0580-1-2-.01 PURPOSE AND SCOPE.

These rules are promulgated for the purpose of providing procedures to allow access to those records of the Tennessee Ethics Commission that are subject to the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq., and are promulgated for the additional purpose of implementing and establishing fees to be charged for reproduction of records or for the development of records in a specific format.

0580-1-2-.02 DEFINITIONS.


(2) Executive Director. The Executive Director of the Tennessee Ethics Commission.

(3) Non-routine Copy. A copy, whether of paper or of electronically stored data, which requires more than minimal staff assistance, i.e., odd or oversize pages, bound documents, or manipulation of electronically stored data.

(4) Public Record. For purposes of this Chapter, any record of the Commission that is deemed to be open to inspection by the public pursuant to the provisions of the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq., and pursuant to court order and case law interpreting the Act. The term “Public Record” does not include any data in any record, or any portion of a record, that is:
   (a) protected as confidential or privileged pursuant to T.C.A. §3-6-202, or pursuant to any other state law, federal law, or under any court order;
   (b) protected as privileged under any statutory or common law privilege;
   (c) protected as any attorney work product;
   (d) protected by the attorney/client or any other professional privilege, or
   (e) reasonably expected by its disclosure to reveal the name or location of a source that is protected by state or federal law or regulation as part of any statutory or regulatory requirements for reporting of abuse, neglect or harm, or that is protected by state or federal law or regulation as part of any statutory or regulatory requirement for the purpose of protecting any person from the threat of domestic violence.

(5) Record. For the purposes of this Chapter, any data and/or documents developed and maintained by the Commission, on paper, magnetically, or electronically, on a single computer or computer system, whether on disk, tape or otherwise, or that have been received and are maintained by the Commission, during the normal course of the Commission’s business activities.

(6) Routine Copy. A paper copy of a record which, to be made, requires minimal staff assistance, i.e., pages which are either 8½ x 11 or 8½ x 14 and can be automatically printed from electronically stored records or automatically fed into a standard copier. Any records, even if stored electronically or magnetically, shall not be deemed routine copies if it is necessary to print the copies of the record by means of a separate screen-print for each individual page of the record.

Authority: T.C.A. §§4-5-201 et seq., 3-6-107; 10-7-503 and 10-7-506; Tennessean v. Electric Power Board of Nashville, 979 S.W.2d 297 (Tenn. 1998); and Op. Tenn. Atty. Gen. 01-021 (Feb. 8, 2001).

0580-1-2-.03 RECORD ACCESS AND REPRODUCTION.

(1) A request to the Commission for access to public records may be made in person, via telephone, via e-mail, postal mail, or facsimile transmission and shall identify with reasonable specificity the record, set or system of
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records which is requested.

(2) Before providing access to the requested record, Commission staff shall review the requested record or records as quickly as reasonably possible, consistent with the availability of appropriate staff and with regard to the scope of the records request, and make an assessment of the status of the records and the scope of the requested access.

(3) Upon review, Commission staff may redact any such data or information prior to release of the record, or portion of the record, that it has reason to believe has or may have confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.

(4) If the Executive Director determines that none of the provisions of subparagraph (5) below apply and that access can otherwise be provided immediately, Commission staff shall provide access to the record or records.

(5) If it appears from the Commission’s review and assessment that access to the record, or the system of records, cannot be immediately provided due to any of the following reasons, then the Commission shall so inform the requestor and shall provide a reasonable approximation of the time that will be required to comply with the request:

(a) The records are not stored on the site or cannot be located;

(b) The record or records require redaction of confidential, privileged or otherwise protected material;

(c) The record is subject to current use as part of an on-going investigation and cannot be provided without interrupting or jeopardizing the investigation and/or its timeliness, or the unavailability of the record to the Commission’s staff will jeopardize the health, safety or welfare of the persons the investigation is intended to protect or the persons involved in the investigation;

(d) A computer or computer system that contains the record is inaccessible, is undergoing maintenance or re-programming for any Commission program purposes, and/or cannot be accessed without substantially interfering with the delivery of services to the public or without damage to the integrity, operability or functioning of any computer or computer system;

(e) Production of the record or records will require development of a program or application to provide access to, or a readable format for access to, electronic or magnetic sources of the record or records; or

(f) for any other reason which would reasonably prohibit or delay access to records.

(6) Review, Assessment and Redaction of Records for Copy Request.

(a) Before reproducing copies of the requested record, Commission staff shall review the requested record or records as quickly as reasonably possible consistent with the availability of appropriate staff and with regard to the scope of the records request and shall make an assessment of the status and scope of the copy request and the difficulty and costs for copies of, or for preparing, any records to determine if the request will require that “routine” or “non-routine” copies, as defined by this Chapter, or a combination thereof, be provided.

(b) Upon review, Commission staff may redact any such data or information prior to release of the record, or portion of the record, that it has reason to believe has or may have confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.

(c) If the Commission determines that none of the provisions of subparagraph (b) above, apply and copies can otherwise be provided immediately, it shall do so. If the reproduction of copies of the records is requested and the request involves the reproduction of “routine” copies, it shall inform the requesting person and shall make such records available to the requesting person as soon as reasonably possible.

(d) If it appears from the Commission’s assessment that reproduction of the record, or the system of
records, cannot be provided immediately for any of the following reasons then the Commission shall inform the requestor and provide a reasonable approximation of the time that will be required and costs that will be involved in complying with the request:

(i) The records are not stored on the site or cannot be located;

(ii) The record or records require redaction of confidential, privileged or otherwise protected material;

(iii) The record is subject to current use as part of an on-going investigation and cannot be provided without interrupting or jeopardizing the investigation and/or its timeliness, or the unavailability of the record to the Commission’s staff will jeopardize the health, safety or welfare of the persons the investigation is intended to protect or the persons involved in the investigation;

(iv) A computer or computer system that contains the record is unable to be accessed, is undergoing maintenance or re-programming for any Commission program purposes, and/or cannot be reproduced without substantially interfering with the delivery of services to the public or without damage to the integrity, operability or functioning of any computer or computer system;

(v) Reproduction of the record or records will require development of a program or application to provide copies, in a readable format, from electronic or magnetic sources of the record or records, or that the person or entity has requested copies of the record in a specific format, and that such program, application or format does not currently exist; or

(vi) any other reason which would reasonably prohibit or delay access to or reproduction of records.

Authority: T.C.A. §§4-5-201 et seq., 3-6-107; 10-7-503 and 10-7-506; Tennessean v. Electric Power Board of Nashville, 979 S.W.2d 297 (Tenn. 1998); and Op. Tenn. Atty. Gen. 01-021 (Feb. 8, 2001).

0580-1-2-.04 FEES AND COSTS FOR REPRODUCTION OF RECORDS.

(1) Routine paper copies shall be charged at a minimum of Twenty-Five Cents ($0.25) per one-sided page and Thirty Cents ($0.30) for a two-sided copy.

(2) Non-Routine paper copies shall be charged at a minimum of Fifty Cents ($0.50) per one-sided page and Sixty Cents ($0.60) for a two-sided copy.

(3) The Commission shall not be required to reproduce copies on two (2) sides unless the equipment at the reproduction site is designed to automatically produce a two (2) sided copy on a single piece of paper.

(4) The Commission may charge for all costs reasonably incurred in reproducing the record for the requestor, regardless of whether the record is determined to be “routine” or “non-routine”. The costs of reproduction shall include the following:

(a) Commission staff time, paper and other products and rental fees, including, but not limited to, the costs of:

(i) Staff time utilized in copying the record;

(ii) Paper or other products such as copy toner or toner cartridges, inks, electronic or magnetic media including, but not limited to floppy disks or compact disks etc., or any per copy charges incurred by the Commission on any rented equipment;

(iii) Development costs of computer programs and applications, including, but not limited to the creation of a new or modified computer program or computer application that is necessary to put the records in a readable and reproducible format or in a specific reproducible format that is requested by the person or entity seeking copies of the record. In such case, the costs of staff, contractors, consultants, or specialists’ time that is required for the production of the program or
application and the costs of any new or modified software or hardware necessary for the production of the records may also be charged by the Commission as costs of reproduction of the record;

(iv) The costs for delivering the records by mail or any other delivery services or any other mechanisms, electronic, magnetic or otherwise; and

(v) Any other costs associated with actually reproducing the requested records, except those out-of-pocket or staff time costs associated with locating or gathering the records.


(a) The time of any Commission staff associated with providing access to or the reproduction of the requested records shall be charged at the hourly rate for the staff person’s position, including the cost of any overtime that is necessary to reproduce the record.

(b) The hourly rate is that established by the Commission of Personnel for the staff person’s position, or the rate determined by dividing the staff person’s gross monthly salary by one hundred sixty-two and one-half (162.5) hours, whichever is greater.

(c) Contractor or Consultant Costs. The costs of a contractor or consultant’s time shall be charged at the unit rates charged to the Commission pursuant to the Commission’s existing contract or any contract made necessary due to the copy request.

(d) Specialist Costs. The costs of a specialist’s time shall be charged at the costs invoiced to the Commission for those services related to the reproduction of the record.

(6) Copying by Requesting Person or Entity.

(a) The Executive Director may, in his or her discretion, permit the requestor to supply the necessary equipment and supplies to make the requested copies where the records are housed or located for purposes of the records request.

(b) In the event that the requestor reproduces the records, the Executive Director may, in his or her discretion, waive all or any portion of the costs associated with such reproduction as computed in accordance with the provisions of this Chapter.

(c) The Executive Director may, in his or her discretion, require that Commission staff observe the requestor reviewing and copying process permitted by this paragraph for the purpose of protecting the integrity of the records, and the costs of staff time necessary for this purpose may be charged pursuant to this Section.

Authority: T.C.A. §§4-5-201 et seq., 3-6-107; 10-7-503 and 10-7-506; Tennessean v. Electric Power Board of Nashville, 979 S.W.2d 297 (Tenn. 1998); and Op. Tenn. Atty. Gen. 01-021 (Feb. 8, 2001).

0580-1-2-.05 PAYMENT FOR RECORDS.

(1) Prior to copies being made, or prior to developing a specific format for the reproduction of records, payment in full must be made to the Commission, unless the payment is waived or delayed pursuant to this Chapter.

(2) Payment shall be made by cashier’s check or money order made payable to the Tennessee Ethics Commission, and be delivered to the Commission contact responsible for reproducing the record.

(3) The Executive Director may waive the applicable fees for copies as defined above when the amount for such copies is equal to or less than One Dollar ($1.00). Costs for reproduction of records above One Dollar ($1.00) shall be charged as otherwise required by this Chapter, unless waived pursuant to this Section.

(4) The Executive Director may allow payment to be delayed under such circumstances as the Executive Director may, in his or her discretion, determine is appropriate.
(5) Excessive or unreasonable requests for waivers, or requests that can otherwise be reasonably construed as an attempt to avoid the intended compensation for copies that exceed One Dollar ($1.00), as described in Paragraph (1), may be denied.

(6) The Executive Director may, in his or her discretion, provide copies of rules, policy, state or federal programs, guidance documents, public reports, etc., without charge:

(a) for general public information or announcement purposes to registrants and other individuals and agencies regulated by the Commission in response to case-specific situations;

(b) to legislative, judicial or administrative bodies or tribunals as part of providing general or specific information or clarification regarding the Commission’s programs or activities or in response to a case-specific request relative to registrants and other individuals and agencies regulated by the Commission;

(c) to other state, county or local agencies, their investigative, administrative, enforcement, regulatory, audit or law enforcement agencies, or for any other purpose;

(d) to federal law enforcement, audit, program, administrative or regulatory agencies, or for any other purpose, or

(e) if necessary to comply with any provisions of federal or state laws, court orders, regulations or policy directives.

Authority: T.C.A. §§4-5-201 et seq., 3-6-107; 10-7-503 and 10-7-506; Tennessean v. Electric Power Board of Nashville, 979 S.W.2d 297 (Tenn. 1998); and Op. Tenn. Atty. Gen. 01-021 (Feb. 8, 2001).