

Petition filed 2/9/07 to request a hearing on proposed rules

Proposed Rules
of
the Tennessee Department of Safety
Administrative Division

Chapter 1340-2-6
Access to Public Records of the Department of Safety

Presented herein is a proposed rule of the Administrative Division, Department of Safety submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Safety to promulgate this rule without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of Tennessee Administrative Register in which the proposed rule is published. Such petition to be effective must be filed with the Department of Safety, 1150 Foster Avenue, Nashville, TN 37249, and in the Department of State, 8th 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 copies of the entire text of the proposed rule, contact: Deborah Martin, Staff Attorney, Tennessee Department of Safety, 1150 Foster Avenue, Nashville, TN 37249, 615-251-5114.

The text of the proposed rule is as follows:

New rule

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1340-2-6-.01 Purpose

- (1) These rules are promulgated for the purpose of providing procedures to allow access to records of the Tennessee Department of Safety 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., 4-3-2009; 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).

1340-2-6-.02 Definitions.

- (1) "Commissioner" is the Commissioner of the Tennessee Department of Safety.
- (2) "Commissioner's Designee" means Deputy Commissioner, Assistant Commissioners, Staff Attorneys, Directors, Colonel, Lt. Colonels, Majors, and Captains.

- (3) "Computerized magnetic copies" are those which are produced by a computer drive or burner and are stored on hard drive, flash memory cards, zip drive, or any other data storage drive or device.
- (4) "Department" means the Tennessee Department of Safety.
- (5) "Magnetic copies" are those which are produced or played by dragging a tape across an electromagnetic read/write head. This includes but is not limited to VHS cassettes, beta cassettes, and audio cassettes.
- (6) "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.
- (7) "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.
- (8) "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.
- (9) "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., 4-3-2009; 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).

1340-2-6-.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 and closure of State Offices by the appropriate officials. Photo identification may be required upon request for access.
- (2) Requests may be made orally or in writing to the office of the Commissioner, or to any Department employee in the State, County, District or Regional Offices of the Department, 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) The Department may, in its discretion, require a request be in writing and on a form provided by the Department. This rule shall have no effect upon the statutes which require certain requests be made in writing.
- (4) 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 that none of the provisions of subparagraph (c) below apply and access can otherwise be provided immediately, it shall do so.
 - (c) If it appears from the Department's review and assessment that access to 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 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;
6. For any other reason, then the Department shall inform the requesting person of the assessment and the reasonable approximate time required in complying with the request and a summary of the basis for the assessment regarding access to the records.

Authority: T.C.A. §§4-5-201 et seq., 4-3-2009; 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).

1340-2-6-.04 Requests for Reproduction of Records.

- (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 and closure of State Offices by the appropriate officials. Photo identification may be required upon request for reproduction.
- (2) Requests may be made orally or in writing to the office of the Commissioner, or to any Department employee in the State, County, District or Regional Offices of the Department, 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) The Department may, in its discretion, require a request be made in writing and on a form provided by the Department. This rule shall have no effect upon the statutes which require certain requests be made in writing.
- (4) 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 1340-2-6-.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 immediately, 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 as soon as reasonably possible.
- (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; or
 6. For any other reason, then the Department shall inform the requesting person of the assessment and the reasonable 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.

Authority: T.C.A. §§4-5-201 et seq., 4-3-2009; 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).

1340-2-6-.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 Five Dollars (\$5.00) per floppy disk containing 1.44 megabytes, Ten Dollars (\$10.00) per CD disk containing 650 megabytes, and Twenty Dollars (\$20.00) per DVD disk containing 4.7 gigabytes, if these media are available.
- (5) Computerized magnetic copies, if available, shall be charged at a minimum of One Hundred Dollars (\$100.00) per drive, flash memory, or disk containing 20 gigabytes.
- (6) Magnetic copies, if available, shall be charged at a minimum of Ten Dollars (\$10.00) per single sided audio cassette, and Fifty Dollars (\$50.00) per VHS or other videotape reproduction.
- (7) This rule shall have no impact on fees for reproduction which are set by statute.
- (8) 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:
 1. Staff time utilized in copying the record; and
 2. Paper or other products such as copy toner or toner cartridges, inks, electronic or magnetic media including, but not limited to floppy disks or 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:
 1. 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.
 2. 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.
- (9) 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 applicable employee 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.
- (10) Contractor or Consultant Costs.
- 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.
- (11) Specialist Costs.
- 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.
- (12) 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., 4-3-2009; 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).

1340-2-6-.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 1340-2-6-.07 below.
- (2) Payment shall be made for payment of the costs of reproducing records only by check, cashier's check, or money order.

- (3) The check, cashier's check, or money order shall be made payable to the Department of Safety, and be delivered to the Department contact responsible for reproducing the record.

Authority: T.C.A. §§4-5-201 et seq., 4-3-2009; 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).

1340-2-6-.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 One Dollar (\$1.00). Costs for reproduction of records above One Dollar (\$1.00) 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 One Dollar (\$1.00), 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 to applicants for, or recipients of, services from the Department's programs, 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 in response to a case-specific request relative to applicants for, or recipients of, services from the Department or its employees, or for any 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 advocacy groups, as determined by the Department, for persons served by the Department, to provide information or clarification, regarding Department programs or activities involving the Department's programs and policies;
 - (e) to federal law enforcement, audit, program, administrative or regulatory agencies, or for any other purpose; or
 - (f) if necessary to comply with any provisions of federal or state laws, court orders, regulations or policy directives.

Authority: T.C.A. §§4-5-201 et seq., 4-3-2009; 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 11th day of December, 2006, 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 30th day of April, 2007. (12-15-06)

