

**RULES
OF
TENNESSEE BOARD OF REGENTS**

**CHAPTER 0240-01-04
ACCESS TO PUBLIC RECORDS OF THE TENNESSEE BOARD OF REGENTS**

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0240-01-04-.01 PURPOSE AND SCOPE OF AUTHORITY.

- (1) In accordance with T.C.A. § 10-7-503(g), this rule is promulgated to provide economical and efficient access to public records as provided under the Tennessee Public Records Act (TPRA) in T.C.A. §§ 10-7-501 et seq.

Authority: T.C.A. §§ 10-7-501, et seq.; 10-7-503; and 49-8-203. **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.

0240-01-04-.02 DEFINITIONS.

- (1) FERPA – The Family Educational rights and Privacy Act, codified in 20 U.S.C. § 1232(g).
- (2) Institution – All Community colleges and colleges of applied technology governed by the Tennessee Board of Regents and the system office.
- (3) Public Record – 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 T.C.A. § 10-7-503(a)(1)(A).
- (4) Records Custodian – The office, official or employee lawfully responsible for the direct custody and care of a public record. See T.C.A. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.
- (5) Requestor – A person seeking access to a public record, whether it is for inspection or duplication.
- (6) Other definitions exist in the body of this rule.

Authority: T.C.A. §§ 10-7-503, 49-8-203, and 20 U.S.C. § 1232(g). **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.

0240-01-04-.03 GENERAL ACCESSIBILITY OF PUBLIC RECORDS.

- (1) The TPRA 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 the institutions governed by the Tennessee Board of Regents are presumed

(Rule 0240-01-04-.03, continued)

to be open for inspection during the regular hours of the institution's business office, unless otherwise provided by law.

- (2) Institution personnel shall provide timely and efficient access and assistance to persons requesting to view or receive copies of public records. No provisions of this rule shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the institution shall be protected as provided by current law. Concerns about this rule should be addressed to the Public Records Request Coordinator for The Tennessee Board of Regents or to the Tennessee Office of the Attorney General and Reporter.
- (3) This rule is posted online on the TBR website at (TBR Open Records Rules). This rule shall be reviewed annually.
- (4) This rule shall be applied consistently throughout the institutions and the TBR system office.
- (5) Each institution shall designate a Public Records Request Coordinator ("PRRC") and notify the TBR System Office PRRC of that person's name and contact information.

Authority: T.C.A. §§ 10-7-503 and 49-8-203. **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.

0240-01-04-.04 REQUESTING ACCESS TO PUBLIC RECORDS.

- (1) Public record requests must be communicated to the appropriate Institution or TBR System Office PRRC, or designee, to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner. The contact information for the TBR System Office PRRC is:

Tennessee Board of Regents
Attn: Director of Communications
1 Bridgestone Park, 3rd Floor
Nashville, Tennessee 37214
Phone: 615-366-4417
Fax: 615-366-3910
OpenRecordsRequest@tbr.edu
- (2) The Institution PRRC's, including institution, name, mailing address, phone number, fax number (if applicable), and email address, are identified on the TBR website at TBR Open Records.
- (3) A PRRC must not require that requests for inspection only be made in writing. However, the PRRC may request a written request to facilitate recordkeeping and ensure accuracy in fulfilling the request. The PRRC should request a mailing [or email] address from the requestor for providing any written communication required under the TPRA.
- (4) Requests for inspection may be made orally or in writing using the Public Records Request Form, located on the TBR website. Requests for inspection may be made in person or by mail, phone, fax, or email to the TBR System Office PRRC listed in paragraph (1), or any Institution PRRC.
- (5) Requests for copies, or requests for inspection and copies, shall be made in writing using the attached Form. Requests for copies may be made in person or by mail, phone, fax, or email to the TBR System Office PRRC listed in paragraph (1), or any Institution PRRC.

(Rule 0240-01-04-.04, continued)

- (6) 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.
- (7) The meeting materials, minutes and webcasts of the meetings of the Board of Regents and its Committees held since November 2013 are available for viewing on the TBR website at [Board Meeting Materials](#).

Authority: T.C.A. §§ 10-7-503 and 49-8-203. **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.

0240-01-04-.05 RESPONDING TO PUBLIC RECORDS REQUESTS.

- (1) Public Record Request Coordinator
 - (a) The PRRC shall review public record requests and make an initial determination of the following:
 1. If the requestor provided evidence of Tennessee citizenship;
 2. If the records requested are described with sufficient specificity to identify them; and
 3. If the Institution is the custodian of the records.
 - (b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
 1. Advise the requestor of this rule 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.
 2. If appropriate, deny the request in writing, providing the appropriate ground, 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. (Offer to assist in clarification)
 - (iii) An exemption makes the record not subject to disclosure under the TPRA. (Provide the exemption in written denial.)
 - (iv) The Institution is not the custodian of the requested records.
 - (v) The records do not exist.

(Rule 0240-01-04-.05, continued)

3. The PRRCs shall report to the Board of Regents on an annual basis about the Institution's compliance with the TPRA pursuant to this rule, and shall make recommendations, if any, for improvement or changes to this rule.

(2) Records Custodian

- (a) Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with T.C.A. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, counsel, or the Tennessee Attorney General and Reporter.
- (b) 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 a records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form.
- (c) If a records custodian denies a public record request, he or she shall deny the request in writing, and give the basis for the denial, which shall be general in nature and shall not disclose confidential information.
- (d) 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 records custodian 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 records custodian should contact the requestor to see if the request can be narrowed.
- (e) If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) Redaction

- (a) 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 should coordinate with 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.
- (b) Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

Authority: T.C.A. §§ 10-7-503 and 49-8-203. **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.

0240-01-04-.06 INSPECTION OF RECORDS.

- (1) There shall be no charge for inspection of open public records.

(Rule 0240-01-04-.06, continued)

- (2) The location for inspection of records within the offices of the Institution should be determined by either the PRRC or the records custodian.
- (3) The PRRC determines the location for the inspection of public records and may require an appointment for the inspection of public records. The PRRC must not allow a requestor to inspect original records outside the presence of an Institution employee designated by the PRRC. The PRRC must take reasonable precautions to ensure that the integrity of the public records is maintained during the inspection of the records.

Authority: T.C.A. §§ 10-7-503 and 49-8-203. **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.

0240-01-04-.07 COPIES OF RECORDS.

- (1) A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- (2) Copies will be available for pickup at a location specified by the records custodian.
- (3) Upon pre-payment for postage in addition to the cost of the copies, copies will be delivered to the requestor's home address by the United States Postal Service. Another means of delivery, such as a commercial delivery service, may be chosen by the requestor, subject to the pre-payment of the cost of delivery.
- (4) A requestor will not be allowed to make copies of records with personal equipment if the cost of production of the records exceeds fifty dollars (\$50).
- (5) If copies are to be provided by the Institution in an electronic format, the Institution must provide the flash drive or other device used to store the media, at the expense of the requestor. Under no circumstances may a requestor provide a data storage device that will be connected to the institution's IT system.
- (6) Electronic records will be produced only in a read-only format.

Authority: T.C.A. §§ 10-7-503 and 49-8-203. **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.

0240-01-04-.08 FEES AND CHARGES AND PROCEDURES FOR BILLING AND PAYMENT.

- (1) Fees and charges for copies of public records should not be used to hinder access to public records. No charges will be assessed for copies and duplicates unless the production costs exceed fifty dollars (\$50).
- (2) Records custodians shall provide requestors with an itemized estimate of the charges, using the appropriate form, prior to producing copies of records and may require pre-payment of such charges before producing requested records.
- (3) When fees for copies and labor do not exceed one hundred dollars (\$100), the fees may be waived.
- (4) Requests for waivers for fees above \$50 must be presented to the Institution's chief finance officer, who is authorized to determine if such waiver is in the best interest of the institution and for the public good. Fees associated with aggregated records requests will not be waived.

(Rule 0240-01-04-.08, continued)

(5) Fees and charges for copies are as follows:

- (a) \$0.15 per page for 8 ½" x 11" and 8 ½" x 14" black and white copies.
- (b) \$0.50 per page for 8 ½" x 11" and 8 ½" x 14" color copies. Prior to copying records in color, the requestor must be advised that the record can be produced in color for the higher cost and consent to paying for color copies.
- (c) The charge for a duplex copy must be the same as the charge for two (2) separate copies.
- (d) If a copy of a public record is produced on a medium other than for 8½" x 11" or 8 ½" x 14" paper, then the PRRC must assess a copy charge equal to the actual cost of producing a copy of the public record, taking into consideration the amount of material, equipment costs and the cost of the alternative medium.
- (e) If the requested records exist electronically, but not in the format requested or a new or modified computer program of application is necessary to put the records in a readable and reproducible format, or it is necessary to access backup files, the PRRC must charge the requestor 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.
- (f) The TPRA does not require the Institution to provide public records to a requestor in the format requested by the requestor if the record does not already exist in that format (e.g., a format that can be manipulated; paper instead of electronic).
- (g) When providing electronic copies of public records, the PRRC may charge per-page copying costs only when paper copies that did not already exist were required to be produced in responding to the request, such as when an electronic public record must be printed and redacted.
- (h) The PRRC may charge the actual costs for flash drives or similar storage devices on which electronic copies are provided.
- (i) If an outside vendor is used, the actual costs assessed by the vendor must be charged to the requestor.

(6) Fees and Labor Costs

- (a) The PRRC must charge the requestor the hourly wage of the employee(s) reasonably necessary to produce the requested records above the labor threshold.
 - 1. The "labor threshold" is the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the Institution in producing the records.
 - 2. "Labor" means the employee time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.
 - 3. The "hourly wage" is based upon the employee(s) base salary and does not include benefits.
- (b) In calculating the labor costs to be charged to the requestor:

(Rule 0240-01-04-.08, continued)

1. First, determine the number of hours each employee spent producing the requested public records;
 2. Second, subtract the one (1) hour labor threshold 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 requestor.
- (c) Labor costs should be tracked based on tenths of an hour, rounded down.
- (d) The PRRC should strive to ensure that current employees with the lowest practicable hourly wage be used to fulfill public records requests. However, the PRRC has the discretion to determine that is more cost effective to utilize a higher-compensated employee if he/she can accomplish the task more efficiently, which may result in lower total labor costs.
- (7) The PRRC has the discretion to determine how payment for production costs must be made (e.g., cash, check credit/debit card).
- (8) Payment in advance will be required when costs are estimated to exceed fifty dollars (\$50).

Authority: T.C.A. §§ 10-7-503 and 49-8-203. **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.

0240-01-04-.09 AGGREGATION OF FREQUENT AND MULTIPLE REQUESTS.

- (1) The Institution will aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than (4) requests are received within a calendar month (either from a single individual or a group of individuals deemed working in concert).
- (2) When Aggregating:
 - (a) The level at which records requests will be aggregated is at the institution level.
 - (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:
 1. Materials for meetings of the Board of Regents and Board committees;
 2. Other records determined by the PRRC.

Authority: T.C.A. §§ 10-7-503 and 49-8-203. **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.

0240-01-04-.10 CONFIDENTIALITY EXCEPTIONS.

- (1) Exceptions to the right to inspect or copy public records include, without limitation:
 - (a) Records made confidential by the TPRA itself or by other state law; and
 - (b) Records the Institution is required to keep confidential by federal statute or regulation as a condition for receipt of federal funds or for participation in a federally funded program.

Authority: T.C.A. §§ 10-7-503 and 49-8-203. **Administrative History:** Original rules filed January 4, 2019; effective April 4, 2019.