



**METROPOLITAN PUBLIC DEFENDER'S OFFICE
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PREFACE

The Metropolitan Public Defender's Office operates with a philosophy that government exists to serve people, and citizens should have the right to access records of work performed on their behalf. Public access to such records promotes transparency in government institutions, accountability of elected leaders and representatives, and a more informed public dialogue around important issues. At the same time, much of the work of the Metropolitan Public Defender's Office involves legal representation of individuals. As lawyers for those individuals, we are required by law, statute, and professional codes of ethics to maintain strict confidentiality of any and all information related to the representation of our clients. As such, any and all records related to the representation of a client of this Office are not public records; they are property of the client, and not subject to disclosure absent written consent of the client.

PUBLIC RECORDS POLICY

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy is hereby adopted by the Metropolitan Public Defender's Office to 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.

The TPRA provides that all state, county and municipal records shall, at all times during business hours be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of the Metropolitan Public Defender's Office are presumed to be open for inspection unless otherwise provided by law.

The Metropolitan Public Defender's Office 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 the Metropolitan Public Defender's Office, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for the Metropolitan Public Defender's Office or to the Tennessee Office of Open Records Counsel ("OORC").

This Policy is available for inspection and duplication at the Metropolitan Public Defender's Office. This Policy is posted online at <http://publicdefender.nashville.gov/public-records-policy/>. This Policy shall be reviewed at least annually.

I. Definitions:

- A. Confidential Record: Any record, or part of a record, which is defined by the Tennessee Public Records Act, or other state or federal law, as being exempt from public inspection, including, but not limited to, those records listed in T.C.A., § 10-7-504.
- B. 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.
- C. 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).
- D. 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.
- E. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

II. Requesting Access to Public Records

- A. Public record requests shall be made to the Public Records Request Coordinator ("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.
- B. Requests for inspection only cannot be required to be made in writing. The PRRC should request a mailing or email address from the requestor for providing any written communication required under the TPRA.
- C. Requests for inspection may be made orally or in writing at The Office of the Metropolitan Public Defender, 404 James Robertson Parkway, Ste. 2022, Nashville, TN 37219 or by phone at 615-862-5730. The Office's hours are 8:00am – 4:30pm, Monday to Friday.
- D. Requests for copies, or requests for inspection and copies, shall be made in writing using the records request form at The Office of the Metropolitan Public Defender, 404 James Robertson Parkway, Ste. 2022, Nashville, TN 37219. Request for inspection or copies may also be sent via e-mail with an attached records request form to: publicdefender@jnsnashville.gov.
- E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of ID) is not required as a condition to inspect or receive copies of public records.

III. Responding to Public Records Requests

A. Public Record Request Coordinator

1. The PRRC shall review public record requests and make an initial determination of the following:

- a. If the records requested are described with sufficient specificity to identify them; and
 - b. If the Metropolitan Public Defender's Office is the custodian of the records.
2. The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
 - a. Advise the requestor of this Policy and the elections made regarding:
 - i. Form(s) required for copies;
 - ii. Fees (and labor threshold and waivers, if applicable); and
 - iii. Aggregation of multiple or frequent requests.
 - b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:
 - i. The request lacks specificity.
 - ii. An exemption makes the record not subject to disclosure under the TPRA.
 - iii. The Metropolitan Public Defender's Office is not the custodian of the requested records.
 - iv. The records do not exist.
 - c. If appropriate, contact the requestor to see if the request can be narrowed.
 - d. Forward the records request to the appropriate records custodian in the Metropolitan Public Defender's Office.
 - e. 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 and PRRC for that entity if known.
3. The designated PRRC is:
 - a. Name or title: Ms. Sherlaine Emmons
 - b. Contact information:

Email: publicdefender@jnsnashville.gov
Mailing/physical address:
The Office of the Metropolitan Public Defender
404 James Robertson Parkway, Ste. 2022
Nashville, TN 37219
Phone: 615-862-5730
Fax: 615-880-3700

4. The PRRC shall report to the Metropolitan Public Defender on an annual basis about the Office's compliance with the TPRA pursuant to this Policy and shall make recommendations, if any, for improvement or changes to this Policy.

B. Records Custodian

1. Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, counsel, or the OORC.
2. 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 shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form.
3. If a records custodian denies a public record request, he or she shall deny the request in writing as provided in Section III.A.2.b using the Public Records Request Response Form.
4. If a records custodian 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 records custodian shall use the Public Records Request Response Form 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 should contact the requestor to see if the request can be narrowed.
5. If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

C. Redaction

1. If a 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. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records.
2. When requested by requestor, a records custodian should provide the requestor with the basis for redaction(s) within the records provided. The basis given for redaction shall be general in nature and not disclose confidential information.

IV. Inspection of Records

- A. There shall be no charge for inspection of open public records.

- B. The location for inspection of records within the Office of the Metropolitan Public Defender should be determined by either the PRRC or the records custodian.
- C. 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.

V. Copies of Records

- A. A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- B. At the discretion of the records custodian or PRRC, as applicable, and where possible, the responsive records may be emailed to the requestor.
- C. Copies, whether hard copies or in electronic form, such as on a CD or flash drive, depending on what is easiest for the records custodian or PRRC, will be available for pickup at a location specified by the records custodian.
- D. Upon payment for postage and copies, copies will be delivered to the requestor's preferred or home address by the United States Postal Service or through any other delivery means agreed to by the PRRC. Costs incurred in delivering the copies will be assessed in addition to other permitted charges.
- E. A requestor inspecting records will be allowed to photograph records with a smart phone or camera, although such photographs of records will not be eligible for certification as certified copies. But, for cyber security reasons, under no circumstances may a requestor insert a personal flash drive or other storage device into any Metropolitan Government computer.¹ The use of any other device is at the discretion of the PRRC or records custodian, as appropriate, which decision shall be made based on considerations such as security or the burden imposed on the department. *A requestor may obtain electronic copies of records on a flash drive or CD provided by the Metropolitan Government, which copies and media will be provided consistent with the provisions of Section VI of this Policy, below.*

VI. Fees and Charges and Procedures for Billing and Payment

- A. Fees and charges for copies of public records should not be used to hinder access to public records.
- B. Records custodians shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.

¹ A department hosting the inspection of electronic records on a Metropolitan Government computer shall, in consultation with ITS, if necessary, lock down the computer that is going to be used for the inspection so as to prevent someone being able to use a flash drive to copy information. Any DVD drive on the computer shall be either disabled or removed entirely to prevent its use. While it may be necessary for the computer on which the inspection will occur to be connected to the network for the purposes of retrieving the records to be inspected, after that is done but prior to the inspection it shall be disconnected from the network.

- C. When fees for copies and labor are not estimated to exceed \$100, the fees may be waived. Requests for waivers for fees above \$100 must be presented to the Administrative Services Manager, who is authorized to determine if such waiver is appropriate. Fees associated with aggregated records requests will not be waived.
- D. Fees and charges for copies are as follows:
 - 1. \$0.15 per page for letter- and legal-size black and white copies.
 - 2. \$0.50 per page for letter- and legal-size color copies.
 - 3. Labor when time exceeds one (1) hour.
 - 4. If an outside vendor is used, the actual costs assessed by the vendor.
- E. No duplication costs will be charged for requests estimated to cost less than \$50.
- F. Payment is to be made in cash, by personal check or postal money order payable to Metro Government of Nashville and Davidson County presented to the records custodian or PRRC.
- G. Payment in advance will be required when costs are estimated to exceed \$100.
- H. Aggregation of Frequent and Multiple Requests
 - 1. At the discretion of the PRRC or records custodian, as appropriate, the Metropolitan Public Defender's Office may 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. If aggregating:
 - a. The level at which records requests will be aggregated is either Metro-wide or Department-wide, at the discretion of the PRRC or records custodian, as appropriate.
 - b. The PRRC is responsible for making the determination that a group of individuals are 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.
 - c. Multiple requests for routinely released and readily accessible records will not be considered aggregate.