

VI. Section 14-2-7. Designation of Custodian; Duties

The Law

Each public body shall designate at least one custodian of public records who shall:

A. receive requests, including electronic mail or facsimile, to inspect public records;

B. respond to requests in the same medium, electronic or paper, in which the request was made in addition to any other medium that the custodian deems appropriate;

C. provide proper and reasonable opportunities to inspect public records;

D. provide reasonable facilities to make or furnish copies of the public records during usual business hours; and

E. post in a conspicuous location at the administrative office, and on the publicly available website, if any, of each public body a notice describing:

(1) the right of a person to inspect a public body's records;

(2) procedures for requesting inspection of public records, including the contact information for the custodian of public records;

(3) procedures for requesting copies of public records;

(4) reasonable fees for copying public records; and

(5) the responsibility of a public body to make available public records for inspection.

Commentary

A. DESIGNATION OF CUSTODIAN

Each state and local government board, commission, committee, agency or entity must designate a custodian to handle requests to inspect public records. (See discussion of the definition of "custodian" in Chapter V, Section A) The person designated should be knowledgeable about the kinds of records kept by the public body, the requirements of the Act, and any specific statutes or regulations protecting or otherwise affecting the public body's records. Agencies do not have to hire new employees just to be their records custodians. The person who is appointed the records custodian may be an existing employee, e.g., a county clerk. In addition, the Act is not intended to make the custodian the exclusive employee with power to respond to inspection requests; other employees may, on behalf of the records custodian, furnish public records for inspection or otherwise respond to requests to inspect public records.

B. RESPONSE IN SAME MEDIUM

A custodian receiving an inspection request must respond in the same medium in which the custodian received the request, be it electronic or paper. The custodian may provide an additional response to the same request in any other medium the custodian deems appropriate.

C. REASONABLE OPPORTUNITY TO INSPECT

Subject to the Act's specific requirements discussed below, a custodian must provide proper and reasonable opportunities to inspect public records. This does not mean that a request to

inspect must take precedence over all other business of the public body. Rather, the duty to provide reasonable opportunities to inspect permits a records custodian to take into account the public body's office hours, available space, available personnel, need to safeguard records and other legitimate concerns. Accordingly, the custodian may impose reasonable conditions on access, including appropriate times when, and places where, records may be inspected and copied. Generally, the obligation to provide reasonable access to public records should not require an office to disrupt its normal operations or remain open beyond its normal hours of operations.

Example 41:

A city treasurer's office posts its accounts and closes its books at the end of each month. A request to inspect the account ledgers for the city on the last business day of the month would interfere with the ability of the office to close the accounts. In such a case, it would be reasonable to ask the requester to return the next day to inspect the ledgers.

Example 42:

A person wishes to inspect all the contracts entered into by a school district for the past five years. To give the person free access to all the filing cabinets containing such documents would both disrupt the normal operations of the school district administrator's office and disturb the filing system. Therefore, it would be reasonable to ask the person to sit in a part of the office out of the main traffic flow and have staff members bring her the records in batches at reasonable intervals.

D. REASONABLE FACILITIES TO MAKE OR FURNISH COPIES

The right to inspect public records includes the right to make copies of public records. The Act provides that a records custodian must provide reasonable facilities to make or furnish copies during usual business hours.

Ordinarily, the facilities available for copying are those used by the office in the normal course of business. Reasonable use of such facilities does not

require the interruption of the regular functions of the office.

Example 43:

A person, having inspected several records pertaining to hearings conducted by a state licensing board, has requested copies of the final orders issued by the board. The copies may be made on the agency's copying machine but the requester may be asked to wait a reasonable amount of time until personnel are available to make the copies.

Commentary

A public agency also may impose reasonable requirements to protect public documents, such as requiring the presence of an employee when sensitive documents are inspected, provided the requirements are reasonable and are not intended to discourage inspection or as harassment.

E. PUBLIC NOTICE DESCRIBING PROCEDURES FOR REQUESTING INSPECTION

A records custodian is required to post a notice in a conspicuous location in the administrative office of the public body and on the public body's publicly accessible web site, if any. The notice must describe, at a minimum, the right to inspect public records, contact information for the records custodian, the procedures for requesting inspection and copies of the public body's records and applicable reasonable fees for copying records. The Act makes clear that the notice must be posted on a website only if the public body maintains a publicly accessible website. The Act does not address the posting requirement for public bodies that do not have an administrative office. If a public body does not have an administrative office, it might comply with the Act by making reasonable efforts to post the required notice in the place where the public body's records are maintained or in another appropriate location where persons who are interested in making a request to inspect the public body's records are likely to see the notice.