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: East Tennessee State University
Division:
Contact Person: Mark A. Fulks, J.D. Ph.D.
University Counsel & Chief Compliance Officer
Address: 1276 Gilbreath Drive, Suite 306, PO BOX 70285, Johnson City, TN 37614
Phone: (423) 439-8550
Email: fulksm@etsu.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: Mary Little
Director and ADA/504 Coordinator
Address: Nell Dossett Hall, 3rd floor | PO Box 70605
City: Johnson City, TN
Zip: 37614
Phone: 423-439-8493
Email: littleme@etsu.edu

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

| Address 1: | Zoom link: [https://etsu.zoom.us/j/95523233031](https://etsu.zoom.us/j/95523233031) |
| Address 2: |  |
| City: |  |
| Zip: |  |
| Hearing Date: | February 2, 2021 |
| Hearing Time: | 8:00 AM CST/CDT, X EST/EDT |

Additional Hearing Information:

This rulemaking hearing will be conducted via electronic means due to the COVID-19 pandemic. Please check the following site for updates on the means by which the rulemaking hearing will be conducted and instructions on participating electronically if it is conducted via electronic means: [http://www.etsu.edu/universitycounsel](http://www.etsu.edu/universitycounsel). Written comments may be submitted via email to Kay Lennon-McGrew at lennonk@etsu.edu. Written comments should be received by 4:30 PM eastern on January 29, 2021 in order to ensure consideration.

Revision Type (check all that apply):
- Amendment
- New X
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to SS-7037 (March 2020)
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Table of Contents is added to Chapter 0240-06-05 Public Records and shall read as follows:

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0240-06-05-.06 Fees and Charges for Public Records; Procedures for Billing and Payment
0240-06-05-.07 Confidentiality Exceptions

0240-06-05-.01 Purpose and Scope of Authority is added to Chapter 0240-06-05 Public Records and shall read as follows:

0240-06-05-.01 Purpose and Scope of Authority.

(1) This rule is promulgated to provide economical and efficient access to public records as provided under the Tennessee Public Records Act.


0240-06-05-.02 Definitions is added to Chapter 0240-06-05 Public Records and shall read as follows: 0240-06-05-.02 Definitions.

(1) East Tennessee State University or ETSU or University - The campuses, centers, units, and institutes of East Tennessee State University and their constituent parts governed by the East Tennessee State University Board of Trustees and administration. Neither East Tennessee State University, ETSU, or University means the East Tennessee State University Foundation, Inc.; the East Tennessee State University Research Foundation; or the Medical Education Assistance Corporation.


(3) Public Record - 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.
(4) Records Custodian - The office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

(5) Requestor - A person seeking access to a public record whether it is for inspection or duplication.

(6) Tennessee Public Records Act or TPRA - The state law codified in T.C.A. §§ 10-7-501 et seq.
0240-06-05-.03 General Accessibility of Public Records is added to Chapter 0240-06-05 Public Records and shall read as follows:

**0240-06-05-.03 General Accessibility of Public Records.**

(1) All ETSU records shall, at all times during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. Accordingly, the public records of ETSU are presumed open for inspection during the regular hours of ETSU unless otherwise provided by law.

Authority: T.C.A. § 10-7-503.

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

**0240-06-05-.04 Requesting Access to Public Records.**

(1) Public records requests must be made to the appropriate Records Custodian to ensure that public records requests are routed and fulfilled in a timely manner.


(3) Requests for inspection or copies may be made orally or in writing using the Public Records Request Form, located on ETSU's Policies website. Requests for inspection may be made in person or by mail, phone, fax, or email to the Records Custodian.

(4) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or alternative acceptable form of ID is required as a condition to inspect or receive copies of public records.

Authority: T.C.A. §§ 10-7-503, et seq., 10-7-506(a).

0240-06-05-.05 Responding to Public Records Requests is added to Chapter 0240-06-05 Public Records and shall read as follows:

**0240-06-05-.05 Responding to Public Records Requests.**

(1) The Records Custodian must review public records requests and make an initial determination of whether:

   (a) The requester has presented proof of Tennessee citizenship;

   (b) The requester described the records requested with sufficient specificity to identify the records requested; and

   (c) The University is the custodian of the requested records.

(2) The Records Custodian must acknowledge receipt of the request and take any of the following action(s) within seven business days from the University's receipt of the request:
(a) Make the records available to the requester;
(b) Deny the request in writing, providing the appropriate grounds for denial; or
(c) Send the requester a completed Public Records Request Response Form stating the
time reasonably necessary to produce the records.

(3) The TPRA does not require the University to sort through files to compile information or to
create or recreate a record that does not exist.

(4) If a record contains confidential information or information that is not open for public
inspection, the Records Custodian must prepare a redacted copy prior to providing access.
(a) The Records Custodian should consult with the Office of University Counsel if questions
arise concerning redaction.
(b) The Records Custodian should provide the requestor with the basis for redaction
whenever a redacted record is provided. The basis given for redaction must be general
in nature and not disclose confidential information.

(5) Records that are not delivered electronically or in-person will be delivered via USPS First
Class Mail. The requestor is responsible for any postage costs associated with fulfilling the
request.

Authority: T.C.A. §§ 10-7-503, et seq.; 10-7-504; 10-7-506(a).

0240-06-05-.06 Fees and Charges for Public Records; Procedures for Billing and Payment
is added to Chapter 0240-06-05 Public Records and shall read as follows:

0240-06-05-.06 Fees and Charges for Public Records; Procedures for Billing and Payment

(1) There is no charge for inspection of public records.

(2) No charges will be assessed for copies and duplicates unless the production costs exceed
five dollars ($5).

(3) ETSU's Records Custodian must provide requestors with an itemized estimate of charges
exceeding fifty dollars ($50) prior to producing copies of records and may require pre­
payment of such charges before producing requested records.

(4) Fees and charges for copies are:
(a) $0.15 per page for 8 ½" x 11" and 8 ½" x 14" black and white copies. ETSU will waive
fees associated with requests for records that are fewer than 30 pages of black and
white copies.
(b) $0.50 per page for 8 ½" x 11" and 8 ½" x 14" color copies. The fee for color copies will
not be waived.
(c) The charge for a double-sided (duplex) copy is the same as the charge for two one­
sided copies.
(d) If a copy of a public record is produced on a medium other than for 8 ½" x 11" and 8 ½" x
14" paper, the Records Custodian may assess a copy charge equal to the actual cost of
producing a copy of the public record, considering the amount of materials, equipment
costs, and the cost of the alternative medium.
(e) ETSU is not obligated to provide electronic copies of the requested records when the requested records are not maintained electronically.

(f) ETSU may charge the actual costs for flash drives or similar storage devices on which electronic copies are provided.

(5) ETSU may charge the requestor the hourly wage of the employee(s) reasonably necessary to produce the requested records above the labor threshold.

(a) The "labor threshold" is the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by ETSU in producing the records. "Labor" means the employee time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.

(b) In calculating the labor costs to be charged to the requestor:

1. First, determine the number of hours each employee spent producing the requested public records.

2. Second, subtract the one-hour labor threshold from the number of hours the highest paid employee spent producing the request.

3. Third, multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage.

4. Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requestor.

(c) Labor costs should be tracked based on tenths of an hour, rounded down.

(d) Combined labor charges may be assessed for multiple requests from the same requestor that are submitted within a 30-day period.

(6) ETSU has discretion to determine how payment for fees and costs should be made and whether advanced payment is required.

Authority: T.C.A. §§ 10-7-503, et seq.; 10-7-506(a).

0240-06-05-.07 Confidentiality Exceptions is added to Chapter 0240-06-05 Public Records and shall read as follows:

0240-06-05-.07 Confidentiality Exceptions

(1) Exceptions to the right to inspect or copy public records include, without limitation:

(a) Records made confidential by the TPRA or by other state law; and

(b) Records ETSU is required to keep confidential by federal statute or regulation as a condition for receipt of federal funds or for participation in a federally funded program.

Authority: T.C.A. §§ 10-7-503, et seq.; 10-7-506(a).
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: 12/11/2020
Signature: ________________
Name of Officer: Adam S. Green
Title of Officer: Secretary to Board of Trustees, ETSU

Department of State Use Only

Filed with the Department of State on: 12/11/2020

Tre Hargett
Secretary of State

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