

ORDINANCE NO. 2017-1045

AN ORDINANCE AMENDING TITLE 1, CHAPTER 5, SECTION 1-503 OF THE SHELBYVILLE MUNICIPAL CODE TO UPDATE PROCEDURES FOR INSPECTION OF, ACCESS TO, AND DUPLICATION OF PUBLIC RECORDS PURSUANT TO THE TENNESSEE PUBLIC RECORDS ACT AND THE MODEL POLICY ESTABLISHED BY THE OFFICE OF OPEN RECORDS COUNSEL IN 2017

WHEREAS, the Office of Open Records Counsel recently issued a model policy that cities should establish by Ordinance to establish procedures for inspection of, access to, and duplication of public records pursuant to the Tennessee Public Records Act, by July 1, 2017; and

WHEREAS, the City of Shelbyville currently has an open records policy but it is deemed in the best interest of the citizens of Shelbyville to update this policy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SHELBYVILLE, as follows:

1. Title 1, Chapter 5, Section 1-503, shall be deleted in full and replaced with the attached documents (Public Records Policy, Form-A, Form-B and Form-C)
2. That this Ordinance shall repeal any ordinance or parts of any ordinance in conflict herewith, and shall take effect fifteen (15) days after its passage on second and final reading, the general welfare of the City requiring same.

APPROVED:

  
\_\_\_\_\_  
Mayor Wallace Cartwright

ATTEST:

  
\_\_\_\_\_  
Acting City Recorder, Anna Mai

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney, Ginger B. Shofner

Passed First Reading: 4/13/17  
Public Hearing Held: 5/1/17  
Passed Second Reading: 5/1/17  
Effective Date - 5/20/17

## PUBLIC RECORDS POLICY

FOR

### THE CITY OF SHELBYVILLE, TENNESSEE

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for the City of Shelbyville is hereby adopted by the Shelbyville City Council 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, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen, unless otherwise provided by state law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of the City of Shelbyville are presumed to be open for inspection unless otherwise provided by law.

Personnel of the City of Shelbyville shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the City of Shelbyville, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for the City of Shelbyville or to the Tennessee Office of Open Records Counsel (“OORC”).

This Policy is available for inspection and duplication in the office of the City Recorder. (This Policy is posted online at [www.shelbyvilletn.org](http://www.shelbyvilletn.org)). This Policy shall be reviewed every two years.

This Policy shall be applied consistently throughout the various offices, departments, and/or divisions of the City of Shelbyville.

#### **I. Definitions:**

- A. 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.
- B. 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).
- C. 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.

- D. 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 person or through online submission) 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 (using the attached request form-A) at Shelbyville City Hall, 201 N. Spring St. Shelbyville, TN 37160, by phone at (931)684-2691, or by email to the City Recorder (email available at website [www.shelbyvilletn.org](http://www.shelbyvilletn.org)).
- D. Requests for copies, or requests for inspection and copies, shall be made in writing (using attached Form-A) at Shelbyville City Hall, 201 N. Spring St. Shelbyville, TN 37160, or by email to the City Recorder (email available at website [www.shelbyvilletn.org](http://www.shelbyvilletn.org)).
- E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver’s license (or other approved form of identification) is 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 requestor provided evidence of Tennessee citizenship;
  - b. If the records requested are described with sufficient specificity to identify them; and
  - c. If the Governmental Entity 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. Proof of Tennessee citizenship;
    - ii. Form(s) required for copies;
    - iii. Fees (and labor threshold waivers, if applicable); and
    - iv. Aggregation of multiple or frequent requests.
  - b. If appropriate, deny the request in writing (using attached Form-B), 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.
    - ii. The request lacks specificity.
    - iii. An exemption makes the record not subject to disclosure under the TPRA.
    - iv. The Governmental Entity is not the custodian of the requested records.
    - v. 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 that City Department.
  - 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: Shelbyville City Recorder.
  - b. Contact information: Shelbyville City Hall, 201 N. Spring St. Shelbyville, TN 37160, (931)684-2691, email may be obtained through the City's website [www.shelbyvilletn.org](http://www.shelbyvilletn.org).
4. The PRRC shall report annually to the Shelbyville City Council regarding 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 custodians receipt of request, send the requestor a completed Public Records Request Response Form which is attached as Form-B, based on the form developed by the OORC.
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 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 is 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. The records custodian and the PRRC may also consult with the OORC.
2. Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. 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 offices of the City of Shelbyville 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. Copies will be available for pickup at a location specified by the records custodian.
- C. Upon payment for postage, copies will be delivered to the requestor's home address by the United States Postal Service.
- D. A requestor will not be allowed to make copies of records with personal equipment. Requestors also will not be allowed to provide their own storage devices for records (discs, thumb drives, etc.).
- E. Fees may be charged for electronic files (sent by email) to be determined by the PRRC.

**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. (No charges will be assessed for paper copies and duplicates unless the amount is \$5.00 or more.)
- B. The fee for records presented on a CD will be \$3.00
- C. The fee for records presented on a DVD will be \$5.00
- D. The fee for records presented on a thumb drive or hard drive will be assessed at the time of the request.
- E. Records custodians shall provide requestors with an itemized estimate of the charges (using Form-C).
- F. When fees for paper copies and labor exceed \$5.00, the fees may be waived upon approval. (Requests for waivers for fees above \$5.00 must be presented to the Shelbyville City Recorder, who is authorized to determine if such waiver is in the best interest of the City of Shelbyville and for the public good). (Fees associated with aggregated records requests will not be waived).
- G. Fees and charges for copies are attached as Form-C.
- H. Payment is to be made payable to the City of Shelbyville by cash or check.
- I. Payment in advance will be required when the cost is estimated to exceed \$100.00.
- J. Aggregation of Frequent and Multiple Requests
  - 1. The City of Shelbyville will not 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.)

**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:** The City of Shelbyville

**From:** \_\_\_\_\_

**Is the requestor a Tennessee citizen?**  Yes  No

**Request:**  Inspection (The TPRA does not permit fees or require a written request for inspection only<sup>1</sup>.)  
 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.

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Signature of Requestor and Date Submitted

\_\_\_\_\_  
Signature of Public Records Request Coordinator and Date Received

<sup>1</sup> 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**  
**City of Shelbyville, 201 N. Spring St. Shelbyville, TN**  
**37160**

Date: \_\_\_\_\_

Requestor's Name and Contact Information: \_\_\_\_\_

In response to your records request received on \_\_\_\_\_, our office is taking the action(s)<sup>1</sup> 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 Shelbyville City Recorder.

Sincerely,

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<sup>1</sup> If all requested records do not have the same response, so indicate.





STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY  
OFFICE OF OPEN RECORDS COUNSEL

**SCHEDULE OF REASONABLE CHARGES**

**PURPOSE:**

Pursuant to Tenn. Code Ann. § 8-4-604(a)(1), the Office of Open Records Counsel ("OORC") is required to establish a schedule of reasonable charges a records custodian may use as a guideline to charge citizens requesting copies of public records. Additionally, Tenn. Code Ann. § 10-7-503(g) requires each governmental entity subject to the Tennessee Public Records Act ("TPRA") to establish a written public records policy that includes a statement of any fees charged for copies of public records and the procedures for billing and payment. Accordingly, the following policy sets forth general guidelines for records custodians when assessing reasonable charges associated with record requests under the TPRA.

**POLICY:**

**I. General Considerations**

- A. Records custodians may not charge for inspection of public records except as provided by law.
- B. The following schedule of reasonable charges should not be interpreted as requiring records custodians to impose charges for copies of public records. Charges for copies of public records must be pursuant to a public records policy properly adopted by the governing authority of a governmental entity. See Tenn. Code Ann. § 10-7-503(g) and § 10-7-506(a).
- C. Application of an adopted schedule of charges shall not be arbitrary. Additionally, excessive fees and other rules shall not be used to hinder access to public records.
- D. A records custodian may reduce or waive charges, in whole or in part, in accordance with the governmental entity's public records policy.
- E. A records custodian may require payment for copies before producing copies of the records.
- F. The TPRA does not distinguish requests for inspection of records based on intended use, be it for research, personal, or commercial purposes. Likewise, this Schedule of Reasonable Charges does not make a distinction in the charges assessed based on the purpose of a record request. However, other statutory provisions, such as Tenn. Code Ann. § 10-7-506(c), enumerate fees that may be assessed when specific documents are requested for a specific use. Any distinctions made, or waiver of charges permitted, based upon the type of records requested should be expressly set forth and permitted in the adopted public records policy.

- G. Records custodians shall provide a requestor an estimate of reasonable costs to provide copies of requested records.

## **II. Per Page Copying Charges**

- A. For each standard 8½" x 11" or 8½" x 14" copy produced, a records custodian may assess a per page charge of up to 15 cents (\$0.15) for black and white copies and up to 50 cents (\$0.50) for color copies. If producing duplex (front and back) copies, a charge for two separate pages may be imposed for each single duplex copy.
- B. If the charge for color copies is higher than for black and white copies, and a public record is maintained in color but can be produced in black and white, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy.
- C. If a governmental entity's actual costs are higher than those reflected above, or if the requested records are produced on a medium other than 8½" x 11" or 8½" x 14" paper, the governmental entity may develop its own charges. The governmental entity must establish a schedule of charges documenting "actual cost" and state the calculation and reasoning for its charges in a properly adopted policy. A governmental entity may charge less than those charges reflected above. Charges greater than 15 cents (\$0.15) for black and white copies and 50 cents (\$0.50) for color copies can be assessed or collected only when there is documented analysis of the fact that the higher charges represent the governmental entity's actual cost of producing such material, unless there exists another basis in law for such charges.

## **III. Additional Charges**

- A. When assessing a fee for items covered under this section, records custodians shall utilize the most economical and efficient method of producing the requested records.
- B. A records custodian may charge its actual out-of-pocket costs for flash drives or similar storage devices on which electronic copies are provided. When providing electronic records, a records custodian may charge per-page costs only when paper copies that did not already exist are required to be produced in responding to the request, such as when a record must be printed to be redacted.
- C. It is presumed copies of requested records will be provided in person to a requestor when the requestor returns to the records custodian's office to retrieve the records.
- D. If a requestor chooses not to personally retrieve records and the actual cost of delivering the copies, in addition to any other permitted charges, have been paid by the requestor or otherwise waived pursuant to the public records policy, then a records custodian is obligated to deliver the copies via USPS First-Class Mail. It is within the discretion of a records custodian to agree to deliver copies of records through other means, including electronically, and to assess the costs related to such delivery.
- E. If it is not practicable or feasible for the records custodian to produce copies internally, the records custodian may use an outside vendor and charge the costs to the requester.

- F. If a records custodian is assessed a charge to retrieve requested records from archives or any other entity having possession of requested records, the records custodian may recover from the requestor the costs assessed for retrieval.

#### **IV. Labor Charges**

- A. A records custodian shall utilize the most cost efficient method of producing requested records. Accordingly, a records custodian should strive to utilize current employees at the lowest practicable hourly wage to fulfill public records requests for copies.
- B. "Labor" is the time (in hours) reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, redacting, and reproducing records.
- C. "Labor threshold" is the first (1<sup>st</sup>) hour of labor reasonably necessary to produce requested material(s). A governmental entity may adopt a higher labor threshold than one (1) hour. A records custodian is only permitted to charge for labor exceeding the labor threshold established by the governmental entity.
- D. "Hourly wage of an employee" is based upon the base salary of the employee and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by the required hours to be worked per year. For example, an employee who is expected to work a 37.5 hour workweek and receives \$39,000 in salary on an annual basis will be deemed to be paid \$20 per hour.
- E. In calculating labor charges, a records custodian should determine the total amount of labor for each employee and subtract the labor threshold from the labor of the highest paid employee(s). The records custodian should then multiply the amount of labor for each employee by each employee's hourly wage to calculate the total amount of labor charges associated with the request.

Example:

The hourly wage of Employee A is \$15.00. The hourly wage of Employee B is \$20.00. Employee A spends two (2) hours on a request. Employee B spends two (2) hours on the same request. The labor threshold is established at one (1) hour. Since Employee B is the highest paid employee, the labor threshold will be applied to the time Employee B spent producing the request. For this request, \$50.00 could be charged for labor. This is calculated by taking the number of hours each employee spent producing the request, subtracting the threshold amount, multiplying that number by the employee's hourly wage, and then adding the amounts together (i.e. Employee A (2 x \$15.00) + Employee B (1 x \$20.00) = \$50.00).

*Submitted to ACOG: November 8, 2016.  
Effective: January 20, 2017*