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Providing Access to Records in Non-Paper Formats

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,

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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).