

- (1) Pursuant to Tenn. Code Ann. § 10-7-503(g), the following rules regarding public records for the Bureau of Workers' Compensation are adopted to provide economical and efficient access to public records as provided under the Tennessee Public Records Act ("TPRA") in Tenn. Code Ann. § 10-7-501, et seq.
- (2) The TPRA provides that all state, county and municipal 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 law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of the Bureau of Workers' Compensation are presumed to be open for inspection unless otherwise provided by law.
- (3) Designated personnel of the Bureau of Workers' Compensation shall timely and efficiently provide access and assistance to persons properly requesting to inspect 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 the Bureau of Workers' Compensation shall be protected as provided by current law. Questions regarding public record requests should be addressed to the Records Custodian for the Bureau of Workers' Compensation.

Authority: T.C.A. §§ 10-7-501, 10-7-503.

0800-02-29-.02 Definitions

- (1) "Bureau" means the State of Tennessee, Bureau of Workers' Compensation.
- (2) "Office of Open Records Counsel" or "OORC" means the Office of Open Records Counsel, Tennessee Comptroller of the Treasury.
- (2) "Public Records" 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 provided under the Tennessee Public Records Act ("TPRA") in Tenn. Code Ann. § 10-7-501, et seq. See Tenn. Code Ann. § 10-7-503(a)(1)(A).
- (3) "Records Custodian" means the individual or individuals designated by the Bureau lawfully responsible for the direct custody and care of a public record. See Tenn. Code Ann. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.
- (4) "Requestor" means a citizen of Tennessee seeking access to a public record, whether it is for inspection or duplication.
- (5) "Tennessee Public Records Act" or "TPRA" means the State law codified in T.C.A. § 10-7-501, et seq., regarding access to public records.
- (6) "Workers' Compensation Law" means Tennessee Code Annotated Title 50, Chapter 6, as currently enacted by the Tennessee General Assembly, specifically including any future enactments by the Tennessee General Assembly involving amendments, deletions, additions, repeals, or any other modification, in any form, of the Workers' Compensation Law.

Authority: T.C.A. §§ 10-7-501, 10-7-503.

0800-02-29-.03 Requesting Access to Public Records

- (1) Public record requests shall be made to the Records Custodian or his/her designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- (2) Requests for inspection may be made orally or in writing at the physical location or mailing address for the request to be made.
- (3) Requests for copies, or requests for inspection and copies, shall be made in writing to Records Custodian, 220 French Landing Drive, 1-B, Nashville, TN 37243, or wc.records@tn.gov.
- (4) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or other government-issued photo ID may be required as a condition to inspect or receive copies of public records.
- (5) Public notices, meeting documents, and other similar records are posted and readily available online at www.tn.gov/workforce/injuries-at-work and <https://www.tn.gov/workforce/events.html>.

Authority: T.C.A. § 10-7-503.

0800-02-29-.04 Responding to Public Records Requests

- (1) The Records Custodian shall review public record requests and make an initial determination of the following:
 - (a) If the requestor provided evidence of Tennessee citizenship;
 - (b) If the records requested are described with sufficient specificity to identify them; and
 - (c) If the Bureau of Workers' Compensation is the custodian of the records.
- (2) The Records Custodian shall acknowledge receipt of the request and take any of the following appropriate action(s):
 - (a) Advise the requestor of these Rules and the elections made regarding:
 1. Proof of Tennessee citizenship;
 2. Form(s) required for copies;
 3. Fees; and
 4. Aggregation of multiple or frequent requests.
 - (b) If appropriate, deny the request, providing the appropriate ground such as one of the following:
 1. The requestor is not, or has not presented evidence of being, a Tennessee citizen.
 2. The request lacks specificity.
 3. An exemption makes the record not subject to disclosure under the TPRA (absent any required signed authorization, subpoena or court order issued by a state or federal court).
 4. The Bureau of Workers' Compensation is not the custodian of the requested records.
 5. The records do not exist.

- (c) If appropriate, contact the requestor to see if the request can be narrowed.
- (d) Forward the records request to the appropriate records custodian in the Bureau of Workers' Compensation.
- (e) If requested records are in the custody of a different governmental entity, and the Records Custodian knows the correct governmental entity, advise the requestor of the correct governmental entity for that entity if known.
- (f) Upon receiving a valid public records request, a records custodian shall promptly make requested public records available in accordance with T.C.A. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the Bureau's Attorney or the OORC.

(3) The contact information is: Records Custodian, 220 French Landing Drive, 1-B, Nashville, TN 37243, wc.records@tn.gov. Ph: 615-532-9495.

(4) If not practicable to timely provide requested records then a records custodian shall notify the requester that additional time will be necessary.

(5) If a records custodian denies a public record request, he or she shall deny the request in writing as provided herein.

(6) If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian shall notify the requestor 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 records custodian should contact the requestor to see if the request can be narrowed.

(7) Redaction: If a 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. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian may also consult with the OORC or with the Office of Attorney General and Reporter.

Authority: T.C.A. §10-7-503.

0800-02-29-.05 Inspection of Records

- (1) There shall be no charge for inspection of open public records.
- (2) The location for inspection of records within the offices of the Bureau of Workers' Compensation should be determined by the records custodian.
- (3) A records custodian may require an appointment for inspection and shall be present during the inspection process.

Authority: T.C.A. § 10-7-503.

0800-02-29-.06 Copies of Records

- (1) A records custodian shall 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 records custodian or may be delivered to the mailing address specified by the requester.
- (3) A requestor will not be allowed to make copies of records with personal equipment. Photographs of records are not allowed.

Authority: T.C.A. § 10-7-503.

0800-02-29-.07 Fees and Charges and Procedures for Billing and Payment

- (1) Fees and charges for copies of public records should not be used to hinder access to the inspection of public records.
- (2) Fees and charges for copies are as follows:
 - (a) Fees for researching and copying shall be ten dollars for conducting the search, which shall include the first twenty-five (25) pages and twenty-five cents (25¢) for each page after 25 pages.
 - (b) The Bureau shall charge an additional fee of \$10.00 for certified records.
- (3) Payments of fees for records shall be made by credit card, check or money order payable to the State of Tennessee, Bureau of Workers' Compensation. Payment in cash will not be accepted. Payment is due upon receipt of the invoice for the requested material. Requestors will not be entitled to receive additional records until all payments for records previously provided have been received by the Bureau.
- (4) Payment in advance may be required when costs or an outstanding balance exceed \$100.00.
- (5) In addition to the copy fees described in paragraph (3) above, labor charges for the time, in hours, to produce copies of records shall be imposed whenever the time exceeds one (1) hour.
- (6) If the copies of the requested records are delivered by mail, the costs of standard delivery, including postage, shall be included in the copy charge. Any charges for non-standard delivery shall be borne by the requesting party.

Authority: T.C.A. § 10-7-503.

0800-02-29-.08 Specific Exemptions

- (1) The following records are specifically exempted from the open record rule:
 - (a) First Reports of Injury, pursuant to § 50-3-702(b), unless the Bureau has a properly executed authorization.
 - (b) Workers' compensation medical records, pursuant to §50-6-131, shall remain confidential and shall not be considered to be public records.
 - (c) Information contained in workers' compensation insurance policies, pursuant to §50-6-421, "shall be deemed confidential and shall not constitute a public record" except for the following information which can be disclosed as a public record:
 1. Employer name and business address;
 2. Workers' Compensation insurance carrier name and business address; and
 3. Workers' Compensation insurance policy number, policy effective date, policy expiration date, policy cancellation date, and policy reinstatement date.
- (2) Mediation Records
 - (a) The Bureau adopts Tennessee Supreme Court Rule 31 pertaining to confidentiality of all information created or obtained during mediation proceedings except as otherwise required by law.
 - (b) Mediation records consists of all documents and information presented to the Bureau, during the course of mediation, relating to the employees' wages, medical condition, and any other

information pertinent to the resolution of disputed issues pursuant to Tenn. Code Ann. § 50-6-236(b)(3).

(c) Requests for public records following mediation shall be made to the Record Custodian; however, during the course of mediation, a party may contact the assigned mediator to obtain those records necessary to facilitate a resolution of the disputed issues, including a copy of the Petition for Benefit Determination, the Request for Mediation, Request for Assistance, or Request for Benefit Review Conference.

(d) The following mediation records are not public records:

1. Confidential position statements, handwritten notes, and other materials or information expressly meant for a mediator and which the submitting party has not expressly consented to be divulged to the other party and;

2. Medical records and claim forms specifically excluded from the public record by law.

(3) Court of Workers' Compensation Claims and Workers' Compensation Appeals Board Records

(a) The Bureau adopts Tennessee Supreme Court Rule 34 pertaining to judicial records filed in the Court of Workers' Compensation Claims and the Workers' Compensation Appeals Board:

(b) The public has a statutory right to inspect public records maintained by agencies of state government. Accordingly, the public has the right to inspect public records maintained by the clerk of the Court of Workers' Compensation Claims and Appeals Board unless the record has been submitted under seal or is the subject of a protective order. Requests to inspect public records maintained by the clerk of the Court of Workers' Compensation Claims and Appeals Board are, however, subject to reasonable requirements and restrictions intended to preserve the integrity of the record, the parties' right to the record for the purpose of preparing their appellate papers, and the efficient operation of the appellate courts.

(c) For the purposes of these guidelines, a "record" includes any record defined as a "public record" in Tenn. Code Ann. § 10-7-301(6)(1992) that has not been submitted under seal or that is not the subject of a protective order.

(d) The following judicial records are not public records:

1. Unfiled drafts of judicial orders and opinions;

2. Written or electronic conference records, notes, memoranda, or other documents of a similar nature prepared by judges or judges staff as part of the judicial decision-making process unless filed as part of the court record;

3. Copies, other than the original, of motions, petitions, briefs, and other similar documents filed with the clerk of the Court of Workers' Compensation Claims and Appeals Board that have been furnished to individual appellate judges for their personal use;

4. Written or electronic conference records, notes, memoranda, reports, or other documents of a similar nature prepared by a judge or judge's staff on behalf of or at the direction of the court or judge as part of the judicial decision-making process unless filed as part of the court record;

5. All internal case management information except for information concerning the composition of panels assigned to consider a particular case;

6. Information maintained by individual judges with regard to their recusal from particular appeals unless the information is filed as part of the court record or unless it is subject to disclosure pursuant to Tenn. Code Ann. §§ 8-50-501, 8-50-506 (1993 & Supp. 1998) or Tenn. S. Ct. R. 10;

7. Documents protected from disclosure by order or rule of court; and

8. Any other record the disclosure of which would frustrate or interfere with the judicial function of the Court of Workers' Compensation Claims or Appeals Board.

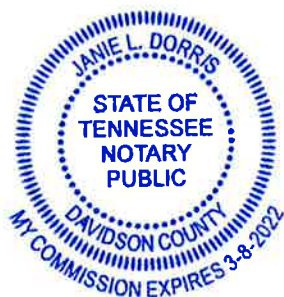
(4) Uninsured Employers Fund/Misclassification Fund Records

(a) The bureau will release the file to a named employer or its attorney, upon request, for review of the materials in which the Administrator's Designee based a determination.

(b) With a proper authorization to release the information, an employer under investigation may inspect or obtain a copy of its file.

Authority: T.C.A. §§ 10-7-503, 50-3-702, 50-6-131, 50-6-421, 50-6-236, 8-50-501, 8-50-506.

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: July 3, 2018

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator

Subscribed and sworn to before me on: July 3, 2018

Notary Public Signature: Janie L. Dorris

My commission expires on: March 8, 2022

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Filed with the Department of State on: 7/3/18

Tre Hargett

Tre Hargett
Secretary of State

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