

Utility Records

BACKGROUND AND PURPOSE

Utilities in Tennessee must abide by the Public Records Act. Generally, this Act requires that most utility documents must be open for public inspection by any citizen of Tennessee.

Office of Open Records Counsel

The Tennessee Comptroller of the Treasury has setup an “Office of Open Records Counsel”

The Office of Open Records Counsel serves as the contact for concerns on access to local government public records under the Tennessee Public Records Act (Tenn. Code Ann. Sections 10-7-501 et seq.). The Office assists in obtaining public records from local government, both in guiding citizens to correct offices/officials and in working to resolve disputes regarding access to public records. The Office promotes education and awareness of the Tennessee public records and open meetings laws through direct outreach and through coordination with existing organizations. This effort is addressed both to citizens and to local governments.

All utilities should visit their web site located at:

<http://www.comptroller1.state.tn.us/openrecords/law.asp> many questions dealing with records can be answered by reading the FAQ section and most forms are available that you made need in handling requests for records. Other contact information for the office is:

Office of Open Records Counsel
505 Deaderick Street, Suite 1600
James K. Polk Building
Nashville, Tennessee 37243-1402
Phone: (615) 401-7891

Toll free phone: 1-866-831-3750

Fax: (615) 741-1551
open.records@tn.gov

All utilities should adopt a “Best Practices Guidelines” (copy attached to this policy).

POLICY STATEMENT

1 ... All state, county, utility and municipal records shall at all times, during business hours, be open for public inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. [TCA 10-7-503]

2... Public records means all documents, papers, letters, maps, books, photographs, electronic data, 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. [TCA 10-7-301(6)]

3 ... In accordance with state law, the following is an example of utility records subject to public inspection:

CUSTOMER RECORDS:

- a) Customer bills and usage records;
- b) Customer mailing lists;
- c) Customer payment delinquencies, cut-offs and payment histories.

EMPLOYEE RECORDS:

- a) Payroll records;
- b) Documents and minutes relating to employee hiring, job performance, discipline, and dismissal.

GENERAL UTILITY RECORDS:

- a) Minutes of meetings of the Governing Board;
- b) Real and personal property records of the utility;
- c) Purchases;
- d) Accounting and bookkeeping records;
- e) Plans, maps and engineering records;
- f) Operations and safety records and reports.

4 ... Records which are not subject to public inspection include the following:

- a) Certain records related to employee medical treatment or medical testing;
- b) Records related to alcohol and drug testing programs under the Tennessee Drug-Free Workplace Program;

- c) Records related to federally mandated drug and alcohol testing programs of the United States Department of Transportation;
- d) Records of treatment or referrals for treatment maintained by an employer assistance program;
- e) Information about a person who has provided a valid protection document to the utility such as an order of protection from a court or affidavit from the director of a rape crisis center or domestic violence shelter indicating a victim needs protection;
- f) Records with the identity of the owner of any public obligation issued (bonds);
- g) The following information on **employees**: unpublished telephone numbers; bank account information; social security numbers; driver's license information except when the employee's job duties requires that he or she operate a motor vehicle; and this same information on family members.
- h) The following **customer records** are considered to be "Private Records": credit card number; social security number; tax identification number; financial institution account number; burglar alarm codes; security codes; and access codes.
- i) Certain records related to the **vulnerability of a utility's operations and contingency plans** or records related to responding to violent incidents or terrorist incidents. These records are: records which would allow a person to identify areas of structural or operational vulnerability of a utility; records that would permit unlawful disruption to, or interference, with a utility's services; and contingency plans of a utility to respond to or prevent violent incidents or terrorist incidents.

5 ... Prior to divulging any employee medical records, the Utility's Governing Board or its designee shall consult with the utility's attorney.

6 ... Any customer or other state citizen requesting utility records will be provided them at the convenience of office staff, or at least within seven working days for all reasonable requests.

7 ... Original records are not to be taken from the utility office except by court authority.

8 ... Photocopies of records will be made available by the utility at the rate of \$0.15 cents per one-sided page black and white, color copies, if available shall be \$0.50..

9 ... Certain information that is stored on computers may be made available by the utility on computer disc for a charge of _____ dollars per request or as otherwise priced from time to time by the Governing Board of the utility.

10... The utility shall/may notify the customer(s) when copies of their records have been requested

11... The utility shall/may require that a photo ID be presented before honoring any records request.

12... If the requestor asked that records be mailed to them the utility shall/may do so after collecting all fees due including the cost of mailing

Records: Converting Paper Records to Computer Records:

The governing body of a utility may adopt a resolution to authorize the disposal of any permanent paper records when the record may be maintained on a computer or removable computer storage media, including CD ROM disks, instead of bound books or paper records if the following standards are met:

(A) Such information is available for public inspection, unless it is a confidential record according to law;

(B) Due care is taken to maintain any information that is a public record during the time required by law for retention;

(C) All daily data generated and stored within the computer system shall be copied to computer storage media daily, and the newly created computer storage media more than one (1) week old shall be stored at a location other than at the building where the original is maintained; and

(D) Utility personnel can provide a paper copy of the information when needed or when requested by a member of the public.

ADOPTION DATE: _____

EFFECTIVE DATE: _____

HOW LONG DO WE KEEP IT?

Utility Records Retention for Utility Districts, Authorities and Cities

2 Years

- a. correspondence

3 Years

- a. daily cash summaries
- b. bank deposit slips
- c. inventory records
- d. employee time records
- e. invoices
- f. purchase orders
- g. customer billing stubs
- h. garnishments
- i. similar records
- j. billing adjustment records
- k. disconnection notices
- l. deposit by customer (after deposit has been applied or refunded)
- m. applications for service (after service has been discontinued)
- n. meter reading records
- o. customer service work orders

6 Years

- a. contracts
- b. leases
- c. insurance policies
- d. claims records

- e. duplicate receipts
- f. canceled checks
- g. redeemed bond/interest coupons
- h. canceled certificates of deposits

7 Years

- a. Billing Registers
- b. Collection Agency Reports

10 Years

- a. accounts receivable
- b. inventory ledgers
- c. cost records
- d. journal vouchers
- e. subsidiary revenue ledgers
- f. expense ledgers
- g. voucher or check registers

PERMANENT Records

- a. audit and financial reports
- b. bond and interest ledgers
- c. certificate of bonds and interest coupons destroyed
- d. charts of accounts and procedure manuals
- e. deeds and other title documents
- f. employee payroll records
- g. fixed asset records
- h. general ledgers and cash journals
- i. investment security or trust records
- j. meter deposit records (not refunded or applied)

k. special assessment ledgers

r. rate schedules

s. tap records

SOURCE: Uniform Accounting Manual for Tennessee Utility Districts and Uniform Accounting Manual for Tennessee Cities, and MTAS

Record-keeping Requirements (Water System & Wastewater)

Type of Record	Must be kept for at least...
Lead and Copper Records	12 Years
Chemical Analyses	10 Years
Sanitary Surveys	10 Years
Bacteriological Analyses	5 Years
Variances and Exemptions	5 Years
Cross-Connection Plans and Inspection Records	5 Years
Customer Complaint Logs	5 Years
Facility Maintenance Records	5 Years
Storage Tank Inspection Records	5 Years
Storage Tank Maintenance Records	Life of the Tank
Violations of Primary Drinking Water Regulations	3 Years
Records for Completing Monthly Operating Reports	Next Sanitary Survey
Turbidity Analyses	Next Sanitary Survey
Chlorine residuals on new water taps on mains which must be dug up to make the tap	Next Sanitary Survey or 3 Years
Daily worksheets and shift logs	Next Sanitary Survey
Underground utilities locations	Permanent

Wastewater

Discharge Monitoring Reports	3 years
Industrial Pretreatment Reports	3 years
Laboratory bench sheets and calibration records	3 years
Land Application Records	Permanent
Monthly Operating Reports	3 years

Source: Tennessee Department of Environment and Conservation

If there is a record that you are unsure of how long it must be kept consult your attorney for advice.

BEST PRACTICE GUIDELINES FOR RECORDS CUSTODIANS RESPONDING TO REQUESTS FOR PUBLIC RECORDS

In Tenn. Code Ann. Section 10-7-505(d), the Tennessee General Assembly declares that the Tennessee Public Records Act (hereinafter “TPRA”) “shall be broadly construed so as to give the fullest possible access to public records.” Courts in Tennessee have opined that unless there is a clear exception provided in law, all records of a governmental entity are to be open to citizens for inspection and/or copying. However, these Courts have also acknowledged the ability of records custodians to adopt reasonable rules governing the manner in which records request are to be made and fulfilled.

In an effort to provide records custodians with a resource that can be utilized when responding to public records request made pursuant to the TPRA, the Office of Open Records Counsel (hereinafter “OORC”) in conjunction with the Advisory Committee on Open Government (hereinafter “ACOG”) has developed “Best Practices Guidelines for Records Custodians Responding to Requests for Public Records.” Records custodians must follow the provisions of the TPRA. The guidelines serve as a resource for records custodians, but records custodians are not required to adhere to the guidelines. However, a Court may consider these guidelines in determining whether action by a records custodian is willful [Tenn. Code Ann. Section 10-7-505(g)]. These guidelines will be reviewed at least annually by the OORC.

Definitions:

Records custodian: the office, official or employee lawfully responsible for the direct custody and care of a public record and is not necessarily the original preparer or producer of the record. A governmental entity may have more than one records custodian.

Public records: defined in Tenn. Code Ann. Section 10-7-503(a)(1): As used in this part and Title 8, Chapter 4, Part 6, "public record or records" or "state record 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.

Redacted record: a public record otherwise open for public inspection from which protected information has been removed or made obscured prior to release or inspection.

Requestor: a Tennessee citizen requesting access to or a copy of a public record.

Governmental entity or agency: this includes but is not limited to the state, any political subdivision, agency, institution, county, municipality, city or sub-entity. Note, certain associations, non-profits, and private entities are also subject to the TPRA.

Best Practices Guidelines Effective 01/01/09

Guidelines:

1. To the extent possible, a governmental entity should have a written public records policy properly adopted by the appropriate governing authority. The policy should be applied consistently throughout the various offices, departments, or divisions within a governmental entity; however, when a particular office, department or division has a need for a policy that is distinct from that of the entire governmental entity, a separate policy should be adopted. The policy should include:
 - a. the process for making requests to inspect public records and/or to receive copies of public records (including whether government issued photo ID's are required and whether written requests for copies are required);
 - b. the process for responding to requests (including the use of required forms); and
 - c. whether and when fees will be charged for copies of public records (including establishment of charges pursuant to the Schedule of Reasonable Charges).

The policy should balance the governmental entity's need to function efficiently and to maintain the integrity of records with the public's right to access records pursuant to the TPRA.

2. Whenever possible, one person within each governmental office, department, or division should be designated as the public records request coordinator. This person will ensure that requests made pursuant to the TPRA are routed to the appropriate records custodian and that requests are fulfilled in a timely manner. It is suggested that this individual be knowledgeable about the TPRA, as well as the records management system being utilized and any written public records policy that has been adopted.
3. A records custodian should make requested records available as promptly as possible in accordance with Tenn. Code Ann. Section 10-7-503.
4. A records custodian should strive to respond to all records requests in the most time and cost efficient manner possible. For example, when labor charges are going to be assessed, qualified staff persons with the lowest hourly wage should be utilized to produce the requested records.
5. To the extent possible, when records are maintained electronically, records custodians should produce large-volume records request electronically. Records should be produced electronically whenever feasible as a means of utilizing the most "cost efficient method of producing" records.
6. If a governmental entity maintains a website, records custodians should post as many records, and particularly records such as agendas and minutes from meetings, on the website whenever it is possible to do so. A records custodian may direct a requestor to the website for requested records. However, a requestor may still exercise the right to inspect the public record during regular business hours in the office of the records custodian and/or to receive a copy or duplicate made by the records custodian.
7. Whenever possible and especially in situations where redaction is necessary, once a records request has been completed and there is a reasonable expectation that the same records will be requested in the future, a records custodian should maintain a copy of the redacted records so that any future request can be easily located and copied.
8. When a records custodian receives a records request for a large volume of records and reasonably determines that production of the records should be segmented, the requestor should be notified that the production of the records will be in segments and that a records production schedule will be provided as expeditiously as possible.
9. If a records request is made to a records custodian who is not the appropriate custodian of the requested records, the records custodian when denying the request should make the requestor

- aware of the appropriate records custodian (if known) whenever possible. However, it should be noted that the statutory time frame for responding to the request is not triggered until the request is made by the requestor to the appropriate records custodian.
10. If a records custodian has provided what is thought to be all records responsive to a public records request and then discovers that records were omitted, the requestor should be made aware of the omission and the records produced as quickly as practicable.
 11. Whenever a record is redacted, a records custodian should provide the requestor with the basis for redaction when the redacted records are provided to the requestor. A records custodian is not required however to produce a privilege log.
 12. Whenever possible, a records custodian should have a designated supervised space available during normal business hours where requestors can inspect public records.
 13. To the extent a records custodian does not have the ability to make copies or duplicates of a requested record, a records custodian should notify the requestor of such and identify the vendor that will be used to produce the requested records, as well as the estimated cost. The inability of a records custodian to internally produce a duplicate or copy of a record does not eliminate the obligation to provide a duplicate or copy if requested.
 14. When a records custodian is unclear as to the records that are being requested, it is suggested that the custodian contact the requestor in an effort to clarify and/or narrow the request. If, after attempting to clarify the request, the records custodian is still unable to determine what is being requested, the request should be denied based upon the requestor's failure to sufficiently identify the requested records in accordance with the requirements of the TPRA.
 15. For purposes of developing a policy that permits fees, including charging for labor, it is suggested that a governmental entity consider the following:
 - a. whether waivers or reduction of charges will be permitted, based on:
 - (1) number of copies or minimum charge amount; or
 - (2) type of record: whether the requested document is a document that is produced on a regular basis, requested on a regular basis and is easily accessible (i.e. records that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held in the previous calendar month); and
 - b. whether the administrative cost of documenting fees and processing the payment (including internal controls) exceeds the cost of copying and labor.
 16. Whenever possible, a records custodian should require and receive either full or partial payment of the estimated charges prior to production of copies of the requested records.
 17. If a records custodian is going to segment the production of requested records, the requirement for payment prior to the production of the records also should be segmented.
 18. When a governmental entity has the ability to accept multiple forms of payments, that could include cash, checks, credit or debit cards, and money orders, it is suggested that the governmental entity permit such forms of payment for copies of public records.
 19. A records custodian must provide requestors with an estimate of the charges to be assessed for copies and labor. Whenever possible, a records custodian should provide the estimate prior to producing the requested copies of records and should itemize the estimate.
 20. State records custodians who have questions about how to respond to a records request should contact the Office of Attorney General and Reporter. All other records custodians who have questions about how to respond to a records request should contact the Office of Open Records Counsel.