

OPEN GOVERNMENT

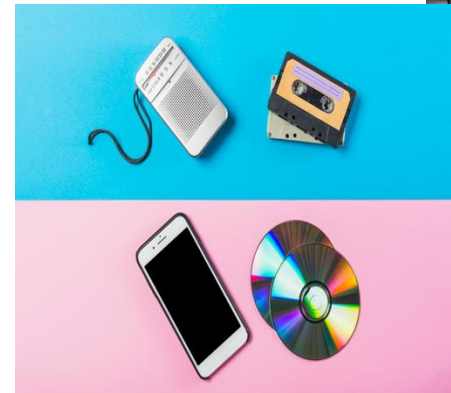


TN PUBLIC RECORDS LAW: TCA 10-7-503

All state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

DEFINITION OF 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.



EXAMPLES OF PUBLIC RECORDS

Employee evaluations

Contracts with vendors

Phone messages

Emails

Text messages



EXCEPTIONS - CONFIDENTIAL RECORDS

CONFIDENTIAL

-
- Some exceptions are in T.C.A. 10-7-504, most are elsewhere (other statutes, court rules, under the common law, federal laws, and administrative rules).
 - Roughly 600 statutory exceptions.



OFFICE OF OPEN RECORDS COUNSEL (OORC)

OORC website has lists compiling all the 600 plus statutory exceptions

<https://comptroller.tn.gov/office-functions/open-records-counsel.html>

Phone: (615) 401-7891

Email: open.records@cot.tn.gov

OORC assists county officials and citizens with specific open records requests and provides training and forms.



REDACTION

Must redact confidential information and turn over rest of record.

230
(103)

 **DEPARTMENT OF DEFENSE**
CRIMINAL INVESTIGATION TASK FORCE (DEPLOYED)
GUANTANAMO BAY, CUBA

REPLY TO
ATTENTION OF

CITF-G/SAC

17 Dec 02

MEMORANDUM FOR JTF-GTMO/2

SUBJECT: JTF GTMO "SERE" INTERROGATION SOP DTD 10 DEC 02

1. On 14 December 02, prior the "Decision Making" brief with the CG, you provided me a copy of JTF GTMO SERE INTERROGATION SOP dated 10 Dec 02 and asked me to review it and provide you my opinion. [REDACTED] b(5)-1

[REDACTED] However, I do want to reiterate CITF-G's general position on this matter. As outlined in our memorandum for JTF GTMO dated 15 Nov 02, CITF-G [REDACTED] While the subject SOP clearly does not apply to LEA (CITF and FBI) interrogators (applicable only to military and civilian interrogators assigned to JTF-GTMO), LEA in conjunction with the FBI's Behavioral Analysis Unit want to modify you the following general observations on [REDACTED]

2. General Observations: Both the military and LEA share the identical mission of obtaining intelligence in order to prevent future attacks on Americans. However, LEA has the additional responsibility of seeking reliable information/evidence from detainees to be used in subsequent legal proceedings.

3. [REDACTED] b(7)E

4. The SERE methods were designed for use in a battlefield environment as a means of collecting tactical intelligence (e.g., to uncover enemy plans, determine enemy strength, movement, weapon capabilities and logistical support, etc.) [REDACTED] b(5)

5. LEA agents are responsible for investigating a wide variety of criminal and counterintelligence matters around the world. Accordingly, they are highly trained and experienced in eliciting information from reluctant subjects of diverse cultural and socio-economic backgrounds. [REDACTED]

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1318
FORM 100-10-110

RECORDS REQUEST PROCESS

If practical, must promptly make available.

If not practical, must within 7 business days:

- Make the record available to the requestor;
- Deny request in writing, stating the basis for the denial; or
- Furnish the requestor in writing the time necessary to produce the record.

DENIAL OF ACCESS

May sue you.

Burden of proof rests on you.

The court may assess attorneys' fees, if the court deems the denial "willful."

The law requires the court to consider guidance given by the OORC.



CHARGING FOR COPIES



No charge to view records.

May charge actual cost for providing copies.

Must provide estimate of cost (get them to agree to pay).

OORC has developed a schedule of reasonable charges for copies of public records.

OORC SCHEDULE OF CHARGES



- Black & white copies = 15 cents
- Color copies = 50 cents
- May charge hourly wage of employee after the first hour.

[Comptroller's website](#) > [Open Records Counsel Home](#) > [Policies & Guidance](#)

LIMITS ON RECORD REQUESTS

- Confidential records & only TN citizens.
- Not required to create a document or compile information into a new record.
- Doesn't show TWICE for inspection.
- Agrees to pay estimate but doesn't pay for copies.

RECORDS POLICY REQUIRED

- Includes:
 - Record request process, forms and fees.
 - Contact info for the public records request coordinator Your policy may be countywide or office specific,
- OORC has published model policy on website
 - - Check your policy!! -

DISPOSAL OF PUBLIC RECORDS



DUTY TO PRESERVE

Official bond insures...

Safely keep all official records; and

Safely turn over to your successor all official records.

UNLAWFUL REMOVAL OR DESTRUCTION

- TCA 39-16-504
- Class E Felony
- Intentionally and unlawfully destroy, conceal, remove or otherwise impair the availability of a county record.



COUNTY PUBLIC RECORDS COMMISSION

3 members appointed by the county mayor

- County commissioner
- Judge of a court of record
- Genealogist

3 ex officio members

- County clerk
- Register of deeds
- County historian

County archivist

IT director



DISPOSAL PROCESS WITH RECORDS COMMISSION

- Identify and classify the record with the records commission.
- Three classes of records:
 - Working papers;
 - Temporary records; and
 - Permanent records.
- CTAS' e-Library (e-Li) contains retention schedules for many major types of temporary and permanent records.

PERMANENT RECORDS

- Permanent Records are records that are required by law or by their importance to be kept forever.
- Can convert permanent paper records into another permanent media (e.g., microfilm or electronic records)
- No original permanent record may be destroyed unless the records commission agrees.
- Must give 90-days notice to the State Library and Archives prior to destruction.

ELECTRONIC RECORDS

Records may be maintained in an electronic format under TCA 10-7-121 if the following standards are met:

The information must be available for public inspection, unless confidential;

The record must be retained for the entire retention period;

All data must be copied to storage media daily and back-ups that are more than one week old must be stored off-site; and

Official must be able to provide a paper copy upon request.

OPEN MEETINGS



OPEN MEETINGS

T.C.A. 8-44-101

- The formation of public policy and decisions is public business and shall not be conducted in secret.

FOUR REQUIREMENTS OF THE OPEN MEETINGS ACT

Meetings
must be
open

Must give
prior
notice

Must take
minutes

All votes
must be
public

FIRST REQUIREMENT

All “meetings” of a “governing body” must be open.

Definitions

- Meeting: Two people communicating to make a decision or to deliberate toward a decision.
- Governing body: any public body consisting of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

EXAMPLES OF BODIES/MEETINGS SUBJECT TO THE SUNSHINE LAW

- County commissions
- School boards
- Highway commissions
- County public records commissions



PUBLIC COMMENT PERIOD

- Must reserve time for public comment.
- Must take “all practicable steps” to allow opposing views.
- May place reasonable restrictions:
 - Length of comment period
 - Number of speakers and time limits
 - Sign up (with instructions in notice)



SECOND REQUIREMENT

Adequate public notice must be given for all meetings.

What's adequate?

- Adequate notice: Depends on the importance of the meeting to the public – the more important to the public the meeting is the greater the public notice burden.

AGENDAS



- Must make agendas public at least 48 hours prior to the meeting.
- If you have a website, must be posted on the website.
- May consider matters not on agenda if follow bylaws but can't do to circumvent requirement.

THIRD REQUIREMENT

- The minutes of meetings must be recorded and open to public inspection.
- Record of persons present, motions, resolution and all votes taken.



FOURTH REQUIREMENT

- All votes must be by public vote, public ballot or public roll call.
- No secret votes or secret ballots allowed.



NUMEROUS EXCEPTIONS – ALL VERY LIMITED!!

Some examples of exceptions:

- Chance meeting or informal gathering (can't deliberate)
- Attorney-client discussions about pending/likely litigation (can't deliberate)
- Interviews of director level positions (can't deliberate)
- Electronic participation due to family/medical emergency, military service or inclement weather (two meetings a year & most members must be physically present [$<$ of 20% or 3 members not present])

PENALTIES AND REMEDIES FOR NONCOMPLIANCE



- Courts are given broad authority to issue injunctions/impose penalties
- Action taken is void
 - Cannot “rubber stamp” prior action
- **ATTORNEYS’ FEES \$\$\$**
 - Court considers OORC advice

ADDITIONAL SOURCES OF ASSISTANCE

- The Office of Open Records Counsel
 - Open Meetings
 - Open Records
- The Tennessee State Library and Archives
 - Record preservation

