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Effective Date: 1/21/2021

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Department of Commerce and Insurance
<b>Division:</b>	Office of the Commissioner
<b>Contact Person:</b>	Mark Green, Deputy General Counsel
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<b>Email:</b>	Mark.K.Green@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0780-07-02	Rules and Regulations for Access to Public Records
Rule Number	Rule Title
0780-07-02-.01	Charges for Access to Public Records
0780-07-02-.02	Waiver
0780-07-02-.03	Reduction of Fees
0780-07-02-.04	Making a Public Records Request
0780-07-02-.05	Responding to a Public Records Request
0780-07-02-.06	Inspection of Records
0780-07-02-.07	Copies of Records
0780-07-02-.08	Fees and Payments

Chapter 0780-07-02  
Rules and Regulations for Access to Public Records  
Amendments

Table of Contents Chapter 0780-07 is amended by deleting the Table of Contents in its entirety and substituting the following so that, as amended, the Table of Contents shall read:

Table of Contents

0780-07-02-.01 Purpose	0780-07-02-.05 Responding to a
0780-07-02-.02 Application	Public Records Request
0780-07-02-.03 Definitions	0780-07-02-.06 Inspection of Records
0780-07-02-.04 Making a Public Records Request	0780-07-02-.07 Copies of Records
	0780-07-02-.08 Fees and Payments

Rule 0780-07-02-.01 Charges for Access to Public Records is amended by deleting the rule and title in its entirety and substituting, instead, the following:

0780-07-02-.01 Purpose

- (1) The purpose of this chapter is to establish a procedure for providing economical and efficient access to public records as required under the Tennessee Public Records Act ("TPRA"), T.C.A. §§ 10-7-501 et seq.
- (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 the state of Tennessee. Those in charge of the records shall not refuse such a right of inspection to any citizen of the state of Tennessee, unless otherwise provided by state law. Accordingly, the public records of the Tennessee Department of Commerce and Insurance ("TDCI") are presumed to be open for inspection unless otherwise provided by law.
- (3) Employees of the department, through the Public Records Request Coordinator ("PRRC") identified in these rules, shall timely and efficiently provide access and assistance to persons requesting to inspect or receive copies of public records. No provisions of this rule shall be used to hinder access to non-confidential public records. However, the integrity and organization of public records as well as the efficient and safe operation of the department shall be protected as provided by law.

Authority: T.C.A. §§ 10-7-501 et seq.

Rule 0780-07-02-.02 Waiver is amended by deleting the rule and title in its entirety and substituting, instead, the following:

0780-07-02-.02 Application

These rules apply to all agencies, divisions, administrative offices, boards, commissions, programs, committees or other governmental entities within and administratively attached to TDCI.

Authority: T.C.A. §§ 4-3-301 et seq. and 10-7-501 et seq.

Rule 0780-07-02-.03 Reduction of Fees is amended by deleting the rule and title in its entirety and substituting, instead, the following:

0780-07-02-.03 Definitions

As used in this chapter, unless the context otherwise requires:

- (1) "Assistant Commissioner" means an assistant commissioner of TDCI, or an assistant commissioner's designee.
- (2) "Commissioner" means the commissioner of TDCI or the commissioner's designee. If the

commissioner or the commissioner's designee is absent and unable to act or the office of the commissioner is vacant, a deputy commissioner.

- (3) "Confidential Record" means any departmental record that is considered confidential or privileged under federal or state law, including, without limitation and without waiving any privilege or any right to confidentiality available under federal or state law, as follows:
  - (a) Any record or portion of any record that is not subject to public inspection or is defined as confidential under the TPRA;
  - (b) Any record or portion of any record that is otherwise protected as confidential or privileged under any federal or state law or regulation or pursuant to any court order;
  - (c) Any record that is protected under the attorney-client privilege;
  - (d) Any record that is protected under the attorney work product doctrine; and
  - (e) Any record that is protected under any other statutory or common law privilege.
- (4) "Department" means the Tennessee Department of Commerce and Insurance ("TDCI").
- (5) "Deputy Commissioner" means a deputy commissioner of TDCI, or a deputy commissioner's designee.
- (6) "Office of Open Records Counsel" or "OORC" means the office established by T.C.A. § 8-4-601 et seq., within the Tennessee Comptroller of the Treasury.
- (7) "Public records" 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 in connection with the transaction of official business by the department. Public records do not include the device or equipment that may have been used to create or store a public record, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment. See T.C.A. § 10-7-503.
- (8) "Public Records Request Coordinator" or "PRRC" means the individual who has, or individuals who have, the responsibility to ensure public records requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA, or the designee of the PRRC. The PRRC shall be the individual(s) designated as Associate General Counsel for Administration.
- (9) "Records Custodian" means the official or employee lawfully responsible for the direct custody and care of public records. The records custodian is not necessarily the original preparer or receiver of the record.
- (10) "Redacted record" means a public record from which confidential information is removed or made obscure prior to release or inspection.
- (11) "Request form" means the most current records request form developed by the OORC at the time of the request and may include the form as adopted by TDCI.
- (12) "Requestor" means a Tennessee citizen requesting access to public records, whether it is for inspection or duplication.
- (13) "Response form" means the most current records response form developed by the OORC at the time of the request and may include the form as adopted by TDCI.
- (14) "TPRA" means the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq.

Authority: T.C.A. §§ 8-4-601 and 10-7-501 et seq.

Chapter 0780-07-02  
Rules and Regulations for Access to Public Records  
New Rules

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.04 [Making a Public Records Request]:

- (1) All public records requests shall be made to the PRRC in order to ensure public records requests made pursuant to the TPRA are routed to the records custodian and fulfilled in a timely manner. All public records requests by or on behalf of news media organizations shall be made to the department's communications director.
- (2) Proof of Tennessee citizenship is required as a condition to inspect or receive copies of public records as authorized by T.C.A. § 10-7-503.
  - (a) Proof of citizenship may be furnished by the presentation of a valid Tennessee driver's license, other state-issued photographic identification, or an alternate form of identification acceptable to the PRRC that includes the requestor's Tennessee address.
  - (b) Notwithstanding lack of Tennessee citizenship, records may be released or made available to any complainant or respondent seeking information contained within the complaint file(s) to which complainant or respondent is a party, any state or federal agency conducting official business, or any person to whom the release of the records is determined to be in the best interests of the state of Tennessee by the commissioner, deputy commissioner, or assistant commissioner.
- (3) Requests for Inspection
  - (a) Requests for inspection may be communicated to the PRRC in person or via telephone, mail, fax, or email. A written request for inspection shall not be required. The PRRC may request written verification of a verbal request in order to facilitate recordkeeping and ensure accuracy in fulfilling the request; however, the PRRC shall not require written verification unless otherwise authorized by law. Requestors shall ensure the department has sufficient and accurate information to fulfill any request for inspection.
    1. The Department's contact information for making requests for inspection is as follows:

500 James Robertson Parkway  
Davy Crockett Tower  
Nashville, TN 37243  
Telephone: (615) 741-3388  
Fax: (615) 741-4000  
Email: TDClopen.Records@tn.gov
  - (b) The PRRC may request a mailing and/or email address from the requestor for the purpose of providing any responsive written communication required under the TPRA. Requestors shall reasonably provide such contact information.
  - (c) Pursuant to T.C.A. § 10-7-503, if a requestor makes two (2) or more requests to inspect public records within a six (6) month period and, for each request, the requestor fails to inspect the public records within fifteen (15) business days of receiving notification that the record is available for inspection, then the department is not required to comply with any subsequent 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 department determines the failure to inspect the public records was for good cause.
- (4) Requests for Copies
  - (a) Requests for copies, or requests for inspection and copies, shall be made in writing using

the request form and submitted to the PRRC in person or via mail, fax, or email. If the commissioner, deputy commissioner, or assistant commissioner determines that completion of the request form creates an undue burden on the requestor, then a clear, documented email or other substitute writing may be sufficient for the request.

1. The Department's contact information for making requests for copies is as follows:

500 James Robertson Parkway  
Davy Crockett Tower  
Nashville, TN 37243  
Telephone: (615) 741-3388  
Fax: (615) 741-4000  
Email: TDClopen.Records@tn.gov

- (b) Requests for copies of records during or following an inspection of records shall be made in writing, and the department shall be notified of the number of copies that the requestor wishes to make. A requestor may not use the requestor's personal equipment to make copies until a written request has been submitted and authorization granted by the PRRC.

- (5) Standing public records requests shall not be permitted. Requestors shall submit a new request for inspection or copies of records each time the requestor would like to inspect or receive copies of responsive records.

Authority: T.C.A. §§ 10-7-501 et seq.

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.05 [Responding to a Public Records Request]:

- (1) Public Records Request Coordinator

- (a) Upon receipt of a public records request, the PRRC shall:

1. Review the request and make an initial determination of the following:

- (i) Whether the requestor provided evidence of Tennessee citizenship;
- (ii) Whether the records requested are described with sufficient specificity to identify them; and
- (iii) Whether the department is the custodian of the requested records.

2. Acknowledge receipt of the request and take any of the following actions as appropriate:

- (i) Advise the requestor of the need for any of the following documentation that was not provided with the initial request:

- (I) Proof of Tennessee citizenship; or
- (II) Request form(s) for copies.

- (ii) Deny the request in writing, using the response form, if one of the following applies:

- (I) Requestor is not, or did not present proof that requestor is, a Tennessee citizen;
- (II) Request lacks sufficient detail or is too broad in scope to identify the specific records to be provided for inspection or copying. If

appropriate, the PRRC should contact the requestor to see if the request can be narrowed;

- (III) The record is not subject to disclosure under the TPRA. The PRRC must provide the specific reference in the denial;
- (IV) The record does not exist; or
- (V) The department is not the custodian of the requested records. If the records relate to another governmental entity and the PRRC is aware of the correct entity, the PRRC should advise the requestor of the correct entity and the PRRC for that entity, if known.

(iii) Forward the request to the appropriate records custodian within TDCI.

(2) Records Custodian

- (a) Upon receiving a public records request from the PRRC, the records custodian shall promptly make the requested records available, if not specifically exempt from disclosure.
- (b) If it is not practicable for the records custodian to promptly make the requested records available because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to the records; to determine whether the records are open; to redact records; or for similar reasons, then the records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a response form via email, fax or U.S. mail. The response form shall include a statement of the time reasonably necessary to produce the records. If the records still cannot be produced within the time frame provided in the initial response form, the records custodian should send another response form or letter, whichever is appropriate, indicating when the requestor can expect to receive the records.
- (c) If the records custodian denies a public records request, he or she shall deny the request in writing.
- (d) If the records custodian determines the 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 notify the requestor 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 requestor to see if the request can be narrowed.
- (e) If the records custodian discovers that records responsive to a records request were omitted, the records custodian shall contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) Redaction

- (a) If a record contains confidential information or information that is not open for public inspection, the records custodian shall redact the information prior to providing access for an inspection or copies. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.
- (b) When a redacted record is provided, the records custodian shall provide the requestor with a general basis for redaction. The basis given for redaction shall not disclose confidential information. The records custodian is not required to produce a privilege log or similar document.

Authority: T.C.A. §§ 10-7-501 et seq.

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.06 [Inspection of Records]:

- (1) The records custodian shall promptly respond to a public records request for inspection in the most economic and efficient manner practicable.
- (2) There is no charge for inspection of public records.
- (3) Location and Time of Inspection
  - (a) The records custodian shall specify the location for the inspection within the offices of the department.
  - (b) The records custodian may require an appointment for inspection or may require inspection of records at an alternative location under reasonable circumstances.
- (4) The records custodian or a designated employee of the department shall remain with the responsive records at all times and take reasonable precautions to ensure that the integrity of public records is maintained during an inspection.
- (5) If, after viewing the records, a requestor wishes to obtain copies, costs will be calculated based on the copy, labor, and other charges accrued for the entire request. If a requestor seeks only a portion of the documents produced, charges will be calculated by taking the total costs of the records requested for inspection and dividing that cost by the total number of pages produced to create a per page rate. Separate requests for copies of documents that were included in a single inspection request shall be aggregated, within a reasonable time frame, to determine the cost of those copies.
  - (a) A requestor may make copies of records with the requestor's personal equipment. However, prior to doing so, the requestor shall make a written request for copies as provided in Rule 0780-07-02-.04 and certify in writing that the department produced the records as initially requested. Any copies made with the requestor's personal equipment, including any in excess of the originally requested amount, shall be identified by the requestor and charged to the requestor by invoice. A requestor who fails to pay for costs of records properly produced pursuant to a request may be referred for collection of the debt owed.
  - (b) Limitations on use of personal equipment:
    1. Any video or images captured using a cell phone or other electronic recording shall be limited to the records requested for inspection.
    2. The requestor shall not connect any personal equipment to a department computer or electronic device, including but not limited to, wireless technology or a portable storage device to make copies of public records.
- (6) If a records request is determined by the PRRC or records custodian to be so large that production of all of the requested records cannot be provided for an inspection at a single time, then the records may be produced in segments. The requestor shall be notified in writing when the next segment of records is expected to be available. Written notice shall also be provided to the requestor if there is any change regarding the date of production. Costs associated with any records produced as part of such a rolling production schedule shall be paid as set out in these rules for the segment of the records produced and no additional records will be produced until payment has been received for the copies received.

Authority: T.C.A. §§ 10-7-501 et seq.

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.07 [Copies of Records]:

- (1) The records custodian shall promptly respond to a public records request for copies in the most

economic and efficient manner practicable.

- (2) Upon payment of costs, physical copies may be made available for pickup at a location specified by the records custodian or mailed to the requestor's address.
- (3) The records custodian may provide electronic copies via email, portable storage device, or other electronic medium upon payment for costs.
- (4) A requestor may submit a written request as provided in Rule 0780-07-02-.04 to make copies of records with the requestor's personal equipment, which may be granted if practicable. If the request is submitted as an amendment to a prior request for copies, the requestor shall certify in writing that the department produced the records as initially requested, if applicable. All costs reasonably accrued for the production of the copies as originally requested shall be paid prior to the requestor making copies of records under this paragraph; such costs shall include, but not be limited to any costs for labor, paper copies, or other costs accrued.
  - (a) Limitations on use of personal equipment:
    1. Any video or images captured using a cell phone or other electronic recording shall be limited to the records requested for copying.
    2. The requestor shall not connect any personal equipment to a department computer or electronic device, including but not limited to, wireless technology or a portable storage device to make copies of public records.
- (5) A requestor who fails to pay for costs associated with records properly produced pursuant to a request may be referred for collection of the debt owed.
- (6) If a records request is determined by the PRRC or records custodian to be so large that production of all of the requested records cannot be produced as copies at a single time, then the records may be produced in segments. The requestor shall be notified in writing when the next segment of the records is expected to be available. Written notice shall also be provided to the requestor if there is any change regarding the date of production. Costs for copies produced as part of such a rolling production schedule shall be paid as set out in these rules for the segment of the records produced and no additional records will be produced until payment has been made for the copies received.

Authority: T.C.A. §§ 10-7-501 et seq.

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.08 [Fees and Payments]:

- (1) General
  - (a) Fees and charges for copies of public records should not be used to hinder access to public records.
  - (b) Prior to producing copies of records, the records custodian shall provide the requestor with an estimate of the charges to be assessed for production and labor. The estimate shall include the job title, hourly rate, and time estimate for each the individuals expected to be involved in producing the records. The records custodian shall not be required to identify the specific tasks to be performed by the individuals for the estimate or invoice.
  - (c) Waiver
    1. When the total cost of production, including the cost for copies, labor, and delivery, do not exceed fifty dollars (\$50.00), the fees shall be waived, unless otherwise required by statute.
    2. Requests for fee waivers exceeding fifty dollars (\$50.00) or fee reductions shall be presented to the commissioner. Any waiver or reduction in fees is in the sole discretion of the commissioner, is not subject to judicial review, and does not



establish any precedent.

3. Fees associated with aggregated records requests shall not be waived unless the fees collectively amount to less than fifty dollars (\$50.00).
- (2) Production costs for copies are determined by the Schedule of Reasonable Charges established by the OORC.
    - (a) Other costs reasonably necessary to produce the records include, but are not limited to:
      1. Archive retrieval costs;
      2. Delivery cost of records;
      3. Computer programs; or
      4. If an outside vendor is used, the actual costs assessed by the vendor.
  - (3) Labor Costs
    - (a) The requestor shall pay labor costs for the production of copies at the hourly wage of the employee(s) reasonably necessary to produce the requested information after one (1) hour of work has been done by the employees in identifying, producing, reviewing, and redacting the requested material. The first hour of labor costs shall not be deducted for purposes of calculating fee waivers for costs that do not exceed fifty dollars (\$50.00),
    - (b) The one (1) hour waiver applies to the highest paid employee. If the highest paid employee spends less than one (1) hour on the request, then the balance of the hour shall roll to the next highest paid employee involved in the request until one (1) full hour of credit has been given.
  - (4) Payment of Costs
    - (a) Copies of records will not be released until such time as payment has been made, except as approved by the commissioner.
    - (b) Forms of payment include any form of payment accepted by the department at the time of any request. The department has the discretion to determine the acceptable forms of payment for costs.
    - (c) Checks must be made payable to the department and presented to the records custodian or PRRC.
  - (5) Pursuant to T.C.A. § 10-7-503, if the department receives a request for copies of a public record and the requestor fails to pay to the department the cost for the production of such copies after copies have been produced, the department is not required to comply with any public records request from the requestor until payment for such copies has been received provided that the requestor was given an estimated cost for producing the copies prior to the production of the copies and agreed to pay the estimated cost for such copies.
  - (6) If the costs for copies exceeds fifty dollars (\$50.00), the requestor shall pay the estimated amount in advance of processing and shall be invoiced for or refunded the difference between the estimated and actual costs, as appropriate.
  - (7) If the records are to be produced as part of a rolling production as set out in Rule 0780-07-02-.07, then the costs for purposes of this paragraph shall be the costs of each segment of records. The requestor shall pay for each segment of records produced prior to the department being obligated to produce the next segment of records. If the costs for requested copies exceed fifty dollars (\$50.00), the requestor shall pay the estimated amount in advance and shall be invoiced for or refunded the difference of the estimated and actual costs, as appropriate.

(8) Aggregation of Frequent and Multiple Requests

- (a) The department will 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 determined to be working in concert.
- (b) Records requests will be aggregated at the department level.
- (c) The PRRC is responsible for making the determination that a group of individuals is 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.

Authority: T.C.A. §§ 10-7-501 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Commerce and Insurance on 09/10/2020 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (06/29/2020)

Rulemaking Hearing(s) Conducted on: (add more dates). (08/25/2020)

Date: Oct 18, 2020

Signature:   
Hodgen Mainda (Oct 18, 2020 08:09 CDT)

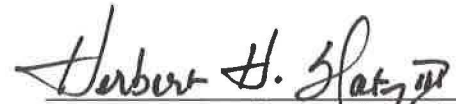
Name of Officer: Hodgen Mainda

Title of Officer: Commissioner

Agency/Board/Commission: Tennessee Department of Commerce and Insurance

Rule Chapter Number(s): 0780-07-02

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Herbert H. Slatery III  
Attorney General and Reporter  
10/20/2020 Date

**Department of State Use Only**

Filed with the Department of State on: 10/23/2020

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Tre Hargett  
Secretary of State

**Public Hearing Comments**

There were no public hearing comments.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

### Regulatory Flexibility Analysis- Pursuant to T.C.A. § 4-5-402

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules;

*These rules are modeled after and, in some respects, duplicate the following: Freedom of Information Act (FOIA), 5 U.S.C. § 552; Tennessee Department of Environment and Conservation, Tenn. Comp. R. and Regs. 0440-01-01-.01; Tennessee Department of Economic and Community Development, Tenn. Comp. R. and Regs. 0500-09-01-.01 thru 0500-09-01-.09; Tennessee Housing Development Agency, Tenn. Comp. R. and Regs. 0770-07-01-.01 thru 0770-07-01-.09; Tennessee Department of Safety, 1340-08-01-.01 thru 1340-08-01-.09; and University of Tennessee, Tenn. Comp. R. and Regs. 1720-01-11-.01 thru 1720-01-11-.06.*

(2) Clarity, conciseness, and lack of ambiguity in the rule;

*The proposed rules are clear, concise and unambiguous.*

(3) The establishment of flexible compliance and reporting requirements for small businesses;

*These rules do not establish any compliance or reporting requirements for small businesses.*

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses;

*These rules do not establish any compliance or reporting requirements for small businesses.*

(5) The consolidation or simplification of compliance or reporting requirements for small businesses;

*These rules do not establish any compliance or reporting requirements for small businesses.*

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and

*The proposed rules do not establish any performance standards for small businesses.*

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

*There are no unnecessary entry barriers or other effects that would stifle entrepreneurial activity, curb innovation, or increased costs created by these rules.*

Economic Impact Statement- Pursuant to T.C.A. § 4-5-403

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

There is no foreseeable cost or benefit for small businesses as a result of these proposed rules as the rules largely reflect the Department's current policy and practices regarding access to public records.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

The proposed rules do not impose reporting, recordkeeping, or other administrative costs to small businesses.

3. A statement of the probable effect on impacted small businesses and consumers;

There is no foreseeable impact on small businesses as a result of the implementation of these rules as the rules reflect the Department's current policy and practices regarding access to public records. The proposed rules would likely reduce the overall costs for consumers to access public records due to the Department's increased fee waiver amount.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

There are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules.

5. A comparison of the proposed rule with any federal or state counterparts;

The proposed rules share similarities with multiple variations of rules pertaining to access to public records including, but not limited to, Model Public Records Policy of the Office of Open Records Counsel; Freedom of Information Act (FOIA), 5 U.S.C. § 552; Tennessee Department of Environment and Conservation, Tenn. Comp. R. and Regs. 0440-01-01-.01; Tennessee Department of Economic and Community Development, Tenn. Comp. R. and Regs. 0500-09-01-.01 thru 0500-09-01-.09; Tennessee Housing Development Agency, Tenn. Comp. R. and Regs. 0770-07-01-.01 thru 0770-07-01-.09; Tennessee Department of Safety, 1340-08-01-.01 thru 1340-08-01-.09; and University of Tennessee, Tenn. Comp. R. and Regs. 1720-01-11-.01 thru 1720-01-11-.06.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule;

There is no foreseeable cost or benefit to small businesses as a result of the implementation of these rules; therefore, an exemption would not impact small businesses.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly.)

These rules are not anticipated to have an impact on local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The language in sections 0780-07-02-.01, 0780-07-02-.02, and 0780-07-02-.03 relate to charges for access to public records, fees waivers, and fee reductions. The proposed rules delete these sections and replace them with sections that detail the purpose of the Chapter, describe the application of the Chapter, and define key terms in the Chapter. Further, the new proposed rules detail the process for making a public records request, responding to a public records request, inspecting records, making copies of records and the procedures for billing and payment.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Pursuant to T.C.A. §10-7-503(g)(1)(D)(2), state governmental entities are required to promulgate rules regarding public records in accordance with the Uniform Administrative Procedures Act.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Tennesseans who request to inspect records or obtain copies of records are most directly affected by these rules. The Department is unaware of entities that would urge adoption of these rules; however, the Tennessee Coalition for Open Government may urge rejection of these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

The Department is unaware of any opinion of the attorney general or any judicial ruling that directly relates to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These proposed rules will have a minimal fiscal impact on state revenues and expenditures; local government revenues and expenditures will not be impacted.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mark K. Green, Deputy General Counsel for Regulatory Boards;  
Maliaka Bass, Deputy General Counsel for General Civil Section;  
Pamela Spicer, Chief Counsel for Regulatory Boards;  
Cherrelle Hooper, Associate General Counsel and Supervising Attorney for General Civil; and  
Carey Kefauver, Associate General Counsel for General Civil

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Mark K. Green, Deputy General Counsel for Regulatory Boards;  
Maliaka Bass, Deputy General Counsel for General Civil Section;  
Pamela Spicer, Chief Counsel for Regulatory Boards;  
Cherrelle Hooper, Associate General Counsel and Supervising Attorney for General Civil; and  
Carey Kefauver, Associate General Counsel for General Civil



(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Mark K. Green  
500 James Robertson Parkway, Nashville, TN 37243  
(615) 532-7617  
[Mark.K.Green@tn.gov](mailto:Mark.K.Green@tn.gov)

Maliaka Bass  
500 James Robertson Parkway, Nashville, TN 37243  
(615) 741-9594  
[Maliaka.Bass@tn.gov](mailto:Maliaka.Bass@tn.gov)

Pamela Spicer  
500 James Robertson Parkway, Nashville, TN 37243  
(615) 741-3072  
[Pamela.Spicer@tn.gov](mailto:Pamela.Spicer@tn.gov)

Cherrelle Hooper  
500 James Robertson Parkway, Nashville, TN 37243  
(615) 741-9730  
[Cherrelle.Hooper@tn.gov](mailto:Cherrelle.Hooper@tn.gov)

Carey Kefauver  
500 James Robertson Parkway, Nashville, TN 37243  
(615) 741-8683  
[Carey.Kefauver@tn.gov](mailto:Carey.Kefauver@tn.gov)

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None Known.

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: \_\_\_\_\_  
Rule ID(s): \_\_\_\_\_  
File Date: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

# Rulemaking Hearing Rule(s) Filing Form (Redline)

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

<b>Agency/Board/Commission:</b>	Tennessee Department of Commerce and Insurance
<b>Division:</b>	Office of the Commissioner
<b>Contact Person:</b>	Mark Green, Deputy General Counsel
<b>Address:</b>	500 James Robertson Parkway, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	615-532-7617
<b>Email:</b>	Mark.K.Green@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0780-07-02	Rules and Regulations for Access to Public Records
Rule Number	Rule Title
0780-07-02-.01	Charges for Access to Public Records
0780-07-02-.02	Waiver
0780-07-02-.03	Reduction of Fees
0780-07-02-.04	Making a Public Records Request
0780-07-02-.05	Responding to a Public Records Request
0780-07-02-.06	Inspection of Records
0780-07-02-.07	Copies of Records
0780-07-02-.08	Fees and Payments

Chapter 0780-07-02  
Rules and Regulations for Access to Public Records  
Amendments

Table of Contents Chapter 0780-07 is amended by deleting the Table of Contents in its entirety and substituting the following so that, as amended, the Table of Contents shall read:

Table of Contents

0780-07-02-.01 <del>Charges For Access To Public Records</del> <u>Purpose</u>	0780-07-02-.05 <u>Responding to a</u>
0780-07-02-.02 <del>Waiver</del> <u>Application</u>	<u>Public Records Request</u>
0780-07-02-.03 <del>Reduction of Fees</del> <u>Definitions</u>	0780-07-02-.06 <u>Inspection of Records</u>
0780-07-02-.04 <u>Making a Public Records</u>	0780-07-02-.07 <u>Copies of Records</u>
<u>Request</u>	0780-07-02-.08 <u>Fees and Payments</u>

Rule 0780-07-02-.01 Charges for Access to Public Records is amended by deleting the rule and title in its entirety and substituting, instead, the following:

0780-07-02-.01 ~~Charges For Access To Public Records~~ Purpose

~~Upon a request for records under Tennessee's Public Records Act, Tenn. Code Ann. 10-7-501 et seq., the Department shall assess charges for the copying and labor based on the most current version of the Schedule of Reasonable Charges, issued by the Office of Open Records Counsel available at <http://www.comptroller.state.tn.us/openrecords/index.htm>.~~

- (1) The purpose of this chapter is to establish a procedure for providing economical and efficient access to public records as required under the Tennessee Public Records Act ("TPRA"), T.C.A. §§ 10-7-501 et seq.
- (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 the state of Tennessee. Those in charge of the records shall not refuse such a right of inspection to any citizen of the state of Tennessee, unless otherwise provided by state law. Accordingly, the public records of the Tennessee Department of Commerce and Insurance ("TDCI") are presumed to be open for inspection unless otherwise provided by law.
- (3) Employees of the department, through the Public Records Request Coordinator ("PRRC") identified in these rules, shall timely and efficiently provide access and assistance to persons requesting to inspect or receive copies of public records. No provisions of this rule shall be used to hinder access to non-confidential public records. However, the integrity and organization of public records as well as the efficient and safe operation of the department shall be protected as provided by law.

Authority: T.C.A. §§ 10-7-501 et seq.; ~~2008 Public Chapter 1179.~~

Rule 0780-07-02-.02 Waiver is amended by deleting the rule and title in its entirety and substituting, instead, the following:

0780-07-02-.02 ~~Waiver~~ Application

~~Should any charge assessed under Rule 0780-07-02-.01 total ten (\$10.00) dollars or less, the Department may waive the charge and provide the requested documents without payment.~~

These rules apply to all agencies, divisions, administrative offices, boards, commissions, programs, committees or other governmental entities within and administratively attached to TDCI.

Authority: T.C.A. §§ 4-3-301 et seq. and 10-7-501 et seq.; ~~2008 Public Chapter 1179. Administrative History: Original rule filed November 22, 2010; effective February 20, 2011.~~

Rule 0780-07-02-.03 Reduction of Fees is amended by deleting the rule and title in its entirety and substituting, instead, the following:

~~The Commissioner, or his or her designee, may reduce any part of the fees calculated under these rules upon a written determination that such reduction would be in the best interests of the public.~~

As used in this chapter, unless the context otherwise requires:

- (1) "Assistant Commissioner" means an assistant commissioner of TDCI, or an assistant commissioner's designee.
- (2) "Commissioner" means the commissioner of TDCI or the commissioner's designee. If the commissioner or the commissioner's designee is absent and unable to act or the office of the commissioner is vacant, a deputy commissioner.
- (3) "Confidential Record" means any departmental record that is considered confidential or privileged under federal or state law, including, without limitation and without waiving any privilege or any right to confidentiality available under federal or state law, as follows:
  - (a) Any record or portion of any record that is not subject to public inspection or is defined as confidential under the TPRA;
  - (b) Any record or portion of any record that is otherwise protected as confidential or privileged under any federal or state law or regulation or pursuant to any court order;
  - (c) Any record that is protected under the attorney-client privilege;
  - (d) Any record that is protected under the attorney work product doctrine; and
  - (e) Any record that is protected under any other statutory or common law privilege.
- (4) "Department" means the Tennessee Department of Commerce and Insurance ("TDCI").
- (5) "Deputy Commissioner" means a deputy commissioner of TDCI, or a deputy commissioner's designee.
- (6) "Office of Open Records Counsel" or "OORC" means the office established by T.C.A. § 8-4-601 et seq., within the Tennessee Comptroller of the Treasury.
- (7) "Public records" 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 in connection with the transaction of official business by the department. Public records do not include the device or equipment that may have been used to create or store a public record, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment. See T.C.A. § 10-7-503.
- (8) "Public Records Request Coordinator" or "PRRC" means the individual who has, or individuals who have, the responsibility to ensure public records requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA, or the designee of the PRRC. The PRRC shall be the individual(s) designated as Associate General Counsel for Administration.
- (9) "Records Custodian" means the official or employee lawfully responsible for the direct custody and care of public records. The records custodian is not necessarily the original preparer or receiver of the record.
- (10) "Redacted record" means a public record from which confidential information is removed or made obscure prior to release or inspection.
- (11) "Request form" means the most current records request form developed by the OORC at the time of the request and may include the form as adopted by TDCI.

- (12) "Requestor" means a Tennessee citizen requesting access to public records, whether it is for inspection or duplication.
- (13) "Response form" means the most current records response form developed by the OORC at the time of the request and may include the form as adopted by TDCI.
- (14) "TPRA" means the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq.

Authority: T.C.A. §§ 8-4-601 and 10-7-501 et seq.; ~~2008 Public Chapter 1179.~~

Chapter 0780-07-02  
Rules and Regulations for Access to Public Records  
New Rules

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.04 [Making a Public Records Request]:

- (1) All public records requests shall be made to the PRRC in order to ensure public records requests made pursuant to the TPRA are routed to the records custodian and fulfilled in a timely manner. All public records requests by or on behalf of news media organizations shall be made to the department's communications director.
- (2) Proof of Tennessee citizenship is required as a condition to inspect or receive copies of public records as authorized by T.C.A. § 10-7-503.
  - (a) Proof of citizenship may be furnished by the presentation of a valid Tennessee driver's license, other state-issued photographic identification, or an alternate form of identification acceptable to the PRRC that includes the requestor's Tennessee address.
  - (b) Notwithstanding lack of Tennessee citizenship, records may be released or made available to any complainant or respondent seeking information contained within the complaint file(s) to which complainant or respondent is a party, any state or federal agency conducting official business, or any person to whom the release of the records is determined to be in the best interests of the state of Tennessee by the commissioner, deputy commissioner, or assistant commissioner.
- (3) Requests for Inspection
  - (a) Requests for inspection may be communicated to the PRRC in person or via telephone, mail, fax, or email. A written request for inspection shall not be required. The PRRC may request written verification of a verbal request in order to facilitate recordkeeping and ensure accuracy in fulfilling the request; however, the PRRC shall not require written verification unless otherwise authorized by law. Requestors shall ensure the department has sufficient and accurate information to fulfill any request for inspection.
    - 1. The Department's contact information for making requests for inspection is as follows:

500 James Robertson Parkway  
Davy Crockett Tower  
Nashville, TN 37243  
Telephone: (615) 741-3388  
Fax: (615) 741-4000  
Email: TDCIopen.Records@tn.gov
  - (b) The PRRC may request a mailing and/or email address from the requestor for the purpose of providing any responsive written communication required under the TPRA. Requestors shall reasonably provide such contact information.
  - (c) Pursuant to T.C.A. § 10-7-503, if a requestor makes two (2) or more requests to inspect public records within a six (6) month period and, for each request, the requestor fails to

inspect the public records within fifteen (15) business days of receiving notification that the record is available for inspection, then the department is not required to comply with any subsequent 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 department determines the failure to inspect the public records was for good cause.

(4) Requests for Copies

(a) Requests for copies, or requests for inspection and copies, shall be made in writing using the request form and submitted to the PRRC in person or via mail, fax, or email. If the commissioner, deputy commissioner, or assistant commissioner determines that completion of the request form creates an undue burden on the requestor, then a clear, documented email or other substitute writing may be sufficient for the request.

1. The Department's contact information for making requests for copies is as follows:

500 James Robertson Parkway  
Davy Crockett Tower  
Nashville, TN 37243  
Telephone: (615) 741-3388  
Fax: (615) 741-4000  
Email: TDCIopen.Records@tn.gov

(b) Requests for copies of records during or following an inspection of records shall be made in writing, and the department shall be notified of the number of copies that the requestor wishes to make. A requestor may not use the requestor's personal equipment to make copies until a written request has been submitted and authorization granted by the PRRC.

(5) Standing public records requests shall not be permitted. Requestors shall submit a new request for inspection or copies of records each time the requestor would like to inspect or receive copies of responsive records.

Authority: T.C.A. §§ 10-7-501 et seq.

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.05 [Responding to a Public Records Request]:

(1) Public Records Request Coordinator

(a) Upon receipt of a public records request, the PRRC shall:

1. Review the request and make an initial determination of the following:

- (i) Whether the requestor provided evidence of Tennessee citizenship;
- (ii) Whether the records requested are described with sufficient specificity to identify them; and
- (iii) Whether the department is the custodian of the requested records.

2. Acknowledge receipt of the request and take any of the following actions as appropriate:

- (i) Advise the requestor of the need for any of the following documentation that was not provided with the initial request:
  - (I) Proof of Tennessee citizenship; or
  - (II) Request form(s) for copies.

- (ii) Deny the request in writing, using the response form, if one of the following applies:
  - (I) Requestor is not, or did not present proof that requestor is, a Tennessee citizen;
  - (II) Request lacks sufficient detail or is too broad in scope to identify the specific records to be provided for inspection or copying. If appropriate, the PRRC should contact the requestor to see if the request can be narrowed;
  - (III) The record is not subject to disclosure under the TPRA. The PRRC must provide the specific reference in the denial;
  - (IV) The record does not exist; or
  - (V) The department is not the custodian of the requested records. If the records relate to another governmental entity and the PRRC is aware of the correct entity, the PRRC should advise the requestor of the correct entity and the PRRC for that entity, if known.
- (iii) Forward the request to the appropriate records custodian within TDCI.

(2) Records Custodian

- (a) Upon receiving a public records request from the PRRC, the records custodian shall promptly make the requested records available, if not specifically exempt from disclosure.
- (b) If it is not practicable for the records custodian to promptly make the requested records available because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to the records; to determine whether the records are open; to redact records; or for similar reasons, then the records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a response form via email, fax or U.S. mail. The response form shall include a statement of the time reasonably necessary to produce the records. If the records still cannot be produced within the time frame provided in the initial response form, the records custodian should send another response form or letter, whichever is appropriate, indicating when the requestor can expect to receive the records.
- (c) If the records custodian denies a public records request, he or she shall deny the request in writing.
- (d) If the records custodian determines the 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 notify the requestor 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 requestor to see if the request can be narrowed.
- (e) If the records custodian discovers that records responsive to a records request were omitted, the records custodian shall contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) Redaction

- (a) If a record contains confidential information or information that is not open for public inspection, the records custodian shall redact the information prior to providing access for an inspection or copies. If questions arise concerning redaction, the records custodian

should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.

- (b) When a redacted record is provided, the records custodian shall provide the requestor with a general basis for redaction. The basis given for redaction shall not disclose confidential information. The records custodian is not required to produce a privilege log or similar document.

Authority: T.C.A. §§ 10-7-501 et seq.

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.06 [Inspection of Records]:

- (1) The records custodian shall promptly respond to a public records request for inspection in the most economic and efficient manner practicable.
- (2) There is no charge for inspection of public records.
- (3) Location and Time of Inspection
  - (a) The records custodian shall specify the location for the inspection within the offices of the department.
  - (b) The records custodian may require an appointment for inspection or may require inspection of records at an alternative location under reasonable circumstances.
- (4) The records custodian or a designated employee of the department shall remain with the responsive records at all times and take reasonable precautions to ensure that the integrity of public records is maintained during an inspection.
- (5) If, after viewing the records, a requestor wishes to obtain copies, costs will be calculated based on the copy, labor, and other charges accrued for the entire request. If a requestor seeks only a portion of the documents produced, charges will be calculated by taking the total costs of the records requested for inspection and dividing that cost by the total number of pages produced to create a per page rate. Separate requests for copies of documents that were included in a single inspection request shall be aggregated, within a reasonable time frame, to determine the cost of those copies.
  - (a) A requestor may make copies of records with the requestor's personal equipment. However, prior to doing so, the requestor shall make a written request for copies as provided in Rule 0780-07-02-.04 and certify in writing that the department produced the records as initially requested. Any copies made with the requestor's personal equipment, including any in excess of the originally requested amount, shall be identified by the requestor and charged to the requestor by invoice. A requestor who fails to pay for costs of records properly produced pursuant to a request may be referred for collection of the debt owed.
  - (b) Limitations on use of personal equipment:
    1. Any video or images captured using a cell phone or other electronic recording shall be limited to the records requested for inspection.
    2. The requestor shall not connect any personal equipment to a department computer or electronic device, including but not limited to, wireless technology or a portable storage device to make copies of public records.
- (6) If a records request is determined by the PRRC or records custodian to be so large that production of all of the requested records cannot be provided for an inspection at a single time, then the records may be produced in segments. The requestor shall be notified in writing when the next segment of records is expected to be available. Written notice shall also be provided to the requestor if there is any change regarding the date of production. Costs associated with any



records produced as part of such a rolling production schedule shall be paid as set out in these rules for the segment of the records produced and no additional records will be produced until payment has been received for the copies received.

Authority: T.C.A. §§ 10-7-501 et seq.

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.07 [Copies of Records]:

- (1) The records custodian shall promptly respond to a public records request for copies in the most economic and efficient manner practicable.
- (2) Upon payment of costs, physical copies may be made available for pickup at a location specified by the records custodian or mailed to the requestor's address.
- (3) The records custodian may provide electronic copies via email, portable storage device, or other electronic medium upon payment for costs.
- (4) A requestor may submit a written request as provided in Rule 0780-07-02-.04 to make copies of records with the requestor's personal equipment, which may be granted if practicable. If the request is submitted as an amendment to a prior request for copies, the requestor shall certify in writing that the department produced the records as initially requested, if applicable. All costs reasonably accrued for the production of the copies as originally requested shall be paid prior to the requestor making copies of records under this paragraph; such costs shall include, but not be limited to any costs for labor, paper copies, or other costs accrued.
  - (a) Limitations on use of personal equipment:
    1. Any video or images captured using a cell phone or other electronic recording shall be limited to the records requested for copying.
    2. The requestor shall not connect any personal equipment to a department computer or electronic device, including but not limited to, wireless technology or a portable storage device to make copies of public records.
- (5) A requestor who fails to pay for costs associated with records properly produced pursuant to a request may be referred for collection of the debt owed.
- (6) If a records request is determined by the PRRC or records custodian to be so large that production of all of the requested records cannot be produced as copies at a single time, then the records may be produced in segments. The requestor shall be notified in writing when the next segment of the records is expected to be available. Written notice shall also be provided to the requestor if there is any change regarding the date of production. Costs for copies produced as part of such a rolling production schedule shall be paid as set out in these rules for the segment of the records produced and no additional records will be produced until payment has been made for the copies received.

Authority: T.C.A. §§ 10-7-501 et seq.

Chapter 0780-07-02 is amended by adding the following as new rule 0780-07-02-.08 [Fees and Payments]:

- (1) General
  - (a) Fees and charges for copies of public records should not be used to hinder access to public records.
  - (b) Prior to producing copies of records, the records custodian shall provide the requestor with an estimate of the charges to be assessed for production and labor. The estimate shall include the job title, hourly rate, and time estimate for each the individuals expected to be involved in producing the records. The records custodian shall not be required to identify the specific tasks to be performed by the individuals for the estimate or invoice.

- (c) Waiver
1. When the total cost of production, including the cost for copies, labor, and delivery, do not exceed fifty dollars (\$50.00), the fees shall be waived, unless otherwise required by statute.
  2. Requests for fee waivers exceeding fifty dollars (\$50.00) or fee reductions shall be presented to the commissioner. Any waiver or reduction in fees is in the sole discretion of the commissioner, is not subject to judicial review, and does not establish any precedent.
  3. Fees associated with aggregated records requests shall not be waived unless the fees collectively amount to less than fifty dollars (\$50.00).
- (2) Production costs for copies are determined by the Schedule of Reasonable Charges established by the OORC.
- (a) Other costs reasonably necessary to produce the records include, but are not limited to:
1. Archive retrieval costs;
  2. Delivery cost of records;
  3. Computer programs; or
  4. If an outside vendor is used, the actual costs assessed by the vendor.
- (3) Labor Costs
- (a) The requestor shall pay labor costs for the production of copies at the hourly wage of the employee(s) reasonably necessary to produce the requested information after one (1) hour of work has been done by the employees in identifying, producing, reviewing, and redacting the requested material. The first hour of labor costs shall not be deducted for purposes of calculating fee waivers for costs that do not exceed fifty dollars (\$50.00).
- (b) The one (1) hour waiver applies to the highest paid employee. If the highest paid employee spends less than one (1) hour on the request, then the balance of the hour shall roll to the next highest paid employee involved in the request until one (1) full hour of credit has been given.
- (4) Payment of Costs
- (a) Copies of records will not be released until such time as payment has been made, except as approved by the commissioner.
- (b) Forms of payment include any form of payment accepted by the department at the time of any request. The department has the discretion to determine the acceptable forms of payment for costs.
- (c) Checks must be made payable to the department and presented to the records custodian or PRRC.
- (5) Pursuant to T.C.A. § 10-7-503, if the department receives a request for copies of a public record and the requestor fails to pay to the department the cost for the production of such copies after copies have been produced, the department is not required to comply with any public records request from the requestor until payment for such copies has been received provided that the requestor was given an estimated cost for producing the copies prior to the production of the copies and agreed to pay the estimated cost for such copies.
- (6) If the costs for copies exceeds fifty dollars (\$50.00), the requestor shall pay the estimated amount in advance of processing and shall be invoiced for or refunded the difference between the

estimated and actual costs, as appropriate.

- (7) If the records are to be produced as part of a rolling production as set out in Rule 0780-07-02-.07, then the costs for purposes of this paragraph shall be the costs of each segment of records. The requestor shall pay for each segment of records produced prior to the department being obligated to produce the next segment of records. If the costs for requested copies exceed fifty dollars (\$50.00), the requestor shall pay the estimated amount in advance and shall be invoiced for or refunded the difference of the estimated and actual costs, as appropriate.
- (8) Aggregation of Frequent and Multiple Requests
- (a) The department will 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 determined to be working in concert.
- (b) Records requests will be aggregated at the department level.
- (c) The PRRC is responsible for making the determination that a group of individuals is 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.

Authority: T.C.A. §§ 10-7-501 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Commerce and Insurance on 09/10/2020 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (06/29/2020)

Rulemaking Hearing(s) Conducted on: (add more dates). (08/25/2020)

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: Hodgen Mainda

Title of Officer: Commissioner

Agency/Board/Commission: Tennessee Department of Commerce and Insurance

Rule Chapter Number(s): 0780-07-02

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

**Public Hearing Comments**

There were no public hearing comments.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

### Regulatory Flexibility Analysis- Pursuant to T.C.A. § 4-5-402

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules;

*These rules are modeled after and, in some respects, duplicate the following: Freedom of Information Act (FOIA), 5 U.S.C. § 552; Tennessee Department of Environment and Conservation, Tenn. Comp. R. and Regs. 0440-01-01-.01; Tennessee Department of Economic and Community Development, Tenn. Comp. R. and Regs. 0500-09-01-.01 thru 0500-09-01-.09; Tennessee Housing Development Agency, Tenn. Comp. R. and Regs. 0770-07-01-.01 thru 0770-07-01-.09; Tennessee Department of Safety, 1340-08-01-.01 thru 1340-08-01-.09; and University of Tennessee, Tenn. Comp. R. and Regs. 1720-01-11-.01 thru 1720-01-11-.06.*

(2) Clarity, conciseness, and lack of ambiguity in the rule;

*The proposed rules are clear, concise and unambiguous.*

(3) The establishment of flexible compliance and reporting requirements for small businesses;

*These rules do not establish any compliance or reporting requirements for small businesses.*

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses;

*These rules do not establish any compliance or reporting requirements for small businesses.*

(5) The consolidation or simplification of compliance or reporting requirements for small businesses;

*These rules do not establish any compliance or reporting requirements for small businesses.*

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and

*The proposed rules do not establish any performance standards for small businesses.*

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

*There are no unnecessary entry barriers or other effects that would stifle entrepreneurial activity, curb innovation, or increased costs created by these rules.*

Economic Impact Statement- Pursuant to T.C.A. § 4-5-403

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

There is no foreseeable cost or benefit for small businesses as a result of these proposed rules as the rules largely reflect the Department's current policy and practices regarding access to public records.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

The proposed rules do not impose reporting, recordkeeping, or other administrative costs to small businesses.

3. A statement of the probable effect on impacted small businesses and consumers;

There is no foreseeable impact on small businesses as a result of the implementation of these rules as the rules reflect the Department's current policy and practices regarding access to public records. The proposed rules would likely reduce the overall costs for consumers to access public records due to the Department's increased fee waiver amount.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

There are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules.

5. A comparison of the proposed rule with any federal or state counterparts;

The proposed rules share similarities with multiple variations of rules pertaining to access to public records including, but not limited to, Model Public Records Policy of the Office of Open Records Counsel; Freedom of Information Act (FOIA), 5 U.S.C. § 552; Tennessee Department of Environment and Conservation, Tenn. Comp. R. and Regs. 0440-01-01-.01; Tennessee Department of Economic and Community Development, Tenn. Comp. R. and Regs. 0500-09-01-.01 thru 0500-09-01-.09; Tennessee Housing Development Agency, Tenn. Comp. R. and Regs. 0770-07-01-.01 thru 0770-07-01-.09; Tennessee Department of Safety, 1340-08-01-.01 thru 1340-08-01-.09; and University of Tennessee, Tenn. Comp. R. and Regs. 1720-01-11-.01 thru 1720-01-11-.06.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule;

There is no foreseeable cost or benefit to small businesses as a result of the implementation of these rules; therefore, an exemption would not impact small businesses.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly.)

These rules are not anticipated to have an impact on local governments.



## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The language in sections 0780-07-02-.01, 0780-07-02-.02, and 0780-07-02-.03 relate to charges for access to public records, fees waivers, and fee reductions. The proposed rules delete these sections and replace them with sections that detail the purpose of the Chapter, describe the application of the Chapter, and define key terms in the Chapter. Further, the new proposed rules detail the process for making a public records request, responding to a public records request, inspecting records, making copies of records and the procedures for billing and payment.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Pursuant to T.C.A. §10-7-503(g)(1)(D)(2), state governmental entities are required to promulgate rules regarding public records in accordance with the Uniform Administrative Procedures Act.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Tennesseans who request to inspect records or obtain copies of records are most directly affected by these rules. The Department is unaware of entities that would urge adoption of these rules; however, the Tennessee Coalition for Open Government may urge rejection of these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

The Department is unaware of any opinion of the attorney general or any judicial ruling that directly relates to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These proposed rules will have a minimal fiscal impact on state revenues and expenditures; local government revenues and expenditures will not be impacted.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mark K. Green, Deputy General Counsel for Regulatory Boards;  
Maliaka Bass, Deputy General Counsel for General Civil Section;  
Pamela Spicer, Chief Counsel for Regulatory Boards;  
Cherrelle Hooper, Associate General Counsel and Supervising Attorney for General Civil; and  
Carey Kefauver, Associate General Counsel for General Civil

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Mark K. Green, Deputy General Counsel for Regulatory Boards;  
Maliaka Bass, Deputy General Counsel for General Civil Section;  
Pamela Spicer, Chief Counsel for Regulatory Boards;  
Cherrelle Hooper, Associate General Counsel and Supervising Attorney for General Civil; and  
Carey Kefauver, Associate General Counsel for General Civil

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Mark K. Green  
500 James Robertson Parkway, Nashville, TN 37243  
(615) 532-7617  
[Mark.K.Green@tn.gov](mailto:Mark.K.Green@tn.gov)

Maliaka Bass  
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Pamela Spicer  
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Cherrelle Hooper  
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[Cherrelle.Hooper@tn.gov](mailto:Cherrelle.Hooper@tn.gov)

Carey Kefauver  
500 James Robertson Parkway, Nashville, TN 37243  
(615) 741-8683  
[Carey.Kefauver@tn.gov](mailto:Carey.Kefauver@tn.gov)

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None Known.