



STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY  
OFFICE OF OPEN RECORDS COUNSEL  
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Comptroller

November 9, 2012

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You have requested an opinion from this office that addresses the following issues:

1. Does the Tennessee Public Records Act require a records custodian to produce records for inspection or copying in response to a request by a corporation or other artificial entity? If yes, what about for a corporation or other artificial entity that has no offices or employees in Tennessee and is not registered to do business in Tennessee?
2. May a governmental agency charge a requestor for responding to a request that asks that the public records be emailed in .pdf format to the requestor? If yes, what charges may be assessed against the requestor?

1. Analysis

In July 2008, Public Chapter 1179, Acts of 2008 became law and through this piece of legislation, the Tennessee General Assembly made significant changes to the Tennessee Public Records Act (hereinafter referred to as the "Act."). Tenn. Code Ann. Section 10-7-503(a)(2)(A) reads, "All state, county and municipal records shall, at all times during business hours . . . be open for personal inspection by any citizen of this state . . ." When the Act was amended, the General Assembly added language that reads in part:

. . . The records custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, that includes the person's address. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.

Tenn. Code Ann. Section 10-7-503(a)(7)(A).

The above mentioned language was added to the statute for the specific purpose of being able to verify that the person making the request is a Tennessee citizen. Because a corporation does not have the ability to provide a government issued photo identification with an address on it<sup>1</sup>, it is the opinion of this office that for purposes of the Act, the term “citizen” does not include corporations. However, it is also the opinion of this office that when an individual who is making a request on behalf of a corporation is able to produce government issued photo identification that includes a Tennessee address, any record that is responsive to the request and is not confidential is required to be made accessible to the requestor.

With regard to fees, PC 1179, Acts of 2008 required this office, in conjunction with the Advisory Committee on Open Government, to develop a schedule of charges that governmental entities can use as a guideline for establishing copy fees. After studying the issue of fees and holding a public hearing on the issue, the Schedule of Reasonable Charges (hereinafter referred to as the “Schedule”) was developed.<sup>2</sup> The Schedule establishes that governmental entities are permitted but not required to charge for copies<sup>3</sup> of public records and the labor associated with providing the records after one (1) hour of labor is incurred producing the records. The Schedule also establishes that in order for a local governmental entity to charge for copies of records on any medium and the labor associated with producing the records, the entity is required to have a policy in place related to the fees that the entity intends to charge.<sup>4</sup> Additionally, the policy is required to be approved by the entity’s governing body.

While the Schedule addresses fees that can be assessed for copies of paper records, fees that can be assessed for cds and dvds when records are provided on such mediums,<sup>5</sup> and fees that can be assessed for labor associated with producing records in any format, the Schedule does not address a fee that can be assessed when records/information is provided electronically. The office is currently researching whether or not there is a way to determine how much it costs to send information electronically. Until such time as that determination has been made, it is the opinion of this office that when a request is made for records in .pdf and the records are not otherwise maintained in that format, a governmental entity that has a properly adopted records policy in place is permitted to assess a requestor any labor necessary to produce the records after one (1) hour is incurred, but is not permitted to assess the requestor the per page fee that can be assessed for paper copies. It is the opinion of this office that “labor” in this scenario includes the time that it takes to locate, retrieve, review, redact, scan, email and/or copy the records onto a disc. Additionally, if the records are maintained

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<sup>1</sup> Tenn. Code Ann. Section 10-7-503(a)(7)(A) also permits other forms of identification that are acceptable to the governmental entity to be provided when the requestor does not have government issued photo identification that contains a Tennessee address.

<sup>2</sup> The Schedule of Reasonable Charges is found at:

[http://www.comptroller.tn.gov/openrecords/pdf/ScheduleofReasonableCharges\(final\)8.pdf](http://www.comptroller.tn.gov/openrecords/pdf/ScheduleofReasonableCharges(final)8.pdf)

<sup>3</sup> A fee of \$0.15 per page can be assessed for a standard size black and white copy and a fee of \$0.50 per page can be assessed for a standard size color copy when the entity has a policy in place related to accessing public records, unless the entity can prove that its actual cost of producing copies exceeds the fees set out above.

<sup>4</sup> The Tennessee Attorney General’s office has opined that in order for a state agency to legally charge for copies of public records and/or the labor necessary to provide the records, the agency has to have a rule in place promulgated through the Uniform Administrative Procedures Act.

<sup>5</sup> An entity can assess back to the requestor the actual cost of the medium, when the entity has a policy in place related to accessing public records.

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electronically and do not have to be scanned but do have to be converted into .pdf, it is the opinion of this office that a component of the labor fee could include the time that it takes to convert the files to .pdf.

Please feel free to call me at (615) 401-7891 if you have any further questions.

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