



August 24, 2024

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# To What Records Is the Public Entitled Access?

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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.

Sincerely,

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# 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.”<sup>[1]</sup> 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.

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<sup>[1]</sup> *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.<sup>[1]</sup> 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<sup>[2]</sup>;
- 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. <sup>[3]</sup>

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.<sup>[4]</sup> 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<sup>[5]</sup>(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.<sup>[6]</sup> 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.

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[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<sup>[1]</sup>. 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.<sup>[2]</sup> 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.<sup>[3]</sup>

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[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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