

PERSONNEL

Personnel

Inspecting and Copying Public Records (6.20)

I. PURPOSE

The Tennessee Public Records Act, codified at Tenn. Code Ann. § 10-7-503 *et seq.*, grants Tennessee citizens the right to inspect public records. The law allows records custodians to charge fees to supply copies of public records. Under Tenn. Code Ann. § 8-4-601 *et seq.*, in 2008, the General Assembly created the Office of Open Records Counsel (OORC) and directed the OORC to develop a schedule of charges that may be used as a guideline to charge Tennessee citizens who request copies of public records. These guidelines create a safe harbor for institutions and records custodians who adhere to the policies and guidelines established by the OORC. The Tennessee Board of Regents promulgated policy #4:07:10:00, *Charges for Producing Copies of Public Records*, incorporating the OORC guidelines as they may be from time to time amended. Tennessee State University (TSU) has adopted this policy and the OORC guidelines, as follows.

II. DEFINITIONS

1. "Labor" means the time reasonably necessary to produce requested records, including time spent locating, retrieving, reviewing, redacting, and reproducing the records.
2. "Labor threshold" means the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the institution in producing the records.
3. "Production costs" means all reasonable costs the institution incurred to produce the public records requested by the requesting party. Production costs include copying costs, labor costs, and delivery costs, as described in this policy.
4. "Public record" means any record of the institution that is required to be open to inspection under the provisions of Tennessee and United States laws.
5. "Public Records Designee" or "PRD" means the person(s) at each campus, department or unit who receives/receive and coordinates /coordinate public records requests and maintains/maintain documentation of public records requests, responses, and charges.
6. "Requesting party" means a Tennessee citizen who requests to inspect or copy public records. To have access to public records, a requesting party must be a citizen of the State of Tennessee and provide a photo ID issued by a governmental entity containing the requestor's Tennessee address.

III. COPYING COSTS

TSU adopts the rates for charges for making copies of public records by photographic or other means established by the OORC as they may be from time to time amended. Per-page fees for copying are as follows:

Copy Charges

1. Fifteen (15) cents per page for each standard 8 ½ x11 or 8 ½ x14 black and white copy produced. An amount equivalent to the charge for two (2) separate copies (thirty (30) cents per page) will be charged for duplex copies.

2. If a public record is maintained in color, color copies may be produced if the custodian's department has color copying equipment/capabilities. If color copies can be produced, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than the fifteen (15) cents per page charge for black and white copies. If the requestor requests a color copy, a charge of fifty (50) cents per page will be assessed for each 8 ½ x 11 or 8 ½ x14 color copy produced.

3. If actual costs are higher than those listed above or if the requested records are produced in a medium other than 8 ½ x11 or 8 ½ x 14 paper, the records custodian may assess higher charges based on actual cost. If higher charges based on actual cost are charged, they will be based on a schedule of charges documenting the University's actual cost and stating the calculation and reasoning for the charges.

4. These fees do not include costs for labor. **Labor costs for copies shall be in addition to the cost for copies** and assessed as follows:

a. There will be no charge for the **first hour of labor** incurred in producing material for copying.

b. After the first hour, the requestor shall be charged the hourly wage of the employee(s) reasonably necessary to produce the requested records. The hourly wage shall be based upon the base salary of the employee(s) and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by the required hours to be worked per year.

c. The records custodian shall utilize the most cost efficient method of producing the requested records.

5. If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is

necessary to convert or put the records in a readable and reproducible format or it is necessary to access backup files, the PRD shall charge the requesting party **the actual costs** incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.

6. Electronic records will be produced only in a read-only format.

IV. PROCESS FOR CALCULATING LABOR COSTS

The following process shall be used to calculate the labor costs to be charged to the requesting party:

1. First, determine the number of hours each employee spent producing the requested public records.
2. Second, subtract one (1) hour from the number of hours the highest paid employee spent producing the request.
3. Third, multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage; and
4. Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requesting party.

V. DELIVERY COSTS

The requesting party will be assessed the cost(s) incurred by the University in delivering records to the requesting party in addition to any other charge permitted by rules promulgated by the OORC or existing law.

1. There is no delivery charge for copies of records if the requestor picks the records up (*i.e.*, receives them by hand delivery).
2. At the discretion of the records custodian, copies of public records may be delivered through other means, including electronically, by U.S. Postal Service, or, if requested, by commercial carrier. If records are delivered using the U.S. Postal service or a commercial carrier, the requestor shall be assessed any labor costs incurred by the University related to preparing the records for this mode of delivery.
3. It is anticipated that most requestors will pick the records up (*i.e.*, receive them by hand delivery) and will not be assessed a delivery charge.

VI. PAYMENT

If the requesting party requests copies of public records, the following provisions concerning payment of production costs shall apply:

1. The PRD shall provide the requesting party an estimate of the production costs before initiating the production of copies of the requested public records.
2. Payment of all production costs must be made in full before copies of public records are delivered or otherwise made available to the requesting party.
3. Production costs must be paid by cash or check. Cash payments must be for the exact amount of the publication costs.
4. The PRD will provide a receipt to the requesting party upon receipt of payment of the productions costs.

VII. REQUESTS FOR INSPECTION ONLY

1. TSU shall not assess a charge to **inspect** public records unless otherwise required by law.
2. When public records are requested for inspection only, the custodian will track the number of hours each employee spends producing the records in order to accurately assess costs in the event that the requestor converts a request for inspection into a request for copies.

IX. REQUESTS FOR COPIES FOLLOWING INSPECTION

If a requesting party, after requesting to inspect public records, then requests copies, the requesting party shall be charged for all production (labor and copying) costs.

1. Copying costs for inspection requests that are converted into requests for copies shall be computed and assessed as set forth in sections (III) (1) - (3), above.
2. Labor costs for inspection requests that are converted into requests for copies shall be computed and assessed as set forth in sections (III) (4) (a) - (c), above.
3. Delivery costs for inspection requests that are converted into requests for copies shall be computed and assessed as set forth in sections (V) (1) - (3), above.

X. FREQUENT AND MULTIPLE REQUESTS FOR PUBLIC RECORDS

1. TSU will assess a fee for all labor reasonably necessary to produce copies of requested records after the records custodian or a designee spends one (1) hour producing the requested records.
2. During each calendar month, records custodians shall aggregate the number of requests for copies made per requestor.

3. When the total number of requests made by a requester during a calendar month exceeds four (4), the requestor shall be charged a fee for all labor that is reasonably necessary to produce copies of the requested records. The requestor shall not be entitled to one (1) free hour of labor before additional costs are assessed.

a. When the total number of requests made by a requester during any calendar month exceeds four (4), the requestor must be notified that a fee will be charged for all labor reasonably necessary to produce additional materials for copying.

b. Labor costs shall be computed and assessed as set forth in sections (III) (4) (a) - (c), above.

4. Requests for items that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held during the previous calendar month, are exempt from this *Frequent and Multiple Requests for Public Records* policy provision.

5. The total number of public record requests made by a requestor and by any other individual will be aggregated if the records custodian reasonably believes the requestor to be acting in concert with or as the agent of another person, entity or organization. When aggregating the labor of multiple requestors, the records custodian must file a *Notice of Aggregation of Multiple Requestors* (see appendix) with the Office of Open Records Counsel.

6. If a records custodian aggregates requests by multiple requestors, in addition to filing a *Notice of Aggregation of Multiple Requestors* (see appendix) with the OORC, he or she must inform the requestors (1) of the determination to aggregate, and (1) that each has the right to appeal the decision to aggregate to the State if Tennessee Office of Open Records Counsel.

Adopted: January 12, 2009. This policy supersedes the previous version of TSU Personnel Policy #6.20 and also constitutes a new business policy.

Authority:

TBR policy #4:07:10:00, *Charges for Producing Copies of Public Records*

(Source: TBR Meeting, December 4, 2008)

[http://www.tbr.edu/policies/default.aspx?d=5182&terms=open+records.](http://www.tbr.edu/policies/default.aspx?d=5182&terms=open+records)

Office of Open Record Counsel (OORC) Schedule of Reasonable Charges
[http://state.tn.us/comptroller/openrecords/pdf/ScheduleofReasonableCharges\(final\)8.pdf](http://state.tn.us/comptroller/openrecords/pdf/ScheduleofReasonableCharges(final)8.pdf)

OORC Frequent and Multiple Request Policy
[http://state.tn.us/comptroller/openrecords/pdf/FrequentandMultipleRequestPolicy\(final\)9.pdf](http://state.tn.us/comptroller/openrecords/pdf/FrequentandMultipleRequestPolicy(final)9.pdf)

Tennessee Public Records Act, Tenn. Code Ann. §10-7-503 *et seq.*

Tennessee Office of Open Records Counsel, Tenn. Code Ann. §§ 8-6-601 *et seq.*

Appendices

A. RECORDS PRODUCTION LETTER

(Insert Agency Name and Address)

(Insert date)

Dear Sir or Madam:

On _____ (*date*), this Office received your open records request to inspect/receive copies of _____ (*insert description of records*), attached (*attach copy of written request*). Tenn. Code Ann. § 10-7-503(a) provides the following:

(2)(B) 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. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall within seven (7) business days:

- (i) Make such information available to the requestor;
- (ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or
- (iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce such record or information. [Emphasis added]**

This Office is currently in the process of retrieving, reviewing, and/or redacting the requested records. In accordance with the above-cited law, this letter is being sent to inform you that by

_____ (*insert reasonably necessary time*), either the records you have requested to inspect/receive copies of will be available or a determination of accessibility and availability will be made regarding the requested records.

[*Include as appropriate if partial denial*] This Office is unable to provide you with part of the requested record(s) and a separate denial letter is being/has been sent to you.]

If you have any additional questions please contact (*insert contact person's name and phone number*).

Sincerely,

(*Record Custodian's name and title*)

Attachment [*Open Records Act request to inspect/receive copies*]

State of Tennessee Office of Open Records Counsel Records Production Letter Tenn. Code Ann. § 10-7-503(a)(2)(B)(ii) Revised effective 1/1/2009 Form #CT-0447

B. RECORDS REQUEST DENIAL LETTER

(*Insert Agency Name and Address*)

(*Insert date*)

Dear Sir or Madam:

On _____ (*date*), this Office received your open records request to inspect/receive copies of _____ (*insert description of records*). After reviewing the request, this Office is unable to provide you with either all or part of the requested record(s). The basis for this denial is:

- No such record(s) exists.
- This office is not the records custodian for the requested record(s).

Additional information is needed to identify the requested record(s):

The following law (citation and brief description why access denied):

Tenn. Code Ann. Section:

Court

Rule: _____

Common Law

Provision: _____

Federal Law (HIPAA, FERPA, etc.): _____

If you have any additional questions please contact _____ (*insert contact person and phone number*).

Sincerely,

(Record request recipients or custodian's name and title)

Form #CT-0447

C. NOTICE OF AGGREGATION OF MULTIPLE REQUESTORS

Mail completed form to:

Office of Open Records Counsel

Suite 1600, James K. Polk State Office Building

505 Deaderick Street

Nashville, Tennessee 37243

(615) 741-1551 (fax) or Open.records@state.tn.us (e-mail)

Records Custodian: _____

(Name of Governmental Entity, Office or Agency)

Employee/official authorizing aggregation: _____

(Name and title)

Address and phone number: _____

Other Offices or Custodians included in aggregation: _____

(_____) of Requestors being aggregated:

(Number)

Requestor's name, address and contact information:

Requestor's name, address and contact information:

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NOTICE OF AGGREGATION OF MULTIPLE REQUESTORS FORM T.C.A. Section 8-4-604(a)(2) Page 1 of 2

Office of Open Records Counsel

Form #CT-0444

NOTICE OF AGGREGATION OF MULTIPLE REQUESTORS FORM (cont).

Explanation of basis for aggregation and description of scope (records included/excluded):

Requestors have been notified that a properly adopted aggregation policy exists, that the decision to aggregate has been made, and that there is a right to appeal the decision to the Office of Open Records Counsel.

Signature of Records Custodian, date

Signature of Requestor, date

Signature of Requestor, date

Signature of Requestor, date

Signature of Requestor, date

NOTICE OF AGGREGATION OF MULTIPLE REQUESTORS FORM T.C.A. Section 8-4-604(a)(2) Page 2 of 2

Office of Open Records Counsel

Form #CT-0444