



County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

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Tennessee Public Records Statutes

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Tennessee Public Records Statutes

Reference Number: CTAS-1153

The public records statutes that do apply to county offices are found in Title 10, Chapter 7, Part 5 of the *Tennessee Code Annotated*. The starting point for a discussion of the law in this area is the declaration found in T.C.A. § 10-7-503, that government records are open to public inspection. It reads as follows:

... [A]ll state, county and municipal records ... except any public documents authorized to be destroyed by the county public records commission in accordance with § 10-7-404, shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.^[1]

This statute has been construed broadly by the both the state attorney general and the Tennessee judiciary.^[2] The legislature made it clear that its intent in passing this law was to "...give the fullest possible public access to public records" and it instructed the courts to exercise whatever remedies are necessary to ensure that purpose is fulfilled.^[3] The courts have ruled that a "presumption of openness" exists with government documents.^[4] That is not to say that public access is totally without limitation however.

^[1]T.C.A. § 10-7-503.

^[2]See generally, *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986).

^[3]T.C.A. § 10-7-505(d).

^[4]*Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn. 1991).

Who Has Access?

Reference Number: CTAS-1154

The statute states that records must be open for inspection by any "citizen" of Tennessee. In keeping with the legislative intent to provide for liberal public access to government records, the Tennessee Supreme Court has determined that the word "citizen" includes convicted felons incarcerated as inmates within the Tennessee prison system.^[1] Although certain rights are stripped from individuals when they are convicted of a felony (i.e. voting, ability to hold public office), the court concluded that neither the Tennessee Public Records Act nor any other statute prevented a convicted felon from seeking access to public records. Neither should access be denied to anyone else who appears to be a citizen of this state.

The law is not as generous with non-residents. Since the statute states that it grants public access to "any citizen of Tennessee," the Tennessee attorney general has opined that public officials may deny requests for copies of public records based on the lack of state citizenship.^[2] Since there is no fundamental federal right to access of government records and since Tennessee's laws provide access only to state citizens, the attorney general reached the conclusion that it is not a violation of the privileges and immunities clause of the United States Constitution to deny access to persons making requests from other states for Tennessee records. Keep in mind that although the act does not affirmatively require disclosure of public records to non-citizens, neither does it prohibit the release of public records to non-citizens.^[3] It is within the discretion of the official who has custody of the records to determine whether or not access will be provided to non-citizens. It is the recommendation of CTAS that offices should develop a written policy in that regard and enforce it consistently.

^[1]*Robin M. Cole v. Donal Campbell*, 968 S.W.2d 274 (Tenn. 1998).

^[2]Op. Tenn. Att'y Gen. No. 99-067 (March 18, 1999) re-affirmed by Op. Tenn. Att'y Gen. No. 01-132 (August 22, 2001).

^[3]Op. Tenn. Att'y Gen. No. 99-067 (March 18, 1999).

How Should Access Be Provided?

Reference Number: CTAS-1155

The law states that records shall be open to inspection "during business hours." Every effort should be

made to provide reasonable accommodation to parties requesting access to records; however, providing this service need not prevent the performance of other duties of the office. A request to see every record of an office and make a photocopy of each of them could obviously bring the entire operation of an office to a halt. For this reason, the official who has custody of the records is also authorized by law to adopt and enforce reasonable rules governing the making of extracts, copies, photographs or photostats of the records.^[1] These regulations should be reasonable and not interfere with the intent of the legislature to provide broad public access to records. The official with custody of the record should strive to balance the right to access records with his or her responsibility to preserve and protect the records. Regulations should be tailored to accommodate requests in a timely manner while allowing for the continued efficient functioning of the office and for the preservation and security of the records. Regulations that are intended to frustrate the ability of a citizen to access records will likely be found unreasonable and struck down by the courts. The county public records commission may serve as a valuable resource in developing and drafting these regulations.

Although there is little legal authority in this area, the following are some examples of regulations that would likely be found reasonable by a court:

- Establishing that copies of records would be provided within a reasonable time period (for example: the next business day for small requests and within five business days for larger requests);
- Prohibiting the inspection and copying of records by citizens without supervision of the official or an employee of the office; and
- Prohibiting the handling of older bound volumes or other fragile records by anyone other than an employee of the office so long as the information in the records is still provided in a usable format.

Another possible regulation could provide that requests for inspection of a large number of records would be accommodated only by appointment pursuant to a written request. In a 2001 opinion, the attorney general was asked to consider a very similar requirement. In opinion 01-021, the attorney general found that there was no clear answer to the question. While the public records laws are to be interpreted to allow the fullest possible access, this should not lead to absurd results. The attorney general opined that if a citizen challenged a requirement to set an appointment to view records, a court might not find this requirement to be tantamount to a denial of access if the agency could articulate a reasonable basis for requiring the appointment. Absent a legitimate reason, the court may conclude the requirement of an appointment was merely being used to delay access to the records.^[2] This opinion therefore appears to support the idea that local officials can implement reasonable regulations so long as there is a clear, articulated reason for the regulation that relates to goals of records management. .

^[1] T.C.A. § 10-7-506(a).

^[2] See Op. Tenn. Att’y Gen. No. 01-021 (February 8, 2001).

Limiting Risks

Reference Number: CTAS-1156

Be aware that there is a danger of theft, vandalism, or damage by negligence inherent in allowing a member of the public access to government records. There is a profitable market out there for certain historical manuscripts. Across the country, government records are disappearing from government offices and reappearing for sale in antique stores, flea markets, speciality shops, or Internet auction sites. To prevent theft or vandalism, someone from your office should supervise the person accessing the records or, at a minimum, the person accessing the records should be required to examine them in an open area where abuse of the records or attempted thefts will be noticed. If county records have been lost in the past and are discovered in someone’s possession, the Tennessee Code, in Section 39-16-504, grants statutory authority to counties to initiate judicial proceedings to reclaim lost, stolen, or otherwise misappropriated records.

Providing Copies of Public Records

Reference Number: CTAS-1157

In all cases in which a person has the right to inspect public records, he or she also has the right to take extracts or make copies of the record, or to make photographs or photostats of the record while it remains in the possession, custody, and control of the official who has lawful custody of the record.^[1] In 1999, the

attorney general interpreted this to mean that the Tennessee Public Records Act does not require a public official to make copies and send them to anyone regardless of whether or not they are a citizen of Tennessee.^[2] However, this opinion is limited by a subsequent court decision. In the case of *Waller v. Bryan*,^[3] the Tennessee Court of Appeals required public officials to make public records available to members of the public who could not visit the official's office under certain circumstances. In that case, an inmate appealed the ruling of a chancellor that he was not entitled to requested records which were in the possession of a police department. The local government refused to make copies of the requested records and mail them to the inmate. Obviously, his circumstances did not allow him to appear in person to inspect the records and make a copy. The Court of Appeals held that as long as a citizen can sufficiently identify the requested records so that the government office knows which records to copy, the official should comply with the records request. To refuse to do so merely because the citizen could not appear in person would, in the words of the court, "place form over substance and not be consistent with the clear intent of the Legislature."^[4] The court observed that a requirement to appear in person would not only limit access to records by inmates, but also all those Tennessee citizens who were prevented by health problems or other physical limitations from appearing at the government office.

[1] T.C.A. § 10-7-506(a).

[2] Op. Tenn. Att'y Gen. No. 99-067 (March 18, 1999).

[3] *Waller v. Bryan*, 16 S.W.3d 770, (Tenn. App. 1999).

[4] *Waller*, at 773.

Charging for Copies

Reference Number: CTAS-1158

The Office of Open Records Counsel, created in 2008, was charged with developing a schedule of reasonable charges which may be used as a guideline in establishing charges or fees, if any, to charge a citizen requesting copies of public records. On October 1, 2008, the Office of Open Records Counsel issued its Schedule of Reasonable Charges for Copies of Public Records. Records custodians are authorized by T.C.A. § 10-7-503(a)(7)(C)(i) to charge reasonable costs consistent with the schedule. The schedule, together with instructions for records custodians, can be found on the website of the Office of Open Records Counsel. Charges established under separate legal authority are not governed by the schedule, and are not to be added to or combined with charges authorized under the schedule. Questions regarding the schedule should be directed to the Office of Open Records Counsel.

Records with Commercial Value

Reference Number: CTAS-1159

The legislature has recognized that in certain circumstances, a governmental agency may expend a great deal of money developing a record with great commercial value. That record in turn may then be requested by a company who only has to pay a small fee for a reproduction of the information which may be used to generate significant amounts of revenue. Therefore, the legislature in 2000 amended T.C.A. § 10-7-506 to add provisions that protect the investment of government resources specifically in computer generated maps or geographic information systems. These systems are expensive to develop and have numerous profitable commercial applications once the data is developed. Private entities could acquire a copy of the data and regular updates for practically no cost then profit greatly by selling subscriptions to the data. For this reason, the legislature allowed governments to also recover a portion of the actual development and maintenance costs when providing copies of computerized mapping systems or data to persons other than the news media or individuals for non-business use. While this general statute is limited to electronic geographic records, an additional statute applicable only to court clerks offices in Knox and Shelby counties allows those officials to charge a fee not to exceed \$5 for computer searches for any public record having a commercial value.^[1]

[1] T.C.A. § 8-21-408.

Special Issues in Providing Access to Court Records

Reference Number: CTAS-1160

Court records can be a little different from most of the records in other county offices in that they are created by parties of the case who need access to the records on an on-going basis during litigation. The evidence and discovery materials in the cases are not created by the clerk, but merely held for use by the parties. For this reason, though case files are technically public records, special provisions may apply. The United States Supreme Court has stated that "every court has supervisory power over its own records and files."^[1] In Tennessee, the Court of Criminal Appeals has similarly ruled that "a trial court has the inherent authority to determine the custody and control of evidence held in the clerk's office."^[2] These case files, while in the court clerk's office, will usually be open to the public.^[3] This public right of access is rooted in the First Amendment and in the common law, but is a qualified right.^[4] Since this right is qualified and not absolute, it is subject to the court's discretion on a particular matter.^[5] Therefore, unless there is a statute making a record confidential or a clear court directive sealing records or prohibiting public access to the records, the public may access case files. If the court seals a record, it becomes confidential and free from public scrutiny.^[6] This power is not unlimited. The records may only be sealed when "interests of privacy outweigh the public's right to know."^[7] If parties to litigation approach a clerk with concerns about public access to materials included in case files, the clerk should direct the parties to petition the judge to order such records sealed from public access. Additionally, as parties to litigation may need extended access to and use of case records, courts may also adopt rules to authorize that pleadings and exhibits may be withdrawn by parties to the case or their legal representatives.^[8]

^[1] *Nixon v. Warner Communications*, 435 U.S. 589, 98 S.Ct. 1306 (1978).

^[2] *Ray v. State*, 984 S.W.2d 236, 238 (Tenn. Crim. App. 1997).

^[3] *Smith v. Securities and Exchange Commission*, 129 F.3d 356, 359 (6th Cir. 1997). See also Op. Tenn. Att'y Gen. No. 02-075 (June 12, 2002).

^[4] *Ballard v. Herzke*, 924 S.W.2d 652, 661-662 (Tenn. 1996).

^[5] *Ray v. State*, at 238.

^[6] *Knoxville News-Sentinel v. Huskey*, 982 S.W.2d 359, 362 (Tenn. Crim. App. 1998)

^[7] *In re Knoxville News-Sentinel*, 723 F.2d 470, at 474 (6th Cir. 1983).

^[8] Op. Tenn. Att'y Gen. No. 02-075 (June 12, 2002).

Expunging Court Records

Reference Number: CTAS-1161

Several statutes in Tennessee law provide for parties to have records of judicial proceedings involving them expunged from the records of the court and certain other offices.

The basic statute for expunction of criminal offense records is found in T.C.A. § 40-32-101. This statute allows individuals to have their records expunged if they are not convicted of any crime. The statute also allows for expungements of charged offenses if the individual was not convicted of the charged offense, even if they are convicted of another offense, so long as the only offense the individual was convicted of was a traffic offense. Additionally, subsection (j) allows an individual to apply for expungement of records from electronic databases relating to the person's arrest, indictment, charging instrument, or disposition for any charges other than the offense for which the person was convicted. Finally, subsection (g) allows for the expungement of certain less serious convictions under certain circumstances if the individual pays the required statutory fees.

The law provides that the record to be expunged "does not include arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of children's services or department of human services that are confidential under state or federal law and that are required to be maintained by state or federal law for audit or other purposes." Court cases have also determined that physical evidence is not addressed by the expungement statutes; and therefore, cannot be expunged. *State v. Powell*, 1999 WL 512072 (Tenn. Ct. App. July 21, 1999, permission to appeal denied January 24, 2000).

In cases of judicial diversion, there is separate statutory authority for expunging records. T.C.A. § 40-35-313. In those circumstances, a person who had charges dismissed through judicial diversion may apply to the court to expunge all official records other than certain non-public records that are kept solely

to determine whether the person is eligible for diversion in the future. The application for expungement shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expungement. If the court determines, after hearing, that the charges against such person were dismissed and the proceedings discharged, it shall enter such order. The effect of such order is to restore the person, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information.

Other statutes authorize expunction in cases that were dismissed through pre-trial diversion under a memoranda of understanding, T.C.A. § 40-15-105, or in cases where the governor declares the defendant exonerated. T.C.A. § 40-27-109.

In cases where the criminal record is expunged, certain information must be reported to the Tennessee Bureau of Investigation (TBI) to be maintained in its expunged criminal offender and pretrial diversion database. T.C.A. § 38-6-118.

In addition to courts with criminal jurisdiction, the primary statute on expunging criminal offenses explicitly states that it applies to juvenile courts. T.C.A. § 40-32-101(a)(4). Additionally, Juveniles who have their driving record suspended can apply to have that record expunged once they reach 18 years of age and have their license reinstated. T.C.A. § 55-10-711.

Outside of the criminal setting, parties to any divorce proceeding, who have reconciled and dismissed their cause of action, may file an agreed sworn petition signed by both parties and notarized, requesting expungement of their divorce records. T.C.A. § 36-4-127. Upon the filing of such petition, the judge shall issue an order directing the clerk to expunge all records pertaining to such divorce proceedings, once all court costs have been paid. The clerk shall receive a fee of \$50 for performing such clerk's duties under this section.

Other less commonly used statutory provisions allow for the expunction of affidavits of heirship from the register of deeds office, T.C.A. § 30-2-712, and records of proceedings related to the appointment of a fiduciary where none was appointed. T.C.A. § 34-1-124. Also, records of military discharge may be expunged by registers of deeds from their records upon application by proper parties T.C.A. § 10-7-513.

Providing Access to Records in Non-Paper Formats

Reference Number: CTAS-1162

The records of governmental offices are no longer only paper documents or bound books. Records may now be found in a diverse mixture of media. If your office stores records in various formats, such as audiotape or videotape, you may need to make sure some means of accessing the record is readily available to the public. Since the definition of a public record includes records of many formats (including various audio and video records and electronic files), the attorney general has opined that it may violate the Public Records Act if the custodian of the records stored in these other formats could not provide a means for the public to inspect these records.^[1] This may require you to have a VCR and television or tape player available for use in your office or somewhere in the courthouse. Separate statutes specifically related to electronic records and microfilm records also require that equipment be available to allow viewing of records stored in these other media.^[2] These mandates may be of particular concern to an archives facility which may store records of many different formats in one location. Allowing continued access to these records may prove difficult for both the office that created the records and the archives. For additional information, see Electronic Records.

[1] Op. Tenn. Att'y Gen. No. 01-021 (February 8, 2001).

[2] T.C.A. §§ 10-7-121 and 10-7-406.

Providing Access to Electronic or Computerized Records

Reference Number: CTAS-1163

The advent of computers in government record keeping has created legal issues regarding not only the question of "what is a public record?" but also "what is the record itself." If the assessment rolls in the assessor of property's office are stored in computers, is the record only a standard report of that information or is it the raw data itself? If the public requests that the data be organized and produced in a format other than standard reports generated routinely by the office, is it entitled to that information in a format of its own choosing?

This is an area of the law that is developing along with the technology that clouds the issue. While the law was amended in 2017 to mandate acceptance of records request by electronic means under certain

circumstances the law is less developed relative to methods of delivering requested records and what electronic data must be provided.

Relative to delivery, the Office of Open Records Counsel (OORC) has stated that when records are maintained electronically, records custodians should produce requested records electronically. The OORC has also stated that records should be produced electronically, when feasible, as a means of utilizing the most economical and efficient method of producing records.

Relative to what electronic data must be provided, under T.C.A. § 10-7-503 a county is not required "to sort through files to compile information or to create or recreate a record that does not exist" and "request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying." However, the line between simply providing recorded data stored electronically and creating a new record or compiling information can often become blurry based on the request and the county's existing technology resources.

This is an area of the law that will undoubtedly evolve in the coming years as counties and citizens both become increasable intertwined with technology.

Remote Access to Computerized Records

Reference Number: CTAS-1164

Another development that has arisen with the advent of electronic records and the development of the Internet is the ability of citizens to access information remotely. County offices are authorized under Tennessee law to provide computer access and remote electronic access (for inquiry only) to information contained in the records of the office which are stored on computer.^[1] Access may be provided both during and after regular business hours. The official who has custody of the records may charge persons using remote electronic access a reasonable amount to recover the costs of providing such services and no other services. The fee must be uniformly applied and must be limited to the actual costs of providing access. It can not include the cost of storage and maintenance of the records or the costs of the electronic record storage system.^[2] Any officials providing remote access to their computer records must implement procedures and utilize a system that does not allow records of the office to be altered, deleted or impaired in any manner. Any official choosing to provide this service must file a statement with the office of the Comptroller of the Treasury at least 30 days prior to implementing the system. The statement must describe the computer equipment, software and procedures that are used to provide access and to maintain security and preservation of the computer records. The state of Tennessee will not bear any of the costs of providing access.^[3] Once a system for providing access is in place, any member of the public willing to pay the fees must be allowed to have access to the records, including anyone desiring to use the information for proprietary purposes.^[4] Similar provisions specific to electronic files of voter registration systems can be found elsewhere in the code.^[5]

An attorney general's opinion examined the question of whether a county official could provide remote access to public records through a private vendor.^[6] In the circumstances described in the opinion, a vendor was allowed to upload a copy of the data stored on the computers in the office of the register of deeds in exchange for certain services provided by the vendor. The vendor then had the right to provide public access to the data via a subscription service. The attorney general opined that this agreement violated T.C.A. § 10-7-123. Specifically, subsection (a)(4) of that statute provides that once a remote access system is in place, access must be given uniformly to all members of the public who desire access so long as they pay the reasonable fees to the county official to cover the cost of actually providing the service. In this case, remote access was being provided by the county official only to one entity, the vendor, and denied to the rest of the public. The law does not prohibit a private vendor from selling subscriptions to the information which has been acquired from county offices.^[7] But it does require the county official to provide equal access to the data to anyone willing to pay the access fee.

The attorney general has also been asked whether there was a problem with the criminal court clerk's office making records, including information about arrests, charges and disposition of cases, available on the Internet. The attorney general opined that the clerk could make such records available in that fashion, so long as the clerk still complied with orders to expunge records and insured they were removed from the Internet as well as the files of the clerk's office once an order compelling expungement was issued by the judge.^[8] This standard applied whether a case led to a conviction or was disposed of through judicial diversion.^[9]

[1] T.C.A. § 10-7-123.

- [2] T.C.A. § 10-7-123.
- [3] T.C.A. § 10-7-123(a)(1).
- [4] T.C.A. § 10-7-123(a)(4).
- [5] T.C.A. § 2-2-138.
- [6] Op. Tenn. Att’y Gen. No. 04-114 (July 19, 2004).
- [7] Op. Tenn. Att’y Gen. No. 04-114.
- [8] Op. Tenn. Att’y Gen. No. 00-058 (March 31, 2000).
- [9] Op. Tenn. Att’y Gen. No. 00-014 (January 26, 2000).

Denial of Access to Public Records—Liability

Reference Number: CTAS-1165

Any citizen of Tennessee who is denied the right to personal inspection of a public record in whole, or in part, is entitled to petition the court to review the actions that were taken to deny access and to grant access to the record.^[1] Petitions may be filed in the chancery court for the county where the records are located or in any other court exercising equity jurisdiction in the county.^[2] Upon the filing of the petition, the court shall, at the request of the petitioning party, issue an order requiring the defendant to appear and show cause why the petitioner should not be granted access to the record. No formal written response to the petition is required. The burden of proof rests on the person having custody of the records to show why public access should not be allowed.^[3] If the court determines that the petitioner has a right to inspect the records, they shall be made available unless the defendant files for appeal or the court certifies a question with respect to disclosure of the records to an appellate court.^[4] If a public official is required to disclose records pursuant to these procedures, he or she can not be held civilly or criminally liable for any damages caused by the release of the information.^[5] If, however, the court determines that the government entity knowingly and willfully refused to disclose a public record, it may, in the discretion of the judge, assess all reasonable costs involved in obtaining the record, including attorney’s fees, against the governmental entity.^[6]

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- [1] T.C.A. § 10-7-505(a).
 - [2] T.C.A. § 10-7-505(b).
 - [3] T.C.A. § 10-7-505(c).
 - [4] T.C.A. § 10-7-505(e).
 - [5] T.C.A. § 10-7-505(f).
 - [6] T.C.A. § 10-7-505(g).

To What Records Is the Public Entitled Access?

Reference Number: CTAS-1166

It has already been noted that the legislature intended the fullest possible public access to public records. But what are public records? Generally speaking, the courts have ruled that “[i]n those instances where documents have been made or received in connection with the transaction of official business by any governmental agency, then a presumption of openness exists, and the documents are public records within the meaning of T.C.A. § 10-7-503.”^[1] Access is not limited by the format in which the record or information is kept. However, the presumption of openness is overcome whenever state law provides that a record shall be kept confidential.

^[1] *Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn. 1991) as quoted in Op. Tenn. Att’y Gen. No. 99-011 (January 25, 1999).

Confidential Records

Reference Number: CTAS-1167

A lengthy statute in the Tennessee Public Records Act provides a laundry list of government records that

must be kept confidential.^[1] This statute is amended and added to on a regular basis by the General Assembly. The following list highlights a few of the many records designated as confidential by T.C.A. § 10-7-504 (see statute for complete list):

- Medical records of patients in state, county, and municipal hospitals and medical facilities;
- Any records concerning the source of body parts for transplantation or any information concerning persons donating body parts;
- All investigative records of the TBI, the office of the TennCare inspector general, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, all files of the drivers' license issuance division and the handgun carry permit division of the department of safety relating to bogus drivers' licenses and handgun carry permits issued to undercover law enforcement agents;
- Records of students in public educational institutions (for more discussion of these records, see Student Records);
- Certain books, records, and other materials in the possession of the office of the attorney general relating to any pending or contemplated legal or administrative proceeding;
- State agency records containing opinions of value or real and personal property intended to be acquired for a public purpose;
- Certain personal information of law enforcement officers^[2];
- Investigative records and reports of the internal affairs division of the department of correction or the department of children's services;
- Official health certificates, collected and maintained by the state veterinarian;
- The capital plans, marketing information, proprietary information, and trade secrets submitted to the Tennessee venture capital network;
- Records of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the board of regents or the University of Tennessee, when the owner or donor wishes to require that the records are kept confidential;
- Personal information contained in motor vehicle records;
- All memoranda, work notes or products, case files, and communications related to mental health intervention techniques conducted by professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, EMTs, paramedics, and firefighters;
- All riot, escape, and emergency transport plans incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the department of correction or under private contract;
- In order of protection cases, any documents required for filing other than certain forms promulgated by the Tennessee Supreme Court;
- Computer software and manuals sold to state agencies or counties;
- Credit card numbers and related identification numbers or authorization codes;
- Credit card numbers, social security numbers, tax ID numbers, financial institution account numbers, burglar alarm codes, security codes, and access codes of any utility;
- Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit disruption or interference with service;
- Contingency plans of governmental entities for response to violent incidents, bomb threats, ongoing acts of violence, threats related to weapons of mass destruction, or terrorist incidents;
- Records of any employee's identity, diagnosis, treatment, or referral for treatment by a state or local government employee assistance program;
- Unpublished telephone numbers in the possession of emergency communications districts;
- Personally identifying information ((i) Social security numbers; (ii) Official state or government issued driver licenses or identification numbers; (iii) Alien registration numbers or passport numbers; (iv) Employer or taxpayer identification numbers; (v) Unique biometric data, such as fingerprints, voice prints, retina or iris images, or other unique physical representations; or (vi) Unique electronic identification numbers, addresses, routing codes or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data;

- Records identifying a person as being directly involved in the process of executing a sentence of death; and
- Information that would allow a person to obtain unauthorized access to confidential information or to government property. ^[3]

For county governments, one important class of confidential records involves personal information of state, county, municipal, and other public employees. An employee's home telephone and personal cell phone numbers, bank account information, health savings account information, retirement account information, pension account information, Social Security number, residential address, driver's license information (except where driving is a part of the employee's job), emergency contact information, and personal, non-government issued, email address are confidential. Additionally, applicants for county employment and former employees are also protected by these confidentiality provisions (as are immediate family members, whether or not the immediate family member resides with the employee, or household members of the employee). Where this confidential information is part of a file or document that would otherwise be public information, such information shall be redacted if possible so that the public may still have access to the nonconfidential portion of the file or document. T.C.A. § 10-7-504(f).

Proposals and statements of qualifications received by a local government entity in response to a personal service, professional service, or consultant service request for proposals or request for qualifications solicitation, and related records, including, but not limited to, evaluations, names of evaluation committee members, and all related memoranda or notes, are declared to be confidential, but only until the intent to award the contract to a particular respondent is announced. T.C.A. § 10-7-504(a).

This list of confidential records found in T.C.A. § 10-7-504 is not exclusive, however, and other statutes, rules, and the common law dealing with a subject matter can also make a specific record confidential.^[4] While the following list is not exhaustive, these statutes are other legal sources that designate certain records that may be in the possession of a county office as confidential:

- All memoranda, work products or notes and case files of victim-offender mediation centers (T.C.A. § 16-20-103);
- Adoption records and related records (T.C.A. §§ 36-1-102 and following);
- Many records regarding juveniles (see T.C.A. §§ 37-1-153, 37-1-154, 37-1-155, 37-1-409, 37-1-612, 37-1-615 and 37-2-408);
- Certain records regarding the granting of consent to abortion for a minor and other records regarding abortion (T.C.A. §§ 37-10-304, 39-15-201);
- Pursuant to T.C.A. § 38-7-110, all or a portion of a county medical examiner's report, toxicological report or autopsy maybe declared confidential upon petition by the district attorney on the grounds that release of such record could impair the investigation of a homicide or felony. Additionally, 2005 Public Chapter 216 made it a criminal offense for certain audio and video materials related to an autopsy to be release to an unauthorized person.
- Certain student information;
- Whistleblowing reports of violations the Education Trust in Reporting Act (T.C.A. §§ 49-50-1408);
- Certain records of an employer's drug testing program (T.C.A. § 50-9-109);
- Accident reports (T.C.A. § 55-10-114 (along with 10-7-504));
- Tax returns and tax information (T.C.A. § 67-1-1702);
- Business tax statements, reports, and returns as well as some information on business license applications^[5](T.C.A. § 67-4-722);
- Information or records held by a local health department regarding sexually transmitted diseases (T.C.A. § 68-10-113);
- Patient medical records of hospitals and local or regional health departments (T.C.A. § 68-11-305); and
- Nursing home patient records (T.C.A. § 68-11-804).

Please note that this list only highlights some of the other provisions of the Tennessee Code that make records confidential. Additionally, the Tennessee Supreme Court has ruled that sources of legal authority other than statutes may make a record confidential. For example, the Tennessee Supreme Court has ruled that the Tennessee Rules of Criminal Procedure and Civil Procedure may also designate certain records as

confidential.^[6] Other records may be sealed by a court order or made confidential by a federal statute or regulation. If you have a question regarding the confidentiality of a specific record not listed above, contact your county attorney or CTAS county government consultant for assistance.

[1] T.C.A. § 10-7-504.

[2] T.C.A. § 10-7-503(c) also addresses the subject.

[3] T.C.A. § 10-7-504.

[4] Op. Tenn. Att’y Gen. No. 99-022 (February 9, 1999).

[5] See Op. Tenn. Att’y Gen. No. 01-165 (September 15, 2001) for a discussion of the confidentiality of phone numbers and other identifying numbers used in the enforcement of the business tax.

[6] See *Appman v. Worthington*, 746 S.W.2d 165, 166 (Tenn. 1987) and *Ballard v. Herzke*, 924 S.W.2d 652, 662 (Tenn. 1996).

Maintenance of Confidentiality

Reference Number: CTAS-1168

Any record that is designated as confidential must be treated as confidential by the agency with custody of the record throughout the maintenance, storage, and disposition of the record. This includes destroying the record (if it is eligible for destruction) in such a manner that the record cannot be read, interpreted, or reconstructed^[1]. However, once a confidential record has been in existence more than 70 years, it shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for mental illness or retardation.^[2] This “70-year rule” also does not apply to adoption records, records maintained by the office of vital records, and records of the TBI that are confidential.^[3]

[1] T.C.A. § 10-7-504(b). See also Op. Tenn. Att’y Gen. 01-040 (March 19, 2001).

[2] T.C.A. § 10-7-504(c).

[3] T.C.A. § 10-7-504(c).

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