

Victoria Defreese
Commissioner, Ninth District
Knox County Commission
2921 Tipton Station Road
Knoxville, Tennessee 37920

June 24, 2008

Dear Ms. Defreese:

You have requested an opinion from the Office of Open Records that specifically addresses whether or not a government official is required to provide access to all or part of constituent communications when access is requested pursuant to the Tennessee Public Records Act (Tenn. Code Ann. §§ 10-7-501 et seq.) (hereinafter referred to as “TPRA”) .

You represented to this Office that a request made from Dwight Van de Vate, Chief Administrative Officer, on behalf of the Knox County Mayor’s Office specifically requesting “access to or copies of any and all correspondence you have received by fax, letter or e-mail related to spending issues in county government” as well as “any and all records regarding phone calls you have received, including handwritten notes, telephone logs, or any other related documentation”. It is our understanding that the request has been officially withdrawn by the Mayor’s Office. However, you still seek an opinion because you believe that if access is required under the TPRA, then constituents’ first amendment rights could be violated or infringed upon and the free flow of communication from voter to official would be constrained.

1. Access to Public Records

The Tennessee General Assembly has for over fifty years embraced the concept that absent certain exceptions provided by state law, all governmental records should be open for inspection by citizens of Tennessee. We note that the request submitted to you in your role as a County Commissioner was not submitted as a request by a citizen, but rather by the Office of the Knox County Mayor. The TPRA expressly grants citizens access to government records and does not expressly address requests made by one governmental entity to another governmental entity. The TPRA provides:

Except as provided in § 10-7-504(f), all state, county and municipal records and all records maintained by the Tennessee performing arts center management corporation, except any public documents authorized to be destroyed by the county public records commission in accordance with § 10-7-404, shall at all times, during business hours, be open for personal 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.

Tenn. Code Ann. § 10-7-503(a).

The records that are referred to in the above-cited statutory provision are often called “public records.” While the definition of “public record” is currently not found within the TPRA, Tennessee Courts have adopted the definition of “public records” that is found in Tenn. Code Ann. § 10-7-301(6) which defines public records as:

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.¹

Atty. Gen Op. 05-099 stands for the position that e-mails sent to individual members of the Tennessee General Assembly can be public records if they were “made or received . . . in connection with the transaction of official business”. Constituent communications are sent in connection with an elected office and therefore meet this definition. However, whether or not access to an e-mail is granted pursuant to the TPRA depends upon particular facts and circumstances. While constituent communications in general may be open to inspection under the TPRA, there may be information within those communications that are made confidential under state law. Therefore it is essential to review the email requested before providing access to the requestor. To the extent that the confidential information can be redacted, access must be granted to the remainder of the e-mail.

This Office has opined on the accessibility of public employee e-mails and the review required prior to providing access. *See* <http://www.comptroller.state.tn.us/openrecords/DyeOpinion.pdf> . This Office has also considered redaction of confidential information from phone records. *See* <http://www.comptroller.state.tn.us/openrecords/James,Jonathan.pdf> . The analysis provided in these two opinions is applicable to the communications included in your request.

¹ Public Chapter 1179, Acts of 2008, effective July 1, 2008, amends the TPRA to contain a definition of “public records” that is identical to the definition found in Tenn. Code Ann. § 10-7-301(6).

Unlike for the Tennessee General Assembly, for which specific statutory authority has been granted to determine that certain constituent communications can be deemed confidential, no such authority has been granted for county or municipal legislative bodies. *See Tenn. Code Ann. Section 3-14-109.*

Just as a citizen has a right to inspect government records that are not made confidential under state law, citizens are also permitted to take a copy of those records inspected. Tenn. Code Ann. § 10-7-506(a) says the following:

In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or such custodian's authorized deputy; provided, that the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

Therefore, access to any public record in your possession (and the making of copies) should be granted unless “otherwise provided by state law.”

II. Conclusion

Based upon the above-cited law, it is the opinion of this Office that under the TPRA access must be granted to constituent communications received by an elected local government official “in connection with the transaction of official business”. Access may be denied if the information contained in the communication is deemed otherwise by law to be confidential. Generally speaking, communication of an opinion on a matter to an elected local government official is not deemed confidential.

Please feel free to contact either me or Elisha Hodge upon receipt of this opinion if you have anything further that you would like to discuss.

Sincerely,

Ann V. Butterworth
Director, Office of Open Records Counsel