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# Disposal of Records

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

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# Disposal of Records

Reference Number: CTAS-206

Even the best planned and operated records program will fail miserably if it never gets rid of records. Simply keeping and storing away every record in short, the "out of sight, out of mind" version of records management is not a viable or responsible option. In order to find what you need and preserve what you need to keep, you have to eliminate records that no longer have any value. That is where disposal comes in.

Checks and Balances—Disposing of the records of a county office is not as simple as hauling them out to the trash when you get tired of them. Because these records can be of great importance to so many people, there are a number of procedural checks and balances to go through in order to lawfully dispose of records, whether the disposition is by destruction or transfer of the records to another institution. For many records, the official who has custody of the record, the county public records commission, the Tennessee State Library and Archives, and, for court records, a judge, all need to be involved in determining the final disposition of the record.

What Kind of Record Is It?—When trying to decide what to do with records, the first step is to identify them and classify them. The retention schedules will tell you how long a record needs to be kept. Find the description in the schedule that matches the record you are considering and see what the table indicates. For disposition purposes, records will fall into one of three classes: working papers, temporary records, and permanent records. The procedures for disposing of each of these classes are different.

## Working Papers

Reference Number: CTAS-1190

Working papers are defined as "those records created to serve as input for final reporting documents, including electronic processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication."<sup>[1]</sup> This class of records comprises all those little records that come and go in the course of a day that we usually do not even think about as records. Whether it's notes for a meeting or a rough draft of a report, if the record becomes obsolete after you use it, consider it a working paper. The good news about working papers is that they are easy to get rid of. Any public record defined as a working paper may be destroyed in accordance with the rules and regulations adopted by the public records commission without retaining the originals of such record and without further review by other agencies.<sup>[2]</sup> Any rules and regulations of a public records commission regarding working papers should be liberal, allowing county officials to eliminate these records as easily as possible before they become burdensome. Many working papers generated by county offices are extremely informal types of records. Because of that officials may not find anything in the retention schedules that describes them. Consider whether the record matches the definition above when trying to determine if it is a working paper.

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<sup>[1]</sup> T.C.A. § 10-7-301.

<sup>[2]</sup> T.C.A. §§ 10-7-406(b) and 10-7-413.

## Temporary Records

Reference Number: CTAS-1191

If a record needs to be kept around for some reason after its initial use, then it is at least a temporary record. Temporary records are officially defined as "...material which can be disposed of in a short period of time as being without value in documenting the functions of an agency."<sup>[1]</sup> Financial and payroll records are good examples. Payroll records have fulfilled their immediate purpose once your employees receive their checks. But those records also must be kept in order to comply with federal statutes and regulations and are important documents in the case of an audit. Most of these retention periods are fairly short (three to five years) and therefore it is simplest to keep most temporary records in their original paper format during this retention period. For a few classes of temporary records, the retention period is long enough or the class of records is so voluminous that it may be helpful and cost effective to transfer the record to a different format for storage during the retention period. Additionally, some temporary records may only exist in electronic format and will never be printed on paper. The law allows this practice as long as certain conditions are met. Regardless of what form the record is in (paper, computer disc,

microfilm) the period of retention is determined by the *content* of the record and not its *format*. Although they take up less space, electronic records also need to be managed and preserved or destroyed in accordance with retention schedules and RDAs.

Once a temporary record has been retained for the period described in the schedule, then, like a working paper, it may be destroyed in accordance with the rules and regulations of the county public records commission.<sup>[2]</sup> The rules of the records commission should require the official wishing to destroy temporary records to notify the commission of the kind of record to be destroyed and cite an authority for its destruction. An easy way to do this is to use the five-digit code number that appears with each listing in the retention schedules as a reference for the authorization to destroy the record. Although your county public records commission may wish to individually review each request to destroy temporary records before approving destruction, it may also provide for a less cumbersome procedure.

#### Continuing Authorization for Destruction of Temporary Records

The Tennessee State Library and Archives has agreed that county public records commissions can provide "continuing authorization" to destroy records so long as the official is complying with the retention schedules. If your records commission adopts the retention schedules and adopts rules that allow for continuing authorization, it is recommended that all officials request continuing authorization from the commission. Once granted, they would only need to notify the commission when records are being destroyed in compliance with the schedule, identifying the type, age, and quantity of the records, and would not have to wait for further authorization or approval to proceed.

For example, many payroll-related records need to be kept for three years. The retention schedule for *Employment Records* describes those records and cites the federal regulations that establishes that retention period. To use continuing authorization to dispose of these records, use the following steps:

1. The public records commission should adopt the retention schedules.
2. The official who has custody of the records should develop an RDA that describes the records he or she believes fall into these records classes.
3. The public records commission should review the RDA to make sure it describes records which appropriately fall under the chosen retention period and then approve the RDA.
4. Once the RDA is approved, the official can begin destroying all records that are covered by the RDA which have been kept for the length of time designated in the retention schedule. As time passes and more records pass the threshold for destruction (in this case three years), the official can automatically destroy the records and send a brief notice to the records commission informing it of this action.

This process can continue indefinitely, without the need to make formal requests or wait on approvals, until such time as the official or the records commission determines that the RDA needs to be revised or reconsidered.

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[1] T.C.A. § 10-7-301.

[2] T.C.A. §§ 10-7-406(b) and 10-7-413.

## Permanent Records

Reference Number: CTAS-1192

Permanent records are records of such value that they must always be retained in some kind of permanent format. Examples of permanent records are the deeds filed in a registers office, the minutes of the county commission, and the original process in a civil or criminal proceeding. Some records, like deeds, are kept permanently because the record continues to have legal significance in perpetuity. Other records are permanent because they preserve certain information about the way we live and conduct government and are therefore valuable historically. Still others are useful for statistical or planning purposes. Then there are those that are permanent simply because there are laws that have declared them to be so. All of these need to be kept in such a manner as to preserve them indefinitely. However, while the information in the record must be preserved, you do not necessarily have to keep the original paper copy of these records.

#### Duplication of Permanent Records

If you can safely and successfully convert paper records into another permanent media that is easier to store, the original paper version of the records can be destroyed.<sup>[1]</sup> This is where the checks and

balances are extremely important. No original permanent public record may be destroyed under the law unless a majority of the county public records commission agrees.<sup>[2]</sup> The records commission should take this review seriously and make certain that the original records were completely and accurately reproduced into a durable medium by the official or his or her contractor before giving approval to destroy the paper. Before destruction, there are also notice requirements. There are two major types of alternative storage formats for records that are recognized in the law: photographic and electronic. However, the State Library and Archives does not consider any existing format for electronic records to be of permanent archival quality. See [Alternative Storage Formats](#) for more information

#### Notice Requirements in Destroying Original Copies of Permanent Records

Even after authorization for destruction of original paper records has been granted by the county public records commission, no *permanent value* record may be destroyed until notice is given to the Tennessee State Library and Archives of the intent to do so. Notice is to be given at least 90 days prior to destroying the records.<sup>[3]</sup> Upon receiving notice, the staff of the state archives is directed to examine the records approved for destruction and take into its possession any records believed by the state archivist to be of historical value for permanent preservation. If the records commission receives no reply after nine months from the date of providing notice to the Tennessee State Library and Archives of the intent to destroy records, it may proceed with the destruction of the records described in the notice.<sup>[4]</sup> However, county officials should note that the Tennessee State Library and Archives considers the wisdom of this practice to be very questionable and should only be used in rare cases if ever.

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[1] T.C.A. § 10-7-406.

[2] T.C.A. § 10-7-404(a).

[3] T.C.A. § 10-7-413(a).

[4] T.C.A. § 10-7-413(a).

## Methods of Destruction

Reference Number: CTAS-1193

This may seem to be a simple question, but officials often ask “how should I destroy a record?” For many working papers and some temporary records of an office, tossing them in the trash, or better yet, recycling them, is appropriate. However, if there is a possibility that confidential information is included in the records, they should be disposed of in a manner that obliterates this information such as shredding or burning.<sup>[1]</sup> The employees of your office would probably prefer that old temporary payroll records of your office which may contain their social security numbers not be put into a trash bin where someone could sift through them. Similarly, even though the information may be public while it is in your custody, many citizens would prefer that taxpayer records, vehicle registrations and other county records are obliterated when they leave your custody and don't end up blowing around in a landfill for anyone to find. Computer records that are eligible for destruction should be fully deleted with storage disks destroyed, reformatted or over-written with new information to eliminate traces of the old files.

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[1] See Op. Tenn. Att'y Gen. No. 01-040 (March 19, 2001).

## Special Considerations

Reference Number: CTAS-1194

Various law provides for some special considerations for certain records or types of records. These requirements should be considered when an official or the public records commission is making decisions about how to manage or dispose of these records

## Financial Records and Audits

Reference Number: CTAS-1195

One important group of such records are those financial records that are needed for an audit. Most financial records of county offices are temporary records that must always be kept at least as long as is required for audit purposes. Regardless of whether or not an official thinks a financial or accounting record has served its useful purpose, it cannot be destroyed if the office of the comptroller deems it necessary for audit purposes.<sup>[1]</sup> You will notice that most financial records listed in the retention schedules have a

five-year retention period. This standard is based on the recommendation of the Division of County Audit in the Office of the Comptroller. Records that are important for audits need to be maintained through the time of the audit plus about three years afterwards in case any problems turn up. Formerly, the retention period for these records was based on keeping them for three years after the audit is complete. Since it was often difficult for a local official to know when an audit became final, the retention period was changed to five years from the date of creation of the record. This gives the official a definite time period to work from and also allows continuous destruction of financial records rather than lumping all records from a fiscal year together with a single retention date. Generally, this five-year period should suffice; however, if directed by the comptroller's office to preserve records for a longer period due to an ongoing audit investigation or some other unusual circumstance, the local official should comply.<sup>[2]</sup>

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<sup>[1]</sup> T.C.A. § 10-7-404(a).

<sup>[2]</sup> T.C.A. § 10-7-404(a).

## Exhibits and Evidence in Court Cases

Reference Number: CTAS-1196

The law includes a number of special considerations for materials which have become evidence and exhibits in judicial proceedings. Although some of these materials are technically not "records" this information is related to records management for court clerks. Some of this information also appears in the retention schedules for court clerks. Exhibits are treated differently depending on whether they are documents or some other kind of physical evidence or firearms.

### Documents

Unless local rules of court provide otherwise, the clerk can destroy certain records under the direction and order of the judge once the case has been finally disposed of for a period of 10 years. "Finally disposed of" means judgment has been entered and the appeal times have lapsed for all parties. The clerk has to retain the pleadings, original process and original opinion, original rules, appearance and execution dockets, minute books, and plat or plan books as permanent records. But all other records, dockets, books, ledgers and documents can be destroyed pursuant to a court order.<sup>[1]</sup> In civil cases, the 10-year period is shortened for certain types of records. A judge may order the clerk to destroy discovery materials, briefs, cost bonds, subpoenas and other temporary records in civil cases three years after the final disposition of the case.<sup>[2]</sup>

In addition to these procedures, clerks need to comply with T.C.A. § 18-1-204. That statute requires them to notify the Tennessee State Library and Archives of the records they intend to destroy and give them 90 days to examine and remove any significant historical records if they so choose. Also, once they get an order for destruction of records from their judge, the clerks should take the order to the records commission for approval prior to destruction pursuant to T.C.A. § 10-7-406.

### For Physical Evidence Other than Documents and Firearms

Physical evidence has a more complicated set of procedures, but the good news is that you can destroy it sooner. If evidence is used in a case, once the case comes to judgment or conclusion and once all appeals have been settled, the clerk is to give 30 days notice to the attorneys of record in the case that they can come pick up any thing that belongs to them or their clients. After 30 days, the clerk can dispose of the evidence by following the procedures in T.C.A. § 18-1-206(a)(2)–(7). This statute requires the clerk to make an inventory of the evidence to be destroyed with references to the case involved and the term of court in which the evidence was used. The clerk then publishes the inventory for three consecutive weeks in a newspaper of general circulation. Parties who want to object to the disposition of the property or make a claim for it have 30 days to file a petition with the court. Once that time passes, the clerk gives the inventory (and any petitions people may have filed) to the court for the judge to approve or reject each item on the list and decide if it should be—

1. Returned to the owner or the owner's attorney;
2. Preserved by an organization for historical purposes;
3. Sold; or
4. Destroyed.

The clerk then gives the court order and the items to be disposed of to the sheriff. Depending on the disposition ordered for the item, the sheriff then delivers the items to their owners or to historical organizations or advertizes and sells the items or destroys them and files an affidavit concerning the

destruction of the items with the court.

#### For Firearms

If a court clerk has exhibits in his or her possession that are firearms they should be disposed of in accordance with the procedures spelled out in T.C.A. §§ 39-17-1317 and 39-17-1318.

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[1] T.C.A. § 18-1-202.

[2] T.C.A. § 18-1-202(b).

## Other Miscellaneous Special Considerations

Reference Number: CTAS-1197

Records and documents of proceedings in a court of record can only be destroyed after a judge has issued an order authorizing their destruction.<sup>[1]</sup> Regardless of who approves it however, the law explicitly prohibits the destruction of any original process in a civil action or criminal proceeding.<sup>[2]</sup> Records pertaining to mortgages and deeds of trust on personal property and chattel mortgages can only be destroyed after the term of the mortgage has expired and all conditions have been met and the register approves the destruction of the record.<sup>[3]</sup> Finally, no record of a county office or a court of record can be destroyed if the county official or judge who has custody of the record objects to its destruction.<sup>[4]</sup> Court case files commonly contain material that is rich in historical and genealogical significance. If the county has an archive or is considering establishing one, these records are excellent candidates to be preserved for their historical value.

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[1] T.C.A. § 18-1-202.

[2] T.C.A. § 10-7-404(c).

[3] T.C.A. § 10-7-412.

[4] T.C.A. § 10-7-404.

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