

Open Records – Transparency of Government

Tennessee’s municipal electric systems are entities owned by local governments, where local citizens and ratepayers govern how the system operates. Like the local governments that own them, the business and records of municipal electric systems are open to the public. It’s often referred to as “transparency”, meaning nothing is hidden from view. They follow the same state laws as other state, county, and city governments that require them to conduct business in such a manner that the public has access to certain actions, records, etc. Municipal electric systems do not have an issue with the public’s right regarding open records. Since the department/entity is owned by the citizens and governed by its ratepayers (through a power/utilities board or city council) it is important that ratepayers have the ability to view data, documents, etc. in order to satisfy their quest for transparency. Tennessee state law has very generous open records and open meetings statutes that require nearly everything to be open to the public except, but there are a few exemptions. Below is a summary taken from a presentation by Ann Butterworth, Public Records Counsel, State of Tennessee, Comptroller of the Treasury at the TMEPA Annual Meeting July 14, 2015 in Pigeon Forge.

Tennessee Public Records Act (TPRA, TCA 10-7-501 et seq.) established the current law regarding Open Records for Government Entities. Passed in 1957, it is a symbol of Tennessee’s commitment to transparency in government and is the basis for public access to government records in Tennessee. In a nutshell, it states that the records of any government agency, whether at the state, county or municipal level, that were made or received pursuant to law or ordinance or in connection with the transaction of business are open for public inspection. What does it cover? All documents, papers, letters, maps, books, photographs, microfilms, sound recordings, or other material, regardless of physical form or characteristics. Pretty broad, isn’t it? The legislature alone has the power to create, limit, or abolish rights of access to public records.

Records are public whether in a draft form or a finalized version. To give you some idea of what records are accessible:

1. Personnel records/applications, disciplinary reports and references
2. Contracts
3. Emails, text messages, and voicemails
4. Financial or performance audits
5. Personnel investigations
6. Meeting agendas/minutes
7. Canceled checks
8. Records related to RFP/RFQs and other bids
9. Budgets
10. Customer lists

Who has the right to access Records under the TRPA?

1. Tennessee Citizens – government I.D. may be required to prove the requestor is a citizen of Tennessee. A records custodian, established by the governmental entity has the right to deny a request to inspect and/or copy public records from a non-Tennessean. The denial is not required, it is discretionary.
2. Individuals, not corporations

You may ask, “Are there any exceptions to the TPRA?” Yes, More than 350 exceptions are found in the following:

1. Tennessee Code Annotated (Statute, primarily at TCA 10-7-504)
2. Tennessee Rules of Civil and Criminal Procedure
3. Administrative Law Rules
4. Supreme Court Rules

5. Common Law
6. Federal Law

Certain information is held confidential when held by a governmental entity in its capacity as an employer.

1. Relates to current and former employees as well as applicants and covers the same information of immediate family members (whether or not residing with the employee) or household members
2. Home and cellular telephone numbers
3. Personal, nongovernment issued email addresses
4. Residential information (street address, city, state and zip code for state employees but only residential street address for county, municipal and other employees):
5. Bank account information, health savings account, retirement account and pension account information.
6. Social Security Number
7. Driver license information except where driving or operating a vehicle is part of the employees job description;
8. Emergency contact information

Some information is considered "Top Secret":

1. Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service.
2. All contingency plans of a governmental entity prepared to respond to or to prevent any violent incident, bomb threat, ongoing act of violence at a school or business or ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction or terrorist incident.
3. **NOT CONSIDERED TOP SECRET** - Documents concerning the cost of governmental utility property, the cost of protecting governmental utility property, the cost of identifying areas of structural or operation vulnerability of a governmental utility, the cost of developing contingency plans for a governmental entity and the identify of vendors providing goods.

A ratepayer or citizen can examine records by either inspecting them in person or by requesting copies be made. As mentioned before, he or she may have to prove Tennessee citizenship as state law says only Tennessee citizens can examine public records in Tennessee. Once citizenship is proven, the requestor describes the documents or records he/she wants to examine along with whether he/she wants to inspect the records or have copies of the records be made. The system has to respond within a certain time to the request by compiling with the request, stating when the request will be compiled with and reason for delay, or stating the request is denied because the record is confidential according to state or federal law.

When a copy or copies are requested, the system can recover its costs for the time, labor, and materials expended to make and produce the copies. This prevents all ratepayers from bearing the burden of the requests of a few. For example, if someone were to request hundreds pages of documents that take several employees a couple of weeks to research, compile and copy, it is the requestor that must pay those costs. This follows a municipal electric system's policy on paying an electric bill: everyone must pay for their use or otherwise some would be getting a free ride.

When it comes to inspecting records in a system's office and not requesting copies of the records, that inspection is free for a requestor. Some records can be easily compiled so they can be viewed. However, many documents require time and labor of system staff to compile the records, inspect the records for sensitive or confidential information, redact the sensitive or confidential information, and otherwise prepare them to be viewed. Requests to inspect large numbers of documents can take a lot of time, effort, and expense that state law does not allow system to be reimbursed for. If several staff people at a small municipal electric system of only a few dozen employees must spend a week or two compiling documents for inspection, the effectiveness of the system is hampered and its costs increase. These costs are not recoverable from the requestor, so all ratepayer must bear the financial cost if only one wants to inspect documents.

Many systems see only handful of people that regularly request to inspect vast numbers of records, creating a high cost charged by a few to be paid by all. This is simply an unfair burden for all of system's ratepayers to shoulder.

There have been attempts to change state law to allow recovery for time, labor and expense to allow for inspection of public records. So far the right balance has not been struck between the public's rights to inspect a government entity's records against the burden put on all taxpayers/ratepayers for the inspection requests of a small few. A municipal electric system operates so that it recovers the costs of its operations from those that use its electricity and services. Unless state law is changed, all Tennessee's municipal electric ratepayers are paying for the records inspection requests of just a few.

Should you have any questions or need clarification, please give us a call at 615-373-5738 or contact us through email. Staff email addresses are in your directory or you can go to our website at www.tmepea.org and click on "Contact Us".

Ann Butterworth from the Comptroller's Office of Open Records Counsel is also available for specific questions and can be contacted at 615-401-7891 and by email at Ann.Butterworth@cot.tn.gov or openrecords@cot.tn.gov.