

American Civil Liberties Union of Tennessee

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REQUESTING RECORDS FROM TENNESSEE STATE AGENCIES

This summary does not constitute legal advice. It is intended to provide general guidance only. If you have specific legal questions, consult a lawyer.

Open Records Act Generally

Under the Tennessee open records law, a Tennessee citizen may personally inspect all state, county and municipal records, and all records maintained by the Tennessee Performing Arts Center management corporation at all times during business hours unless the records are declared by state law to be confidential. A public record is defined as “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.”

Who May Request Public Records?

Any citizen of the state of Tennessee can request access to any records that are deemed to be public records. In 1998, the Supreme Court held that a convicted felon is still a citizen for purposes of being able to seek access to public records. Corporations and other entities may be citizens of Tennessee for purposes of open records act requests. You do not have to have a specific reason for requesting the records, and you don't have to tell the agency why you want them. However, if you seek records of a political candidate or political action committee, the Registry of Election Finance or any county election commission must provide notice to a candidate or political action committee whose files, statements, or records have been inspected or copied.

Who May I Request Records From?

The law grants full access to all governmental records “unless otherwise provided by state law.”

No Tennessee agencies are entirely exempted. There are, however, some specific limitations:

1. Copies of any act, record, or paper in the office of the secretary of state are available to any person, “except papers relating immediately to the executive department, and, in the governor's judgment, requiring secrecy.”
2. All law enforcement personnel records are open, but special rules apply when inspections are made of the records.
3. The joint legislative services committee has sole authority to determine whether any member of the public may be permitted access to the legislative computer system in which confidential information is stored or processed. Direct access to such a computer may not be permitted unless protection of any confidential information is ensured.

4. Judicial records that are exempt are: complaints of judicial misconduct to the Court of the Judiciary; proceedings involving allegations of misconduct by or the disability of an attorney; proceedings of the court of the judiciary; and predisposition reports of investigations and evaluations of juveniles.
5. Some “non-governmental” entities may also be covered. Tennessee courts have said that non-governmental bodies that receive public funds are subject to the open records law. Tenant subleases of city-owned property are open records. The payroll records of a public hospital have been held to be open under the law.

What Does It Cost To Make An Open Records Request?

There is no charge for merely reviewing public records in person. Each county official may charge a “reasonable fee” for “computer access and remote electronic access.” A “reasonable fee for providing access to the remote electronic access information system shall be an amount sufficient to recover the cost of actually providing such services and no more.” The custodian of public records also has the right to make rules about reasonable fees for copies. You should ask them directly for fee amounts. There are no exceptions to a reasonable fee.

What Records Are Exempt?

The following records are exempt, meaning, you *cannot obtain them through an open records request*:

1. The medical records of patients in state institutions, including those containing the source of organ donations for transplantation and information concerning organ donors;
2. All investigative records of the Tennessee Bureau of Investigation and all criminal investigative files of the motor vehicle division of the department of safety;
3. Records of the military department involving national or state security, including national guard personnel records and staff studies and investigations;
4. The academic, financial, and medical or psychological records of students in public educational institutions;
5. Books, records, and other materials in the possession of the attorney general’s office relating to any pending or contemplated legal or administrative proceeding in which the office may be involved, including (a) records designated confidential or privileged by state law, (b) records related to federal investigations and designated confidential or privileged under federal law, (c) the work product of the attorney general or his subordinates, (d) communications to or by the attorney general covered by the attorney-client privilege, and (e) records available for public inspection in other departments and agencies;
6. Agency records containing opinions of the value of real and personal property intended to be acquired for public purposes, until acquisition is complete;
7. Sealed bids for the purchase of goods and services and leases of real property, until completion of evaluation;
8. All investigative records and reports of the internal affairs division of the department of corrections or department of youth development;
9. Official health certificates obtained and maintained by the state veterinarian;
10. The capital plans, marketing, and proprietary information and trade secrets

submitted to the Tennessee Venture Capital Network at Middle Tennessee State University;

11. Records of historical research value given or sold to public archival institutions or libraries when the owner or donor of such records wishes to place restrictions on access to the records;
12. Personal information contained in motor vehicle records;
13. Memoranda, work notes, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide counseling and therapy to law enforcement officers, firefighters, paramedics and other emergency medical technicians;
14. Riot, escape, and emergency transport plans of county jails and workhouses or prisons;
15. A utility department's records of address, telephone number and social security number that might be used to locate someone who has a protection order from a court to protect such person from violence;
16. A governmental entity's records of address, telephone number and social security number that might be used to locate someone who has a protection order from a court to protect such person from violence;
17. The telephone number, address and any other information which might be used to locate the whereabouts of a domestic violence shelter or rape crisis center;
18. Bank records are generally closed;
19. Certain information concerning prisoners and parolees is closed (the Commissioner of Correction may restrict access to records if access would result in jeopardy to lives of inmates and officers);
18. In addition to the exemptions above, more than 170 other statutes and court rules designate certain records confidential. In order to override the Act, the legislature must enact a statute that exempts the material.

How Do I Make a Request?

Requests for the right to personally inspect public records should be addressed to the official in charge of the records. The law does not say whether requests should be written or may be oral, however under all circumstances it is recommended that you ask for the records in writing. Requests should clearly state which specific records you want and should offer to pay reasonable fees for copies. Here are the important things to remember:

1. *Write your request clearly; and be specific.* Overly broad requests are wasteful in time (yours, and the government's) and resources (yours, and the government's). Be specific: assume the official is not familiar with your topic. Also, provide accurate titles and dates, full names, and pertinent news stories discussing the subject of your request. In other words, assist the person in doing the search by providing key items of information.
- 2) *Keep your request brief, avoiding long stories.* Long irrelevant stories will confuse the official. Don't write a two-page supporting essay for your request. Just ask for the documents you want.
- 3) *Target your request.* In addition to researching your topic, research the government to find out where to send the request. Send your request to the agency most likely to hold the records. It is worth your time to find out exactly which components of agencies

maintain the documents you are requesting. It will save time (weeks, months or even years) in referrals.

4) *Establish and maintain contact with the agency.* Follow up calls are fine. But do not harass the official – you want them to help you. Keep a record of all telephone conversations you have with the agency in addition to all letters you receive.

5) *Be reasonable.* A well-written request, helpful contact, and a non-confrontational manner on your end will only aid the processing of your request. Don't send frivolous letters or make repeated and pointless telephone calls.

Unfortunately, neither the open records act nor regulatory rules provide a time limit on agency response. The law does not recognize delay as a denial. However, failure to respond in a reasonable time would be a denial. You should ask for a response in two weeks, if you do not receive a response, *send a second letter* (and be sure to say that it is the second request). If you do not receive any response within two months, that should be considered a denial.

A sample letter is on the other side of this sheet.

August 19, 2005

Joe Smith
Mayor's Office
321 Central Ave.
Anywhere, TN 30303

RE: OPEN RECORDS ACT REQUEST

Dear Mr. Smith,

Pursuant to the state open records law, Tenn. Code Ann. sec. 10-7-503 to 10-7-512; 10-7-701 to 10-7-702; 10-8-101 to 10-8-103, I write to request access to and a copy of - any and all records pertaining to [*state clearly what you want*].

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50.00. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

I request your response within fourteen (14) business days.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all records that do not fall under the exemptions.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that the knowing and willful violation of the open records law can result in the award of all reasonable costs involved in obtaining the records, including attorney fees.

Thank you for your assistance.
Sincerely,

Jane L. Doe
123 Main Street
Anywhere, Tennessee 30303

(123) 555-4545