PUBLIC RECORDS POLICY
FOR
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for the Tennessee Health Services and Development Agency ("HSDA") is hereby adopted by the HSDA 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.

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 HSDA are presumed to be open for inspection unless otherwise provided by law.

Personnel of the HSDA shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Policy 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 HSDA, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Executive Director of the HSDA or to the Tennessee Office of Open Records Counsel ("OORC").

This Policy is available for inspection and duplication in the office of the HSDA. This Policy is posted online at the HSDA's website. This Policy shall be reviewed every two years.

I. Definitions:

Records Custodian: The office, official or employee 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.

Public Records: 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. *See* Tenn. Code Ann. § 10-7-503(a)(1)(A).

Public Records Request Coordinator: The individual, or individuals, designated in Section III, A.3 of this Policy who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. *See* Tenn. Code Ann. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.

Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

II. Requesting Access to Public Records

A. Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or his/her designee [or via online submission] in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.

B. Requests for inspection only cannot be required to be made in writing. The PRRC should request a mailing [or email] address from the requestor for providing any written communication required under the TPRA.

C. Requests for inspection may be made orally or in writing [using the attached Form] at [physical location and mailing address for the request to be made] or by phone at 615-741-2364.

D. Requests for copies, or requests for inspection and copies, may be made in writing using the attached Form, at the office of the Tennessee Health Services and Development Agency.

E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license is not required as a condition to inspect or receive copies of public records.

III. Responding to Public Records Requests

A. Public Record Request Coordinator

1. The PRRC shall review public record requests and make an initial determination of the following:

   a. If the records requested are described with sufficient specificity to identify them; and

   b. If the Governmental Entity is the custodian of the records.

2. The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):

   a. Advise the requestor of this Policy and the elections made regarding:

      i. Form(s) required for copies;

      ii. Fees (and labor threshold and waivers, if applicable); and

      iii. Aggregation of multiple or frequent requests.

   b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:

      i. The request lacks specificity. (Offer to assist in clarification)

      ii. An exemption makes the record not subject to disclosure under the TPRA. (Provide the exemption in written denial)

iii. The Governmental Entity is not the custodian of the requested records.

iv. 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 Tennessee Health Services and Development Agency.

e. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC for that entity if known.

3. The designated PRRC(s) is the HSDA's Executive Director, located at the HSDA's office, Andrew Jackson Bldg., 9th Floor, 502 Deaderick Street, Nashville, TN 37243. The Executive Director's phone number is 615-741-2364; and fax number is 615-741-9884.

4. The PRRC(s) shall report to the governing authority on an annual basis about the Governmental Entity's compliance with the TPRA pursuant to this Policy and shall make recommendations, if any, for improvement or changes to this Policy.

B. Records Custodian

1. Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, counsel, or the OORC.

2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then a records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form, which is attached, based on the form developed by the OORC.

3. If a records custodian denies a public record request, he or she shall deny the request in writing as provided in Section III.A.2.b using the Public Records Request Response Form.

4. 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 use the Public Records Request Response Form to 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.

5. If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

C. Redaction

1. 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 and the PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.

2. Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

IV. Inspection of Records

A. There shall be no charge for inspection of open public records.

B. The location for inspection of records shall be the office of the HSDA.

C. Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

V. Copies of Records

A. A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.

B. Copies will be available for pickup at the offices of the HSDA.

C. Upon payment for postage, copies will be delivered to the requestor's home address by the United States Postal Service.

D. If the PRRC determines that copies are of a limited number of pages as to make delivery by email the most economic and efficient manner practicable, and if the requestor does not object in writing or by email, then delivery by email is permitted.

E. A requestor will not be allowed to make copies of records with personal equipment.

VI. Fees and Charges and Procedures for Billing and Payment

Upon a request for records under Tennessee's Public Records Act, Tenn. Code Ann. § 10-7-501 *et seq.*, The HSDA shall assess charges for the copying and labor based on the most current version of the Schedule of Reasonable Charges, issued by the Office of Open Records Counsel.

A. Records custodians shall provide requestors with an itemized estimate of the charges, using the attached Form, prior to producing copies of records and will require pre-payment of such charges before producing requested records.

B. When fees for copies and labor do not exceed $10, the fees may be waived. Requests for waivers for fees above $10 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of the public.

C. Payment is to be made by personal check payable to the Tennessee Health Services and Development Agency.

E. Aggregation of Frequent and Multiple Requests

1. The HSDA will not aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC.

PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY
ATTN: Public Records Request Coordinator
Andrew Jackson Bldg., 9th Floor, 502 Deaderick Street, Nashville, TN 37243.

From: [Insert Requestor's Name and Contact Information (include an address for any TPRA required written response)]

Request: O Inspection (The TPRA does not permit fees or require a written request for inspection only[1].)
O Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed $ _____ ? If so, initial here: .

Delivery preference: O On-Site Pick-Up O USPS First-Class Mail
O Electronic O Other:

Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Signature of Requestor and Date Submitted _____ Signature of Public Records Request Coordinator and Date Received _____

[1] Note, Tenn. Code Ann. § 10-7-504(a)(20)(C) permits charging for redaction of private records of a utility.

PUBLIC RECORD REQUEST RESPONSE FORM
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY
Andrew Jackson Bldg., 9th Floor
502 Deaderick Street
Nashville, TN 37243.

[Date]

[Requestor's Name and Contact Information]:

In response to your records request received on [Date Request Received], our office is taking the action(s)[1] indicated below:

☐ The public record(s) responsive to your request will be made available for inspection:
Location: _____
Date & Time:

☐ Copies of public record(s) responsive to your request are:
☐ Attached;
☐ Available for pickup at the following location:
_____; or
☐ Being delivered via: ☐ USPS First-Class Mail ☐ Electronically ☐ Other: _____ .

☐ Your request is denied on the following grounds:
☐ Your request was not sufficiently detailed to enable identification of the specific requested record(s). You need to provide additional information to identify the requested record(s).
☐ No such record(s) exists or this office does not maintain record(s) responsive to your request.
☐ No proof of Tennessee citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification.
☐ You are not a Tennessee citizen.
☐ You have not paid the estimated copying/production fees.
☐ The following state, federal, or other applicable law prohibits disclosure of the requested records:

☐ It is not practicable for the records you requested to be made promptly available for inspection and/or copying because:
☐ It has not yet been determined that records responsive to your request exist; or
☐ The office is still in the process of retrieving, reviewing, and/or redacting the requested records.

The time reasonably necessary to produce the record(s) or information and/or to make a determination of a proper response to your request is: _____.

If you have any additional questions regarding your record request, please contact the Executive Director.

Sincerely,

Melanie Hill, Executive Director
melanie.hill@tn.gov
615-741-2364

1 If all requested records do not have the same response, so indicate.

POLICY CONSIDERATIONS

The Tennessee General Assembly declares that the Tennessee Public Records Act ("TPRA") "shall be broadly construed to give the fullest possible access to public records." See Tenn. Code Ann. § 10-7-505(d). Accordingly, unless there is a clear exception provided in law, all public records of a governmental entity are to be open to Tennessee citizens for inspection.

Records custodians must comply with the TPRA and their respective public records policies and rules. Tenn. Code Ann. § 10-7-506(a) grants records custodians the right to adopt and enforce reasonable rules governing the making of copies.

Adherence to the Model Public Records Policy developed by the Office of Open Records Counsel ("OORC") is not mandatory. However, courts may consider adherence to guidance provided by the OORC in determining whether a denial of access to public records by a records custodian is willful. See Tenn. Code Ann. § 10-7-505(g). Additionally, adherence to the policies and guidelines of the OORC provides a safe harbor for records custodians. See the OORC's Safe Harbor Policy.

I. The TPRA authorizes a governmental entity to determine the following with respect to each entity's public records policy:

   A. Whether to respond to TPRA requests by persons who are not citizens of Tennessee;

   B. Whether to require government-issued photo identification as a prerequisite to providing access to records;

   C. Whether to require requests for copies to be in writing and on a specific form;

   D. Whether to charge for copying and duplication costs, including labor, when requestors ask for copies or duplicates;

   E. Whether to waive copying and duplication costs in certain circumstances; and

   F. Whether to permit requestors to make copies or duplicates using their own devices, such as a cell phone camera. (Note that use of requestor-provided devices such as flash drives pose serious security concerns.)

II. Prior to adopting a public records policy, a governmental entity should consider and determine the following:

   A. Who or what is the "appropriate governing authority" responsible for approval of the policy as required by Tenn. Code Ann. § 10-7-503(g).

   B. Who or what sub-entities or offices are to be covered by the policy.

   C. Whether there are legal requirements, other than the TPRA, that require the governmental entity to provide public access to specific records.

   D. What authority, other than the TPRA, exists for charging fees for copies and whether it is mandatory or discretionary.

      1. If no separate authority exists for duplication fees or copying fees, will fees be assessed for copies?

2. Will labor be charged when it exceeds one (1) hour (or will the governmental entity use a higher threshold)?

3. Will waivers be permitted, and who should have the authority to make the decision to waive fees?

E. Who, within the governmental entity, are "records custodians," which are defined as "any office, official or employee of any governmental entity lawfully responsible for the direct custody and care of a public record" and whether there is a designated records officer or records archivist.

F. What records the government entity creates or receives that are required by law or ordinance, or that occur in the transaction of official business, that would be subject to disclosure under the TPRA.

1. Are the records produced in physical or electronic format and where are they stored or maintained?

2. If electronic, what capability exists to search and to securely electronically redact the records?

3. If in physical form, how are the records filed or cross-referenced?

4. If on microfilm, microfiche or other legacy formats, how are the records filed or cross-referenced? Is equipment available to access/read the records?

G. What, if any, exemptions apply to the governmental entity's public records or the information in the records making them confidential.

H. What means of communication exist for the public to communicate with the governmental entity.

I. What are the governmental entity's existing policies on:

1 Government transparency;

2 How to respond to TPRA requests, including what fees to charge;

3 Records management, including:

a. Retention, maintenance, and destruction;

b. Records made or received "off-site" or using personal devices; and

c. Monitoring of the accessibility and readability of records;

4 Use of email and other electronic communication and social media;

5 Use of personal devices in the work place;

6 Securing of records upon the departure of an employee/official; and

7. Disaster recovery and planning.

J. What resources are available for compliance with the TPRA.

1. What space is, or will be, available to requestors for physical inspection of records?

2. Is a secure computer terminal (that does not allow access to confidential records) available for public inspection of electronic records?

3. What is the governmental entity's capability to duplicate records? If the entity does not have internal capability, are there existing contracts with vendors or available duplication services to respond promptly to requests?

4. What staffing and funding is available?

K. What the governmental entity has or provides that may contain or produce records accessible pursuant to the TPRA, including:

1. Portable electronic devices such as cell phones, laptops, or tablets;

2. Voice mail;

3. Email accounts;

4. Websites; and

5. Social media accounts, such as Facebook or Twitter.

L. Who should be appointed the Public Records Request Coordinator(s).

1. How will the appointment be disclosed internally and externally?

2. What authority exists to require records custodians to respond to the coordinator?

M. Whether Tennessee citizenship will be required for requests under the TPRA, and if so:

1. Will visual inspection of a Tennessee driver's license suffice or will a copy be kept?

2. What forms of proof beyond a Tennessee driver's license will be accepted?

N. Whether requests will be aggregated, whether by individual requestors or requestors acting in concert. See the OORC's Reasonable Charges for Frequent and Multiple Requests Policy.

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