PUBLIC RECORDS
Inspection and Copying

Heidi Zimmerman, University Counsel
November 10 and 11, 2010
Sources

• Tennessee Code Annotated 10-7-503, et. seq.

• Tennessee Board of Regents Policy 4:07:10:00 - Charges for Producing Copies of Public Records

• MTSU Policy I:03:01 – Public Records – Inspecting/Copying Public Records
Office of Open Records Counsel

http://www.comptroller1.state.tn.us/openrecords/index.asp

Provides forms, schedule of allowable charges, opinions, FAQs
Public Records Mandate

T.C.A. 10-7-503:

“All state ... 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.”
What are Public Records?

All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, emails, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official University business.
Not Public Records:

Must be explicitly exempt by state or federal statute. Examples:

• FERPA-protected records (student education records)
• Sponsored research information
• Audit working papers
• Donor records
• Documents maintained by the Tennessee Venture Capital Network at MTSU
Employee Information

Personnel files are **open** to inspection and copying **except** with regard to:

- Home telephone and personal cell phone numbers
- Bank account and individual health savings account, retirement account and pension account information
- Social security number
- Residential info: street address, city, state, zip code
- Driver’s license info (unless driving is part of job)
- Medical info, sick leave docs, EAP files
Employee Information

These exceptions pertain to current and former employees, employee’s immediate family members, or members of the employee’s household.

Employee will be notified that a request was made and who made the request.
Subpoenas, Court Orders

Different process than Public Records requests (though should charge similarly for copies.)

Issued pursuant to judicial process.
If served, ascertain that you are the correct recipient.

Get a copy to me *immediately.*
Someone just came in my office asking for records!!!
What do I do?

Don’t panic - you’re not required to immediately produce the records; you have 7 business days to respond.
Determine if your office officially maintains the record and who the custodian is.

“Records Custodian” - An individual who is an MTSU employee who lawfully exercises direct care and control over a specific group or collection of records and who is responsible for the protection, preservation and release of non-confidential information. A Records Custodian is not necessarily the original preparer or producer of the record.
Records Custodian Duties

- Respond to receipt of requests.
- Make copies or arrange for copies to be made.
- Ensure the integrity and security of the records.
- Ensure appropriate redaction.
- Determine fees and charges.
- Require proper payment of fees and charges.
- Maintain file documentation of requests.
If you are not the proper custodian, you are not required to produce the records.

However, if you know who the proper custodian is, direct them there.

If the request comes from the media, send them to News and Public Affairs.
Determine if the request is:
- to inspect; or,
- get copies.
Inspect vs. Copy

Inspect:
- Can request, but not require, this request to be in writing.
- Cannot charge to inspect.

Copy:
- Request must be in writing.
- Charge for copies, other fees.
Proof of Citizenship

Require proof of current Tennessee citizenship.

Make a copy of their government-issued, photo ID. Must indicate a Tennessee address.
Review the Request to Inspect/Copy Public Records form.

http://www.mtsu.edu/policies/request
Request to Inspect/Copy Public Records

Copies to: Office of University Counsel, Office of News and Public Affairs

Name ___________________________ Telephone Number ___________________________

Address ___________________________

E-mail address ________________________

Tennessee Driver’s License Number ___________________________
(or other acceptable identification to prove citizenship in Tennessee). Attach a copy of the ID.

Company or business represented, if applicable ___________________________

Business telephone number ___________________________

Date and time of request: Date ________ Time ________

Department of record ___________________________

Signature of Requestor ___________________________ Date ___________________________

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<tr>
<th>Specific Records Requested/Examined</th>
<th>Date Examined</th>
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Costs

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<th>Estimate</th>
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Cost (15 per page for black and white and 50 per page for color)

Labor/Programming

Delivery

Other (Specify)

Total

Payment received

Date copies mailed to requestor: ___________________________

Signature of custodian ___________________________ Date ___________________________

Attach additional sheet(s), if needed.
Copies of Request

Send copy of Request to Inspect/Copy Public Records as an email attachment to:

- Office of News and Public Affairs
- Office of University Counsel
Clarification of Request

It is the requestor’s responsibility to clearly state the records he/she wishes to inspect or obtain copies of.

If sufficient detail is not provided to allow identification of specific records, contact the requestor to clarify or narrow the request.
Respond Within 7 Business Days

- Provide records for inspection;
- Communicate when copies will be ready;
- Provide copies; or,
- Send Denial Letter
Redaction

Removal of confidential information must be done prior to inspection or copying.

If inspecting records, cannot charge for labor for redacting or for the copies made.
Inspection of Records

• Remember: can’t charge to inspect.
• Do not relinquish custody of originals.
  - “In presence of Records Custodian.” Provide room or desk for viewing, with supervision.
• Can (and should) charge for any copies the person leaves with.
Provide Copies

• Estimate costs:
  - copy charge
  - labor charge
  - programming charge
  - delivery charge
• Get payment before making copies (estimate).
• Get payment in full before releasing copies (actual).
Fees and Charges

Copies

- Letter and legal size pages
  - $0.15 per page, black and white
  - $0.50 per page, color
  - actual cost for larger documents

- Other formats
  - Reasonable fee. Document rationale of the basis for the fee.
Fees and Charges

Labor and Programming Charges

“Labor” – the time reasonably needed to produce the requested records including the time spent locating, retrieving, reviewing, redacting, and reproducing the records.

“Programming” – the time reasonably needed to extract information requested from a database.
Calculating Labor and Programming Charges

The University, not the requestor, will make the requested copies.

• Each employee documents time spent responding to a request.
• The first hour is subtracted from the number of hours of the highest paid employee.
• Add (remaining) hours for each employee and multiply by that employee’s hourly wage, excluding benefits.
• Add for the total charge.
### Calculation of Labor Costs

**Open Records Time Sheet**

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<th>Hourly Rate</th>
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**Instructions:** Every employee who works on the requested assignment must record their time.

*Hourly Rate Calculation: Divide your annual salary by 1950.*
Format of Records

If the requested records exist electronically, but not in the format requested, or a new or modified computer program or application is necessary to put the records in a readable and reproducible format, or it’s necessary to access backup files, actual costs incurred to do so should be charged.
Format of Records

• Records Custodian shall determine the appropriate format for copies.
• No records shall be produced or copied in a form to further a commercial, business or similar purpose: mailing labels, envelopes, etc.
• Computer tapes, etc., should be copied in a printed format.
Format of Records

• Produce records electronically whenever feasible if this is also the most cost-effective method of responding to a records request.
• Produce electronic records in read-only format.
• “The University is not required to create records or compile information.”
Fees and Charges

• Delivery costs

All actual delivery costs, if any, such as postal fees, will be added to the final bill.
Payment of Fees and Charges

• Payment of estimated amount must be made prior to beginning production of copies. Give itemized estimate to the requestor using a copy of the Request to Copy form.

• Payment of actual amount must be made prior to providing the copies. Give itemized breakdown of costs to requestor using a copy of the Request to Copy form.
Payment of Fees and Charges

• Requestor takes estimate/actual and makes payments at Cashier’s window in CAB. Put account # on form.
• Cashier provides receipt to Requestor.
• Requestor provides receipt to Records Custodian to establish payment.
• Email or mailed requests: Requestor sends check or money order to Records Custodian.
Other University Offices

The procedure does not apply to University offices that request to inspect and/or copy records so long as this is for a business-related purpose.

The Records Custodian may ask for certification of the purpose.
Production of Copies

Produce within 7 business days of the date of the request (assuming payment of costs have been made).

If the records will not be available within 7 business days of the date of the request, provide a Records Production Letter. Must use this form letter.
Dear Sir or Madam:

On [insert date] this Office received your open records request to inspect/receive copies of [insert type of records]. Tennessee Code Annotated § 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.

[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 and phone number].

Sincerely,

[Record Custodian’s name and title]

C: Office of University Counsel; Office of News and Public Affairs

Records Production Letter
Tennessee Code Annotated § 10-7-503(a)(2)(B)

A Tennessee Board of Regents University

MTSU is an equal opportunity, affirmative action institution that does not discriminate against individuals with disabilities, 0322-08-10
Denying Requests

Send Denial Letter within 7 business days of receipt of request, or once the Record Custodian is unable to obtain sufficient clarity with regard to the request.

Must use this form letter.
Dear Sir or Madam:

On [insert date], this Office received your open records request to inspect/receive copies of [insert type 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 (e.g., FIPPA, FERPA, etc.):

If you have any additional questions please contact

Sincerely,

[Record Setter's name and title]

C: Office of University Counsel; Office of News and Public Affairs

Records Request Denial Letter
Tennessee Code Annotated § 15-7-413(f)(2)(B)(i)

A Tennessee Board of Regents University
Documentation for File

- The Request to Inspect/Copy Public Records form
- Proof of Tennessee citizenship
- Labor Cost form, if applicable
- Copies of receipts for payment of fees and charges
- Correspondence with requestor, if any
- Denial letter, if appropriate
Office of University Counsel

If you have any questions about a request such as:

- are the records “public records”?
- can the Requestor legitimately ask to inspect/for copies?
- do I have to provide copies in a specific format?
- how much information am I required to provide?

Contact me at: 898-2025 or hzimmerman@mtsu.edu
FAQs

• Should non-Tennessee citizens be denied access to and/or copies of public records?
• What should I do if I get a request via email?
• I get the same request from the same person every semester; does he have to fill out the paperwork and show an ID each time?
• A reporter is in my office saying she needs copies of records for a story that has to air tomorrow; what do I do?
• Do I really need to send OUC and N&PA copies of every request?
• When does the 7 business day time period begin?
• Do I give the Requestor a copy of the Calculation of Labor Cost sheet?
• Can I try to talk the Requestor out of asking for as many copies as he’s asking for?
• Can I provide copies in batches?
• Can I assign any employee I want to work on producing the copies?
• The policy says we can’t give copies in a form to further a commercial or business purpose. Does that mean I don’t have to respond to off-campus bookstore requests for info?
• If my employees work on a request a total of 58 minutes, can I charge for labor?
• Does the Requestor need to come in person for any of these steps?
• My office produces “canned reports”. If a requestor asks for info contained in it, along with additional info, can I provide that or ask him if that’s what he wants?
• Can we direct a requestor to info on our webpage in response to a request?