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Emergency or Public Necessity Rule(s) Filing Form

Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.

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| Division: | |
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Rule Type :

- Emergency Rule
 Public Necessity Rule

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Statement of Necessity:

Submitted herewith are proposed rules of the University of Tennessee for promulgation under the public necessity provision of the Uniform Administrative Procedures Act. The University of Tennessee has adopted these rules pursuant to Tenn. Code Ann. § 4-5-209(a)(4), which authorizes an agency to adopt public necessity rules when “[t]he agency is required by an enactment of the general assembly to implement rules within a prescribed period of time which precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules.”

Public Chapter 1179 of the Acts of 2008 amended the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503, *et seq.* (“Public Records Act”). Section 6 of Public Chapter 1179 establishes the Office of Open Records Counsel (“OORC”) and requires that the OORC, among other things, “shall establish a schedule or reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5. Section 1 of Public Chapter 1179 amends Tenn. Code Ann. § 10-7-503 to provide that, while the OORC is developing such a schedule, a records custodian may require a requestor to pay the records custodian’s actual costs in producing requested public records. However, when such Schedule of Reasonable Charges is developed, this provision will no longer be applicable and the provisions of section (a)(7)(C)(1) shall become effective. That section provides that a “records custodian may require a requestor to pay the custodian’s reasonable costs incurred in producing the requested material and to assess such reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.”

The OORC has now developed a Schedule of Reasonable Charges for Copies of Public Records. The Schedule of Reasonable Charges specifically states that “[i]f a records custodian determines to charge for copies or duplication of public records, such determination and schedule of charges must be pursuant to a properly adopted rule and evidence by a written policy authorized by the governmental entity’s governing authority.” The Schedule of Reasonable Charges also states that “[a] records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity’s property adopted written policy.” The Schedule of Reasonable Charges further states that “[t]he development date of the Schedule of Reasonable Charges is October 1, 2008, and notification of the development will be given to the Tennessee Code Commission on October 31, 2008.” The instructions regarding the Schedule of Reasonable Charges

prepared by the OORC for records custodians specifically states that “[a]ll governmental entities must comply with T.C.A. Section 10-7-506(a) in order to charge for copies or duplication of public records requested pursuant to the Tennessee Public Records Act.”

Accordingly, the University of Tennessee has promulgated this public necessity rule in order to meet the deadlines mandated by the General Assembly in Public Chapter 1179 and to comply with the requirements of Tenn. Code Ann. § 10-7-506(a) and the Schedule of Reasonable Charges developed by the OORC. Without the adoption of the public necessity rule, the University of Tennessee is faced with a period of time after October 31, 2008, during which it potentially could be unable to charge any fee for copies of public records. The University’s inability to charge any fee for copies of public records would defeat one of the primary purposes of the amendments to the Public Records Act to reaffirm the authority of agencies to charge fees for copies of public records and to standardize those fees through the development of the Schedule of Reasonable Charges by the OORC.

For a copy of these public necessity rules, please contact Matthew M. Scoggins, III, Assistant General Counsel, the University of Tennessee, 719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN 37996-0170, telephone number (865) 974-2356.

Hank Dye
Vice President for Public and Government Relations
University of Tennessee

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here.)

| Chapter Number | Chapter Title |
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Rules
of
The University of Tennessee
(All Campuses)

Chapter 1720-01-11
Charges for Producing Copies of Public Records

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1720-01-11-.01 Purpose. Following the publication of the Schedule of Reasonable Charges for Copies of SS-7040 (August, 2008)

Public Records developed by the Office of Open Records Counsel pursuant to Tenn. Code Ann. § 8-4-604(a), these Rules are promulgated for the purpose of establishing and implementing charges for producing copies of public records of The University of Tennessee. Other statutory provisions, such as Tenn. Code Ann. § 10-7-506(c), describe charges that may be assessed when specific records are requested for a specific use.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.02 Definitions.

- (1) "Labor" means the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.
- (2) "Labor threshold" means the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the University in producing the records.
- (3) "Production costs" means all reasonable costs the University incurred to produce the public records requested by the requesting party. Production costs include copying costs, labor costs, and delivery costs, as described in these Rules.
- (4) "Public record" means any record of the University that is required to be open to inspection under the provisions of the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501 et seq.
- (5) "Public Records Designee" or "PRD" means the person at each campus, institute, or other unit of the University who receives and coordinates public records requests and maintains documentation of public records requests, responses, and charges. For purposes of these Rules, this term includes Human Resource and Purchasing Department employees who independently respond to public records requests for personnel or purchasing records.
- (6) "Requesting party" means the person who requests to inspect or copy public records of the University. To have access to public records, a requesting party must be a citizen of the State of Tennessee.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.03 Production Costs. Except as otherwise provided in these Rules, the PRD shall charge the requesting party for production costs as defined in Rule 1720-01-11-.02(3). The production costs charged to the requesting party shall be reasonable. The Schedule of Reasonable Charges for Copies of Public Records, published by the Office of Open Records Counsel, will be used as a guideline to determine the amount a requesting party will be charged for producing copies of public records. The PRD shall utilize the most cost efficient method of producing copies of public records.

Authority: Tenn. Code Ann. § 49-9-209(e); Tenn. Code Ann. § 10-7-506(a).

1720-01-11-.04 Copying Costs. Copying costs include the costs related to making copies of the public records requested by the requesting party by photographic or other means of duplication.

- (1) The PRD shall assess a charge of \$0.15 per page for each standard 8 ½ x 11 or 8 ½ x 14 black and white copy produced.
- (2) If a public record is maintained in color, the PRD shall advise the requesting party that the record can be produced in color if the requesting party is willing to pay the higher charge for a color copy. If the citizen then requests a color copy, the PRD shall assess a copy charge of 50 cents per page for each 8 ½ x 11 or 8 ½ x 14 color copy produced.
- (3) The charge for a duplex copy shall be the same as the charge for two (2) separate copies.
- (4) If a copy of a public record is produced on a medium other than 8 ½ x 11 or 8 ½ x 14 paper, the PRD shall assess a copy charge equal to the actual cost of producing a copy of the public record, taking into consideration the amount of material, equipment costs, and the cost of the alternative medium.

- (5) 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 PRD 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.
- (6) Electronic records will be produced only in a read-only format.
- (7) If the PRD utilizes an outside vendor to produce copies of the requested records because the University is legitimately unable to produce the copies, the cost charged by the vendor to the University shall be recovered from the requesting party.
- (8) If the PRD is charged a fee to retrieve requested records from the Tennessee State Library and Archives or from any other entity having possession of requested records, the PRD shall charge the requesting party the cost charged the University for retrieval of the records.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.05 Labor Costs. The PRD shall charge the requesting party the hourly wage of the employee(s) reasonably necessary to produce the requested records above the labor threshold defined in Rule 1720-01-11.02(2). The "hourly wage" is based upon the employee(s) base salary and does not include benefits. In calculating the labor costs to be charged to the requesting party, the PRD shall:

- (1) First, determine the number of hours each employee spent producing the requested public records;
- (2) Second, subtract the one (1) hour threshold from the number of hours the highest paid employee spent producing the request;
- (3) Third, multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage; and
- (4) Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requesting party.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.06 Delivery Costs. The PRD shall charge the requesting party for the costs incurred by the PRD in delivering the records to the requesting party, in addition to any other charge permitted by these Rules.

- (1) Delivery of copies of public records to the requesting party shall be by hand delivery when the requesting party returns to the PRD's office to retrieve the requested records. If the requesting party chooses not to return to the PRD's office to retrieve the copies, the PRD shall deliver records to the requesting party through the United States Postal Service.
- (2) In the discretion of the PRD, copies of public records may be delivered through other means, including electronically.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.07 Payment Of Production Costs. If the requesting party requests copies of public records, the following provisions concerning payment of production costs shall apply:

- (1) The PRD shall provide the requesting party an estimate of the production costs before initiating the production of copies of the requested public records.
- (2) The PRD may require payment in full of all production costs before copies of public records are delivered or otherwise made available to the requesting party.

(3) Production costs must be paid by cash or check. Cash payments must be for the exact amount of the production costs. Checks must be made payable to The University of Tennessee for the exact amount of the production costs.

(4) The PRD will provide a receipt to the requesting party upon receipt of payment of the production costs.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.08 Waiver Of Production Costs. Waiver of production costs for copies of public records shall be in accordance with the following provisions:

- (1) The PRD shall provide copies of public records without charge if all production costs, as defined in Rule 1720-01-11-.02(3), do not exceed Three Dollars (\$3.00).
- (2) The PRD shall provide copies of materials for meetings of the Board of Trustees and its committees without charge when requested contemporaneously with the meeting
- (3) When the requesting party is a federal, state, or local government agency, the PRD shall provide the requested copies of public records without charge.
- (4) When the requesting party is a current employee of the University, the PRD shall provide the requesting party copies of his/her employment records without charge.
- (5) The PRD may provide copies of the following records without charge if the University will not incur significant production costs in providing the records: current enrollment data, basic budget information, history of the University, biographical data for University employees, University policies and procedures, general facts and figures about the University, and similar information.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.09 Requests For Copies Following Inspection. The PRD shall not assess a charge to inspect public records, unless otherwise required by law. However, if the requesting party, after requesting to inspect public records, requests copies of public records, the PRD shall charge the requesting party for all production costs.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).