

PUBLIC RECORDS POLICY AND PROCEDURES
FOR THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for The Metropolitan Government of Nashville and Davidson County is hereby adopted by the Metro Public Records Commission as authorized under BL2017-708 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 The Metropolitan Government of Nashville and Davidson County are presumed to be open for inspection unless otherwise provided by law.

The Metropolitan Government of Nashville and Davidson County 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 open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of The Metropolitan Government of Nashville and Davidson County, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for The Metropolitan Government of Nashville and Davidson County or to the Tennessee Office of Open Records Counsel (“OORC”). If a department routinely provides documents to the public in the ordinary course of business, nothing in this policy should prevent it from continuing to do so. In such cases, when requests are made for such documents directly to the department, and the request is fulfilled by the immediate provision of the documents to the requesting party, it is not necessary for the department to go through the process described in this policy.

This Policy is available for inspection and duplication in the Metropolitan Clerk’s Office. This Policy is posted online at PublicRecordsRequest.nashville.gov. This Policy shall be reviewed at least every two years.

This Policy shall be applied consistently throughout the various offices, departments, and/or divisions of The Metropolitan Government of Nashville and Davidson County except the following offices, departments, or divisions of The Metropolitan Government of Nashville and Davidson County, which have separate public records policies:

- 1) Metropolitan Nashville Police Department
- 2) Justice Integration Systems
- 3) The Metropolitan Board of Education
- 4) The Office of the Criminal Court Clerk
- 5) Health and Education Facilities Board
- 6) County Clerk
- 7) Department of Finance
- 8) Department of Health
- 9) Clerk and Master
- 10) Circuit Court Clerk
- 11) Juvenile Court Clerk
- 12) Public Defender’s Office
- 13) Sheriff’s Office
- 14) Register of Deeds
- 15) Department of Emergency Communications

While requests under this policy should be initially submitted to the Public Records Request Coordinator and forwarded to the respective Records Custodian(s) to facilitate and fulfill requests as outlined in this policy, each Department Head shall be responsible for carrying out this policy. Each Department Head

may adopt supplemental rules as authorized in accordance with this policy. 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., as the same may be hereafter amended), or other law.
- 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.

I. Definitions:

A. *Confidential record*: 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.

B. *Department Head*: 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.

C. *Labor*: The time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing records.

D. *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.

E. *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).

F. *Public Records Request Coordinator (PRRC)*: The individual, or individuals, designated in Section III, A.3 of this Policy who has, or have, the responsibility to ensure 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.

G. *Public Official*: A federal, state, and local government official who seek records in their official capacity.

H. *Requester*: 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 his/her designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.

B. Requests for inspection may be made the following ways:

1. Request online at PublicRecordsRequest.nashville.gov
2. Complete and submit the Metro public records request form to the Metropolitan Clerk's Office via email to publicrecords@nashville.gov or in person or by mail to the Metropolitan Clerk's Office, 1 Public Square, Suite 205, Nashville, TN 37201
3. Contact the Metropolitan Clerk's Office at 615-862-6770

4. Request via letter or other written request, so long as the request is sufficiently clear that the records requested are ascertainable.

C. Requests for inspection only can be made in writing or by oral request. Written requests are encouraged to ensure that the appropriate records for inspection are made available to the requester. If the requester desires responses regarding the status, clarification, decision to deny a request, or other written communications from Metro to be sent to a preferred mailing or email address, these addresses must be provided by the requester. If the requester does not provide a preferred mailing or email address, then any requests for clarification, responses, or other written communication required by the TPRA in response to requests for inspection only will be sent to the mailing address shown on the proof of Tennessee citizenship submitted by the requester.

D.. Requests for copies shall be made in writing through one of the following ways:

1. Request online at PublicRecordsRequest.nashville.gov

2. Complete and submit the Metro public records request form to the Metropolitan Clerk's Office via email to publicrecords@nashville.gov or in person or by mail to the Metropolitan Clerk's Office, 1 Public Square, Suite 205, Nashville, TN 37201

3. Request via letter or other written request, so long as the request is sufficiently clear that the records requested are ascertainable.E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of ID determined by Metro) is required as a condition to inspect or receive copies of public records.

F. Most public information regarding The Metropolitan Government of Nashville and Davidson County's departments, services, programs, events, and meetings are readily available on www.nashville.gov. In addition, The Metropolitan Government of Nashville and Davidson County offers an open data portal for some of our most frequently requested data and information available at <http://www.nashville.gov/Government/Open-Data.aspx>. The Metropolitan Government waives proof of Tennessee citizenship for copies of information publicly available on www.nashville.gov or Metro's Open Data portal at <http://www.nashville.gov/Government/Open-Data.aspx>.

G. Prior public records requests and the records provided in response to them, as well as other public records, may be made publicly available online at www.nashville.gov or at the Open Data portal at <http://www.nashville.gov/Government/Open-Data.aspx>. The PRRC or records custodian may respond to a request by directing the requester to such publicly available information, if it includes the records responsive to that request. Requesters should note that their public records requests and the information submitted along with them are also public records and maybe made publicly available unless otherwise protected from disclosure by state or federal law.

III. Responding to Public Records Requests

A. Public Record Request Coordinator

1) The PRRC shall review public record requests and make an initial determination of the following:

a. If the requester provided evidence of Tennessee citizenship;

b. If the records requested are described with sufficient specificity to identify them, if practical (unless the records custodian is needed to make this determination); and

c. If the Metropolitan Government is the custodian of the records, if known (unless the records custodian is needed to make this determination).

2) The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):

- a. Advise the requester of this Policy and the elections made regarding:
 - i. Proof of Tennessee citizenship;
 - ii. Form(s) required for copies;
 - iii. Aggregation of multiple or frequent requests, if appropriate.
- b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:
 - i. The requester is not, or has not presented evidence of being, a Tennessee citizen.
 - ii. The request lacks specificity, if it can be determined by the PRRC
 - iii. An exemption makes the record not subject to disclosure under the TPRA, if it can be determined by the PRRC. PRRC will provide the exemption in written denial.
 - iv. The Governmental Entity is not the custodian of the requested records, if known by the PRRC.
 - v. The records do not exist, if known by the PRRC.
- c. If appropriate, contact the requester to see if the request can be narrowed (PRRC will attempt to offer to assist in clarification, if possible).
- d. Forward the records request to the appropriate Metro records custodian(s) if covered under this policy.
- e. If requested records are in the custody of a different governmental entity and if the PRRC knows the correct governmental entity, advise the requester of the correct governmental entity and PRRC for that entity if known.

3) The designated PRRC for all Metro departments not exempted by Ordinance No. BL2017-708

is:

- a. Name or title: Metropolitan Clerk or his/her designee
- b. Contact information:
 - Email: publicrecords@nashville.gov
 - Phone: 615-862-6770
 - Mailing/physical address: 1 Public Square, Suite 205, Nashville, TN 37201
 - Fax: 615-880-3733

4) The PRRC shall report to the Public Records Commission at least once every two years about the Governmental Entity's compliance with the TPRA pursuant to this Policy and shall make recommendations, if any, for improvement or changes to this Policy.

B. Records Custodian

1. Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. The records custodian also has the right to contact the requester to see if the request can be narrowed. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC or Metro Legal/counsel.

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 a records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requester a completed Public Records Request Response Form which is attached, based on the form developed by the OORC and send a copy of this completed form to the PRRC in the Metro Clerk's Office.

3. If a records custodian denies a public record request, he or she shall use the Public Records Request Response Form to notify the requester of the denied request using the Public Records Request Response Form and send a copy of this completed form to the PRRC in the Metro Clerk's Office.

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 records custodian shall use the Public Records Request Response Form to notify the requester 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 requester to see if the request can be narrowed. The records custodian shall send a copy of this completed form to the PRRC in the Metro Clerk's Office.

5. If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requester concerning the omission and produce the records as quickly as practicable and notify the PRRC in the Metro Clerk's Office of this discovery and response.

6. If the records custodian fails to comply with any of the provisions of this policy, the department head will be notified and will be responsible for fulfilling the provisions and responsibilities of the record custodian.

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 should coordinate with Metro Legal/counsel or other appropriate parties regarding review and redaction of records.

2. When requested by a requester, a records custodian should provide the requester with a general statement of the bases for redaction(s) within the records provided. The bases given for redactions 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 unless otherwise provided for under state or federal law.

B. The location for inspection of records within the offices of The Metropolitan Government of Nashville and Davidson County will be at the office of the PRRC. The records custodian or PRRC will advise the requester of when these records can be inspected.

C. The PRRC may require an appointment for inspection or may require inspection of records at an alternate location. When an appointment is required, the appointment will be during normal business hours and should be at a mutually agreeable time for the requester. Each department may adopt policies to be approved by the Public Records Commission and filed with the PRRC, regarding the need for appointments and/or hours of inspection. If no policy is on file, the presumption shall be that no appointment is required, but under reasonable circumstances a records custodian may nevertheless require one.

D. At the discretion of the records custodian or PRRC, as applicable, and despite the fact that inspection only was requested, the records custodian or PRRC may choose to waive otherwise

applicable requirements, and where it is possible and most convenient or efficient for the records custodian or PRRC to do so, the records responsive to the request for inspection only may instead be emailed to the requester.

E. A requester inspecting records will be allowed to photograph records with a smart phone or camera, although such photographs of records will not be eligible for certification as certified copies, but, for cybersecurity reasons, under no circumstances may a requester insert a personal flash drive or other storage device into any Metropolitan Government computer.¹ The use of any other device is at the discretion of the PRRC or records custodian, as appropriate, which decision shall be made based on considerations such as security or the burden imposed on the department.

V. Copies of Records

A. A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.

B. At the discretion of the records custodian or PRRC, as applicable, and where possible, the responsive records may be emailed to the requester.

C. Copies, whether hard copies or in electronic form, such as on a cd or flash drive, depending on what is easiest for the records custodian or PRRC, will be available for pickup at a location specified by the records custodian at one of their department location(s).

D. Upon payment for postage and copies, copies will be delivered to the requester's preferred or home address by the United States Postal Service. Additional permitted means of delivery may be utilized at the discretion of the PRRC or records custodian, as appropriate.

E. A requester may obtain electronic copies of records on a flash drive or cd provided by the Metropolitan Government, which copies and media will be provided consistent with the provisions of Section VI of this Policy, below.

VI. Fees and Charges and Procedures for Billing and Payment

A. Each Department Head may delegate any and/or all of the following functions to his/her designee or records custodian:

B. A Department Head/designee shall produce records using the most cost efficient method(s).

C. In the absence of a departmental policy approved by the Public Records Commission and filed with the PRRC or other applicable federal, state, or local law which governs cost of a particular record, requesters 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, requesters shall be advised that color copies are available at a higher charge than black and white copies. If the requester then requests a color copy, the requester 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 requesters. 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

¹ A department hosting the inspection of electronic records on a Metropolitan Government computer shall, in consultation with ITS, if necessary, lock down the computer that is going to be used for the inspection so as to prevent someone being able to use a flash drive to copy information. Any DVD drive on the computer shall be either disabled or removed entirely to prevent its use. While it may be necessary for the computer on which the inspection will occur to be connected to the network for the purposes of retrieving the records to be inspected, after that is done but prior to the inspection it shall be disconnected from the network.

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. Should Metro use other media such as a flash drive, CD, etc. in order to fulfill a request, Metro reserves the right to charge the cost of the media medium to the requester.

D. A Department Head/designee can charge the requester 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. Moreover, there shall be no charge for inspection of records, nor may a Department Head or its designee require nor request in advance any payment for labor incurred in the retrieval or records compiled for a requester's inspection only. When a department elects to charge labor incurred in association with production of copies in response to a specific request for same by the requester, 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/designee 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/designee will then multiply each employee's hourly wage by the total number of labor hours worked by that employee, and the total labor hours for all employees will be added together to determine the total labor amount to charge. When a requester has requested to inspect records, and the requester subsequently requests to obtain copies of some or all of the inspected materials, the department may charge the average hourly rate of all labor that was actually expended in retrieving, reviewing and redacting the records, prorated by the number of copies made from the total volume of records that were identified as responsive to the request by the department, in addition to copy fees for the number of pages produced as calculated in accordance with this section.

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

F. A Department Head/designee shall establish a written schedule of charges for special copies of records that are not maintained or provided on 8 1/2" x 11" or 8 1/2" 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.

G. A Department Head/designee may establish a written schedule of charges for copies provided on 8 1/2" x 11" or 8 1/2" 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.

H. 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 Public Records Commission, the written schedule of charges for that department shall become effective when filed with the PRRC.

I. The estimated cost of providing copies requested shall be calculated by the Department Head/designee and explained to the requester, unless the requester waives his/her right to receive this estimate. Should a requester cancel the public records request, to the extent costs have been incurred by the Department Head, the requester shall be responsible for paying the costs incurred, if the requester has agreed in writing to make the payment as set out in this section, and as explained to the requester before the copies are made. The requester has a right to waive his/her right to an estimate of charges.

J. A Department Head/designee has 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.

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

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

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

N. The Department shall give the requester 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.

O. 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 requester to provide copying equipment or an electronic scanner when reasonable.

P. 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/designee may waive any or all payment by Public Officials where the waiver is in the best interest of the Metropolitan Government.

VII. Aggregation of Frequent and Multiple Requests

1. At the discretion of the PRRC or records custodian, as appropriate, the Metropolitan Government may 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. [If aggregating]:

a. The level at which records requests will be aggregated is either Metro-wide or Department-wide, at the discretion of the PRRC or records custodian, as appropriate.

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: www.nashville.gov, Metro's Open Data portal, Municode, etc.

VIII. Discretion of Public Records Request Coordinator or Departmental Records Custodian to Deny Request for Failure of Requestor to Comply with Applicable Terms hereof.

As is provided in TCA 10-7-503(a)(1)(A)(vii)(a) and (b) (2017):

(a) If a person makes two (2) or more requests to view a public record within a six-month period and, for each request, the person fails to view the public record within fifteen (15) business days of receiving notification that the record is available to view, the governmental entity is not required to comply with any public records request from the person for a period of six (6) months from the date of the second request to view the public record unless the governmental entity determines failure to view the public record was for good cause.

(b) If a person makes a request for copies of a public record and, after copies have been produced, the person fails to pay the governmental entity the cost for producing such copies, the governmental entity is not required to comply with any public records request from the person until the person pays for such copies; provided, that the person was provided with an estimated cost for producing the copies prior to producing the copies and the person agreed to pay the estimated cost for such copies.