

Proposed Rules  
of the  
Tennessee Ethics Commission

Chapter 0580-01-02  
Access to Public Records of the Tennessee Ethics Commission

Presented herein are proposed rules of the Tennessee Ethics Commission, submitted pursuant to T.C.A. §4—5—202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Ethics Commission to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in Suite 1820 of the SunTrust Bank Building, , 201 4<sup>th</sup> Ave N, Nashville, TN, and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact Anne F. Turner, General Counsel, Tennessee Ethics Commission, 201 4<sup>th</sup> Ave N, Suite 1820, Nashville, TN 37248; 615-253-2665.

New Rules

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0580-01-02-.01 Purpose and Scope

These rules are promulgated for the purpose of providing procedures to allow access to those records which are within the custody and control of the Tennessee Ethics Commission, and that are within the definition of public records in the Tennessee Public Records Act, T.C.A. §§ 10-7-501, et seq., pursuant to court order and case law interpreting the Act; and that are not within any exception, privilege, court decision, statute, common law principle, or other provision of law that excludes the public record from being available for inspection and copying by members of the public. All records of the Tennessee Ethics Commission are currently housed at the main office of the Commission. These rules are also promulgated for the 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., 3-6-107; 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).

0580-01-02-.02 Definitions

- (1) Act. The Tennessee Public Records Act, T.C.A. §§ 10-7-501, et seq.
- (2) Commission. The Tennessee Ethics Commission.
- (3) Executive Director. The Executive Director of the Tennessee Ethics Commission.
- (4) Non-routine Copy. A copy, whether of paper or of electronically stored data, which, to be made, requires more than minimal staff assistance, e.g., odd or oversize pages, bound documents which

must be disassembled before copying and reassembled after copying, an unusually large number of copies, or manipulation or retrieval of electronically stored data.

- (5) **Public Record.** For purposes of this Chapter, any record of the Commission that is deemed to be open to inspection by 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, with the proviso that a document may be within an exception otherwise provided by state law pursuant to T.C.A. § 10-7-503(a), and therefore may not be subject to inspection or copying.
- (6) **Record.** For the purposes of this Chapter, any data and/or documents developed and maintained by the Commission (whether on paper, magnetically, or electronically, whether on a single computer or on a computer system, whether on disk, tape or otherwise), or that have been received and are maintained by the Commission, during the normal course of the Commission's activities. A Record may or may not be a Public Record. Records of the Commission are retained, transferred or destroyed in accordance with state record retention laws.
- (7) **Routine Copy.** A copy, whether of paper or of electronically stored data, which, to be made, requires minimal staff assistance, e.g., 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 copies of Public Records, even if stored electronically or magnetically, shall not be deemed Routine Copies if it is necessary to print the copies of the Public Records by means of a separate screen-print for each individual page of the Record.

Authority: T.C.A. § §4-5-201 et seq., 3-6-107; 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).

#### 0580-01-02-.03 Requests for Inspection or for Reproduction of Public Records

- (1) A request to the Commission for inspection or reproduction of Public Records may be made in person, via telephone, via e-mail, postal mail, or facsimile transmission; provided, however, that a citizen making a request by telephone may be asked to follow up with a written request to the Commission. The request shall identify with reasonable specificity the Public Record, set or system of Public Records which is being requested.
- (2) Before providing inspection, or inspection and reproduction, of the requested Record, Commission 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, to determine whether the Record appears to be a Public Record and, if so, assess the status of the Public Records and the scope of the request.
- (3) Upon review and prior to the release of the requested Public Record, the Commission's staff may redact any data or information in the Public Record that is confidential, privileged or otherwise protected from disclosure by state law.
- (4) If it appears from the Commission staff's review and assessment that the requested Record is a Public Record and inspection and/or reproduction of the Public Record is permissible and is not protected, but that inspection and/or reproduction of the Public Record, or the system of Public Records, cannot immediately be provided, then the Commission staff shall so inform the individual or entity making the request. The Commission staff shall provide a reasonable estimate of the time that will be required to comply with the request and an explanation of why the Public Record is not immediately available.
- (5) **Denial of Request to Inspect or Reproduce Requested Record.** If it appears from the Commission staff's review and assessment that the requested Record either is not a Public Record, or is not

subject to inspection or reproduction pursuant to state or federal law, Commission staff shall provide notice to the requesting individual or entity, stating the legal basis for the denial.

Authority: T.C.A. §§ 4-5-201 et seq., 3-6-107; 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).

0580-01-02-.03 Requests for Inspection or for Reproduction of Public Records

- (1) Fees and costs for the reproduction of Public Records are as follows; provided, however, that if a contractor, consultant or specialist is used to fulfill the reproduction request, then the fee charged shall be the actual costs related to reproduction of the Public Record which were invoiced to the Commission:

Service	Fee
(a) Routine Copies on paper \$0.30 per two-sided copy	\$0.25 per one-sided copy
(b) Non-Routine Copies on paper	\$0.50 per one-sided copy \$0.60 per two-sided copy
(c) Copies on CD-Rom	\$5.00 per disk
(d) E-mail of electronic files which do not require special computer programming time as set forth in paragraphs (g) and (h) below	No Charge
(e) Postal mail of paper files	Actual postage fees incurred by Commission
(f) Facsimile Transmission	No Charge, 10 or fewer pages; \$5.00 for every 10 pages thereafter
(g) Computer programming time, when necessary to place the Public Records in a readable and reproducible format or in a specific reproducible format that is requested by the individual or entity seeking copies of the Public Record, in addition to the copy costs described in paragraphs (a) through (c), above.	\$18.00 per half hour, with minimum charge of \$108.00
(h) Staff Time. If the Executive Director determines that the staff time necessary to reproduce the Public Records, or to supervise the reproduction of Public Records as set forth in Paragraph (2), below, exceeds the reasonable period of staff time which would typically be devoted to responding to a request for reproductions of Public Records, the Executive Director shall so notify the requesting individual or entity and shall provide the requesting individual or entity an estimate of the anticipated staff costs associated with the requested reproduction. Such costs shall be computed using the staff position's hourly wage as determined by the Fiscal Division of the Office of the Secretary of State.	
(i) Before the Commission makes copies of Public Records, or before the Commission develops a specific format for the reproduction of Public Records, the requesting individual or entity must make payment in full to the Commission. Payment shall be made by cashier's check or money order made payable to the Tennessee Ethics Commission, and be delivered to	

the Commission's office; provided, however, that amounts equal to or less than Ten Dollars (\$10.00) may be paid in cash; provided further that, notwithstanding the fee schedule set forth in this section, the Executive Director may, in his or her discretion, waive payment if the total costs of reproduction are less than one dollar (\$1.00).

(2) Copying by Requesting Individual or Entity.

- (a) All Public Records shall remain in the sole custody of Commission staff. No original Public Records shall be placed in the custody of the individual or entity making the request.
- (b) The Executive Director may, in his or her discretion, permit the individual or entity requesting the Public Record(s) to supply the necessary equipment and supplies to make the requested copies where the Public Records are housed or located for purposes of the records request.
- (c) The Executive Director may, in his or her discretion, require that Commission staff observe the reviewing and copying process permitted by this paragraph for the purpose of protecting the integrity of the Public Records, and any costs associated therewith may be charged pursuant to these rules.

Authority: T.C.A. §§ 4-5-201 et seq., 3-6-107; 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).

The proposed rules set out herein were properly filed in the Department of state on the 30th day of November, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of March, 2008. (FS 11-25-07; DBID 2765)