



OFFICE OF
OPEN RECORDS COUNSEL



ANNUAL REPORT



MARCH 2019

Justin P. Wilson
Comptroller of the Treasury

Jason E. Mumpower
Deputy Comptroller

Governor and Members of the 111th General Assembly:

This report provides an overview of the Office of Open Records Counsel's activities over the past year.

On January 30, 2018, the Office released a report of 538 exceptions that make certain public records confidential and exempt from disclosure under the Tennessee Public Records Act (TPRA). In August 2018, the Office updated this report to reflect an additional 26 exceptions added during the second session of the 110th General Assembly. The Office created an online searchable database of these exceptions as a useful resource for citizens and public officials. This database is available on the office website at <https://www.comptroller.tn/gov/openrecords/>.

On June 15, 2018, former Speaker Beth Harwell and Lt. Governor Randy McNally formed an Open Records Ad Hoc Committee to review the exceptions set forth in the Office's report. The Office worked with the committee members and various organizations and associations to discuss the exceptions and methodologies for reviewing the enactment of future exceptions. The committee met four times between August 14, 2018 and December 13, 2018, to review and discuss exceptions to the TPRA.

Over the past year, the Office promptly resolved over 800 public records and open meetings inquiries submitted by citizens and public officials from across the state. The Office also continued to assist governmental entities with the implementation of newly adopted public records policies required by Public Chapter 722, Acts of 2016, which must set forth the process for making requests to inspect public records or receive copies of public records, the process for responding to requests, including redaction practices, and a statement of fees charged for copies of public records and the procedures for billing and payment. The Office also released an informal advisory opinion on October 16, 2018, regarding a Tennessee citizen's right to make copies of public records during inspection pursuant to Tenn. Code Ann. § 10-7-506. A copy of the opinion is available on the [office website](#).

We are proud of the Office's accomplishments over the past year, and we look forward to continuing to make government work better by assisting and educating public officials and citizens with open records and open meetings issues. Thank you for your consideration of this report. Please feel free to contact our office if we can be of any assistance.



A blue ink signature of Lee Pope.

Lee Pope

Open Records Counsel



A blue ink signature of Rachel Buckley.

Rachel Buckley

Assistant General Counsel

HISTORY OF THE OFFICE

The 104th General Assembly enacted the Sunshine in Government Improvement Act of 2006, which created a special joint committee to study open government laws. The committee was charged with determining whether there was a need for revisions to Tennessee's open government laws.

In 2007, the 105th General Assembly appropriated funding for the Office of Open Records Ombudsman, which opened in the fall of 2007 in the Office of the Comptroller of the Treasury. In the following year, based on the recommendations of the special joint committee, the General Assembly amended the TPRA and provided statutory authority for the Office of Open Records Counsel by enacting Public Chapter 1179, Acts of 2008. The legislation also created the Advisory Committee on Open Government, which is composed of appointed persons and ex officio members to guide and advise the Office on open records and open meetings issues.

Today, the Office of Open Records Counsel strives to make government work better by helping citizens and government officials better understand Tennessee's laws on public records and open meetings through educational outreach, posting resources on the Office website, and direct communication and interaction with citizens and government officials across the state.

OFFICE RESPONSIBILITIES

The Office of Open Records Counsel is charged with the following responsibilities:

- Serve as a point of contact for questions and concerns regarding public records and open meetings;
- Assist citizens with public records requests;
- Assist public officials with responses to public records requests;
- Promote education and awareness of Tennessee's public records and open meetings laws;
- Collect data on open meetings inquiries and problems;
- Issue informal advisory opinions; and
- Develop forms, schedules, policies, and guidelines for open record requests.

OPEN RECORDS & OPEN MEETINGS TRAINING

Over the past year, the Office of Open Records Counsel conducted statewide trainings to educate citizens and officials about Tennessee's public records and open meetings laws. The Office also provided trainings to various governmental entities and associations across the state, including the Municipal Technical Advisory Service, Duck River Utility Commission, Jackson Utility Authority, American Society for Public Administration, Tennessee Municipal Electric Power Association, Tennessee Risk Management Association, Cleveland Police Department, Shelby County Government, and Williamson County Bar Association.

PRESENTATIONS ACROSS TENNESSEE



OPEN RECORDS QUESTIONS & CONCERNS

What are “public records” in Tennessee?

The Tennessee Code Annotated defines “public record” broadly, without regard to physical or electronic form or characteristics, as any record that is “made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity.” Tenn. Code Ann. § 10-7-503(a)(1)(A). The TPRA does not require records to be created, and it does not distinguish between temporary and permanent records. The TPRA provides that if the record exists at the time of the request, and it is open for public inspection, access to the record must be provided promptly to a Tennessee citizen. Tenn. Code Ann. § 10-7-503(a)(2)(B).

What governs whether a public record is open?

All public records are presumed open for inspection by Tennessee citizens “unless otherwise provided by state law.” Tenn. Code Ann. § 10-7-503(a)(2)(A). Although many exceptions are set forth in the TPRA, most exemptions are found elsewhere throughout the Tennessee Code Annotated, the United States Code Annotated, state and federal rules of procedure, as well as in common law. While records custodians have a duty to provide access to public records promptly, they also have a duty to maintain the confidentiality of records not open to public inspection.

Are there limitations on public record requests?

The TPRA does not limit the number of public records a citizen may request, the frequency of such requests, or the motivation behind the requests. However, the TPRA does require requests to “be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying.” Tenn. Code Ann. § 10-7-503(a)(4). If responsive records cannot be made promptly available, governmental entities should provide any readily available records and then establish a schedule or process for making the remaining records available promptly thereafter. Although governmental entities cannot require a request for inspection only of records to be in writing, they may require requests for copies to be in writing. Tenn. Code Ann. § 10-7-503(a)(7)(A) & (g)(1).

OPEN RECORDS QUESTIONS & CONCERNS CONTINUED

Who has the right to request records under the Tennessee Public Records Act?

The right to inspect public records is granted to “any citizen of this state.” Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, a records custodian has discretion to “require any person making a request to view or make a copy of a public record to present a government-issued photo identification, if the person possesses photo identification, that includes the person’s address.” Tenn. Code Ann. § 10-7-503(a)(7)(A)(vi). Governmental entities should determine whether they will require proof of citizenship or respond to requests from non-Tennessee citizens and include such determinations in their written public records policies. Tenn. Code Ann. § 10-7-503(g)(1).

OPEN MEETINGS QUESTIONS & CONCERNS

Who must comply with the “Sunshine Law”?

The “Sunshine Law,” or the Tennessee Open Meetings Act (TOMA), Tenn. Code Ann. §§ 8-44-101 *et seq.*, prohibits 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. A governing body of a public entity is a multiple member entity created by state, county, or municipal legislative action. Committees of governing bodies with the authority to make decisions for, or recommendations to, a governing body on policy or administration must also comply with TOMA.

TOMA does not grant the public a right to speak at, or to participate in, a meeting. TOMA does grant the right to be present and to listen to the transaction of business.

What is an “open meeting”?

“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. § 8-44-102(b)(2). TOMA requires adequate public notice of any “meeting” of a governing body. Such notice should be sufficient to provide interested individuals an opportunity to become aware of and attend the meeting.

Open meetings issues in Tennessee

- Committees of governing bodies providing public notice of meetings and preparing meeting minutes.
- Meeting agendas not clearly describing matters to be deliberated and decided.
- Governing bodies not providing the public with meeting materials.
- Governing bodies discussing matters during executive session that should only be discussed during an open public meeting.

2019 ADVISORY COMMITTEE ON OPEN GOVERNMENT

The 17-member Advisory Committee on Open Government (ACOG) provides advice and guidance to the Office. Over the past year, the members of ACOG provided valuable input and advice on the model public records policy developed by the Office that was distributed to governmental entities that were developing and implementing local public records policies.

On October 15, 2018, the Comptroller appointed 10 members to ACOG, representing the American Association of Retired Persons, Common Cause, Tennessee League of Women Voters, Society of Professional Journalists, Tennessee Association of Broadcasters, Tennessee Association of Chiefs of Police, Tennessee Hospital Association, Tennessee Municipal League, Tennessee Sheriff's Association, and University of Tennessee. The Office met with the advisory committee on September 6, 2018, and October 25, 2018, to introduce new members and assist with the appointment of co-chairs created by Public Chapter 897, Acts of 2018. In accordance with Public Chapter 897, ACOG will now provide a separate report of its activities to the governor, the speaker of the senate, the speaker of the house of representatives, the chair of the state and local government committee of the senate, the chair of the local government committee of the house of representatives, and the chair of the state government committee of the house of representatives by March 1 of each year.

2019 Committee Members

Adam Yeomans	<i>Tennessee Coalition for Open Government</i>
Kathryn Strong	<i>County Officials Association of Tennessee or Tennessee County Services Association</i>
Jack McElroy	<i>Tennessee Press Association</i>
Ken Krushenski	<i>Tennessee Municipal League</i>
Debbie Shedden	<i>Tennessee School Board Association</i>
Perry McDonald	<i>League of Women Voters</i>
Carey Whitworth	<i>University of Tennessee</i>
Jeff Hughes	<i>Tennessee Association of Chiefs of Police</i>
Dick Williams	<i>Common Cause</i>
Amy Garner	<i>Tennessee Hospital Association</i>
Dan Haskell	<i>Tennessee Association of Broadcasters</i>
Harold Beaver	<i>AARP</i>
Tony Gonzalez	<i>Society of Professional Journalists</i>
Mike Breedlove	<i>Tennessee Sheriffs' Association</i>

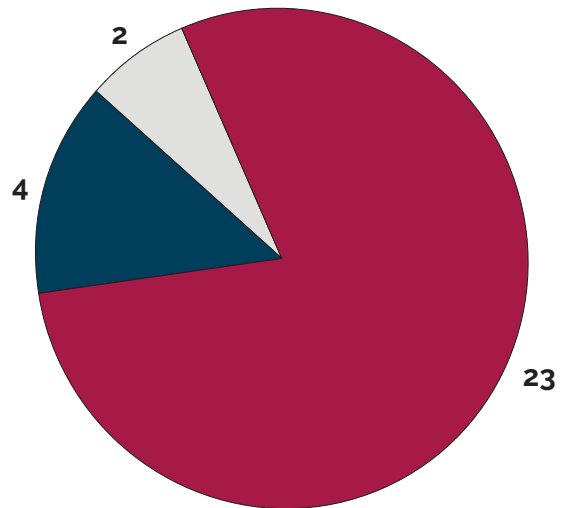
Ex Officio Committee Members

Senator Steve Dickerson <i>Chair, Senate State & Local Government Committee</i>
Representative Kelly Keisling <i>Chair, House State Government Committee</i>
Ms. Janet Kleinfelter <i>Tennessee Attorney General and Reporter</i>

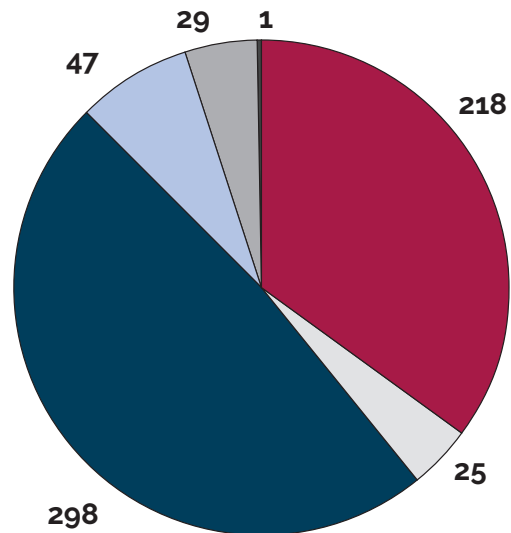
OPEN MEETINGS INQUIRY STATISTICS

Inquiries by Category	
Records Inquiry	618
Records Request	23
Mediation Request	0
Meetings Inquiry	58
Meetings Complaint	29
Records/Meetings	17
Records Policy Inquiry	12
Presentation Request	8
Other	27
Total 792	

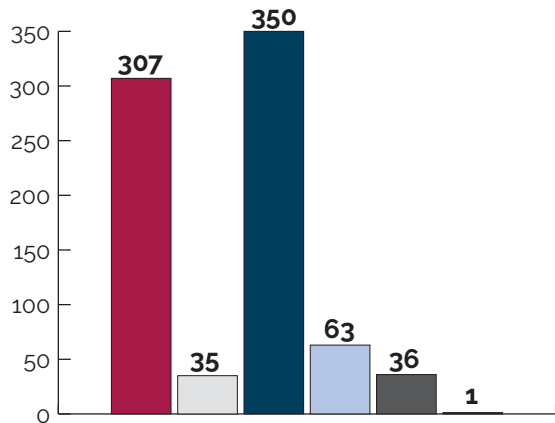
Meeting Complaints



Records Inquiries by Affiliation



All Inquiries by Affiliation



- Citizens
- Media
- Local Government
- State Government
- Out of State
- Unknown

CONTACT INFORMATION



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*For additional information about the Office of Open Records Counsel
and other related resources, visit:*

<https://www.comptroller.tn.gov/openrecords/>

