

Public Records Access

Policy: Public Records Access	
	Approved By: Executive Management Team March 9, 2009
Updated:	
Responsible Party/Official: Tonya Y. Foreman, MPHD Records Custodian	

Purpose: To describe the circumstances under which the citizens of Tennessee have the opportunity to access, inspect, and obtain copies of records of the Metro Public Health Department that are not confidential, exceptions to the Tennessee Public Records Act, or otherwise protected from disclosure by law.

Scope: This policy applies to all Metro Public Health Department personnel and all Metro Public Health Department public records.

Policy: It is the Metro Public Health Department's policy to provide all citizens of the state of Tennessee the opportunity to inspect and obtain copies of its public records in accordance with the Tennessee Public Records Act (T.C.A. § 10-7-503 et seq) and Mayor Karl Dean's Executive Order #35 (attached). Exclusions exist for all Metro Public Health Department "confidential records". T.C.A. § 10-7-504 ("Confidential record" is any record, or part of a record, which is defined by the Tennessee Public Records Act, or other state or federal law, as being exempt from public inspection). For access to protected health information please refer to the Metro Public Health Department's HIPAA policy on "Access and Inspection".

Procedures:

1. Right to Inspect MPHD Public Records. Any citizen of Tennessee has the right to inspect and obtain copies of Metro Public Health Department public records.
2. Requests for Information. All requests for copies of MPHD public record information must be submitted in writing and contain the agreement that the requestor will pay all costs incurred for copying the record. Any request to view MPHD public record information does not require a written notice, and the request may be verbal. All citizens making a request for public record information must have a valid Tennessee ID.
3. Provision of Records. The records custodian of the Metro Public Health Department will promptly turnaround the request for public records, however where a prompt turnaround is not practicable, within seven (7) business days the records custodian shall respond with one of the following:
 - o Make the information available
 - o Deny the request in writing and include the basis for the denial
 - o Furnish the requestor with estimated time that will be reasonably necessary to produce the record or information, if it will not be produced within seven (7) business days.
4. Cost for reproduction of records.
 - o The requestor shall be charged \$0.15 per page (8.5" x 11" or 8.5" x 14" size paper) for black and white copies of MPHD public records.
 - o Requestor shall be charged \$0.50 per page (8.5" x 11" or 8.5" x 14" size paper) for all color copies.

- Duplex copies (two sided) are charged as two separate copies.
- Additional costs incurred by requestor will include employee labor that exceeds one (1) hour of work time for the process of producing copies of MPHD public records and postage for mail delivery of records to the requestor.
- The requestor shall pay all costs before the copies are provided to them.
- If the requestor cancels the public records request, to the extent that costs have been incurred by the MPHD, the requestor shall be responsible for paying the costs incurred.

Tennessee Citizen Request to Access and/ or obtain Copies of MPHD Public Records

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

KARL F. DEAN , MAYOR

EXECUTIVE ORDER NO. 035

SUBJECT: Policy for the Inspection and Copying of Public Records under the Tennessee Public Records Act (T.C.A. § 10-7-503 et seq.)

I, Karl Dean, Mayor of the Metropolitan Government of Nashville and Davidson County, by virtue of the power and authority vested in me, do hereby find, direct and order the following:

I. General Policy

A. It is the policy of the Metropolitan Government to:

- 1) Comply with the Tennessee Public Records Act (T.C.A. § 10-7-503 et seq.) by permitting the inspection and copying of the public records of the Metropolitan Government. (Attachment 1)
- 2) Provide any citizen of Tennessee the opportunity to inspect all records of the Metropolitan Government that are not confidential, exceptions to the Tennessee Public Records Act, or otherwise protected from disclosure by law.
- 3) Provide citizens of Tennessee the opportunity to copy or have provided to them a copy of records of the Metropolitan Government that are not confidential, exceptions to the Tennessee Public Records Act, or otherwise protected from disclosure by law for a fee in compliance with law that recovers for the Metropolitan Government the actual cost to the Metropolitan Government of producing and delivering the copies.

B. Each Department Head shall be responsible for carrying out this policy. Each Department Head may adopt supplemental rules, not inconsistent with this order. Each Department Head shall also have the responsibility to:

- 1) Preserve the confidentiality of a public record or information in a public record that is confidential under the Tennessee Public Records Act (T.C.A. 10-7-504 et seq.). (Attachment 2)
- 2) Protect public records from damage or disorganization.
- 3) Make public records not exempt from disclosure and in the Department Head's custody available for inspection during normal business hours unless a state law provides otherwise.

C. A Department may not require a request to view a public record to be in writing and may not assess a charge to view a public record unless otherwise required by law. T.C.A. § 10-7-503(a)(7).

D. A Department may require a request for copies of public records to be in writing. T.C.A. § 10-7-503(a)(7).

E. A Department may require a citizen making a request to inspect or copy a public record to present photo identification, if the person possesses photo identification, issued by a governmental entity, which includes the person's address. If a person does not possess such photo identification, the Department may require other forms of identification acceptable to the Department. T.C.A. § 10-7-503(a)(7).

F. Any request for inspection or copying of a public record shall be sufficiently detailed to enable the Department to identify the specific records to be located or copied. T.C.A. § 10-7-503(a)(7).

II. Definitions

In the interpretation and application of this policy, the following terms mean:

1) "Confidential record" is any record, or part of a record, which is defined by the Tennessee Public Records Act, or other state or federal law, as being exempt from public inspection, including, but not limited to, those records listed in T.C.A., § 10-7-504.

2) "Department Head" means any person designated a department head by the Metropolitan Charter, the Metropolitan Code of Laws, or the Mayor and shall also include a Department Head's designee.

3) "Labor" means the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing records.

4) "Public Official" means federal, state, and local government officials who seek records in their official capacity.

5) "Public records or records" means all written or electronically created or stored 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 the Metropolitan Government or as may further be defined in T.C.A. § 10-7-301(6).

III. Procedure for Inspecting or Copying Public Records.

A. Any citizen of Tennessee who has requested access to the Metropolitan Government's public records is entitled to inspect or copy the public record(s) if such record(s) is not exempt from disclosure. Where part of a public record contains information exempt from disclosure, that part shall be redacted.

B Public records not exempt from disclosure shall be made available promptly for inspection or copying.

C. Where a prompt turnaround is not practicable, within seven (7) business days the custodian shall:

1) Make the information available;

2) Deny the request in writing and include the basis for the denial;

3) Furnish the requestor with the estimated time that will be reasonably necessary to produce the record or information if it will not be produced within seven (7) business days.

D. To the extent possible copies shall be made on the copying equipment owned or leased by the Metropolitan Government. Where the equipment does not exist, is inoperative, is not designed to copy the records requested, or the requestor wants the copies in a format the Metropolitan Government's equipment cannot accommodate, the copies may be made on commercial copying equipment.

E. The Metropolitan Government is not responsible for searching through files to compile information or for creating records that do not exist.

IV. Cost of copies.

A. In the absence of a departmental policy approved by the Mayor and filed with the Metropolitan Clerk, requestors shall be charged \$0.15 per page (8 ½" x 11" or 8 ½" x 14" paper) for black and white copies. For documents in color, requestors shall be advised that color copies are available at a higher charge than black and white copies. If the requestor then requests a color copy, the requestor shall be charged \$0.50 per page (8 ½" x 11" or 8 ½" x 14" paper). Duplex copies (copies on both sides of a page of paper) are charged as two (2) separate copies. These charges are designed to cover the cost to the Metropolitan Government for copies of records maintained and provided to requestors. This is a reasonable amount that reflects the cost to the government based upon the average cost for the copy machine, paper and supplies, and overhead costs and is also an amount equal to or less than the amount adopted by the Office of Open Records Counsel of the State of Tennessee as a reasonable cost for producing a copy of a public record. ([Attachment 3.](#))

B. The Department Head can charge the requestor for employee labor that is reasonably necessary to produce the requested records. However, no charge shall accrue for the first one (1) hour incurred by personnel in producing the requested material. Costs are charged based on the hourly wage of the employee(s) (not including benefits). For salaried employees, the hourly wage is determined by dividing the employee's annual salary by the required hours to be worked per year (salary/ [52 weeks per year x hours worked per week]). The Department Head shall determine the number of hours each employee spent producing a request and then subtract one (1) hour from the highest paid employee. The Department Head will then multiply each employee's hourly wage by the total number of labor hours worked by that employee. Finally, the total labor hours for all employees will be added together to determine the total labor amount to charge.

C. Requestors will retrieve requested records by hand delivery when they return to the custodian's office. If the requestor requests delivery by means of the United States Postal Service, or through any other delivery means agreed to by the Department Head, costs incurred in delivering the copies will be assessed in addition to other permitted charges. The requestor shall pay the costs before the copies are provided to the requestor.

D. Department Policies

1) Department Heads shall produce records using the most cost efficient method(s).

2) Department Heads shall establish a written schedule of charges for special copies of records that are not maintained or provided on 8 ½" x 11" or 8 ½" x 14" paper if the actual cost of providing such record exceeds \$0.15 per page for black and white copies or \$0.50 per page for color copies.

3) Department Heads may establish a written schedule of charges for copies provided on 8 ½" x 11" or 8 ½" x 14" paper if the actual cost of providing such record exceeds \$0.15 per page for black and white copies or \$0.50 per page for color copies.

4) Department policies proposing to charge more than \$0.15 per page for black and white copies or \$0.50 per page for color copies must be submitted to the Finance Director's Office along with documentation that demonstrates that the proposed schedule of charges represents the actual costs to that department. Such documentation will also include the calculations and reasoning used to determine actual costs. If recommended by the Finance Director and approved by the Mayor, the written schedule of charges for that department shall become effective when filed with the Metropolitan Clerk.

E. The estimated cost of providing copies requested shall be calculated by the Department Head and explained to the requestor. Should a requestor cancel the public records request, to the extent costs have been incurred by the Department Head, the requestor shall be responsible for paying the costs incurred. The requestor shall have agreed in writing to make the payment as set out in this section and as explained to the requestor before the copies are made.

F. Department Heads have discretion to reduce or waive payment of costs if the requesting party is indigent or if the administrative cost of collecting the payment is greater than the cost of providing the

copies. A decision to reduce or waive costs shall be made in such manner so as to be in the best interests of the Metropolitan Government, shall be in compliance with all federal, state, and local laws, shall be made with complete impartiality and shall not be made in a way to give the appearance of preferential treatment.

G. Where it is not practical or possible for the department's copying equipment to prepare the copies of the records requested, the Department Head shall immediately notify the requestor. The requestor may then request the Department Head to determine and advise the requestor of the estimated cost to commercially reproduce a copy of the records. After the requestor pays the estimated commercial reproduction costs, the Department Head shall arrange the commercial reproduction of the documents for the requestor. The requestor shall pay any costs exceeding the estimated cost before the copies are provided to the requestor.

H. Where it is not reasonably possible for the department's staff to prepare the copies within the time frame the requestor needs, the Department Head shall immediately notify the requestor. The requestor may then request the Department Head to determine and advise the requestor of the estimated cost to commercially reproduce a copy of the records. After the requestor pays the estimated commercial reproduction costs, the Department Head shall arrange the commercial reproduction of the documents for the requestor. The requestor shall pay any costs exceeding the estimated cost before the copies are provided to the requestor.

I. Where the Department Head will be assessed a charge to retrieve requested records from archives, or any other entity having possession of the requested records, the Department Head shall immediately notify the requestor. After the requestor pays the estimated retrieval costs, the Department Head shall arrange for the retrieval and reproduction of the documents for the requestor. The requestor shall pay any costs exceeding the estimated cost before the copies are provided to the requestor.

J. The Department shall give the requestor the option of receiving information in any format in which it is maintained by the Department, including electronic format consistent with Tennessee Code Title 10, Chapter 7, Part 1.

K. When large-volume requests are involved, the Department shall provide the information in the most efficient and cost effective manner, including but not limited to permitting the requestor to provide copying equipment or an electronic scanner when reasonable.

L. Public Officials shall not be charged for copies of records where the total cost prescribed for copies of public records does not exceed twenty-five (\$25.00) dollars. The Department Head may waive any or all payment by Public Officials where the waiver is in the best interest of the Metropolitan Government.

M. It is the intent of this Executive Order to comply with all state laws including Title 8, Chapter 4, Part 6, of the Tennessee Code, the Office of Open Records Counsel, and T.C.A. § 10-7-503. Should it be determined that the requirements of state law conflict with the provisions of this Executive Order, the state law shall govern as to that requirement (See for example T.C.A. § 8-21-401 (i)(4), (5) and (11) which identifies the uniform copying fees applied in all courts).

N. At such time as the Office of Open Records Counsel, created by 2008 Tennessee Laws, Pub. Ch. 1179, Section 6, alters or amends the schedule of reasonable charges that a records custodian may impose, this Executive Order will be reviewed by the Finance Director and the Director of Law who shall recommend changes to this Executive Order that may then be necessary.

Ordered, Effective and Issued:

Karl F. Dean
Mayor

Date: December 9, 2008