



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
James K. Polk State Office Building
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-1402**

**Justin P. Wilson
Comptroller**

April 15, 2014

Mr. Alex Friedmann
Via email: afriedmann@prisonlegalnews.org

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

1. Does the Tennessee Public Records Act (hereafter referred to as the “TPRA”) require a Tennessee citizen to submit a public records request for copies in person at the office of the governmental entity that maintains the requested records?
2. Does the TPRA require a Tennessee citizen, who has paid all applicable labor and copy fees, to retrieve the requested records in person at the office of the governmental entity that maintains the requested records?

Analysis

Tenn. Code Ann. Section 10-7-503(a)(2)(A) requires that all public records, whether maintained by a state, county, or municipal governmental agency, be open for personal inspection by a citizen of Tennessee during normal business hours, unless there is a provision within state law that makes the record confidential. Additionally, Tenn. Code Ann. Section 10-7-506(a) provides that “[i]n all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof . . .” subject to reasonable rules of the records custodian. There is very little guidance in the TPRA about the types of reasonable rules that a records custodian can require a requestor to adhere to in order to obtain copies of public records. As such, many of the questions related how records can be accessed and copies obtained are addressed through case law.

The court addressed each of the questions presented above in *Waller v. Bryan*, 16 S.W. 3d 770 (Tenn. Ct. App. 1999). In *Waller*, the court specifically examined whether or not a requestor’s “inability to present himself in person to inspect and request copies of the documents prohibits him from obtaining those copies if he is otherwise entitled to receive them under the Public Records Act.” *Id.* at 773. In its analysis, the court determined that

if it were to hold that personal appearance was required in order to obtain copies of public records, that “would mean that any citizen who was unable to personally appear before the records custodian would be unable to obtain copies of the documents pursuant to the Public Records Act.” *Id.* According to the court, such a “restriction would prohibit all Tennessee citizens who are unable, because of health reasons or other physical limitations, to appear before the records custodian from obtaining copies of public documents pursuant to the Public Records Act.” *Id.* The court concluded that “[s]uch a result is not consistent with the clear intent of the Legislature” and instead held:

[i]f a citizen can sufficiently identify the documents which he wishes to obtain copies of so as to enable the custodian of the records to know which documents are to be copied, the citizen's personal presence before the record custodian is not required. However, the records custodian is not required under the Public Records Act to make the inspection for the citizen requesting the documents. The citizen, to be able to obtain copies of those documents without making a personal inspection, must sufficiently identify those documents so that the records custodian can produce and copy those documents without the requirement of a search by the records custodian. The records custodian can require a charge or fee per copy that will cover both the costs of producing the copies and delivering the copies.

Id. at 774.

Conclusion

Based upon that language above, it is the opinion of this office that, to the extent that a requestor is able to sufficiently identify the records for which copies are being requested and has paid all necessary copying, labor and delivery fees associated with producing the requested copies, the requestor is not required to appear in person either to submit a public records request or retrieve the requested records.

Elisha D. Hodge
Open Records Counsel