



# OFFICE OF OPEN RECORDS COUNSEL

ANNUAL REPORT  
MARCH 2015

**Justin P. Wilson**  
Comptroller of the Treasury

**Ann V. Butterworth**  
Open Records Counsel

Dear Governor and Members of the 109th General Assembly,

This annual report provides an overview of the Office of Open Records Counsel's activities over the last year. The Office of Open Records Counsel's report is offered in conjunction with the Advisory Committee on Open Government. Thank you for your consideration of this report. I encourage you to contact the office if we can be of assistance.



*Ann V. Butterworth*

Ann V. Butterworth  
Open Records Counsel

## HISTORY OF THE OFFICE

The 104<sup>th</sup> General Assembly enacted the Sunshine in Government Improvement Act of 2006 which created a special joint study committee on open government laws. The committee was charged with determining whether there was a need for revisions to the open government laws.

In 2007, the 105<sup>th</sup> General Assembly appropriated funding for the Office of Open Records Ombudsman under the purview of the Comptroller of the Treasury. The Office was opened in the fall of 2007 and in the following year, the General Assembly provided statutory authority for the Office of Open Records Counsel by enacting Public Chapter 1179, Acts of 2008. The legislation additionally created the Advisory Committee on Open Government, composed of appointed persons and ex officio members, to guide and advise the Office on open records and open meetings.

Today, the Office of Open Records Counsel strives to make government work better by educating citizen's and government officials about Tennessee's laws on public records and open meetings.

## OFFICE RESPONSIBILITIES

The Office of Open Records Counsel's goals include to:

- ☉ Serve as a point of contact for questions and concerns regarding access to public records and open meetings;
- ☉ Assist citizens in obtaining public records;
- ☉ Promote education and awareness of the Tennessee public records and open meetings laws;
- ☉ Collect data on open meetings inquiries and problems;
- ☉ Issue informal advisory opinions on open records issues; and
- ☉ Develop forms, schedules, policies, and guidelines for open record requests.

## OPEN RECORDS FREQUENTLY ASKED QUESTIONS

### *What are “public records” in Tennessee?*

The Tennessee Code defines "public records" to be “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.”

Tenn. Code Ann. Section 10-7-503(a)(1)(A).

### *Where can I find what governs whether a public record is open or not?*

All public records are open for inspection by Tennessee citizens “unless otherwise provided by law.” Tenn. Code Ann. Section 10-7-503(a)(2)(A). Although many exemptions are found in the Tennessee Public Records Act (Tenn. Code Ann. Sections 10-7-503 and -504), exemptions are found throughout the Tennessee Code, federal law, state and federal rules and court decisions, as well as in common law.

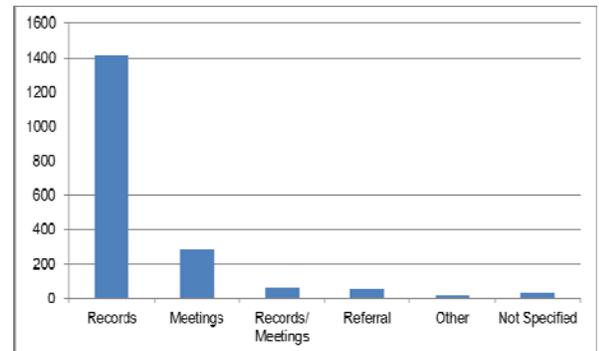
### *Who is a citizen?*

There is no definition of “citizen” in the Tennessee Public Records Act. However, the right to inspect is granted to “any citizen of this state.” Tenn. Code Ann. Section 10-7-503(a)(2)(A). A records custodian has the discretion to “require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, that includes the person's address.” Tenn. Code Ann. Section 10-7-503(a)(7)(A). In 2013 the US Supreme Court in *McBurney v. Young* upheld a state’s ability to limit the right of access to public records under a freedom of information law to only its citizens.

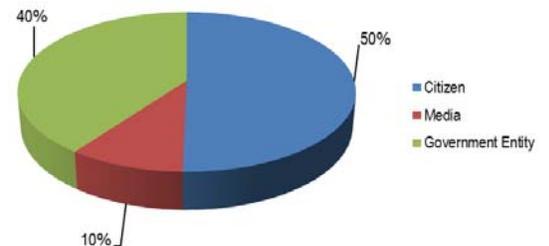
### *Who is the records custodian?*

There is no definition of “records custodian” or of “custodian” in the Tennessee Public Records Act. However, “those in charge of the records” are directed not to refuse a request for inspection by a citizen. Tenn. Code Ann. Section 10-7-503(a)(2)(A). “The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure.” Tenn. Code Ann. Section 10-7-503(a)(2)(B).

## INQUIRIES BY TOPIC



## INQUIRIES BY AFFILIATION



## INQUIRIES BY YEAR



## OPEN MEETINGS FREQUENTLY ASKED QUESTIONS

### *What is the “Sunshine Law”?*

The “Sunshine Law” or the Tennessee Open Meetings Act (Tenn. Code Ann. Sections 8-44-101 et seq.) is an act that prohibits multiple members of a governing body from meeting and deliberating towards and/or making decisions on public business, unless the public receives adequate notice of the meeting. The meeting is to be open to the public and accurate minutes of the meeting are to be recorded. Although the Act does not give the public the right to speak during the meeting, a chancellor has held that the public has the right to be able to hear what is being said.

### *What is an “open meeting”?*

An “open meeting” is a meeting of a governing body that is subject to the Tennessee Open Meetings Act. “Meeting” is defined in part as “the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.” Tenn. Code Ann. Section 8-44-102(b)(2). The Act requires that the public be given adequate notice sufficiently in advance of the actual meeting in order to give an opportunity to become aware and to attend. In very limited circumstances, a governing body may meet in non-open session.

### *What is a “governing body”?*

The Act defines “governing body” in part as “members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.” Tenn. Code Ann. Section 8-44-102(b)(1)(A). The Act does not govern the General Assembly. The Tennessee Supreme Court, in *Mayhew v. Wilder*, has opined that even if the Act were amended to include the General Assembly, the action would not bind a subsequent General Assembly.

## ADVISORY COMMITTEE ON OPEN GOVERNMENT

### 2015 Committee Members

Lucian Pera	Tennessee Coalition for Open Government
Richard Hollow	Tennessee Press Association
Chad Jenkins	Tennessee Municipal League
David Connor	Tennessee County Services Association
Don Long	Tennessee School Board Association
Dick Williams	Common Cause
Vivian Underwood Shipe	League of Women Voters
Amy Griffin	Tennessee Hospital Association
Robb Harvey	Tennessee Association of Broadcasters
Monica Greppin-Watts	Tennessee Board of Regents
Blake Farmer	Society of Professional Journalists
David Moore	Tennessee Association of Chiefs of Police
Jerry Vastbinder	Tennessee Sheriffs’ Association
Fred Fields	AARP

### Ex Officio Committee Members

Senator Ken Yager	Chair, Senate State & Local Government Committee
Rep. Bob Ramsey	Chair, House State Government Committee
Ms. Janet Kleinfelter	Deputy Attorney General

## CONTACT INFORMATION

**Ann V. Butterworth**  
*Open Records Counsel*

Office of Open Records Counsel  
James K. Polk State Office Building  
505 Deaderick Street, Suite 1700  
Nashville, TN 37243-1402

Office: (615) 401-7891  
Toll-free phone: 1-866-831-3750  
Fax: (615) 741-1551  
E-mail: [Open.Records@cot.tn.gov](mailto:Open.Records@cot.tn.gov)

For additional information about the Office and other related resources visit:

[www.comptroller.tn.gov](http://www.comptroller.tn.gov)

