



OFFICE OF OPEN RECORDS COUNSEL



ANNUAL REPORT



March 2022

Jason E. Mumpower
Comptroller of the Treasury



Lee Pope
Open Records Counsel

Governor Lee and Members of the 112th General Assembly:

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

The Office of Open Records Counsel continues to assist citizens and local government officials with issues surrounding access to public records and public meetings. Over the past year, the Office resolved more than 1,000 inquiries pertaining to the state's public records and open meetings laws. The Office also continues to work closely with local government officials and citizens to resolve issues related to safely conducting open public meetings during the coronavirus pandemic.

In July 2021, the Office released its annual Legislative Update and updated its report on exceptions to the Tennessee Public Records Act to reflect 32 new or amended exceptions passed during the first session of the 112th General Assembly. A database of the exceptions is available online at tncot.cc/exceptions.

In October 2021, the Office provided free statewide public records and open meetings training seminars, hosting three virtual trainings for government officials, media, and any others interested in learning more about Tennessee's public records and open meetings laws. The training sessions were popular, with approximately 100 attendees per session. Given the considerable interest in the training, the Office plans to provide this training again in 2022.

In addition to the statewide training, the Office conducted 15 training sessions for various government entities and associations across the state, including the Tennessee Association of Municipal Clerks and Recorders, Tennessee Association of School Board Officials, Tennessee Public Risk Management Association, Tennessee Municipal Electric Power Association, Nashville Bar Association, County Officials Association of Tennessee, Trousdale County Commission, Duck River Utility Authority, Tennessee Department of Children's Services, and Tennessee Department of Commerce and Insurance.



Finally, the Comptroller's Office of General Counsel is pleased to announce the addition of Assistant General Counsel Seth May. Seth will join me in providing valuable assistance through the Office of Open Records Counsel.

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 respect to Tennessee's public records and open meetings laws. Thank you for your consideration of this report. Please feel free to contact our Office if we can be of any assistance.

A handwritten signature in black ink, appearing to read 'Lee Pope', followed by a horizontal line.

Lee Pope
Open Records 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 under the purview of the Comptroller of the Treasury. In the following year, based on the recommendations of the special joint committee, the General Assembly amended the Tennessee Public Records Act 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 comprised 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, resources posted 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 and public officials with requests for public records;
- 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 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 long as the record 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 Tennessee Public Records Act (“TPRA”) does not require government entities to create new records, and it does not distinguish between temporary and permanent records. The TPRA provides that if a 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 public records are open in Tennessee?

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). Numerous state laws make certain records or information confidential and not accessible to the public in Tennessee. Most of these state laws are found throughout the Tennessee Code Annotated but also exist in the United States Code Annotated, state and federal rules of procedure, as well as in common law. While records custodians have a duty to promptly provide access to open public records, they also have a duty to maintain the confidentiality of records that are not open to public inspection.

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). Government 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).

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, government entities should furnish the requestor the time reasonably necessary to produce the records in writing or by completing a records request response form. Although government entities cannot require a request to only inspect records to be made in writing, they may require requests for copies to be in writing. Tenn. Code Ann. § 10-7-503(a)(7)(A) and (g)(1).



OPEN MEETINGS QUESTIONS & CONCERNS

Who is subject to the open meetings laws?

The Tennessee Open Meetings Act (“TOMA”), Tenn. Code Ann. §§ 8-44-101 et seq., applies to meetings of a public governing body. A “governing body” is considered a multiple member entity created by state, county, or municipal legislative action with authority to make decisions or recommendations to another governing body concerning matters affecting public policy. Accordingly, city councils, county commissions, and state boards and commissions are typically considered “governing bodies” subject to the requirements of TOMA. However, committees created by these governing bodies with authority to make decisions or recommendations affecting public policy are also considered “governing bodies” that must comply with TOMA.

Can I speak during public meetings?

While TOMA does not grant the public the right to speak at, or to participate in, a public meeting, it does grant the right to be present and to listen to the transaction of business. Other laws or local bylaws may grant the public a right to speak to a governing body or may require a governing body to hold a public hearing at which the public may speak.

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 citizens a reasonable opportunity to become aware of and attend the meeting.



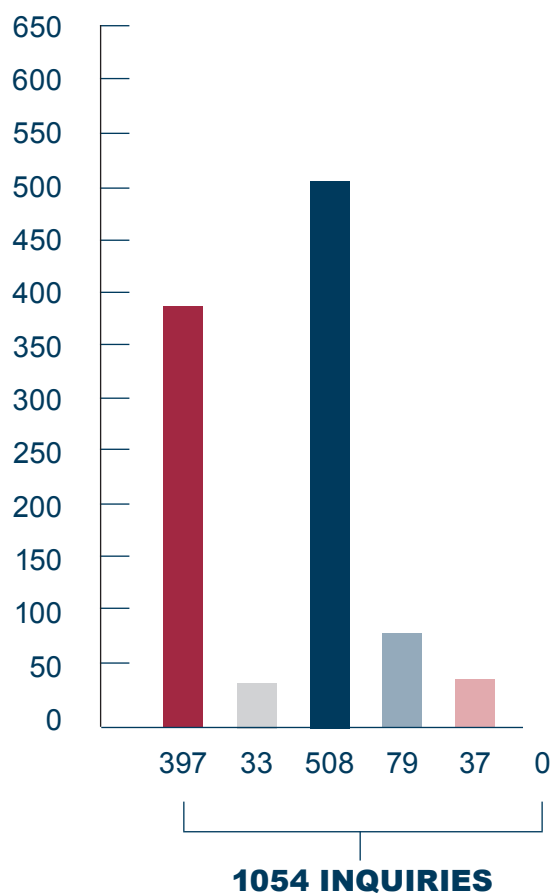
**More FAQs regarding the TPRA and TOMA are also available
on the Office of Open Records Counsel website at
www.comptroller.tn.gov/openrecords**

OPEN MEETINGS INQUIRY STATISTICS

For the period February 28, 2021 through February 22, 2022.

| INQUIRIES BY CATEGORY | |
|-------------------------------|-------------|
| Records Inquiry | 758 |
| Records Request | 55 |
| Mediation Request | 1 |
| Meetings Inquiry | 129 |
| Meeting Complaints | 38 |
| Records/Meetings | 5 |
| Records Policy Inquiry | 7 |
| Presentation/Training Request | 20 |
| Other | 41 |
| TOTAL | 1054 |

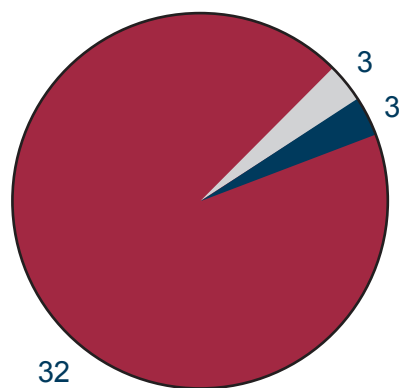
ALL INQUIRIES BY AFFILIATION



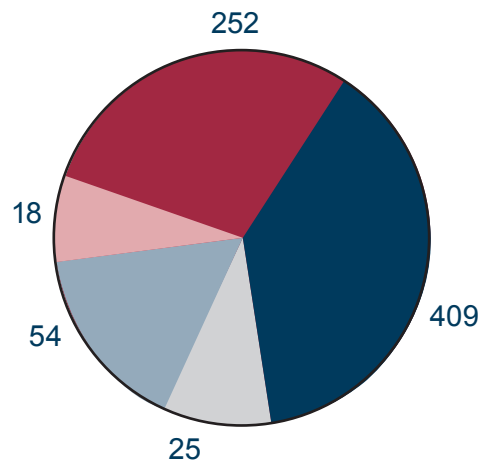
AFFILIATION KEY

- CITIZENS
- MEDIA
- LOCAL GOVERNMENT
- STATE GOVERNMENT
- OUT OF STATE
- UNKNOWN

MEETING COMPLAINTS BY AFFILIATION



RECORDS INQUIRIES BY AFFILIATION



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*For additional information about the
Office of Open Records Counsel
and other related resources, visit:
www.comptroller.tn.gov/openrecords*

