

Management of Personnel Records

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal 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 municipal 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 MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

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Management of Personnel Records

Reference Number: MTAS-883

Some Tennessee cities maintain their personnel records in separate locations and by untrained personnel. Records are often maintained in each department where employees may have access and be free to look at any and all of the information contained in the files, including Social Security numbers, driver's license numbers, library cards, personally identifying information of police officers, health-related matters, and other such information that is protected by federal and/or state laws. Employees may review records of other employees and remove from the files information about reprimands, suspensions, demotions, and the like.

MTAS recommends that every city in Tennessee maintain its personnel records in a central location and that such records be under the custodianship of a trained employee, or employees, depending on the size of the city. The custodian should know what records are public and what records are private under state and federal laws. The custodian should know that personnel records are owned by the city and not the employee. It should never be permissible for an employee, or anyone else, to take a personnel file out of the records office, or to remove any document from the personnel records.

MTAS also recommends that the custodian of the records maintain a duplicate file for public and employee access that does not include private protected information. T.C.A. § 10-7-503 requires that certain confidential information be redacted before the record is inspected. Failure to comply with this requirement could create a cause of action against the municipality. Additional information about confidential records can be found under confidential records [1].

Legislation in Tennessee requires that the chief of police make the decision to release, or not release, information in a police officer's personnel file. If the personnel records are not disclosed, the chief must explain in writing the reason for refusing to release the information and then release the redacted file. If the personnel records are to be disclosed, the chief must first notify the officer whose files have been requested and give that officer an opportunity to oppose the release. The recorder or other records custodian should notify the chief that a request for an officer's personnel records has been made and then ask the chief to make the determination as to what should or should not be released. Additional information about the Police Chief's responsibilities can be found under Law Enforcement Officer's Records [2].

Confidential Information under HIPAA

Reference Number: MTAS-2122

Section 1172 (a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191 [3]) makes some cities responsible for maintaining and transmitting health information in accordance with reasonable and appropriate administrative, technical, and physical safeguards:

- To ensure the integrity and confidentiality of the information;
- To protect against any reasonably anticipated:
 - Threats or hazards to the security or integrity of the information,
 - Unauthorized uses or disclosure of the information, and
- Otherwise to ensure compliance with this part (Section 1172 (a)) by the officers and employees of the city.

The act requires a covered entity to consider:

- Its size, complexity, and capabilities,
- Its technical, hardware, and software infrastructure,
- The costs of security measures, and
- The likelihood and possible impact of potential risks to e-PHI.

The act provides that a person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA faces a fine of \$50,000 and up to one year of imprisonment. Penalties may increase up to \$100,000 and up to five years imprisonment, depending on the circumstances.

Maintaining personnel records in a central location under the custodianship of a trained records keeper is the best insurance for the city and its employees to comply with HIPAA and to significantly reduce or avoid liability.

For a summary of HIPAA security information of key elements of the Security Rule including who is covered, what information is protected, and what safeguards must be in place to ensure appropriate protection of electronic protected health information, see the Department of Health and Human Services [4]webpage.

On January 25, 2013, the Department of Health and Human Services issued a final rule modifying HIPAA's Privacy, Security, and Enforcement Rules to implement statutory amendments under the Health Information Technology for Economic and Clinical Health Act ("the HITECH Act") which merits review.

Links:

[1] <http://www.mtas.tennessee.edu/reference/confidential-records>

[2] <http://www.mtas.tennessee.edu/reference/law-enforcement-officers-records>

[3] <http://aspe.hhs.gov/admsimp/pl104191.htm>

[4] <https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>

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