

TENNESSEE PUBLIC UTILITY COMMISSION



502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

NOTICE OF FILING COMMENTS

DOCKET: 17-00136

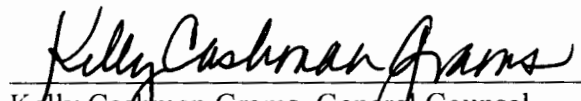
IN RE: *Rulemaking to Delete Obsolete Rule and Promulgate New Rule
Related to Access to Public Records of the TPUC*

DATE: August 23, 2018

On August 23, 2018, the Tennessee Public Utility Commission filed a Notice of Rulemaking Hearing with the Secretary of State. The noticed Hearing will be held on **October 15, 2018 at 9:00 a.m. (central)** to consider the proposed rule amendments and deletions filed in this docket. As a courtesy, a redline copy of the proposed repeal of Rule 1220-01-01-.7 and new rule 1220-01-04 is attached to this notice.

Any interested persons who wish to file written comments on the proposed rule changes in advance of the hearing shall do so no later than **October 8, 2018**.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:


Kelly Cashman Grams, General Counsel

Original in docket file

c: Interested Parties

Rule 1220-01-01-.07 Requests For Public Information And Copying Charges is deleted in its entirety.

~~1220-01-01-.07 REQUESTS FOR PUBLIC INFORMATION AND COPYING CHARGES.~~

- ~~(1) The Chair of the Commission, as the custodian of the public records of the Commission, shall accept requests for public information and copies of public documents and retain such requests in the files of the Commission.~~
- ~~(2) The Chair of the Commission shall charge the same fees that are charged by the Secretary of State for producing copies.~~

Chapter 1220-01-04 Access to Public Records is created with the following language in its entirety:

1220-01-04-.01 PURPOSE AND SCOPE.

- (1) Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Rules for the Tennessee Public Utility Commission ("TPUC") are hereby adopted to provide economical and efficient access to public records as provided under the Tennessee Public Records Act ("TPRA").
- (2) 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.
- (3) Personnel of TPUC, through the TPUC Public Records Request Coordinator identified in this Rule below, shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Rule 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 TPUC, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for TPUC or to the Tennessee Office of Open Records Counsel ("OORC").

Authority: T.C.A. §§ 65-2-102 and 10-7-503.

1220-01-04-.02 DEFINITIONS.

- (1) "Commission" or "TPUC" means the Tennessee Public Utility Commission.
- (2) "Public Record" means 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.
- (3) "Public Records Request Coordinator" or "PRRC" means the individual, or individuals, 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.
- (4) "Records Custodian" means the office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

- (5) "Requestor" means a citizen of the State of Tennessee seeking access to a public record, whether for inspection or duplication.
- (6) "Tennessee Public Records Act or "TPRA" means the State law codified in T.C.A § 10-7-501, *et seq.*

Authority: T.C.A. §§ 65-2-102 and 10-7-503.

1220-01-04-.03 REQUESTING ACCESS TO PUBLIC RECORDS.

- (1) Public record requests, whether written or oral, shall be made to the PRRC, to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- (2) Public record requests shall include the following information clearly and concisely expressed:
 - (a) Name and Tennessee contact information (in order to provide any communication required under the TPRA);
 - (b) Detailed description of the records being requested, including type, time frame, subject matter or key words, and any other information identifying the records;
 - (c) Statement whether the request is for inspection or receipt of copies or both; and
 - (d) Delivery preference if requesting copies.
- (3) Proof of Tennessee citizenship by presentation of a valid, unexpired Tennessee driver license; a valid, unexpired Tennessee state-issued ID; or a current school-year student ID from a Tennessee school is required as a condition to inspect or receive copies of public records and must be presented with the request. Upon a satisfactory showing, such proof will not be kept or retained by the PRRC. If copies of documentation are provided by mail or electronically to the PRRC, after verification, the information will be disposed of in such a way as to maintain the confidentiality of the information.
- (4) Requests for inspection shall be made:
 - (a) In person at the office of the PRRC;
 - (b) By phone to the PRRC; or
 - (c) By email to the PRRC; or
 - (d) In writing sent or delivered to the PRRC.
- (5) Requests for copies, or requests for inspection and copies, shall be made in writing. A Requestor may use the TPUC Public Records Request form which is available on the TPUC website. Such requests shall be submitted to the PRRC via email or regular mail.
- (6) Requests not made in the appropriate manner, or not directed to the PRRC as provided herein, will not be accepted. Requests made via any method other than those prescribed herein will not be accepted.
- (7) The contact information for the PRRC is as follows:

Public Records Request Coordinator
Andrew Jackson State Office Building,
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243
Phone: 615-770-6850
Email: TPUCRecRequest@tn.gov

- (8) Any changes to the contact information for the PRRC shall be posted on the TPUC's website.

Authority: T.C.A. §§ 65-2-102 and 10-7-503.

1220-01-04-.04 RESPONDING TO PUBLIC RECORDS REQUESTS.

- (1) Public Records Request Coordinator.
- (a) The PRRC shall review public records requests and make an initial determination of the following:
1. If the requester provided evidence of Tennessee citizenship;
 2. If the records requested are described with sufficient specificity to identify them; and
 3. If TPUC is the custodian of the records.
- (b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate actions:
1. Advise the Requester of this rule chapter and the decisions made regarding:
 - (i) Proof of Tennessee citizenship;
 - (ii) Any forms required for copies;
 - (iii) Fees;
 - (iv) Aggregation of multiple or frequent requests; or
 - (v) Need for clarification of the request(s).
 2. If appropriate, deny the request in writing, providing the appropriate ground for denial such as:
 - (i) The requester is not or has not presented evidence of Tennessee citizenship;
 - (ii) The request lacks specificity;
 - (iii) An exemption makes the record not subject to disclosure under the TPRA;
 - (iv) TPUC is not the custodian of the requested records;
 - (v) The records requested do not exist; or,

- (vi) Any other legal grounds for denial.
- 3. If appropriate, contact the Requestor to see if the request can be narrowed or otherwise clarified.
- 4. Forward the records request to the appropriate records custodian within TPUC.
- 5. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the Requestor of the correct governmental entity.

(2) Records Custodian.

- (a) Upon receiving a public records request, a TPUC records custodian in collaboration with the PRRC shall make the requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If records custodian is uncertain whether certain information is confidential, protected, or an applicable TPRA exemption applies, the custodian shall consult with the PRRC or TPUC General Counsel before making the records available.
- (b) If not practicable to promptly provide requested records, a records custodian in collaboration with the PRRC shall, within seven (7) business days from the records custodian's receipt of the request, send the Requestor a written response indicating the reason for the delay and an estimate of the time necessary to produce the records or information.
- (c) If a records custodian in collaboration with the PRRC denies a public records request, the PRRC shall deny the request in writing.
- (d) If a records custodian in collaboration with the PRRC reasonably determines that 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 response form should be used 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 or PRRC should contact the requester to see if the request can be narrowed.
- (e) If a records custodian discovers records responsive to a records request were omitted, the records custodian shall promptly contact the PRRC concerning the omission and produce the records as quickly as practicable. The PRRC will contact the Requestor and supplement the records response.

Authority: T.C.A. §§ 65-2-102, 10-7-503, and 10-7-504.

1220-01-04-.05 REDACTION.

- (1) If a record contains confidential information, or information that is not open for public inspection, the PRRC or the records custodian shall prepare a redacted copy of the record and consult with General Counsel or his/her designee before providing access to the records.
- (2) Whenever a redacted record is provided, the PRRC will provide the Requestor with the general basis for redaction without revealing confidential information.

Authority: T.C.A. §§ 65-2-102, 10-7-503, 10-7-504, and 10-7-515.

1220-01-06-.06 ACCESS TO RECORDS.

- (1) Inspection:
 - (a) There shall be no charge for inspection of public records.
 - (b) The location for inspection of open public records will be the office location of the PRRC in Nashville and such inspection will occur during times in which TPUC is open for business.
 - (c) Under reasonable circumstances, the PRRC may require an appointment for inspection or may require inspection of records at an alternate location.
- (2) Copies:
 - (a) Copies will be available for pickup at a location specified by the PRRC.
 - (b) Upon payment for postage, copies will be delivered to the Requestor's home or business address by the United States Postal Service.
 - (c) Electronic records that can be sent in a single transmission will be sent by email.
 - (d) A Requestor will not be allowed to make copies of records with personal equipment. All copies shall be made by an employee of the TPUC.
- (3) Limitations on use of recording devices. A Requestor's use of electronic recording equipment shall be limited to devices which take images of the records requested. Requestor shall not be permitted to capture video of the interior of buildings where copies or inspections are being made. After being informed by staff that attempts to capture such video or images, continued efforts to take video or images of staff or the interior of the buildings will result in termination of the inspection or copying session.

Authority: T.C.A. §§ 65-2-102 and 10-7-503.

1220-01-04-.07 FEES AND CHARGES AND PROCEDURES FOR BILLING AND PAYMENT.

- (1) The PRRC will provide Requestors with an itemized estimate of the charges prior to producing copies of records. Requestors must pre-pay the estimate before the records will be produced.
- (2) When fees for copies and labor do not exceed ten dollars (\$10.00), the fees may be waived by the PRRC..
- (3) Fees associated with aggregated record requests will not be waived.
- (4) For fees and charges for copies, the TPUC adopts the Schedule of Reasonable Charges established by the Office of Open Records Counsel.
- (5) Requestors must pay by cash, check, or money order, payable to TPUC and delivered as specified by the PRRC. If a Requestor's check does not clear, TPUC will not comply with any public record requests by that Requestor until payment, including any processing fees related to the check, is received in full pursuant to Tenn. Code Ann. § 10-7-503(a)(7)(A)(vii)(b).

Authority: T.C.A. §§ 65-2-102 and 10-7-503.

1220-01-04-.08 AGGREGATION OF FREQUENT AND MULTIPLE REQUESTS.

- (1) TPUC will aggregate record requests for records of TPUC in accordance with the Reasonable Charges for Frequent and Multiple Requests Policy promulgated by the Office of Open Records Counsel when more than four (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert by the PRRC.
- (2) The PRRC is responsible for making the determination that a group of individuals are working in concert, and upon such determination, shall inform the individuals that they have been deemed to be working in concert.
- (3) Routinely released and readily accessible records shall be excluded from aggregation. Such records include, but are not limited to, any public docket filings, notices, orders, agendas, meeting minutes, and other materials that are accessible on the Tennessee Public Utility Commission's website.

Authority: *T.C.A. §§ 65-2-102 and 10-7-503.*

1220-01-04-.09 FAILURE TO INSPECT OR TO PAY FOR COPIES.

- (1) If a Requestor makes two (2) or more requests to view a Public Record within a six-month period and, for each request, the Requestor fails to view the Public Record within fifteen (15) business days of receiving notification that the record is available to view, or misses two (2) or more scheduled appointments to view, TPUC will not comply with any public records request from the Requestor for a period of six (6) months from the date of the second request to view the Public Record unless the TPUC determines failure to view the Public Record was for good cause.
- (2) If, after agreeing to pay an estimated cost prior to the production of copies, a Requestor fails to pay the cost to produce the requested copies, TPUC will not comply with any public record requests from the Requestor until payment is received.

Authority: *T.C.A. §§ 65-2-102 and 10-7-503.*