

DATE: May 11, 2017

SUBJECT: New Commission Policy- Public Records Policy

ACTION RECOMMENDED: Approval

BACKGROUND INFORMATION:

Pursuant to Tenn. Code Ann. § 10-7-503(g), every governmental entity subject to the Tennessee Public Records Act (“TPRA”) (Tenn. Code Ann. § 10-7-501 et seq.), must establish a written public records policy properly adopted by the appropriate governing authority by July 1, 2017. The policy adopted shall not impose requirements on those requesting records that are more burdensome than state law and shall include:

- The process for requesting access to public records and any required form(s);
- The process for responding to requests, including redaction practices;
- A statement of any fees charged for copies of public records and the procedures for billing and payment; and
- The name or title and contact information of the individual or individuals designated as the Public Records Request Coordinator(s).

Pursuant to Tenn. Code Ann. § 8-4-604(a)(1)(4), the Office of Open Records Counsel (“OORC”) is required to establish best practices guidelines and a model public records policy for use by agency records custodians in compliance with Tenn. Code Ann. § 10-7-503. The proposed THEC Public Records Policy was developed in accordance with the OORC’s model policy and is consistent with the OORC’s published guidelines and best practices. As such, it fulfills THEC’s duties under the TPRA.

The proposed policy is attached for review, discussion, and action at the May 11, 2017 meeting. Once approved, the policy will be distributed to each THEC employee and published in THEC’s Policy Manual. This policy clearly states the expectations of each employee involved in the fulfillment of public records requests on behalf of the Commission.

PUBLIC RECORDS POLICY FOR THE TENNESSEE HIGHER EDUCATION COMMISSION

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for the Tennessee Higher Education Commission (“THEC”) is hereby adopted by THEC to provide economical and efficient access to public records as provided under the Tennessee Public Records Act (“TPRA”) in Tenn. Code Ann. § 10-7-501, et seq.

The TPRA provides that all state, county, and municipal records shall at all times during business hours be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of THEC are presumed to be open for inspection unless otherwise provided by law.

Employees of THEC shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this policy shall be used to hinder access to available public records. Concerns about this policy should be addressed to the Public Records Request Coordinator for THEC or to the Tennessee Office of Open Records Counsel (“OORC”). This policy was developed in accordance with the Model Public Records Policy established by the OORC. THEC employees shall adhere to this policy and to the policies and guidelines established by the OORC.

This policy shall be applied consistently throughout the various offices, departments, and/or divisions of THEC, shall be reviewed no less than every two years, and may be revised by THEC to remain in compliance with law or state policy.

This policy is available for inspection and duplication in the office of the THEC General Counsel and is available online at: <https://www.tn.gov/thec/topic/about-thec-and-tsac>.

I. Definitions:

- A. *Records Custodian*: The office, official or employee lawfully responsible for the direct custody and care of a public record. See Tenn. Code Ann. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.

- B. Public Records: 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. See Tenn. Code Ann. § 10-7-503(a)(1)(A).
- C. Public Records Request Coordinator: The individual, or individuals, designated in Section III, A.3 of this policy with the responsibility of ensuring public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. See Tenn. Code Ann. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.
- D. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

II. Requesting Access to Public Records

- A. Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- B. THEC shall not require requests for inspection to be made in writing. The PRRC may request a mailing or email address from the requestor for providing any written communication required under the TPRA.
- C. Requests for inspection may be made:
 - 1. orally at 404 James Robertson Parkway, Suite 1900, Nashville, TN 37243,
 - 2. by phone at 615-741-3605,
 - 3. in writing using the Public Records Request form (Attachment A), or
 - 4. by email at THEC.TSAC.PublicRecords@tn.gov
- D. Requests for copies, or requests for inspection and copies, shall be made in writing using the Public Records Request form, submitted:
 - 1. in person at 404 James Robertson Parkway, Suite 1900, Nashville, TN 37243,
 - 2. in writing using the Public Records Request form, or
 - 3. by email at THEC.TSAC.PublicRecords@tn.gov

- E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of ID) is required as a condition to inspect or receive copies of public records.
- F. Public notices, archived videos of THEC meetings, meeting documents, and other frequently requested records and publications are posted and readily available online at www.tn.gov/the/.

III. Responding to Public Records Requests

A. Public Record Request Coordinator

1. The PRRC shall review public record requests, consult with the appropriate records custodian as needed, and make an initial determination of the following:
 - a. If the requestor provided evidence of Tennessee citizenship;
 - b. If the records requested are described with sufficient specificity to identify them; and
 - c. If THEC is the custodian of the records.
2. The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
 - a. Advise the requestor of this policy and the elections made regarding:
 - i. Proof of Tennessee citizenship;
 - ii. Form(s) required for copies;
 - iii. Fees (and labor threshold and waivers, if applicable); and
 - iv. Aggregation of multiple or frequent requests.
 - b. If appropriate, deny the request in writing, providing the appropriate grounds such as one of the following:

- i. The requestor is not, or has not presented evidence of being, a Tennessee citizen.
 - ii. The request lacks specificity. The PRRC shall offer to assist in clarification.
 - iii. An exemption makes the record not subject to disclosure under the TPRA. The PRRC shall provide the exemption in written denial.
 - iv. THEC is not the custodian of the requested records.
 - v. The records do not exist.
- c. If appropriate, contact the requestor to see if the request can be narrowed.
 - d. Immediately upon acknowledgement of receipt of request, forward the records request to the records custodian.
 - e. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC for that entity if known.

3. The designated PRRC is:

- a. Name or title: THEC Deputy General Counsel
- b. Contact information: 404 James Robertson Parkway
Parkway Towers, Suite 1900
Nashville, TN 37243
615-741-3605
THEC.TSAC.PublicRecords@tn.gov

B. Records Custodian

- 1. Upon receiving a public records request, a records custodian shall coordinate with the PRRC to promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If the records

custodian is uncertain that an applicable exemption applies, the custodian shall consult with the PRRC, counsel, or the OORC.

2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then the PRRC, or records custodian as designee, shall, within seven (7) business days from the receipt of the request, send the requestor a completed Public Records Request Response form (Attachment B).
3. If a public record request is denied, the PRRC, or records custodian as designee, shall deny the request in writing as provided in Section III.A.2.b using the Public Records Request Response form.
4. If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the PRRC, or records custodian as designee, shall use the Public Records Request Response form to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the PRRC, or records custodian as designee, should contact the requestor to see if the request can be narrowed.
5. If the PRRC or records custodian discovers records responsive to a records request were omitted, the PRRC, or records custodian as designee, will contact the requestor concerning the omission and produce the records as quickly as practicable.
6. The records custodian shall provide the requested records to the PRRC once compiled. The PRRC will coordinate delivery of the records to the requestor. Any redaction or segmentation of records must be authorized by the PRRC or General Counsel's office. Throughout the process of fulfilling any public records request, the records custodian shall fully inform the PRRC of any issues or difficulty that may arise during the process. All communication with the requestor regarding the request shall be initiated by or with the explicit approval of the PRRC.

C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian shall coordinate with the PRRC, THEC General Counsel, or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.
2. Whenever a redacted record is provided, the PRRC, or records custodian as designee, should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

IV. **Inspection of Records**

- A. There shall be no charge for inspection of open public records.
- B. The location for inspection of records within the offices of THEC should be determined by either the PRRC or the records custodian.
- C. Public records may be inspected during regular business hours. Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

V. **Copies of Records**

- A. The PRRC or records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- B. Copies will be available for pickup at a location specified by the PRRC or records custodian.
- C. Upon payment for postage, copies will be delivered to the requestor's home address by the United States Postal Service. Electronic delivery via email or electronic storage device is also permitted as appropriate.

D. A requestor will not be allowed to make copies of original records with personal equipment.

VI. Fees, Charges, and Procedures for Billing and Payment

A. THEC employees shall not use fees and charges for copies of public records to hinder citizen access to public records. The fees, charges, and procedures for billing and payment established by this policy were developed in accordance with the provisions of the Model Public Records Policy and Schedule of Reasonable Charges established by the OORC and are therefore presumed reasonable under the "safe harbor" provision of Tenn. Code Ann. § 8-4-604(a)(3).

B. The PRRC or records custodian shall provide requestors with an itemized estimate of charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.

C. When fees for copies and labor do not exceed twenty dollars (\$20.00), the fees may be waived.

D. Fees and charges for copies are as follows:

1. \$0.15 per page for letter- and legal-size black and white copies.

2. \$0.50 per page for letter- and legal-size color copies.

3. Labor when time exceeds one (1) hour.

4. Exceptions to the standard fees and charges above may include, but are not limited to, video, audio, electronic files, over-sized print formats, or other non-standard media. These fees and charges will be determined on a case-by-case basis dependent on the cost to duplicate, redact, and otherwise produce the requested records. These fees and charges shall be provided to the requestor in the itemized estimate.

5. If an outside vendor is used to duplicate records, the actual costs assessed by the vendor will be added to any other applicable charges incurred by THEC.

E. Payment is to be made by personal check or money order, payable to the Tennessee Higher Education Commission, presented to the records custodian or the PRRC.

F. Payment in advance will be required.

G. Aggregation of Frequent and Multiple Requests

1. THEC will aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than (4) requests are received by THEC within a calendar month (either from a single individual or a group of individuals deemed working in concert).

2. If aggregating:

a. The level at which records requests will be aggregated is the agency-level, encompassing all divisions of THEC.

b. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

c. Routinely released and readily accessible records excluded from aggregation include, but are not limited to any record regularly maintained by THEC in electronic format, not requiring redaction or other modification, delivered to the requestor via electronic means.

PUBLIC RECORDS REQUEST

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: Public Records Request Coordinator (PRRC)
Tennessee Higher Education Commission
404 James Robertson Parkway, Suite 1900
Nashville, TN 37243
615-741-3605
THEC.TSAC.PublicRecords@tn.gov

From: Requestor's Name & Contact Information: (include address for any required written response)

Is the requestor a Tennessee citizen? Yes No

Request: Inspection (The TPRA does not permit fees or require a written request for inspection only.)
 Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed \$ _____? If so, initial here: _____.

Delivery preference: On-Site Pick-Up USPS First-Class Mail
 Electronic Other: _____

Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

Signature of Requestor & Date Submitted

Signature of PRRC & Date Received

PUBLIC RECORD REQUEST RESPONSE
Tennessee Higher Education Commission
404 James Robertson Parkway, Suite 1900
Nashville, Tennessee 37243

[Date]

[Requestor's Name and Contact Information]:

In response to your records request received on [Date Request Received], our office is taking the action(s)¹ indicated below:

- The public record(s) responsive to your request will be made available for inspection:
 Location: _____
 Date & Time: _____
- Copies of public record(s) responsive to your request are:
 Attached;
 Available for pickup at the following location: _____; or
 Being delivered via: USPS First-Class Mail Electronically Other: _____.
- Your request is denied on the following grounds:
 Your request was not sufficiently detailed to enable identification of the specific requested record(s). You need to provide additional information to identify the requested record(s).
 No such record(s) exists or this office does not maintain record(s) responsive to your request.
 No proof of Tennessee citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification.
 You are not a Tennessee citizen.
 You have not paid the estimated copying/production fees.
 The following state, federal, or other applicable law prohibits disclosure of the requested records:
 _____.
- It is not practicable for the records you requested to be made promptly available for inspection and/or copying because:
 It has not yet been determined that records responsive to your request exist; or
 The office is still in the process of retrieving, reviewing, and/or redacting the requested records.

The time reasonably necessary to produce the record(s) or information and/or to make a determination of a proper response to your request is: _____.

If you have any additional questions regarding your record request, please contact [Records Custodian or Public Records Request Coordinator].

Sincerely,
 [Records Custodian or Public Record Request Coordinator]
 [Name, Title, and Contact Information]

¹ If all requested records do not have the same response, so indicate.