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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Health
Division:	Inspection and Copying of Department Records
Contact Person:	Mary Kennedy Deputy General Counsel, Department of Health
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	227 French Landing, Suite 501 Nashville, TN 37243
Phone:	(615) 532-4397
Email:	

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Poplar Conference Room, Heritage Place MetroCenter		
Address 2:	227 French Landing Drive		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	10/25/10		
Hearing Time:	10:30 a.m.	<input checked="" type="checkbox"/> _X_ CST	<input type="checkbox"/> __ EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1200-34-01	Inspection and Copying of Department Records

Rule Number	Rule Title
1200-34-01-.01	Purpose
1200-34-01-.02	Definitions
1200-34-01-.03	Making a Request
1200-34-01-.04	Inspection and Copying of Public Records
1200-34-01-.05	Payment of Costs for Reproducing Public Records

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Department of Health
Inspection And Copying Of Department Records
Chapter 1200-34-01

New Rules

1200-34-01-.01 Purpose.

The purpose of these rules is to establish procedures to accommodate requests to inspect and/or copy records maintained by the Tennessee Department of Health, to the extent that such records are public records open to inspection by citizens of the State of Tennessee under the Tennessee Public Records Act, T.C.A. §10-7-501, et seq., while preserving the confidentiality of confidential records and/or confidential information as provided in Federal or State law. These rules do not govern charges made for copies of records made pursuant to a law other than the Tennessee Public Records Act. In addition, these rules establish procedures and standard fees for recovering the cost of providing copies of public records upon request.

Authority: T.C.A. §§ 10-7-503, 10-7-504 and 10-7-506.

1200-34-01-.02 Definitions. As used in these rules, the following terms are defined as follows:

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Health.
- (2) "Confidential record" means any Department 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 Public Records Act;
 - (b) Any record or portion of any record that is not subject to discovery or admissible into evidence in any Federal or State court proceeding or in any action for damages under the provisions of 23 U.S.C. § 409;
 - (c) 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;
 - (d) Any record that is protected under the attorney/client privilege;
 - (e) Any record that is protected under the attorney work product doctrine; and
 - (f) Any record that is protected under any other statutory or common law privilege.
- (3) "Department" means the Tennessee Department of Health.
- (4) "Non-routine record" means a record, in any form, that cannot be readily produced for public inspection or copied upon request without more than minimal assistance or processing from the Records Custodian, and including without limitation:
 - (a) Archived records;
 - (b) Microfilmed records;
 - (c) Audio recordings;

- (d) Records accessed only through the manipulation of electronically or digitally stored information;
 - (e) Oversized pages or bound volumes that cannot be fed automatically into and copied on a standard office photocopier; and
 - (f) Records containing or located within files containing material that may be a confidential record under Federal or State law.
- (5) "OORC" means the Office of Open Records Counsel.
- (6) "Public record" means any Department record that is open to inspection by any citizen of the State of Tennessee under the provisions of the Public Records Act, and is not otherwise considered a confidential record under Federal or State law.
- (7) "Public Records Act" means the Tennessee Public Records Act as codified in Tennessee Code Annotated, Section 10-7-501, et seq.
- (8) "Record" means any document or stored information, in any form, that has been generated or received and maintained by the Department pursuant to law or in connection with the transaction of the Department's official business.
- (9) "Record available for purchase" means a record generated by the Department in connection with official business that the Department also offers for sale to other governmental agencies, bidders, and/or individuals as a service to the public, including without limitation as follows:
- (a) Specialized output including but not limited to maps, tables, html and xml documents and spreadsheets;
 - (b) Custom and specialized aggregations or records and data;
 - (c) Custom reports not otherwise produced
 - (d) Data sets; and
 - (e) Vital Records
- (10) "Records Custodian" means an employee of the Department who has direct supervisory authority over the specific division, section or office of the Department where the requested Department records are maintained.
- (11) "Record having commercial value" means a record requested for any purpose other than:
- (a) A non-business use by an individual; or
 - (b) A news gathering use by the news media.
- (12) "Redacted record" means a record that has been edited to remove information that is confidential under Federal or State law.
- (13) "Routine record" means a public record, in any form, that can be readily produced for public inspection or copied upon request with minimal assistance from the Records Custodian, including without limitation:
- (a) An unbound paper record of standard letter or legal size which can be automatically fed into and copied on a standard office photocopier;
 - (b) Any electronically or digitally stored record that can be readily accessed and printed on a standard office printer; provided, however, that such a record shall not be considered a

routine record if each separate screen-page of the record must be printed as a separate page.

- (14) "Vital records" means certificates or reports of birth, death, marriage, divorce or annulment and other records related thereto.

Authority: T.C.A. § 8-4-604, §§10-7-503, 10-7-504, 10-7-506, and §68-3-102.

1200-34-01-.03 Making A Request.

- (1) Business Hours.
- (a) A request to inspect or copy public records of the Department pursuant to the Public Records Act shall be made, and any inspection or copying shall be conducted, during the Department's normal business hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.
- (2) Notice of Requests.
- (a) Notice of a request to inspect or copy public records of the Department, other than a record available for purchase, may be made orally or in writing to the appropriate Records Custodian where the requested records are maintained.
- (b) The Department may request the notice to be made or confirmed in writing if, in the judgment of the Department, the request is for any non-routine record or for multiple routine records that cannot be readily produced for inspection in the specific office where the request has been made. The Department may require a request for copies of public records to be made in writing.
- (c) Any form of written notice, e.g., letter, facsimile transmission or e-mail, will be acceptable.
- (d) The notice shall identify the record or records requested for inspection or copying with as much specificity as reasonably possible.
- (e) Any record available for purchase may be obtained by contacting the appropriate office where the record is offered for sale to the public.

Authority: T.C.A. § 8-4-604, §§10-7-503 and 10-7-506.

1200-34-01-.04 Inspection and Copying Of Public Records.

- (1) Preliminary Review of Request.
- (a) Upon receiving a request to inspect a Department record, other than a record available for purchase, the Records Custodian shall make a preliminary assessment of the nature and scope of the request. If the Records Custodian determines that it is not practicable to make the record promptly available for inspection and/or copying, the Records Custodian shall, within seven business days:
1. Make the information available to the requestor; or
 2. Deny the request in whole or in part by providing a completed records request response in the form provided by OORC stating the basis for any denial; or
 3. Provide the requestor with a completed records request response form in the form provided by OORC stating the time reasonably necessary to produce the record.
- (b) To preserve a record of the request, the Department may ask the requestor to submit the request in writing, in accordance with Rule 1200-34-01-.03(2) above; provided, that

failure to put the request in writing shall not prevent the requestor from making a personal inspection of records at the appropriate office during normal business hours.

- (c) In processing a request for the inspection of non-routine records, the Department will first determine whether the requested records exist within the custody of the Department. If the requested records exist within the custody of the Department, the Department will locate and review the requested records as soon as reasonably practicable, taking into consideration the nature and/or volume of the request and the availability of Department staff.
 - (d) If the requested records either do not exist within the custody of the Department, or are confidential records, the requestor shall be so advised; provided, however, that nothing in this Chapter shall be construed to require the Department to generate a detailed description of each confidential record withheld from inspection, such as may be required with respect to the production of documents in discovery under the Tennessee Rules of Civil Procedure.
 - (e) If a requested record contains confidential information (e.g., certain information maintained in personnel records) but is otherwise a public record, the Department will generate a copy of the record from which the confidential information has been removed and the redacted record will be made available for inspection. As provided in Rule 1200-34-01-.05(5) below, the Department may require reimbursement for the employee time associated with making the redacted record.
 - (f) If the requested record or information is available in an electronic or digital database or other non-printed form, and providing access to the record will require development of a program/application or the reloading of backup files to produce the record or put it into a readable format, the Department may require reimbursement for any employee time and/or other costs associated with developing the program or application and producing the record for inspection, as provided in Rule 1200-34-01-.05(6) below.
- (2) Form of Record Produced.
- (a) Nothing in this Chapter shall be construed to require the Department to make any public record available for inspection in the exact form requested by the requestor, e.g., the Department may make a public record maintained in electronic or digital form available for inspection in printed form.

Authority: T.C.A. § 8-4-604, §§10-7-503, 10-7-504 and 10-7-506.

1200-34-01-.05 Payment of Costs For Reproduction of Public Records.

- (1) The Department adopts the "Schedule of Reasonable Charges for Copies of Public Records" and any successor schedule developed by the Office of the Open Records Counsel for copies of public records made pursuant to the Tennessee Public Records Act, T.C.A. § 10-7-501, et. seq. Any charges not specifically listed or in addition to the amounts specified in the Schedule must be documented by the Records Custodian.
- (2) If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is necessary to put the records in a readable and reproducible format or it is necessary to access backup files, the custodian shall charge the requesting party the actual costs incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.
- (3) Electronic records will be produced only in a read-only format.
- (4) If the custodian utilizes an outside vendor to produce copies of the requested records because the Department is unable to produce the copies, the cost charged by the vendor to the Department shall be recovered from the requesting party.

- (5) Delivery and/or shipping costs incurred may be included in the total amount charged for the records release if appropriate.
- (6) Payment must be made in advance in the form of a check or money order made payable to the "Treasurer, State of Tennessee".
- (7) The Department adopts the "Frequent and Multiple Requests Policy" and any successor policy developed by the Office of the Open Records Counsel for copies of public records made pursuant to the Tennessee Public Records Act, T.C.A. § 10-7-501, et. seq. A Records Custodian may aggregate such requests on any level, whether by agency, department, bureau, division, office or otherwise.
- (8) A Records Custodian may waive or reduce charges governed by these rules if:
 - (a) Charges total less than Ten Dollars (\$10.00);
 - (b) The person requesting the copies is indigent pursuant to Federal poverty guidelines and signs a statement to that effect; or
 - (c) The person requesting the copies does so on behalf of a government agency.
- (i) The Commissioner may waive or reduce charges governed by these rules if the charges exceed Ten Dollars (\$10.00). A person requesting such reduction or waiver must do so in writing submitted to the Records Custodian.

Authority: T.C.A. §4-4-103; § 4-5-218(b) and (d); §8-4-604 and § 10-7-506(a).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 8/30/10

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 8/30/10

Notary Public Signature: Shelora P. Wilkins

My commission expires on: 11/7/2011

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Filed with the Department of State on: 8/31/10

Tre Hargett

Tre Hargett
Secretary of State



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