

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

POLICIES AND PROCEDURES

Subject:

Public Records Requests

Effective Date:
7/1/2017

Policy Number:

Review Date:

Revision Date:
12/7/2017

Entity
responsible:
Office of
Communication

1. Purpose:

This policy establishes procedures regarding public records requests received by the Tennessee Department of Mental Health and Substance Abuse Services ("TDMHSAS").

2. General Information:

- 2.1 Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for TDMHSAS is hereby adopted 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.
- 2.2 The TPRA provides that all state, county, and municipal records shall, at all time during business hours, which for public hospitals shall be during the business hours of their administrative offices, 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 or federal rule or law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of TDMHSAS are presumed to be open for inspection unless otherwise provided by law.
- 2.3 Personnel of TDMHSAS shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provision of this Policy shall be used to hinder access to open public records. However, the integrity and organization of public records, as well the efficient and safe operation of TDMHSAS, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator ("PRRC") for TDMHSAS.
- 2.4 This Policy is available for inspection and duplication in the office of the PRRC. This Policy is posted online at tn.gov/behavioral-health. This Policy shall be reviewed annually by the PRRC in consultation with the Privacy Counsel for TDMHSAS.
- 2.5 This Policy shall be applied consistently throughout the various offices, department, and/or divisions of TDMHSAS.

3. Procedures:

3.1 Definitions

- A. Governmental Entity: The state of Tennessee, or any county, municipality, city or other political subdivision of the state of Tennessee.
- B. Privacy Counsel: TDMHSAS General Counsel unless otherwise delegated.
- 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, not otherwise protected by law or exempt from disclosure under the TPRA. See Tenn. Code Ann. § 10-7-503(a)(1)(A).
- D. Public Records Request Coordinator ("PRRC"): The individual, or individuals, designated in Section 3.3(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 PRRC may also be a records custodian.
- E. 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.
- F. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

3.2 Requesting Access to Public Records

- A. Public record requests shall be made to the PRRC or his/her designee in order to ensure public records requests are routed to the appropriate records custodian and fulfilled in a timely manner. Any employee of TDMHSAS who receives what they believe may be a public records request, formal or informal, shall immediately notify the PRRC.
- B. Requests for inspection are not 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 using the attached Public Records Request Form ("Form A") at Andrew Jackson Building, 6th Floor, 500 Deaderick Street, Nashville, TN 37243 or by phone at 615-532-8697.
- D. Requests for copies, or requests for inspection and copies, shall be made in writing using the attached Form A. Form A can be sent by mail or email. Please send mail to Andrew Jackson Building, 6th Floor, 500 Deaderick Street, Nashville, TN 37243 or email to the PRRC at Matthew.Parriott@tn.gov.

- E. Proof of Tennessee Citizenship by presentation of a valid Tennessee driver's license or Tennessee Identification Card is required as a condition to inspect or receive copies of public records.

3.3 Responding to Public Records Requests

A. Public Records Request Coordinator "PRRC"

1. The PRRC shall review public record requests and make an initial determination of the following:
 - a. If the requestor provided evidence of Tennessee citizenship, pursuant to Section 3.2(E) of this Policy;
 - b. If the records requested are described with sufficient specificity to identify them; and
 - c. If TDMHSAS has these records, and who the records custodian(s) is; and,
 - d. If the records requested, or any of their contents, are protected by privacy laws or are in any way confidential or privileged under law and whether the Privacy Counsel needs to be consulted.
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. Proof of Tennessee citizenship, pursuant to Section 3.2(E) of this Policy;
 - ii. Form(s) required for copies;
 - iii. Fees (and labor threshold and waivers, if applicable); and
 - iv. 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 requestor is not, or has not presented evidence of being, a Tennessee citizen, pursuant to Section 3.2(E) of this Policy.
 - ii. The request lacks specificity.
 - iii. An exemption makes the record not subject to disclosure under the TPRA.
 - iv. TDMHSAS is not the custodian of the requested records.
 - v. The records do not exist.
 - vi. Any other legal grounds for denial.
 - 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 TDMHSAS.
 - e. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity to which the public records request should be made, the PRRC will advise the requestor of the correct governmental entity and the PRRC for that entity if known.
3. The designated PRRC is:
 - a. Name or title: TDMHSAS Director of Communication
 - b. Contact Information: Andrew Jackson Building, 6th floor, 500 Deaderick Street, Nashville, TN 37243. Email: Matthew.Parriott@tn.gov. Phone: 615-532-8697.
4. Upon receiving a public records request, the PRRC shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If the PRRC is uncertain as to whether an applicable exemption applies or whether the records requested, or any of their contents, are protected by privacy laws or are in any way confidential or privileged under privacy law, the PRRC will consult with the Privacy Counsel. The PRRC may also consult with the Office of Open Records Counsel ("OORC") after first consulting with the Privacy Counsel.
5. 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 the PRRC shall, within seven (7) business days from the PRRC's receipt of the request, send the requestor a completed Public Records Request Response Form ("Form B").
6. If the PRRC denies a public records request, he or she shall deny the request in writing as provided in Section 3.3(A)(2)(b) using Form B.
7. If 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 PRRC shall use Form B 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 PRRCs should contact the requestor to see if the request can be narrowed.
8. If the PRRC discovers records responsive to a records request were omitted, the PRRC should contact the requestor concerning the omission and produce the records as quickly as possible.

B. Records Custodian

1. The records custodian shall promptly respond to direction provided by the PRRC regarding public records requests.

C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the PRRC will coordinate with the Privacy Counsel or other appropriate parties regarding potential redaction of records. The PRRC may also consult with the OORC or with the Office of Attorney General and Reporter after first consulting with the Privacy Counsel.
2. Whenever a redacted record is provided, the PRRC should provide the requestor with a basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

3.4 Inspection of Records

- A. There shall be no charge for inspection of open public records.
- B. The location for inspection of records within the offices of TDMHSAS shall be determined by the PRRC.
- 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.

3.5 Copies of Records

- A. The PRRC shall promptly respond to a public record request for copies in the most economic and efficient manner practicable, to include providing digital copies.
- B. Copies will be available for pickup at a location specified by the PRRC.
- C. Upon payment for postage or delivery charges, copies will be delivered to the address provided by the requestor.
- D. If the requestor requests digital copies, digital copies will be delivered via email to an email address designated by the requestor.

3.6 Fees and Charges; Procedures for Billing and Payment; Aggregation of Frequent and Multiple Requests

- A. The PRRC 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.
- B. When fees for copies and labor do not exceed \$10, the fees may be waived by the PRRC. Requests for waivers for fees above \$10 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of TDMHSAS and for the public good. Fees associated with aggregated records requests will not be waived.

- C. Fees and charges for copies are as follows:
 - 1. \$0.15 per page for letter and legal-sized black and white copies.
 - 2. \$0.50 per page for letter and legal-sized color copies.
- D. Fees for labor and actual costs are assessed in accordance with the OORC's Schedule of Reasonable Charges.
 - 1. Labor when time exceeds one (1) hour.
 - 2. If an outside vendor is used, the actual costs assessed by the vendor.
- E. Payment is to be made by personal check payable to "TDMHSAS FISCAL SERVICES" presented to Fiscal Services, Andrew Jackson Building, 6th Floor, 500 Deaderick Street, Nashville, TN 37243.
- F. Payment in advance will be required when costs are estimated to exceed \$50.
- G. Aggregation of Frequent and Multiple Requests:
 - 1. TDMHSAS will aggregate records request 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 departmental.
 - b. 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.

4. Authority:

Tenn. Code Ann. § 10-7-503(g)

Approved:



Commissioner

12.7.17

Date

FORM A

PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: [Insert Governmental Entity Name and Name and Contact Information for the Public Records Request Coordinator]

From: [Insert Requestor's Name and Contact Information (include an address for any TPRA required written response)]

Is the requestor a Tennessee citizen? Yes No

Request: Inspection (The TPRA does not permit fees or require a written request for inspection only¹)
 Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed \$ _____? If so, initial here _____.

Delivery preference: On-Site Pick-Up USPS First-Class Mail
 Electronic Other: _____

Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

Signature of requestor and Date Submitted

Signature of Public Records Coordinator and Date Received

¹ Note, Tenn. Code Ann. § 10-7-504(a)(20)(C) permits charging for redaction of private records of a utility.

PUBLIC RECORD REQUEST RESPONSE FORM
TN Department of Mental Health and
Substance Abuse Services
[Date]

[Requestor's Name and Contact Information]:

In response to your records request received on [Date Request Received], our office is taking the action(s)¹ indicated below:

- The public record(s) responsive to your request will be made available for inspection:
Location: _____
Date & Time: _____
- Copies of public record(s) responsive to your request are:
 - Attached;
 - Available for pickup at the following location: _____; or
- Being delivered via: USPS First-Class Mail Electronically Other: _____
- Your request is denied on the following grounds:
 - Your request was not sufficiently detailed to enable identification of the specific requested record(s). You need to provide additional information to identify the requested record(s).
 - No such record(s) exists or this office does not maintain record(s) responsive to your request.
 - No proof of Tennessee citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification.
 - You are not a Tennessee citizen.
 - You have not paid the estimated copying/production fees.
 - The following state, federal, or other applicable law prohibits disclosure of the requested records:

- It is not practicable for the records you requested to be made promptly available for inspection and/or copying because:
 - It has not yet been determined that records responsive to your request exist; or
 - The office is still in the process of retrieving, reviewing, and/or redacting the requested records.

The time reasonably necessary to produce the record(s) or information and/or to make a determination of a proper response to your request is: _____

If you have any additional questions regarding your record request, please contact [Records Custodian or Public Records Request Coordinator].

Sincerely,

[Records Custodian or Public Record Request
Coordinator] [Name, Title, and Contact Information]

¹ If all requested records do not have the same response, so indicate.