




Policy Number: PRIV 029	
Policy Subject: Public Records Policy	
Approved by: 	Effective Date: 10/26/2017

PURPOSE OF POLICY

This policy establishes the process and procedure, pursuant to T.C.A. § 10-7-503(g), through which the Division of TennCare will provide economical and efficient access to public records as provided under the Tennessee Public Records Act (“TPRA”) in Tenn. Code Ann. § 10-7-501, et seq.

SCOPE

This Policy applies to all employees in the various offices, departments, and/or divisions of TennCare and all requests for public records made to TennCare. This policy and its procedures should be implemented in conjunction with its companion forms made available by TennCare.

POLICY

Pursuant to T.C.A. § 10-7-503, TennCare shall provide economical and efficient access to public records as provided under the TPRA. TennCare’s Public Records Request Coordinator (PRRC) shall report to the deputy commissioner on an annual basis about the agency’s compliance with the TPRA pursuant to this policy and shall make recommendations, if any, for improvement or changes to this policy.

TennCare public 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.

Personnel of TennCare shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Policy 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 TennCare, its programs, and the individuals they support, shall be protected as provided by law. Further, TennCare is not required to sort through files to compile information or to create or recreate a record that does not exist in order to satisfy a records request. Concerns about this Policy should be addressed to the PRRC for TennCare or the Office of General Counsel.

Generally, individually identifying information and Protected Health Information (PHI) is not subject to public records requests. PHI and other sensitive information are confidential except as use or disclosure is permitted by The Privacy Act, HIPAA and other federal and state privacy rules.

Requests by journalists, media organizations, outlets, agencies and their representatives may be treated as Media Inquiries and responded to based on the procedures of the TennCare Communications Office. It is the policy of TennCare to respond only to public record requests by journalists who are Tennessee citizens. Interstate journalist and media organization requests shall be treated as Media Inquiries rather than as a records request and such requests will be responded to at the discretion of the TennCare Deputy Director of Communications and Employee Relations. Contact information for the Communications Office is available on the TennCare website.

This Policy is available in the office of PPRO as well as on the TennCare website. This Policy shall be reviewed at minimum bi-annually.

PROCEDURES

A. Requesting Access to Public Records

1. Public record requests shall be made to the PRRC or his/her designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
2. Requests for inspection must be made in writing using the TennCare Public Records Request Form (hereinafter Request Form) at the PRRC's mailing address, email address, fax or phone number as made available in the Request Form. The PRRC may request contact information from the requestor for providing any written communication required under the TPRA.
3. Requests for copies, or requests for inspection and copies, shall be made to the PRRC in writing using the Request Form at the mail or email addresses or fax number provided on the form.
4. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or at TennCare discretion an alternative acceptable form of ID) is required as a condition to inspect or receive copies of public records.

B. Responding to Public Records Requests

1. Public Record Request Coordinator
 - a. The TennCare designated PRRC is the Privacy and Public Records Officer, part of the Office of General Counsel, whose name and contact information is available

in the Request Form.

- b. The PRRC shall review public record requests and make an initial determination of the following:
 - i. If the requestor provided evidence of Tennessee citizenship;
 - ii. If the records requested are described with sufficient specificity to identify them; and
 - iii. If TennCare is the custodian of the records.
- c. The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
 - i. Advise the requestor of this Policy and the decisions made regarding:
 - a) Proof of Tennessee citizenship;
 - b) Any forms required for copies;
 - c) Fees; and
 - d) Aggregation of multiple or frequent requests.
 - ii. If appropriate, deny the request in writing, using the TennCare Public Records Request Response Form (hereinafter Response Form) providing the appropriate ground for denial such as:
 - a) The requestor is not, or has not presented evidence of being, a Tennessee citizen;
 - b) The request lacks specificity;
 - c) An exemption makes the record not subject to disclosure under the TPRA;
 - d) TennCare is not the custodian of the requested records;
 - e) The records requested do not exist.
 - iii. If appropriate, contact the requestor to see if the request can be narrowed or otherwise clarified.
 - iv. Forward the records request to the appropriate records custodian within TennCare.
 - v. 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 TennCare records custodian in collaboration with the PRRC shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503 and using the Response Form. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC or the Office of General Counsel.
- b. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then 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 completed

Response Form indicating the reason for the delay and an estimate of the time necessary to produce the records or determine the proper response to the request.

- c. If a records custodian in collaboration with the PRRC denies a public record request, he or she shall deny the request in writing as provided above using the Response Form.
- d. If a records custodian in collaboration with the PRRC reasonably determines 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 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 or PRRC should contact the requestor 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 in collaboration with the PRRC should contact the requestor concerning the omission and produce the records as quickly as practicable.

3. Redaction

- a. If a TennCare record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access or copies. If questions arise concerning redaction, the records custodian should coordinate with the PRRC or counsel or other appropriate parties regarding review and redaction of records. The records custodian, the PRRC, and the Office of General Counsel may also consult with the OORC or with the Office of Attorney General and Reporter regarding this topic or others regarding open records requests.
- b. Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

C. Inspection of Records

1. There shall be no charge for inspection of open public records. However, charges may be incurred for preparation of records for inspection which may include labor costs and outside vendor expenses for collection and redaction as appropriate.
2. The location for inspection of records shall be reasonably determined by the PRRC or the records custodian.
3. Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

D. Copies of Records

1. The PRRC and/or records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
2. Copies will be available for pickup at a location specified by the PRRC and/or records custodian.
3. Upon payment for postage and fees for copies and labor, copies will be delivered to the requestor's home address via the United States Postal Service. Additional permitted means of delivery may be agreed upon with the requestor, including email, electronic transfer or via disk, upon payment of fees for copies and labor and in the case of use of devices such as flash drives, the agency's cost for procuring such a device.
4. Except for the use of a cell phone or handheld camera, a requestor will not be allowed to make copies of records with their personal equipment during the inspection of such records.

E. Fees and Charges and Procedures for Billing and Payment

1. Excessive fees and charges for copies of public records should not be used to hinder access to public records.
2. Records custodians in collaboration with the PRRC shall provide requestors with an itemized estimate of the charges prior to producing copies of records and shall require pre-payment of such charges before producing requested records.
3. When fees for copies and labor do not exceed \$50.00, the fees will be waived. Requests for waivers for fees above \$50.00 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of TennCare and for the public good. Fees associated with aggregated records requests will not be waived.
4. Fees and charges for copies are as follows
 - a. \$0.15 per page for letter- and legal-size black and white copies.
 - b. \$0.50 per page for letter- and legal-size color copies.
 - c. Shipping or mailing costs in excess of \$15.00.
 - d. Labor when time exceeds 1 hour for time reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, reproducing, redacting or scanning records. The cost will vary depending on the hourly rates of the employee(s) doing the work and may include the time of an attorney reasonably necessary to review records and redactions to ensure compliance with confidentiality requirements of state and federal law.

- e. If an outside vendor is used, the actual costs assessed by the vendor.
 - f. If transfer is performed via disk, such as a flash drive, the agency's cost for procuring such a device.
5. No duplication costs will be charged for requests for less than 10 pages.
 6. Payment is to be made by check or money order payable to TennCare and presented to the PRRC via mail or hand delivery, at the address provided in the Request and Response Forms.

F. Aggregation of Frequent and Multiple Requests

1. TennCare will aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC 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.
2. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC 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.
3. Requests for any TennCare records, regardless of the type of records requested or whether the request pertains to any office or sub-division of the agency may be aggregated.
4. Once the aggregation threshold is reached, the exemption for labor charges up to one hour specified above do not apply for any ongoing and subsequent requests.

DEFINITIONS

Media: As used in this policy, includes reporters, editors and journalists working with radio, television, online or other news organizations and serving the general public.

Media Inquiry(ies): Inquiries made by or on behalf of members of the Media, and which are not related to the use or disclosure of Public Records.

Records Custodian: The office, official or employee lawfully responsible for the direct custody and care of a public record. See Tenn. Code Ann. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.

Protected Health Information (PHI): Information that is: (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium, including demographic information that identifies or may be used to identify an individual and

that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. See 45 CFR 160.103

Public Records: 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. See Tenn. Code Ann. § 10-7-503(a)(1)(A).

Public Records Request Coordinator: The individual, or individuals, designated in Section III, A.3 of this Policy 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. See Tenn. Code Ann. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.

Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

OFFICE OF PRIMARY RESPONSIBILITY

TennCare Privacy and Public Records Office, Office of the General Counsel

RELATED DOCUMENTS

TennCare Public Records Request Form

TennCare Public Records Response Form

ORRC Policy regarding Reasonable Charges for Frequent and Multiple Requests

REFERENCES

Tenn. Code Ann. § 10-7-503 et. seq.

45 C.F.R. §§ 160-164