

**GOOD MORNING, SUNSHINE:
THE TENNESSEE PUBLIC RECORDS ACT &
TENNESSEE OPEN MEETINGS ACT**

**Open Records Roadshow
Fall 2025 Edition**

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TRANSPARENCY IN GOVERNMENT

What we're going to cover:

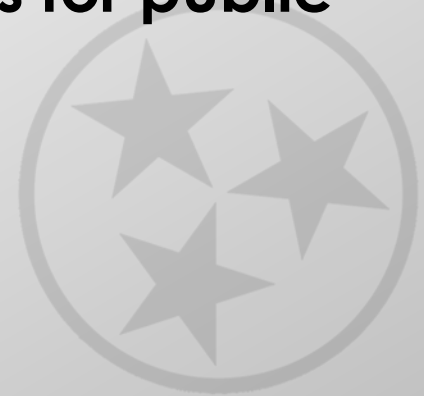
- Office of Open Records Counsel (“OORC”)
- Tennessee Public Records Act (“TPRA”)
- Common Exceptions to TPRA
- Processing Public Record Requests
- Tennessee Open Meetings Act (“TOMA”)
- New laws as of 2025.



ABOUT THE OORC

Office of Open Records Counsel

- 🌐 Created in 2008
- 🌐 Helps citizens and government officials better understand Tennessee's laws on public records and open meetings.
 - Respond to questions and concerns
 - Educational outreach
 - Develop forms, schedules, and policies for public record requests
 - Post resources online
 - Cannot enforce TOMA or TPRA



OFFICE OF OPEN RECORDS COUNSEL

Policies and Guidelines

- 🌐 Best Practices
- 🌐 Model Public Records Policy
- 🌐 Schedule of Reasonable Charges
- 🌐 Charges for Frequent Requests
- 🌐 Informal Advisory Opinions
- 🌐 Mediation of Records Disputes
- 🌐 Records Request Form, Records Response Form



OFFICE OF OPEN RECORDS COUNSEL

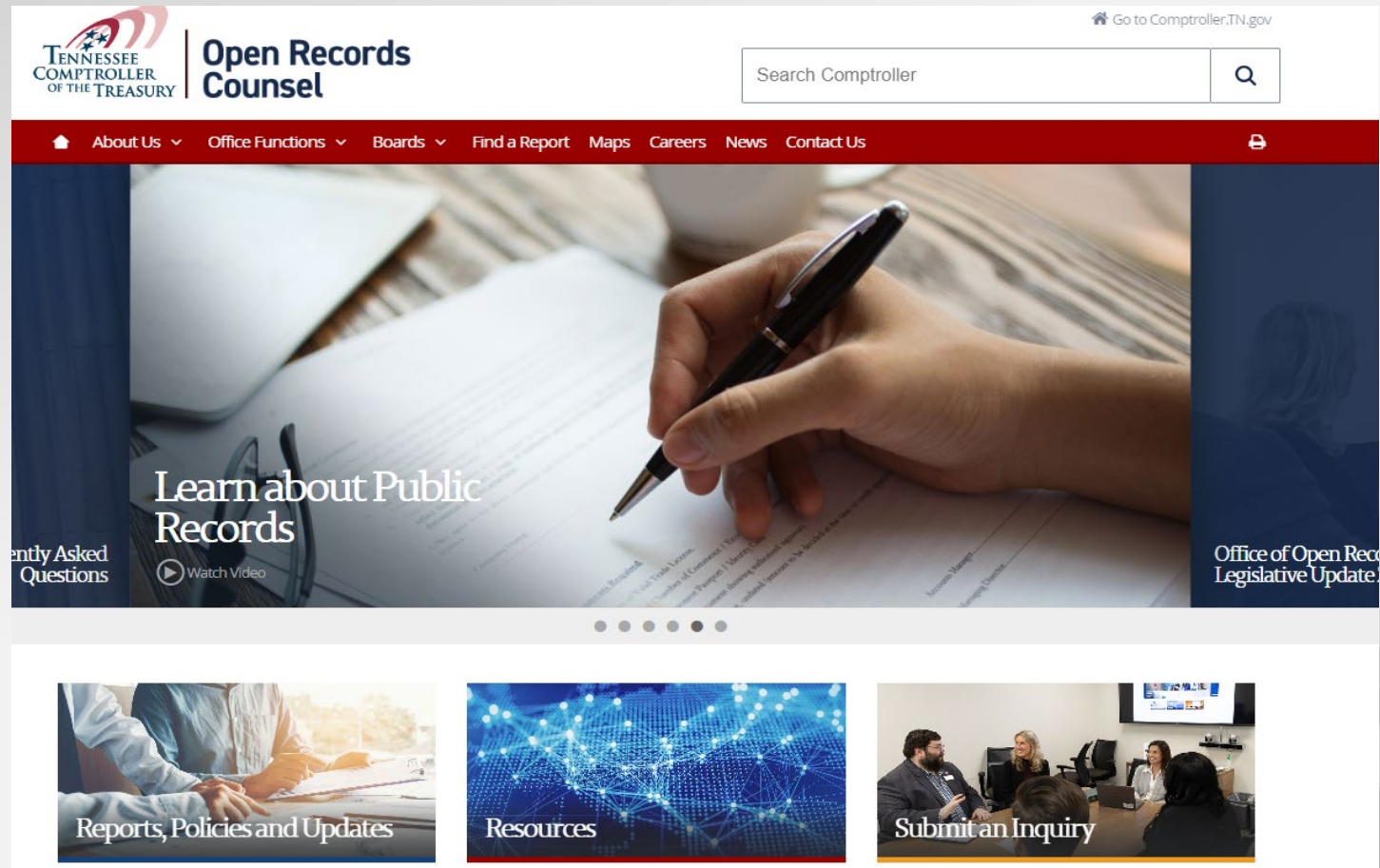
Benefits of Utilizing OORC

- ⊙ Whether a custodian must pay attorney's fees, if a court overturns their denial.
- ⊙ Schedule of Reasonable Charges
 - Charges Presumed Reasonable
- ⊙ Familiarity with Records/Meetings Issues
- ⊙ Neutral Intermediary
- ⊙ We're FREE



OFFICE OF OPEN RECORDS COUNSEL

OORC Website



TENNESSEE PUBLIC RECORDS ACT

Symbol of Transparency

“Facilitating access to governmental records promotes public awareness and knowledge of governmental actions and encourages governmental officials and agencies to remain accountable to the citizens of Tennessee.”

- *Schneider v. City of Jackson*, 226 S.W.3d 332, 339 (Tenn. 2007).



INTERPRETED BROADLY

- 🌟 Courts are to interpret the provisions of the TPRA broadly to give the fullest possible public access to public records.
 - Tenn. Code Ann. § 10-7-505(d).
- 🌟 TPRA expresses a clear legislative mandate favoring disclosure of government records.
 - *State v. Caewood*, 134 S.W.3d 159, 164-5 (Tenn. 2004).
- 🌟 Unless there is an express exemption within the law, disclosure is required “even in the face of serious countervailing considerations.”
 - *Memphis Publ’g Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994).

WHO IS SUBJECT TO THE TPRA?

Government Entities

- State agencies, counties, municipalities
- Not subject to Freedom of Information Act (“FOIA”)

“Functional Equivalent”

- A private entity’s relationship with the government is so extensive that it is the functional equivalent of a governmental entity.
- Based on totality of the circumstances.
 - Level of government funding
 - Government involvement and control over entity
 - Whether entity created by legislative act or previously determined by law to be open to public access
- Burden is on the petitioner



TENNESSEE PUBLIC RECORDS ACT

Tenn. Code Ann. § 10-7-503

- All public records
 - are open for inspection
 - by any citizen of the state
 - unless they're not
-
- **Creates a presumption of openness!**
 - Public records are open to Tennessee citizens unless state law provides otherwise



WHAT IS A “PUBLIC RECORD”?

Tenn. Code Ann. § 10-7-503(a)(1)(A)

- ☉ Made or received pursuant to law or ordinance; or
Made in connection with the transaction of official gov't business.
- ☉ Does not include the actual device or equipment.
- ☉ Drafts can be public records.
- ☉ “Public Record” determined by substance of the record.
- ☉ You don't have to create new records (sort of).
- ☉ Records, not information.



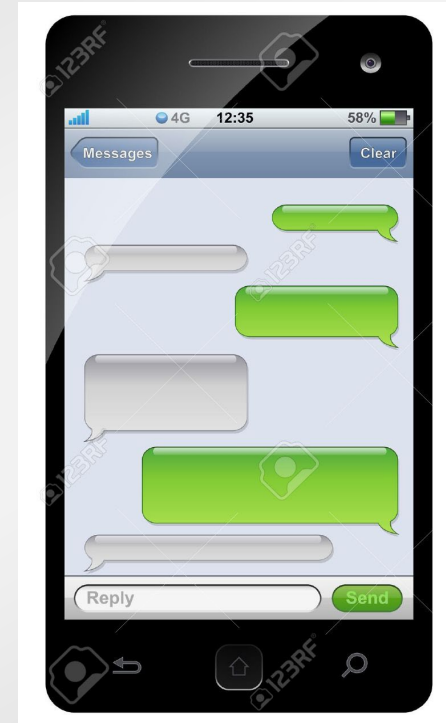
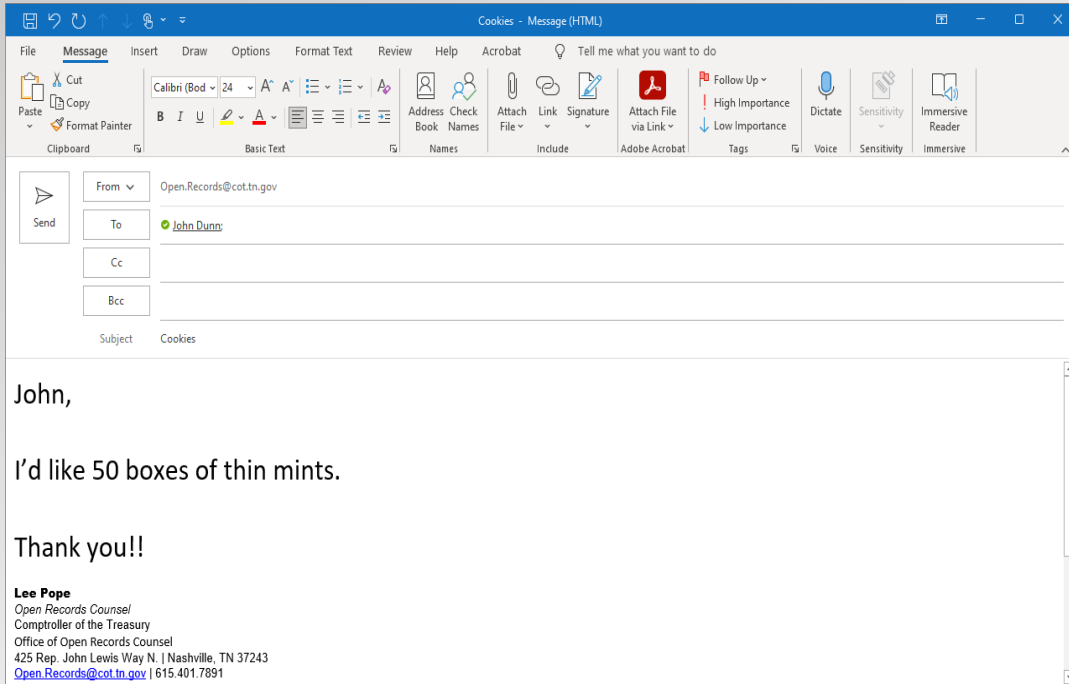
TYPES OF PUBLIC RECORDS

Common “Public Records”

- 🌐 Emails, texts, tweets, FB posts
- 🌐 Video recordings/surveillance
- 🌐 Personnel records/HR Investigations/Applicant Records
- 🌐 Travel/leave information
- 🌐 Meeting agenda and minutes
- 🌐 Contract/bidding documents
- 🌐 Budget records
- 🌐 Financial records



WHAT IS A “PUBLIC RECORD”?



TYPES OF PUBLIC RECORDS

Not Public Records

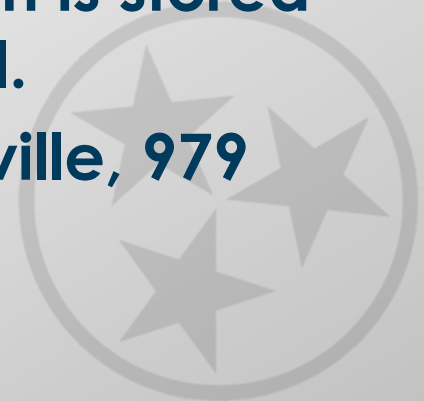
- Records that don't exist.
- Records that should exist, but don't.
- Information.
- A custodian is not required to “sort through files to compile information into a new record or to create or recreate a record that does not exist”.*
- * Sometimes you do though.



THE NES CASE

**You don't have to create new records,
except sometimes you do.**

- 🌐 If the requested information exists electronically, a records custodian is obligated to produce the information requested, provided that the requestor is willing to pay the costs incurred in obtaining the electronic information.
- 🌐 Case likely only applies where information is stored in one database, rather than over several.
- 🌐 *Tennessean v. Electric Power Bd. of Nashville*, 979 S.W.2d 297 (Tenn. 1998).



WHO CAN ACCESS RECORDS?

- Open for personal inspection *by “any citizen of this state.”*
- May require proof of citizenship: government-issued photo ID with address, or alternative forms of ID.
 - Driver License
 - Student ID
 - Utility Bill
 - Proof of Property Ownership
- Proof of citizenship is discretionary
- Should be included in Public Records Policy
- Does not include corporations or other artificial entities
- Commercial use of records is allowed



EXCEPTIONS TO THE TPRA

“Unless otherwise provided by state law”

- 🌟 **Tenn. Code Ann. § 10-7-504**

- **50+ Exceptions; 700+ elsewhere in Tennessee Code**

- 🌟 **“‘State law’ includes statutes, the Tennessee Constitution, the common law, rules of court, and administrative rules and regulations.”**

- ***Tennessean v. Metro. Gov’t of Nashville and Davidson Cnty.*, 485 S.W.3d 857, 865-66 (Tenn. 2016), citing *Swift v. Campbell*, 159 S.W.3d 565, 571-72 (Tenn. 2004).**

- 🌟 **OORC Report on Statutory TPRA Exceptions**

- **Lists statutory exceptions identified in Tennessee Code**



EXCEPTIONS TO THE TPRA

Common Exceptions

- TBI Files
- Medical Information – HIPAA
- Student Information – FERPA
- Juvenile Information (in some situations)
- Expunged Records
- Tax information
- Attorney, Physician or Therapist Privileges
- Criminal investigations and prosecutions

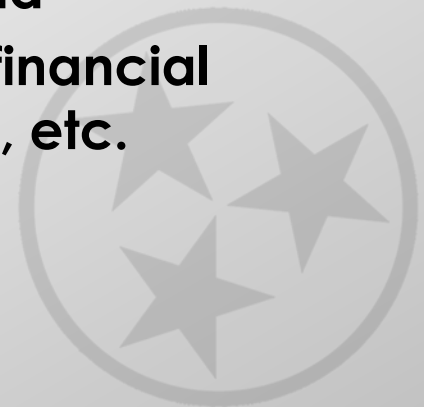


EXCEPTIONS TO THE TPRA

“Personally Identifying Information”

🌐 **Tenn. Code Ann. § 10-7-504(a)(29)**

- **Social security numbers;**
- **Official state or government issued driver licenses or identification numbers;**
- **Alien registration numbers or passport numbers;**
- **Employer or taxpayer identification numbers;**
- **Unique biometric data, such as fingerprints; and**
- **Unique electronic identification numbers and financial information – routing codes, account numbers, etc.**



EXCEPTIONS TO THE TPRA

Public Employee Personnel Records

🌐 When held only as an employer, the following is confidential:

- Home phone and cell phone numbers;
- Personal, nongovernment issued email addresses;
- Residential street address for non-state employees;
- Bank account information, health savings account, retirement account, and pension account information;
- Emergency contact information; and
- Above information for immediate family.

Tenn. Code Ann. § 10-7-504(f)



EXCEPTIONS TO THE TPRA

Law Enforcement Personnel Records

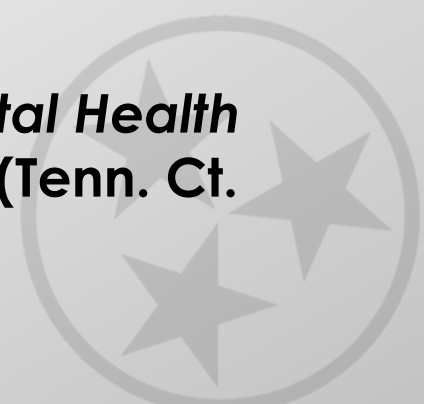
- If request is not for a professional, business or other purpose, officer should be notified and given opportunity to object to release of information. Tenn. Code Ann. § 10-7-504(g)
- Tenn. Code Ann. § 10-7-503(c) also requires notice be provided to an officer when personnel file is inspected.



EXCEPTIONS TO THE TPRA

Tenn. R. Crim. P. 16

- ⊙ **Materials relevant to ongoing or pending criminal proceedings are not subject to disclosure.**
 - *Tennessean, et al. v. Metro. Gov't of Nashville and Davidson Cnty., et al.*, 485 S.W.3d 857 (Tenn. 2016)
- ⊙ **Records must be investigatory in nature; ordinary public records do not become confidential due to association with criminal proceeding.**
 - *Scripps Media, Inc. v. Tennessee Dept. of Mental Health and Substance Abuse Serv.*, 2019 WL 3854298 (Tenn. Ct. App., August 16, 2019).



EXCEPTIONS TO THE TPRA

Juvenile Information

🌐 Generally open public record unless exception applies:

- Law enforcement records related to a juvenile court proceeding. (Tenn. Code Ann. § 37-1-154)
- Juvenile victim of crime (Tenn. Code Ann. § 10-7-504(t))
- Reports of harm (Tenn. Code Ann. §§ 37-1-409, 37-5-107)
- Reports of sexual abuse (Tenn. Code Ann. § 37-1-612)
- Law Enforcement Body Camera of Juvenile at School (Tenn. Code Ann. § 10-7-504(u)(1)(A))
- Law Enforcement Records Regarding Incident at a School (Tenn. Code Ann. § 10-7-504(a)(4)(H))
- Proceedings involving DCS
- Ongoing criminal investigation/prosecution



EXCEPTIONS TO THE TPRA

Security of Gov't Property

- ④ Information and records that would identify areas of structural or operational vulnerability that would permit interference with operations.
 - Alarm and security codes, passwords, wiring diagrams.
 - Surveillance recordings.
 - Government Buildings: § 10-7-504(m).
 - Government electronic systems and infrastructure: § 10-7-504(i).
 - Utilities: § 10-7-504(a)(21).
- ④ Identity of a vendor that provides goods and services used to protect electronic systems. § 10-7-504(i)(3).



EXCEPTIONS TO THE TPRA

Contingency Plans/Security

- Security assessment of a government building. § 10-78-504(m).
- Government's contingency plans to respond to or prevent violent incidents, bomb threats, ongoing acts of violence at a school, business, or public gathering. § 10-7-504(a)(21).
- Detention centers' riot, escape, and emergency transport plans. T.C.A. § 10-7-504(a)(14).



EXCEPTIONS TO THE TPRA

Other Common Exceptions

- Expunged Records. T.C.A. § 40-32-101
- Info that could locate a domestic violence or human trafficking shelter, or rape crisis center. T. C. A. § 10-7-504(a)(17).
- Records obtained from the FBI National Identification Index. T.C.A. § 38-14-101.



AND...



PRACTICAL STUFF

- Public Records Policy
- Receiving requests.
- Inspection vs. Copies
- Responding to requests.
- Redaction.
- Format of records.
- Charging for requests.
- Denying requests.
- Penalties for custodians and requestors



PUBLIC RECORDS POLICY/RULE

Tenn. Code Ann. § 10-7-503(g)

Every Gov't Entity must have a policy that includes:

- Process for making requests, including any required forms;
 - Process for responding to requests;
 - Statement of fees and billing/payment procedures; and
 - Contact information for the Public Records Request Coordinator (“PRRC”).
- OORC Model Policy released January 2017



RECEIVING TPRA REQUESTS

Verifying Information

- 🇺🇸 Tennessee Citizenship
- 🇺🇸 What is the requestor looking for?
Requests must be “sufficiently detailed” to identify what records are requested.
- 🇺🇸 Broad requests vs. insufficiently detailed requests



RECEIVING TPRA REQUESTS

Inspection vs. Copies

Requests for only inspection:

- Cannot require the request to be in writing
- Cannot assess a charge (even for labor)
- Can place reasonable restrictions on the inspection

Requests for copies:

- Can require to be in writing or on a form
- Can charge reasonable costs incurred to produce the requested records



TIMEFRAME TO RESPOND

Tenn. Code Ann. § 10-7-503(a)(2)(B)

- 🌐 The custodian must respond “promptly.”
- 🌐 If the custodian can’t respond promptly, they must respond within 7 business days:
 - Make the records available;
 - Deny the request in writing with the basis for denial; or
 - Give a production schedule, including a date certain to finish the request.
- 🌐 Failure to respond as indicated above = denial



RECORD FORMAT

Electronic Records

- ⊙ Not required to convert paper records into electronic format, BUT required to produce records electronically if records held electronically
- ⊙ Electronic files can be converted to another format, but must clearly convey the original content.
- ⊙ Only charge for copies if electronic copy must be printed – usually only have labor charges



CHARGING FOR PUBLIC RECORDS

OORC Schedule of Reasonable Charges

- 🌐 **Schedule sets forth reasonable charges for copies and labor**
 - Can charge for copies and labor
 - \$.15 per page/\$.50 per page for color
 - Use lowest possible labor
 - One-hour labor threshold
 - Can charge for redaction of copies
 - Can only charge for labor related to providing electronic copies unless physical copies are printed
- 🌐 **Must provide estimate of costs**
- 🌐 **Cannot charge if only inspecting records**



CHARGING FOR PUBLIC RECORDS

Charges for Multiple Requests

- ⊙ If a requestor, or group of requestors, makes four 4 or more requests within in a calendar month, a records custodian no longer is required to waive the first hour of labor or waive any other fees that would normally be waived in accordance with the local public records policy.
- ⊙ This policy does not allow a records custodian to aggregate requests when the requests are for certain types of routinely released and readily accessible documents.



CHARGING FOR PUBLIC RECORDS

Additional Production Charges

- Only required to deliver records via USPS
 - Can deliver records by other means
- Only required to provide records electronically if they are maintained electronically
- Any other actual cost of producing records.
- Except for IRL inspection.



NO RECORDS FOR YOU!

Grounds for Denying Requests

- ❁ Cannot identify responsive records
- ❁ Records do not exist
- ❁ Not a Tennessee citizen
- ❁ Didn't pay for copies/inspect previously requested records
- ❁ State law makes the records confidential



TPRA PENALTIES

Tenn. Code Ann. § 10-7-503(a)(7)(A)(vii)

Failure to Inspect

- 2 or more requests to inspect in 6 months
- Fails to view records within 15 days of being notified that records are available to view
- No TPRA requests for 6 months, unless failure to view was for “good cause.”

Failure to Pay for Copies

- Government entity provides estimate of costs
- Requestor agrees to pay estimated costs
- Requestor fails to pay for copies after they are produced
- No more TPRA requests until requestor pays costs



PETITIONING FOR ACCESS

Tenn. Code Ann. § 10-7-505

- ⊙ Includes constructive denial – excessive charges, unreasonable timeframe to produce records.
- ⊙ Petition filed in chancery or circuit court
- ⊙ Burden is on governmental entity to prove denial was justified
- ⊙ Court orders access to records and may impose attorney's fees if it finds denial was “willful.”



RECORDS RETENTION

Municipal Records – MTAS

- Municipal Technical Advisory Service to compile and print a records retention manual for municipalities. Tenn. Code Ann. § 10-7-702
- <http://mtasresource.mtas.tennessee.edu/reference/retention-schedules>

County Records - CTAS

- The County Technical Assistance Service to compile and print a records retention manual for counties. Tenn. Code Ann. § 10-7-404
- <http://eli.ctas.tennessee.edu/reference/current-retention-schedules>

State Records – Secretary of State

- Division of Records Management directs the disposition of all state records. Tenn. Code Ann. § 10-7-303



TENNESSEE OPEN MEETINGS ACT

Tenn. Code Ann. § 8-44-101, *et. seq*

- The formation of public policy and decisions is public business and shall not be conducted in secret.
- Construed broadly in favor of the public.
- Provides the right to attend AND the right to participate.



TENNESSEE OPEN MEETINGS ACT

TOMA Requirements

- ④ **“Meetings” must be open to the public**
- ④ **“Adequate Public Notice”**
- ④ **Agenda 48 hours in advance**
- ④ **Meeting Minutes**
 - **Persons present**
 - **Motions, proposals and resolutions offered**
 - **Results of any votes**
- ④ **All votes by public vote, public ballot or public roll call**
- ④ **Opportunity for public comment**



TENNESSEE OPEN MEETINGS ACT

What is a “Governing Body”?

- ⊙ Members of a public body of 2 or more members with authority to make decisions for or recommendations to a public body on policy or administration.
- ⊙ “Public Body”
 - 1. Origin or authority traced to state, city or county legislative action; and
 - 2. Possess authority to make decisions or recommendations concerning policy or administration.
- ⊙ Includes certain non-profits.
- ⊙ Does not include advisory committees created by a single official



TENNESSEE OPEN MEETINGS ACT

What is a “Meeting”?

- ❁ Convening of a governing body of a public body to make a decision or to deliberate toward a decision.
- ❁ “Deliberation” about an issue a quorum would have to vote upon
 - Weigh arguments for or against a proposed course of action
- ❁ Doesn't include executive sessions or informational workshops/sessions
 - Does it go beyond the provision of information and extend into substantive discussion of positions and attempt to develop a consensus?



TENNESSEE OPEN MEETINGS ACT

“Adequate Public Notice”

- ⊙ **Under the totality of the circumstances, does notice give interested citizens a reasonable opportunity to exercise their right to attend?**
- ⊙ **Regular Meeting: Only Time & Place of Meeting**
- ⊙ **Special Meeting:**
 - **Reasonably describe proposed actions to be taken or decisions to be made**
 - **Cannot discuss other matters during the meeting**



TENNESSEE OPEN MEETINGS ACT

Public Comment Period

- ⊙ **Must include a public comment period if there are actionable items on the agenda.**
- ⊙ **There are (almost) always actionable items on the agenda.**
- ⊙ **Reasonable restrictions are allowed**
 - Length of time for total comments, and/or per speaker
 - May require advance notice
 - Number of speakers
- ⊙ **Must ensure equal access for opposing viewpoints.**

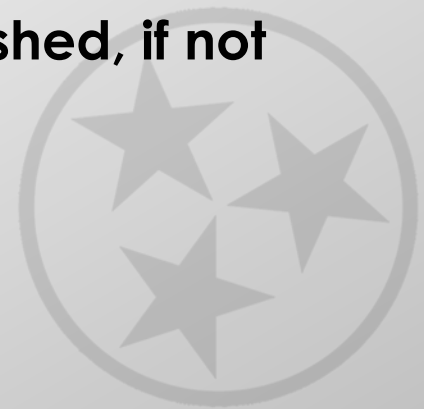


TENNESSEE OPEN MEETINGS ACT

Agendas

Tenn. Code Ann. § 8-44-110

- Local government bodies and state government bodies must make an agenda available to the public at no charge at least 48 hours prior to the meeting.
- Must make agenda available to the public on the website provided the governing body maintains a website.
- Must describe the matters to be deliberated or acted upon during the meeting.
- Items can be added after the agenda is published, if not done so to violate sunshine laws intentionally.
- Separate from notice of meeting.



TENNESSEE OPEN MEETINGS ACT

Meetings, but not “Meetings”

- 🌟 **Executive Sessions**
- 🌟 **Informational Sessions/Workshops**
- 🌟 **School Safety Planning**
- 🌟 **Government Audit Committees**



TENNESSEE OPEN MEETINGS ACT

TOMA OOPS!

- ❁ **Any action taken in violation of TOMA is null and void, except commitments affecting public debt.**
 - Tenn. Code Ann. § 8-44-105
- ❁ **Court has broad jurisdiction to issue injunctions, impose penalties and otherwise enforce purpose of TOMA.**
 - Tenn. Code Ann. § 8-44-106
 - Court retains jurisdiction and governing body must report to the court semi-annually re TOMA compliance
- ❁ **Willful violation? Attorney's fees for you!**



LEGISLATIVE UPDATE

2025 Edition

- 🌟 Makes full residential information for all public employees confidential, including street address, city, state, and zip code. Public Chapter 280
- 🌟 State governing bodies may allow electronic participation in meetings. Public Chapter 524.
- 🌟 Savanna's Law – creates a public, online registry of persistent domestic violence offenders. Public Chapter 520.

Full 2025 Legislative Update on OORC Website.



QUESTIONS?

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