

Open Government

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 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,

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Open Government

Reference Number: MTAS-61

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Open Meetings Law

Reference Number: MTAS-205

The Sunshine Law or Tennessee Open Meetings Act (hereinafter "TOMA") establishes "... that the formation of public policy and decisions is public business and shall not be conducted in secret". T.C.A. § 8-44-101.

The law applies to formal meetings that require a quorum and to informal meetings of two or more members of a governing body, if the members have the authority to make decisions for or recommendations to a public body. If the participants in the meeting deliberate toward a decision or make a decision on public business, the meeting is required to be open to the public, unless there is a provision within State law that authorizes the meeting to be closed. Additionally, the TOMA requires "adequate public notice" for both regular and special called meetings. T.C.A. § 8-44-103. There is no statutory definition of what constitutes "adequate," but the courts appear to have adopted a "totality of circumstances" test to help determine whether notice is adequate under a particular set of facts.

Retreats are subject to the TOMA, if public business will be discussed or decided upon by multiple members of a governing body. (See *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990)).

Telephone calls, emails, text messages and all other electronic communications exchanged between multiple members of a governing body related to a public business are generally prohibited. However, certain governing bodies are permitted to establish Internet forums after receiving approval from the Office of Open Records Counsel. T.C.A. § 8-44-109.

At meetings, all votes must be public. Secret ballots are not permitted. T.C.A. § 8-44-104.

The following gatherings are not subject to the provisions of the TOMA:

- On-site inspections of projects or programs (T.C.A. § 8-44-102(b)(2));
- Chance meetings of two or more members of a governing body, if the members do not deliberate towards or make a decision on public business (T.C.A. § 8-44-102(c));
- Strategy sessions of a governing body in labor negotiations, although actual labor negotiations must be conducted in public (T.C.A. § 8-44-201);
- Meetings of school boards to hear student suspension appeals (T.C.A. § 49-6-3401)
- Meetings of public hospital boards to discuss, but not to adopt, marketing strategies, strategic plans, and feasibility studies (T.C.A. § 68-11-238); and
- Meetings related to school safety and security plans (T.C.A. § 49-6-804).

The courts have also established narrow parameters related to when multiple members of a governing body can go into executive session with the city/town attorney. Multiple members of a governing body can go into a closed gathering with the city/town attorney when:

- The discussion concerns a pending lawsuit;
- The governing body is a named party; and
- The members of the governing body provide facts about the lawsuit to the city/town attorney and the city/town attorney provides the members legal advice based upon the facts presented (See *Smith County Education Association v. Anderson*, 676 S.W. 2d 328 (Tenn. 1984); *Van Hooser v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 1991).)

However, the governing body must deliberate towards and/or make decisions related to the subject of the executive session in an adequately noticed public meeting.

T.C.A. § 8-44-108 allows certain state bodies to meet using electronic means. This statute generally does not apply to municipal governing bodies, except that it does apply to the governing bodies of municipalities incorporated under the general law city manager-commission charter with a commission of three members and a population of more than 2,500.

T.C.A. § 6-54-143 allows a service member, who is also a member of the legislative body and deployed for 13 months or less, to attend meetings of the body via two-way electronic audio-video communication during the deployment. The member is also allowed to vote and receive compensation for attendance. However, only one service member at a time may attend and vote using the two-way communication.

Any action held by a court to have violated the Sunshine Law is void, unless the action is related to public debt. If a citizen successfully sues a city/town for a TOMA violation, the court may issue an injunction and impose penalties. The court retains jurisdiction over the governing body for a year and the governing body must submit semiannual compliance reports. T.C.A. §§ 8-44-105–106.

Compliance with the Tennessee Open Meetings Act

Reference Number: MTAS-418

The Tennessee Open Meetings Act (hereinafter "TOMA") is commonly referred to as the "Open Meetings Law" or the "Sunshine Law," and it is one of the most comprehensive open meetings laws in the country. The statute declares that all public policy and public business decisions must be made in meetings that are open to the public. The TOMA not only requires that meetings be open to the public but also requires adequate public notice and thorough minutes of such meetings. This section explains the scope and application of this law so that city officials may understand how to perform their duties in compliance with the statute.

Tennessee Open Meetings Act

Reference Number: MTAS-426

The Tennessee Open Meetings Act (hereinafter "TOMA") is found at T.C.A. § 8-44-101, *et seq.* The TOMA prohibits multiple members of a governing body from meeting privately to deliberate towards or make decisions on public business. Subject to limited exceptions, almost every meeting of a municipality's governing body, boards and commissions is going to be subject to the TOMA.

Governing Body

Reference Number: MTAS-419

A two-pronged test must be used to analyze a meeting to determine if the Tennessee Open Meetings Act (hereinafter "TOMA") applies. First, a city/town must determine if the entity that is planning to meet is a "governing body" as defined in the TOMA. If the answer to that question is yes, it must then be determined if the governing body will be deliberating towards or making decisions on public business during the course of the meeting. If the governing body will be deliberating towards decisions or making decisions on public business during the course of a meeting, the meeting is subject to the TOMA, which means that it must be open to the public, there must be adequate public notice of the meeting provided and there must be minutes of the meeting recorded.

With regard to the first prong of the test, "governing body" is defined in T.C.A. § 8-44-102 as:

(A) The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration ...so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times.

Clearly, your city/town's legislative body fits this definition, but what about other boards or bodies established by your city/town or boards that include city/town officials? Court opinions shed some light on this issue.

The Tennessee Supreme Court provided guidance as to what types of entities constitute a “governing body” in *Dorrier v. Dark*, 537 S.W.2d 888 (Tenn. 1976). The court states:

It is clear that for the purpose of this Act, the Legislature intended to include any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and *whose members have authority to make decisions or recommendations on policy* or administration affecting the conduct of the business of the people in the governmental sector. *Id.* at 892 (*emphasis added*).

Based upon the language in *Dorrier*, in order for a board or body to be subject to the TOMA, it must have been formed by an ordinance, resolution, private act, or general law and it must have some authority to affect decisions related government business. Based on this reasoning, the Tennessee Court of Appeals ruled that a grievance committee created by the South Central Human Resource Agency is not subject to the TOMA, despite being established under a specific law, since the “sole function of the committee is to hear and dispose of personnel complaints in accordance with the policies and procedures of the governing board.” *Hastings v. South Central Human Resource Agency*, 829 S.W.2d 679, 686 (Tenn. Ct. App. 1992). The committee did not have the authority to make recommendations to the agency on matters of policy, rather it had the purpose of applying established policies in grievance hearings and, as such, was not subject to the TOMA.

In another case, the Court of Appeals determined that the “governing body” definition applied to a preferred provider organization’s (PPO) board of directors on grounds that the PPO’s charter indicated that it was created as a government instrumentality of the county general hospital district. *Souder v. Health Partners, Inc.*, 997 S.W.2d 140 (Tenn. App. 1998). The PPO further made policy decisions and commingled funds with the county general hospital district. The court found the PPO to be subject to the TOMA and actions taken in closed meetings were invalidated.

If a board or committee appointed by your governing body is authorized to make recommendations to the governing body that may affect policy or decisions, the committee or board is a “governing body” subject to the TOMA. Such boards include planning commissions, beer boards, boards of zoning appeals, and economic development boards.

Boards that have the authority to carry out the policies of a city/town’s governing body, do not necessarily meet the definition of “governing body” found in the law. Questions related to whether a board, commission, or council is a governing body should be referred to the city/town attorney or to your MTAS Management Consultant.

Meeting and Deliberation

Reference Number: MTAS-420

Although your city/town council or board clearly fits the description of a “governing body,” meetings or functions of the body are only required to be open to the public under the law if the board is deliberating towards or making a decision on public business. The Tennessee Open Meetings Act (hereinafter “TOMA”) states:

(2) “Meeting” means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. “Meeting” does not include any on-site inspection of any project or program.

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part. T.C.A. § 8-44-102.

One must examine the topic of discussion as well as the purpose of a meeting to determine if a particular meeting or discussion between board members must be open to the public. For instance, if board members are discussing any matter that is pending before the board, the discussion must be held during an adequately noticed public meeting. If the board members are discussing personal matters or personal opinions on topics that will not come before the board for consideration, such discussions do not have to be open to the public.

Municipal governing bodies may not meet by conference call or other electronic means, except in two limited circumstances. T.C.A. § 8-44-108 permits cities organized under the general law city manager-commission charter, having a population no greater than 2,500 and a governing body of only three members to conduct meetings at which members may participate by electronic or other means when a physical quorum cannot be reached otherwise. Additionally, T.C.A. § 8-44-109 allows certain governing bodies to communicate electronically via an Internet forum. However, before a governing body can utilize an Internet forum, use must be approved by the Office of Open Records Counsel and the communications must be available for public viewing. Aside from these two provisions with limited application, municipal governing bodies may not hold meetings via conference call or any other electronic means.

It is permissible for a governing body to have a "retreat" or a closed-door meeting during which the relations of council members are discussed or the functions of the board are addressed in general, as long as no matters of city business are discussed. However, when board members meet in private it is often difficult to keep them from talking about matters pending before the board.

Such was the case in *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. App. 1990). Members of a board of education and the superintendent attended a retreat in another state where the issue of whether to adopt a clustering plan was discussed. The decision concerning the adoption of a clustering plan had been considered by the board for several years, and following the retreat the board finally approved a clustering plan at the next regular meeting. The plaintiffs argued that the board members discussed the proposed clustering plan at length during the retreat and made their decision before the next board meeting. The court found that the retreat was actually a "meeting" as defined in the TOMA, stating "regardless of whether any Board member made a decision at the meeting, we do not believe that the Board can successfully avoid the fact that it deliberated toward making a decision." *Id.* at 435. It is important to remember that even in situations when a vote is not taken or no quorum is present or required, the gathering of the members of a governing body may still be subject to the requirements of the TOMA. Any discussion of pending or anticipated city business must be held in an adequately noticed public meeting.

Private meetings may be held with city staff members for the purpose of gathering information if the person seeking comments has the authority to make decisions independent from the governing body. Meetings between city staff members and a purchasing agent in which staff provided their opinions regarding whether a contract should be awarded to a low bidder were found to be exempt from the TOMA, as the purchasing agent had the power to make the decision without staff input and no quorum was required. *Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Government of Nashville and Davidson County*, 842 S.W.2d 611 (Tenn. Ct. App. 1992).

Phone calls made by a county commissioner to his fellow commissioners in which he solicited their support for his appointment as county trustee were determined not to violate the TOMA as no meeting took place as defined under the Act. *Jackson v. Hensley*, 715 S.W.2d 605 (Tenn. Ct. App. 1986).

What about meetings between city officials and consultants in which the consultants solicit the officials' opinions as guidance? The Tennessee Attorney General has opined that meetings of a third-party consultant with individual board members to discuss each member's preferences regarding a list of candidates for a new city manager are not subject to the act and may be held privately. Op. Tenn. Atty. Gen. No. 99-193. However, the consultant cannot serve as a conduit taking information back and forth between the members.

Further, language has been added to T.C.A. § 9-3-405(d)(3) that allows local government audit committees and the governing body of a local government meeting with the city/town's audit committees to go into executive session to discuss pending or ongoing audits and audit related investigations.

Exception for Attorney-Client Privilege

Reference Number: MTAS-421

The Tennessee Supreme Court used similar reasoning to determine when meetings between multiple members of a governing body and their attorney concerning pending litigation are required to be open. Although there is no attorney-client privilege exception explicitly set out in the Tennessee Open Meetings Act (hereinafter "TOMA"), the court found that an exception for such communications exists based upon the language in the TOMA that reads "except as provided by the Constitution of Tennessee." The Tennessee Supreme Court held:

The majority of states have fashioned an exception to their states' open meeting laws to permit private attorney-client consultation on pending legal matters even where the statute itself makes no such express exception ... Two approaches, both based upon the same policy consideration, are given for permitting this exception: (1) the evidentiary privilege between lawyer and client and (2) the attorney's ethical duty not to betray the confidences of his client ... we believe the second approach, the attorney's ethical duty to preserve the confidences and secrets of his client, provides a better basis for establishing an exception to the Open Meetings Act. *Smith County Education Association v. Anderson*, 676 S.W.2d 328, 332-333 (Tenn. 1984).

The exception has also been applied to discussions between multiple members of a governing body and their attorney concerning pending controversies that have not yet reached litigation. *Van Hooser v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 1991). But not all meetings between multiple members of a governing body and their attorney to discuss pending or threatened litigation may be closed to the public. The application of the exception, whether litigation is threatened or pending, depends on the discussion that takes place. The court in *Smith County* held:

Clients may provide counsel with facts and information regarding the lawsuit and counsel may advise them about the legal ramifications of those facts and the information given to him. However, *once any discussion, whatsoever, begins among the members of the public body regarding what action to take based upon the advise of counsel, whether it be settlement or otherwise, such discussion shall be open to the public* and failure to do so shall constitute a clear violation of the Open Meetings Act. *Id.* at 334 (*emphasis added*).

After the members of the governing body provide the attorney facts and information related to the litigation or controversy and the attorney provides the governing body legal advice on the issues, all discussions related to what actions to take and any decisions made related to those discussions must take place in an adequately noticed public meeting.

Internet Forum

Reference Number: MTAS-422

The General Assembly passed Public Chapter 175, Acts of 2009, which permits local government officials to participate in meetings via an Internet forum. This law expands a pilot project in Knox County by making the option available to city/town governing bodies and school boards. Codified at T.C.A. § 8-44-109, the law permits governing bodies and school boards to "allow electronic communication between members by means of a forum over the Internet", if specific requirements are met. Before permitting such Internet discussions, the governing body must:

1. Ensure that the forum be "available to the public at all times other than that necessary for technical maintenance or unforeseen technical limitations;"
2. Provide "adequate public notice" of use of the forum;
3. Control who may communicate through the forum;
4. "Control the archiving of the electronic communications to ensure that the electronic communications are publicly available for at least one (1) year," and access to the archived communications must be "user-friendly for the public;" and
5. "Provide reasonable access to members of the public to view the forum at the local public library, the building where the governing body meets or other public building."

The law further requires that such Internet forums “shall not substitute for decision making by the governing body in a meeting.”

Before city/town officials may hold such Internet chats, the governing body must file a plan with the Office of Open Records Counsel (hereinafter "OORC"). The plan is then evaluated by Open Records Counsel, who will report whether or not the plan complies with the requirements above within thirty (30) days. If the plan fails to comply, Open Records Counsel will provide written comments to the governing body. No Internet forums are allowed under the law until the OORC issues a report of compliance.

The OORC has documents which make the process of developing an Internet forum plan simpler for cities/towns. These documents include: “Plan Considerations,” which contain extensive comments by Counsel on each requirement of the law; a template resolution or ordinance to be passed by the governing body submitting the plan; and, a template “Terms of Use Agreement.” These documents may be printed from the Open Records Counsel website [1].

Plans for Internet forums should be submitted to the OORC.

Adequate Notice of Public Meeting

Reference Number: MTAS-423

Another question that frequently arises under the Tennessee Open Meetings Act (hereinafter "TOMA") is what constitutes adequate public notice for meetings. The TOMA states:

§ 8-44-103. Notice

(a) NOTICE OF REGULAR MEETINGS. Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.

(b) NOTICE OF SPECIAL MEETINGS. Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.

(c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

No definition of “adequate public notice” is provided in the TOMA. The courts in Tennessee have been reluctant to adopt a specific meaning of “adequate public notice,” saying:

We think it is impossible to formulate a general rule in regard to what the phrase “adequate public notice” means. However, we agree with the Chancellor that adequate public notice means adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public. *Memphis Publishing Company v. City of Memphis*, 513 S.W.2d 511, 513 (Tenn. 1974).

However, an unpublished opinion, *Englewood Citizens for Alternate B v. The Town of Englewood*, 1999 WL 419710 (Tenn. Ct. App. June 24, 1999), provides some guidance concerning what constitutes adequate public notice in the context of special called meetings only. The court in *Englewood* held:

First, the notice must be posted in a location where a member of the community could become aware of such notice. Second, the contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken. And, third, the notice must be posted at a time sufficiently in advance of the actual meeting in order to give citizens both an opportunity to become aware of and to attend the meeting.

Id. at *2. The *Englewood* case concerns the selection of a route for a highway construction project. A special meeting was scheduled for December 12, and the town recorder testified that notice of the meeting was posted on December 10 at the local post office, at city hall, and at a bank. The city recorder also faxed a copy of the notice to the local newspaper, but the paper did not publish the notice. Although the court found the locations of the posting of the notice to be reasonable, the contents of the notice were insufficient to adequately inform the public of the purpose of the meeting. The notice simply stated “letter to State concerning HWY 411.” The court determined that “a more substantive pronouncement stating that the commission would reconsider which alternative to endorse for Highway 411 should have been given.” *Id.* at *3.

Notice of a city council meeting to hear an appeal from a discharged police officer was found to be adequate in *Kinser v. Town of Oliver Springs*, 880 S.W.2d 681 (Tenn. Ct. App. 1994). Without discussing the contents of the notice, the court determined that the posting of notices inside city hall, where people pay their water bills and above the entrance to the police department and council room to be sufficient. It is important to note that the *Kinser* case involved an appeal of a termination by an employee and was not a matter affecting a number of city residents.

The Court of Appeals found the content of a meeting notice to be inadequate in *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990). Members of a board of education and the superintendent attended a retreat in another state at which the issue of whether to adopt a clustering plan was discussed. The planned retreat was announced at a prior regular meeting of the board and was further mentioned in media reports. The notice published in the paper stated that two issues would be addressed at the retreat but made no mention of consideration of the clustering plan. *Id.* at 435. The court found the notice to be insufficient, stating "adequate public notice under the circumstances" is not met by misleading notice." *Id.* at 436.

When providing notice of public meetings, a city/town should follow its normal procedures established for the posting of notices. The attorney general opined that a city did not provide adequate public notice of a special meeting when it failed to follow its normal procedure for posting meeting notices. This attorney general's opinion also considered the fact that city employees were not aware of the meeting, and employees informed some members of the public that no meeting was scheduled for that date. Op. Tenn. Atty. Gen. No. 00-095.

Posting notices of meetings on an Internet site likely will not satisfy the adequate public notice requirement of the TOMA, unless notice is also posted in locations around the city/town and/or through media outlets. Op. Tenn. Atty. Gen. No. 00-090.

A governing body may temporarily adjourn or recess a meeting, but adequate public notice must be provided as to when and where the meeting will be reconvened. Op. Tenn. Atty. Gen. No. 07-30.

Minutes of Governing Body Meetings

Reference Number: MTAS-424

The Tennessee Open Meetings Act (hereinafter "TOMA") also addresses minutes of meetings of governing bodies. The language in T.C.A. § 8-44-104 requires:

(a) The minutes of a meeting of any governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of the persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of a roll call.

(b) All votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed. As used in this chapter, "public vote" means a vote in which the "aye" faction vocally expresses its will in unison and in which the "nay" faction, subsequently, vocally expresses its will in unison.

In a rather alarming opinion, the Court of Appeals found beer board meeting minutes to be insufficient under the Act in the unreported case *Grace Fellowship Church of Loudon County v. Lenoir City Beer Board*, 2002 WL 88874 (Tenn. Ct. App. Jan. 23, 2002). The church challenged the issuance of a beer permit that was in violation of a distance requirement contained in the city ordinance. An application for the beer permit was denied at first but was granted on reconsideration at a later meeting. The minutes for both meetings state the time and location, identify the application being considered, name the member making the motion, and record the vote of each of the two board members. Nevertheless, the court found the minutes to be lacking information but failed to specify what was missing from the minutes. The minutes did not list the names of members present at the meeting, but since this was a board composed at the time of only two members whose votes were recorded, it is difficult to conclude that this omission alone led to the court's decision. In any event, cities should take notice of this opinion and strive to record in detail all events that occur in meetings.

Boards or councils may take action in subsequent meetings to correct or cure deficiencies in meeting minutes without being required to debate issues again or call for votes a second time as long as debate and discussion actually occurred during the earlier meeting. *Zselvay v. Metropolitan Government of Nashville and Davidson County*, 986 S.W.2d 581 (Tenn. Ct. App. 1999).

Additionally, notes from a meeting taken by staff or members of the governing body and minutes that are in draft format that have not been approved are subject to the Tennessee Public Records Act.

Violation and Remedies

Reference Number: MTAS-425

If a citizen brings a legal challenge, a court can find that the action taken by a governing body related to public business in a private meeting, in a meeting that was not adequately noticed, and/or at a meeting with insufficient minutes is a violation of the Tennessee Open Meetings Act (hereinafter "TOMA") and is therefore void, unless the action taken concerns the public debt of the city/town. T.C.A. § 8-44-105. A violation can be cured if the matter is brought before the governing body at an adequately noticed public meeting, the body fully discusses and makes a decision on the matter during an adequately noticed public meeting, and the minutes reflect that the issue was properly addressed.

A violation of the TOMA by a committee that reports to a governing body may be cured by the governing board but only if a full discussion and reconsideration of the matter occurs. In the unreported opinion *Allen v. City of Memphis*, 2004 WL 1402553 (Tenn. Ct. App. June 22, 2004), the Court of Appeals found that a committee appointed by the city council to analyze costs associated with a proposed annexation violated the law by failing to keep minutes of meetings. In one committee meeting held between the first and second readings on the ordinance, the scope of the annexation was changed by removing an area from the property description. The committee meeting was open to the public and proper notices were posted, but minutes were not kept of the discussion that led to the alteration of the ordinance. The Memphis City Council later approved the amended ordinance after a public hearing, but there was no discussion of the reasons the ordinance was changed. The court, citing the *Neese v. Paris Special School District* opinion, stated:

We do not believe that the legislative intent of this statute was forever to bar a governing body from properly ratifying its decision made in a prior violative manner. However, neither was it the legislative intent to allow such a body to ratify a decision in a subsequent meeting by a perfunctory crystallization of its earlier action. We hold that the purpose of the act is satisfied if the ultimate decision is made in accordance with the Public Meetings Act, and if it is a new and substantial reconsideration of the issues involved, in which the public is afforded ample opportunity to know the facts and to be heard with reference to the matters at issue. *Id.* at *5, citing *Neese v. Paris Special School District*, 813 S.W.2d 432, 436 (Tenn. Ct. App. 1990).

The court found that the city failed to cure the violation of the law since there was no new and substantial reconsideration of the issue in the council meeting.

In contrast, the court held that Kingsport's Board of Mayor and Aldermen acted appropriately to cure a violation of the TOMA by holding numerous public meetings and engaging in new and substantial reconsideration of an issue that the members met about and discussed privately. *Dossett v. City of Kingsport*, 258 S.W.3d 139 (Tenn. Ct. App. 2007). In this unreported case, some members of Kingsport's Board of Mayor and Aldermen attended private meetings to discuss a potential sale of city property. Despite such private meetings, the Court of Appeals found:

After two private meetings, each of which included two members of the Board, the entire Board then met in several public meetings to consider selling the EAP Building to TriSummit. After carefully reviewing the record, including the minutes of these public meetings, we hold that the Board conclusively established that it cured the alleged violations of the Open Meetings Act by fully and fairly considering the proposed sale during its five public meetings following the last private gathering. It is undisputed that the public was afforded at these five public meetings both ample opportunity to know the facts and to be heard as to the proposed sale. It was only after these public meetings that the decision to sell the property ultimately was made. *Id.* at 150.

Governing bodies that violate the TOMA and do not take appropriate corrective action may be sued in circuit or chancery court by any party affected by the board action. T.C.A. § 8-44-106. If the trial court determines that the Act has been violated, it will issue an order called an "injunction" that permanently forbids the governing body from violating the law. The court will have jurisdiction over the governing body for one year, during which time the council or board must report to the court twice, in writing, regarding its compliance with the TOMA T.C.A. § 8-44-106(c),(d).

Even if a governing body takes action to cure a defect in the meeting minutes or deliberates an issue a second time at a properly noticed meeting, the body may not be able to avoid a court order. If a lawsuit has been filed and the court determines that a violation occurred, whether intentional or not, an order may be issued that requires the governing body to remain under the court's watch for a full year. *Zseltvay v. Metropolitan Government of Nashville and Davidson County*, 986 S.W.2d 581 (Tenn. Ct. App. 1999).

Once city officials realize that a violation of the TOMA has occurred, the governing body must act to place the issue on the next meeting agenda for full discussion and reconsideration. If an ordinance was passed following discussions that violated the law, the ordinance should be reconsidered and the readings and votes should be repeated as soon as possible, in order to avoid litigation.

Tennessee Public Records Act

Reference Number: MTAS-206

All documents made or received by city/town officials and employees related to city/town business are subject to the Tennessee Public Records Act (hereinafter "TPRA"). Records custodians must respond as promptly as possible, but if it is not possible to provide the requested records promptly, records custodians must, within seven business days of receiving a public records request, either produce the requested records, deny the request in writing with the legal basis for the denial included or provide an estimated time frame for production of the requested records on the Office of Open Records Counsel's (hereinafter "OORC") records request response form. Failure to do so constitutes a denial of the request and gives the requestor the right to file a public records lawsuit. T.C.A. § 10-7-503. Additionally, if copies are requested, a records custodian must provide the requestor with an estimate of the cost of copies. The estimate should be provided as soon as possible.

If a citizen of Tennessee is denied access to requested records, the individual may petition a chancery or circuit court for copies or inspection of the requested records. The burden of proof is on the city/town officials or employees, who must justify the denial by a preponderance of evidence. State law instructs courts hearing these cases to construe the TPRA as broadly as possible to give citizens of Tennessee "... the fullest possible public access to public records". T.C.A. § 10-7-505 (d). If a court determines that a city/town has violated the TPRA, the city/town may be assessed costs. Additionally, if a court determines that the city/town employee or official "willfully refused" access to the requested records, the city/town can also be assessed attorney's fees. When determining whether a city/town willfully violated the TPRA, the court may consider guidance provided to the city/town by the OORC, which is discussed below. T.C.A. § 10-7-505(g). An official required to provide access to requested records will not be civilly or criminally liable for providing access. T.C.A. § 10-7-505(f).

Confidential Records

Reference Number: MTAS-207

In general, city employees' personnel records and most other city documents are subject to public inspection under the Tennessee Public Records Act. Some exceptions that affect local government are:

- Employee assistance program records that apply to counseling or referrals for mental health, marriage, alcoholism, and similar personal problems may remain confidential if they are maintained separately from personnel records. T.C.A. § 10-7-504(d).

- Personal cell phone and home phone numbers, bank account information, Social Security numbers, and driver's license information (except when driving is part of or incidental to the employee's job), emergency contact information, residential street addresses and personal, non-government issued email addresses of applicants, current and former employees are confidential; the same information for the employees' immediate family members and household members is confidential. T.C.A. § 10-7-504 (f)(1).
- City hospital medical records and records of patients receiving medical treatment paid for by a municipality are confidential. T.C.A. § 10-7-504(a)(1). (The Americans with Disabilities Act requires that all employee medical records be confidential and kept in a separate file.)
- Library records identifying a person who requested or obtained specific materials are not open to the public. T.C.A. § 10-8-102.
- Financial statements filed by cities as evidence of their ability to pay workers' compensation claims are confidential. T.C.A. § 50-6-405(b)(3).
- Certain "books, records, and other materials in the possession of the Office of the Attorney General and Reporter which relate to any pending or contemplated legal or administrative proceeding in which the Office of the Attorney General and Reporter may be involved" are not open to public inspection. T.C.A. § 10-7-504(a)(5).
- All files, reports, records, and papers relative to child abuse investigations are confidential. T.C.A. § 37-1-612.
- The Tennessee Rules of Criminal Procedure contains a section that "does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with the investigation or prosecution of the case or of statements made by state witnesses or prospective state witnesses" (Tenn. R. Crim. P. 16(a)(2)). This rule is an exception to the rule of discovery, which requires the state to allow a "defendant to inspect and copy or photograph any relevant written or recorded" statements, records, objects, etc., that are material to the defense's preparation (Tenn. R. Crim. P. 16(a)(1)).^[1]
- *Arnold v. City of Chattanooga*, 19 S.W.3d 779 (Tenn. Ct. App. 2000) (permission to appeal denied June 19, 2000) holds that a city attorney's work product prepared in anticipation of litigation or in preparation for trial is confidential and is not subject to disclosure under the Public Records Act.
- Unpublished phone numbers possessed by emergency communications districts are confidential until there is a contract to the contrary between the telephone customer and the service provider, T.C.A. § 10-7-504(e).
- Information about law enforcement officers, firefighters, emergency medical technicians, correction officers, dispatchers and paramedics who seek help for job-related critical incidents through group counseling sessions led by mental health professionals is privileged and is not subject to disclosure unless the privilege is waived. This includes all memoranda, work notes, work products, case files, and related communication. T.C.A. § 10-7-504(a)(13)(A).
- Certain taxpayer information, returns, reports, and audits are confidential. T.C.A. § 67-2-108, T.C.A. § 67-4-722, T.C.A. § 67-5-402, T.C.A. § 67-1-1702.
- The identity of an informant who provides information resulting in an eviction for violation of drug laws or for prostitution is confidential. T.C.A. § 66-7-107.
- Home and work telephone numbers, addresses, social security numbers, and any other information that could be used to locate an individual who has a protection or restraining order are not (utility) and may not be (other governmental entities) open to the public. Such an individual may request this protection and present a copy of the order to the record keeper of the municipality or utility. T.C.A. § 10-7-504(a)(15) and T.C.A. § 10-7-504(a)(16).
- Any information pertaining to the location of a domestic violence shelter, family safety center, rape crisis center, or human trafficking service provider is confidential when the director requests such in writing. T.C.A. § 10-7-504(a)(17).
- Security codes, plans, passwords, combinations, and computer programs used to protect electronic information and government property are confidential. T.C.A. § 10-7-504.

- Filing documents required in order of protection cases, except forms required by the courts, are confidential but may be transmitted to the TBI, emergency response agency, or law enforcement agency. T.C.A. § 10-7-504(a)(16).
- Records that would allow a person to identify areas of vulnerability of a utility service provider or that would permit unlawful disruption of utility service are confidential. Documents relative to costs of utility property or its protection are not confidential, but confidential information must be redacted when the record is made public. This provision does not limit access to these records by other government agencies performing official functions nor does it preclude any governmental agency from allowing public access to these records in performing official functions. T.C.A. § 10-7-504(a)(21).
- Contingency plans for responding to terrorist acts are confidential. T.C.A. § 10-7-504(a)(21).
- Credit card numbers, social security numbers, tax identification numbers, financial institution account numbers, burglar alarm codes, security codes, consumer-specific energy and water usage data except for aggregate monthly billing information, and access codes of utilities are confidential. This information must be redacted when possible when the rest of the record is made public. The requester must pay the costs of redaction. T.C.A. § 10-7-504(a)(20).
- Photographs and recordings of juveniles by law enforcement officers are confidential. T.C.A. §§ 37-1-154 and 37-1-155.
- Financial records filed for income verification under the local option property tax freeze are confidential. T.C.A. § 67-5-705.
- Competitive sealed proposals are confidential until the intent to award is announced. Then the proposals will be open to public inspection. T.C.A. § 12-3-1207.
- Records addressing marketing strategies and strategic plans of public hospitals are confidential until seven days before the strategies and plans are adopted. T.C.A. § 68-11-238.

[1] The Tennessee Supreme Court, in *Schneider v. City of Jackson*, 226 S.W. 3d 332 (Tenn. 2007), held that the common-law law enforcement privilege does not apply in Tennessee. Therefore, police officers' field interview cards and other investigative records not protected by this rule may be open for public inspection.

Breach of Computer Security System

Reference Number: MTAS-432

Municipalities that hold personal information in a computer system that is not lawfully available to the public must give notice of any breach of the system if personal information was, or is reasonably believed to have been, obtained by any unauthorized person. The disclosure must be made to the person or persons whose information was or might have been obtained. The law outlines the circumstances under which the notice must be made and the methods for giving the notice. T.C.A. § 47-18-2107.

All municipalities must create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by municipalities. Failure to comply creates a cause of action or claim for damages against the municipality if a citizen of the state proves by clear and convincing evidence that the citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. T.C.A. § 47-18-2901.

Identity Theft Precautions

The federal Fair and Accurate Credit Transactions Act of 2003 (FACTA), Public Law 108-159, requires utilities and other municipal departments that defer payments for services to take precautions to protect personal identifying information in their records. The municipality must have a policy that protects personally identifying financial and medical information and provide training on the policy.

Law Enforcement Officers' Records

Reference Number: MTAS-430

Like all public employees' records, law enforcement officers' personnel files are generally open to public inspection subject to the limitations mentioned in this and the previous section. However, the custodian of the records must record all inspections and notify the officer within three days of the inspection, that an inspection took place. The notification must include the name, address, and telephone number of the person making the inspection; for whom the inspection was made; and the date of the inspection. T.C.A. § 10-7-503(c). It is also important to note that anytime a citizen has the right to inspect, he/she also has the right to receive copies. T.C.A. § 10-7-506(a). So, the same notification procedure set out above must be followed if copies are requested instead of inspection.

T.C.A. § 10-7-504(g)(1) allows the police chief to "segregate" or refuse to release information that could be used to locate or identify any officer working undercover. It also allows the police chief to "segregate" or refuse to release certain personal information about an officer of his or her immediate family when the request is for a professional, business or official purpose. Personal information is defined as the officer's residential address; home and cell phone numbers; place of employment; name, work address, and phone numbers of the officer's immediate family; and the names, locations, and phone numbers of any educational institution or day care center where the officer's spouse or child is enrolled. The police chief must consider the specific circumstances in making the determination. If the police chief decides to withhold personal information, he or she must give specific reasons in writing to the requester within two business days and must release the redacted file. When the police chief determines there is no reason to keep personal information confidential, he or she must notify the officer and give the officer a reasonable opportunity to oppose release of the information. A request for personal information about a law enforcement officer must include the requester's business address, business phone number, and e-mail address. It also must include the name and contact information for a supervisor for verification. T.C.A. § 10-7-504(g).

The information made confidential by this provision is in addition to the information made confidential by other provisions in the Tennessee Code.

Open Records Counsel

Reference Number: MTAS-428

T.C.A. § 8-4-601 establishes the Office of Open Records Counsel (hereinafter "OORC") in the Comptroller's office to answer questions and provide information to the public and public officials regarding public records. The OORC issues opinions on public records questions and may mediate disputes relative to public records. The OORC established a schedule of reasonable charges that is to serve as guidance to governmental entities on how to charge for copies of public records and public information. The schedule of reasonable charges is found at <http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePoliciesGuidelines/20170119ScheduleofReasonableCharges.pdf> [2].

Complying with Requests for Copies

Reference Number: MTAS-429

A records custodian may require a request for copies of public records to be made in writing, on a form that complies with T.C.A. § 10-7-503(c), or on a form developed by the Office of Open Records Counsel. If a municipality requires a request for copies to be made in writing, the records custodian must accept the request in person, by mail, through email, if email is used to transact official business, or via an Internet portal, if the municipality maintains an Internet portal that is used to accept public records requests. If a municipality does not require a request for copies to be made in writing, a records custodian must accept the request in person, by mail, fax, or telephone, through email, if email is used to transact official business, or via an Internet portal, if the municipality maintains an Internet portal that is used to accept public records requests. The records custodian may also require any citizen making a request for copies to show government issued photo identification with an address on it or some

alternative form of identification that is acceptable to the records custodian, if the requestor does not have government issued photo identification that includes an address.

Additionally, when requests for copies of public records are made, record custodians are required to provide the requestor an estimate of the costs associated with providing the copies. T.C.A. § 10-7-503(A)(7)(C)(ii).

A municipality does not have to create a record that does not exist, but redacting confidential information from a record or electronic database does not constitute creating a new record. A municipality may not avoid its disclosure obligations by contractually delegating its responsibility to a private entity. T.C.A. § 10-7-503.

Fees for Geographic Information System Data

When a request is made for copies of public records that have commercial value, the records require the reproduction of all or a portion of a computer generated map or other similar GIS information and the records were developed with public funds, a municipality may assess the requestor the cost of reproduction of the data and ten percent of the total development costs of the system. An additional ten to twenty percent may be assessed, if approved by the governing body and by the state Information Systems Council. After the total development cost is recovered, fees must be reduced to recover only maintenance costs of the system.

The additional development costs for the GIS data may not be assessed when a request is made by an individual for a non-business use or by the news media for a news gathering purpose. T.C.A. § 10-7-506.

Records Preservation and Destruction

Reference Number: MTAS-431

Preservation and destruction of municipal public records are governed by T.C.A. §§ 10-7-701 and 702. They are defined as "all documents, papers, records, books of account, and minutes of the governing body of any municipal corporation within said county or of any office or department of such municipal corporation within the definition of 'permanent records,' 'essential records,' and/or 'records of archival value.'" T.C.A. § 10-7-301. T.C.A. § 10-7-702 authorizes the Municipal Technical Advisory Service (MTAS) to publish retention schedules of records for municipal officials.

Electronic Records

T.C.A. §§ 47-10-101, *et seq.*, allow cities to conduct business by electronic means and to determine the extent to which they will send, accept, and rely on electronic records and electronic signatures.

T.C.A. § 47-10-112 provides that electronic records may be retained and have the same status as original records. Electronic records are subject to open records and retention requirements just like other records.

Electronic Mail

A municipality with electronic mail must adopt a written policy addressing any monitoring of e-mail. The policy must include a statement that any form of e-mail may be a public record open to inspection. T.C.A. § 10-7-512.

Disposal of Records

T.C.A. § 10-7-702 allows any municipal governing body to authorize by resolution the disposal, including destruction, of permanent paper records that have been copied to another medium, such as microfilm or CD-ROM, in accordance with T.C.A. § 10-7-121. Other records may be destroyed when the retention period prescribed by the retention schedule used by the municipality has expired.

Municipal Public Records Guide

Reference Number: MTAS-433

The public's inherent right to inspect government records has officially been recognized by the state of Tennessee for more than 100 years. See *State ex rel. Wellford v. Williams*, 110 Tenn. 549 (Tenn. 1902). This right was statutorily adopted in 1957 by the enactment of the Tennessee Public Records Act

(hereinafter “the act”). This law has since been amended by statute and interpreted by case law. From inception, the law in this arena has stressed disclosure wherever possible and struck down any avoidable barrier to public access.

The general rule of the Tennessee Public Records Act is found at T.C.A. § 10-7-503(a)(2)(A) and reads:

All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

Scope and Application

Reference Number: MTAS-434

The Tennessee Public Records Act (hereinafter referred to as the "Act") is a statutory creation of broad scope and application. The legislature has stated that the Act “shall be broadly construed so as to give the fullest possible public access to public records.” T.C.A. § 10-7-505(d). The Act requires that all state, county, and municipal records be open for public inspection during normal business hours unless the records are confidential. The overarching provision of the Act is found at T.C.A. § 10-7-503(a)(2)(A) and reads:

All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

A: Who is Entitled to Access Public Records?

Pursuant to the Act, only citizens of Tennessee have the statutory right to access requested public records. The term “citizen” is broadly construed, for purposes of the Act. Each municipality’s public records request coordinator (hereinafter “PRRC”) may, pursuant to the language in the municipality’s public records policy, require a requestor making a request to view and/or receive copies of public records to present a valid government-issued photo identification which includes the individual’s address. If a requestor does not possess a valid government-issued photo identification that includes an address, the PRRC may accept other forms of identification. As long as a requestor can produce a valid government-issued photo identification that includes a Tennessee address or some other acceptable identification, the requestor must be provided access to requested records that are not otherwise confidential. *Friedmann v. Marshall County, TN*, 471 S.W. 3d 427 (Tenn. Ct. App. 2015). This is true even if the requestor is incarcerated or has a felonious criminal record. *Cole v. Campbell*, 968 S.W. 2d 274 (Tenn. 1998).

While only citizens of Tennessee have the statutory right to access requested public records, municipalities are not statutorily required to deny access to individuals who are not citizens of Tennessee. Each municipality’s public records policy should address who has the right to access municipal records.

Also, municipalities may not deny access to public records based upon the requestor’s use or intended use of the records. Except in very limited circumstances, a requestor cannot be required to provide an explanation of his or her intended use of the records and a PRRC should not inquire into a requestor’s purpose for requesting the records. Questioning could be interpreted as an attempt to discourage requestors from requesting access to records that they are legally entitled to access.

B. What Materials are Covered by the Act?

Almost every record created, maintained, or received by a municipal government is covered by the Act.

The Act defines “public record” as:

...all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business

by any governmental agency.

T.C.A. § 10-7-503(a)(1)(A).

Hence, to determine whether a document is a public record, it must first be determined if the document was made or received in connection with the transaction of official business by any governmental agency. This determination should be made by considering the totality of circumstances.

It is important to note that just because a record is covered by the Act, it is not necessarily open to public inspection. Many records covered are confidential and not accessible to the public.

C. Records of Nongovernmental and Quasi-governmental Bodies

The courts in Tennessee have held that some nongovernmental and quasi-governmental entities, as well as the boards of these bodies, are subject to the Act. To determine if the body is subject, the courts in Tennessee use the “functional equivalency” test analysis. *Memphis Publishing Co. v. Cherokee Child & Family Services*, 87 S.W. 3d. 67 (Tenn. 2002). If the body is acting as the functional equivalent of government, its records are covered by the Act. Here, too, one must consider the totality of circumstances; however, the four (4) factors that the courts have expressly set out as part of the functional equivalency analysis are:

1. Whether the entity is performing a traditional governmental function;
2. The level of governmental funding;
3. The extent of governmental involvement or control; and
4. Whether the entity was created by the government.

Nongovernmental entities found to be covered by the Act include a sports authority, *Op. Tenn. Atty. Gen. No. 96-011* (Feb 6, 1996); sublessees of municipally owned property, *Creative Restaurants Inc. v. Memphis*, 795 S.W. 2d. 672 (Tenn. Ct. App. 1990); and a private prison corporation contracted with the State to house inmates, *Friedmann v. Corrections Corporation of America*, 310 S.W. 3d 366 (Tenn. Ct. App. 2009).

D. Documents in Electronic and Other Non-paper Formats

As the quantity of records produced by municipalities expands, the use of technology becomes increasingly necessary to process and store the records. As this technology is implemented into the public sphere, municipalities must ensure that electronic storage does not fetter public access.

The legislative language defining what records are accessible to the public is intentionally broad. Electronic records are subject to public records and retention requirements just like all other records. The language of T.C.A. § 10-7-121 provides that electronically stored records must, like their paper counterparts, be made available for public inspection. This, coupled with case law, solidifies the notion that regardless of format, public records are accessible to the public during municipal business hours.

The Tennessee Supreme Court addressed the issue of access to electronically maintained records and information in *The Tennessean v. Electric Power Board of Nashville*, 979 S.W. 2d 297 (Tenn. 1998). In that case, specific categories of electronically stored information were requested. In order for the requested information to be provided to the requestor, a program had to be created to extract the information. The Court held that the information was public information and the governmental entity was required to create a program or have a program created to extract the requested information.

The court also addressed electronically stored records and information in *Lance v. York*, 359 S.W. 3d 197 (Tenn. Ct. App. 2011). While there is no language in the Act that explicitly states that a requestor has the right to choose the format in which a requested record is produced, the court in *York* did state that when records are maintained in electronic format and are requested in that format, the records should be provided electronically. *Id.* at 203.

Email communications, voicemails and text messages that are sent or received as part of municipal business are also subject to the Act, whether sent or received on personal equipment or equipment owned by a municipality. As is the case with all other municipal records, municipal employees and officials are required to retain electronic records based upon the content of the records. As such, employees and officials should be familiar with the municipality's adopted retention policy to determine what, if any emails, text messages and voicemails are required to be retained.

Municipal Records Categories

Reference Number: MTAS-435

Click on the topics listed below in this section for more information

Business and Financial Records

Reference Number: MTAS-436

There are a number of provisions within the Tennessee Code that make certain business and financial records confidential. Some of these exceptions include:

- T.C.A. § 6-54-142 makes any contract or agreement that obligates public funds as part of a municipality's economic and community development program to assist new and existing businesses and industries, together with all supporting documentation, accessible to the public as of the date the contract or agreement is made available to the members of the governing body, but not before that time. Requires the governing body to publicly disclose the proposed contract or agreement in a manner that will fairly inform the public of the proposed contract or agreement before the vote. Requires trade secrets received to be maintained as confidential. Also requires marketing information and capital plans that are provided with the understanding that they are confidential to be maintained as such until the provider of the information no longer requires the information to be maintained as confidential.
- T.C.A. § 10-7-504(a)(19) makes credit card numbers and related PIN numbers or authorization codes in the possession of a municipality confidential.
- T.C.A. § 10-7-504(a)(20) makes the "private records" of consumers maintained by a municipal utility confidential. Private records is defined to include "credit card number, social security number, tax identification number, financial institution account number, burglar alarm codes, security codes, access codes, and consumer-specific energy and water usage data except for aggregate monthly billing information."
- T.C.A. § 10-7-504(a)(22) makes the "audit working papers" of the Comptroller's office and municipal internal audit staff confidential. Audit working papers is defined to include, "auditee records, intra-agency and interagency communications, draft reports, schedules, notes, memoranda and all other records relating to an audit or investigation."
- T.C.A. § 67-4-722 provides that only the name and address of any current or former owner of a business, as the information appears on any business license or application, is accessible to the public.
- T.C.A. § 67-1-1702 provides that any tax return filed or submitted with the Commissioner of Revenue or tax information or tax administration information received by, recorded by, prepared by, furnished to, or collected by the Commissioner.

Election and Voter Registration Records

Reference Number: MTAS-437

Generally, election and permanent voter registration records are open to public inspection. The Tennessee Court of Appeals held, in *Chattanooga Publishing Co. v. Hamilton Co. Election Comm'n*, No. E2003-00076-COA-R3-CV, 2003 WL 22469808, (Tenn. Ct. of App. Oct. 31, 2003), that election records are accessible to the public, unless covered by a confidentiality provision, even when they become part of a TBI investigation, if they were requested prior to the investigation.

There are, however, a few exceptions in State law that make specific types of election records confidential. T.C.A. § 2-11-202(a)(5) protects reports generated as the result of an investigation into potential election law violations. Additionally, Article IV, Section 4 of the Tennessee Constitution provides that all elections, except those made by the General Assembly, "shall be by ballot". The Tennessee Supreme Court, in *Mooney v. Phillips*, 118 S.W. 2d 224, 226, (Tenn. 1938) stated, "the prime objective of constitutional provisions that voting shall be by ballot is to insure secrecy to the voter in expressing his choice as between candidates." Based upon this language, the manner in which a registered voter votes in an election is also confidential.

Personnel Records

Reference Number: MTAS-438

Personnel records clearly fall under the Act's definition of public record and are thus accessible to the public. Salary information, disciplinary records, and employment applications are all open for public inspection, subject to any required redaction. Other personal information such as Social Security numbers and bank account and routing numbers, medical records, and driver's license information is confidential and should never be released. Almost every personnel file contains confidential information. This is why original personnel records should never be released. Instead, even where a requestor only requests inspection, a copy of the requested records should be made, and all confidential information should be redacted before inspection occurs.

The following is a non-exhaustive list of provisions that make certain records and information included as part of an employee's personnel record confidential:

- T.C.A. § 10-7-504(a)(13) makes all records and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, municipal correctional officers, dispatchers, EMTs, EMT-Ps, and firefighters, both volunteer and professional, confidential.
- T.C.A. § 10-7-504(f) makes the following records maintained by a municipality in its capacity as an employer confidential, and only accessible in limited circumstances:

- (A) Home telephone and personal cell phone numbers;
- (B) Bank account and individual health savings account, retirement account and pension account information; provided, that nothing shall limit access to financial records of a governmental employer that show the amounts and sources of contributions to the accounts or the amount of pension or retirement benefits provided to the employee or former employee by the governmental employer;
- (C) Social security number;
- (D)(i) Residential information, including the street address, city, state and zip code, for any state employee; and
 - (ii) Residential street address for any county, municipal or other public employee;
- (E) Driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job;
- (F) The information listed in subdivisions (f)(1)(A)--(E) of immediate family members, whether or not the immediate family member resides with the employee, or household members;
- (G) Emergency contact information, except for that information open to public inspection in accordance with subdivision (f)(1)(D)(ii); and
- (H) Personal, nongovernment issued, email address.

- T.C.A. § 10-7-504(d) makes the records related to any employee's identity, diagnosis, treatment or referral for treatment maintained by a municipality's employee assistance program (EAP) confidential.
- T.C.A. § 50-9-109 makes drug and alcohol testing information received by an employer participating in the Drug-Free Workplace Program confidential.
- T.C.A. § 10-7-504(a) makes the medical records of any individual receiving medical treatment, in whole or in part, at the expense of the State or the municipality, confidential.

Police Personnel Records

Reference Number: MTAS-439

Some of the most commonly requested personnel records are those of law enforcement officers. The personnel records of law enforcement officers are also less accessible to the public than the personnel files of any other group of public employees.

When a request is made to inspect or receive copies of the personnel records of a law enforcement officer, the municipality must, within three days of the inspection taking place or the copies being provided, notify the officer whose records were requested. The notice must say that copies were provided or an inspection took place and include the name, address, and telephone number of the person making the inspection; for whom the inspection was made; and the date of the inspection. (T.C.A. § 10-7-503(c)).

Additionally, while the personnel records of law enforcement officers are subject to the exception in T.C.A. § 10-7-504(f) that covers all public employees, the records are also subject to the exception found in T.C.A. § 10-7-504(g) that is specific to law enforcement officers. T.C.A. § 10-7-504(g)(1)(A) allows the police chief to "segregate" information about any officer working undercover and maintain as confidential "personal information" about any officer and his or her immediate family, when there is a reason not to disclose the personal information. Personal information is defined to include, "the officer's residential address, home and personal cellular telephone numbers; place of employment; name, work address and telephone numbers of the officer's immediate family; name, location, and telephone number of any educational institution or daycare provider where the officer's spouse or child is enrolled." T.C.A. § 10-7-504 (g)(1)(A)(ii) requires the chief or the chief's designee to make a determination as to the accessibility of personal information "when a request to inspect includes such personal information *and the request is for a professional, business, or official purpose*" (emphasis added). However, under Tennessee law, a requestor does not have to state his or her purpose for requesting records. As such, municipalities should have the police chief make the determination *every time* a request is made for a law enforcement officer's personnel records, if the records contain personal information. The police chief should decide, what, if any, personal information should be redacted prior to inspection or copying of the records.

If the police chief decides to withhold any information, he or she must give specific justification in writing to the requestor within two (2) days and release the redacted records. If the police chief decides there is no justification for keeping the personal information confidential, the officer must be notified and given reasonable opportunity to oppose the release. When the request is from a business entity, it must also include the name and contact information for a supervisor for verification.

Law Enforcement Records

Reference Number: MTAS-440

While law enforcement records are generally open to public inspection, exceptions have been enacted to safeguard certain law enforcement records. Some of the exceptions include:

- Tenn. R. Crim. P. 16(a)(2) which provides that all records related to an ongoing criminal investigation or prosecution may be maintained as confidential until the conclusion of the criminal action. *Tennessean v. Metropolitan Government of Nashville*, 485 S.W. 3d 857 (Tenn. 2016) and *Schneider v. City of Jackson*, 226 S.W. 3d 332 (Tenn. 2007).
- T.C.A. § 10-7-504(t) provides that when a minor is the victim of a criminal offense, the minor's name, unless a parent or guardian waives confidentiality of the name, home, work and electronic mail address, telephone numbers, Social Security number, any photo or video depiction of the minor, and whether the defendant is related to the minor, unless the relationship is an essential element of the offense, is confidential.
- T.C.A. § 10-7-504(u) makes the recordings from body-worn cameras that capture minors, when taken inside of a school that serves any grades from K-12, the inside of a facility licensed under Title 33 or Title 68, or the interior of a private residence that is not being investigated as part of a crime scene confidential.

- T.C.A. § 37-1-154 makes the law enforcement records related to a juvenile whose case will be prosecuted in juvenile court confidential.

School and University Records

Reference Number: MTAS-441

Records of students currently enrolled in public schools, including academic, financial, and medical records, are confidential. However, statistical information not identified with a particular student may be released. Additionally, information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement, and academic degrees awarded may be disclosed. T.C.A. § 10-7-504(a)(4). The Family Educational Rights and Privacy Act (FERPA), found in 20 U.S.C. § 1232 includes similar language.

Safety and Security Records

Reference Number: MTAS-442

- T.C.A. § 10-7-504(a)(15) makes the "identifying information" of any individual who has a valid order of protection or similar protection document confidential when maintained by a utility service provider, if the individual asks that his/her identifying information be maintained as confidential and provides a copy of the order to be kept on file with the utility. Identifying information is defined to include "home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual." Similar language is found in T.C.A. § 10-7-504(a)(16) for all other governmental entities, except that maintaining identifying information as confidential is discretionary in that provision, instead of mandatory.
- T.C.A. § 10-7-504(a)(17) makes the telephone number, address and any other information that could be used to locate a domestic violence shelter, family safety center, rape crisis center, or human trafficking service provider confidential when the information is maintained by a utility service provider and provides other governmental entities with the discretion to maintain the information as confidential.
- T.C.A. § 10-7-504(a)(21)(A)(i) provides that records that would allow a person to identify areas of structural and operational vulnerability of a utility or would permit unlawful disruption to, or interference with, the services provided by a utility are confidential.
- T.C.A. § 10-7-504(a)(21)(A)(ii) provides that all contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident are confidential.
- T.C.A. § 10-7-504(a)(29) prohibits a municipality from publically disclosing "personally identifying information" about any citizen of Tennessee, unless the citizen consents, disclosure is authorized under federal or state law or disclosure is made to certain financial institutions or consumer reporting agencies under federal law. Use of personally identifying information is permitted by governmental entities when performing official functions and disclosure is permitted to other governmental entities or private individuals contracting with a governmental entity. Personally identifying information is defined to include social security numbers, official state or government issued drivers licenses or identification numbers, alien registration numbers or passport numbers, employer or taxpayer identification numbers, unique biometric data, such as fingerprints, voice prints, retina or iris images, or other unique physical representations, and unique electronic identification numbers, routing codes or other personal identifying data which enables individuals to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data.

- T.C.A. § 10-7-504(m) makes information and records directly related to the security of a municipal building confidential. This includes information and records about alarm and security systems used at a municipal building, security plans, including security-related contingency planning and emergency response plans, assessments of security vulnerability, information and records that would identify areas of structural or operational vulnerability or permit unlawful disruption to, or interference with, the services provided by the municipality, and surveillance recordings; except that portions of the recordings may be made public when they capture an incident related to public safety or security or criminal activity.

Utility Records

Reference Number: MTAS-1592

A public utility commonly possesses confidential information regarding its customers. This information including, credit card numbers, Social Security numbers, account numbers, security codes, and other identifying information in the hands of a utility must be redacted prior to the release of any public record. Furthermore, consumer-specific energy and water usage data is confidential, except aggregate monthly billing information is open to public inspection. Thus, a customer's monthly usage is open but a breakdown by date and time is not.

When a customer provides the utility with a copy of a valid protection order and requests that his/her identifying information be maintained as confidential, all identifying information for the customer in the possession of a private or public utility service provider that could be used to locate the customer is to be maintained as confidential and is not open to the public.

Records of a utility that would identify areas of vulnerability or allow disruption of utility service are likewise confidential.

Policies and Procedures

Reference Number: MTAS-443

Click on the topics listed below in this section for more information

Open Records Procedures

Reference Number: MTAS-444

Tennessee law allows municipalities to adopt reasonable rules and regulations relating to accessing public records. Every municipality was statutorily required to have a public records policy adopted by July 1, 2018. The policy was, at a minimum, required to include:

1. The process for making requests to inspect public records or receive copies of public records and a copy of any required request form;
2. The process for responding to requests, including redaction practices;
3. A statement of any fees charged for copies of public records and the procedures for billing and payment; and
4. The name or title and the contact information of the individual or individuals within such governmental entity designated as the PRRC.

MTAS developed a sample public records resolution to assist municipalities in adopting a policy. The sample resolution is found here: <https://www.mtas.tennessee.edu/knowledgebase/sample-resolution-adopting-...> [3].

Fees and Copying

Reference Number:

MTAS-445

Municipal records must be accessible to the public during regular business hours. A municipality has no legal authority to charge any fee for viewing/ inspecting public records, unless state law requires a fee to be assessed. T.C.A. § 10-7-503(a)(7)(A)(i). If a requestor wants to merely view a public document, generally, no fee can be assessed.

More often, however, the requestor will want a copy of the requested records or information. If the record is public and not covered by an exemption, the requestor has a right to inspect the requested record and a right to obtain a copy or duplicate. T.C.A. § 10-7-506(a). Municipalities may adopt and enforce reasonable rules governing the making of copies of public records and those rules should be included in the municipality's public records policy.

If a municipality assesses fees for copies and duplicates, the municipality's public records policy should also include how those fees are assessed. The OORC established the Schedule of Reasonable Charges (hereinafter "the Schedule") in 2008 that municipalities can adopt; however, municipalities are not required to adopt the Schedule. Any municipality assessing fees for copies or duplicates that are higher than those set out in the Schedule must prove and document through a cost analysis that the actual cost to the municipality for copying or duplicating records exceeds the fees in the Schedule. MTAS strongly encourages every municipality to establish and assess its fees in accordance with the Schedule ^[1]. The Schedule sets the following as reasonable charges:

- Black and white copy, 8 ½ X 11 or 8 ½ X 14 \$0.15
- Color copy, 8 ½ X 11 or 8 ½ X 14 \$0.50

Duplication of other materials such as DVDs, CDs, audio tapes, maps, plats, etc., should be reproduced at actual cost. If a municipality lacks the means to reproduce a requested record, the PRRC may use a private vendor. When doing so, the PRRC must use the most cost efficient method of reproducing the requested record.

The Schedule also provides that after one hour of labor is expended on a request for copies, the requestor can be assessed a labor fee that includes the total time that was required to locate, retrieve, review, redact and copy the requested records. The one free hour of labor is to be deducted from the labor provided by the highest paid employee. When calculating the labor fee, a municipality may multiply the total time that each employee spends on the request by the employee's hourly wage. The Schedule is included as Appendix D.

It is important to remember that a municipality is not required to assess a fee for labor and copies; however, if fees are going to be assessed, a municipality is statutorily required to provide the requestor an estimate of the fees. T.C.A. § 10-7-503(a)(7)(C)(ii). ^[2] It is imperative that the PRRC confer with staff after a request for copies is made to determine the estimated cost of the copies and labor. That estimate should then be provided to the requestor in writing, as soon as possible and the requestor should be asked to agree to the payment of the estimate in writing. Also, a municipality has the authority, through its public records, to require all or a portion of the estimate to be paid upfront.

If a requesting party is not physically present and the requested records must be physically sent to the requestor, case law states that cities may recover actual costs associated with delivery of the records. *Waller v. Bryan*, 16 S.W. 3d 770 (Tenn. Ct. App. 1999).

[1] Municipalities that establish and assess copying and duplication fees in accordance with the Schedule are covered by the OORC's Safe Harbor Policy. <http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePolic...> [4]

[2] A municipality also has the authority to waive fees for copies and labor. However, if fees are going to be waived, there should be explicit language in the municipality's public records policy that addresses when waiver will occur.

Requests for Records

Reference Number: MTAS-446

While a requestor seeking to view or inspect records generally cannot be required to make the request in writing, it is important for the PRRC to keep written documentation of all such requests made and all responsive records provided. T.C.A. § 10-7-503(a)(7)(A)(i). The PRRC is encouraged to complete a records request form for each request to inspect received. A municipality is required to accept requests for inspection by telephone, fax, mail, in person, via email, if email is used by a municipality to conduct business, or through an Internet portal, if a municipality maintains an Internet portal that is used to make a public records request.

A municipality may require a request for copies to be made in writing and on a specific form. If a municipality requires a specific form to be used, the form is required to be provided to the requestor as quickly as possible after being requested. T.C.A. § 10-7-503(a)(7)(A)(v). A recommended best practice is to have the records request form, whether required or not, available on the municipality's website. A sample records request form is included as Appendix B. Requests for copies that are required to be made in writing must be accepted in person, via mail, via email, if email is used by a municipality to conduct business, or through an Internet portal, if a municipality maintains an Internet portal that is used to make a public records request. If a request for copies is not required to be made in writing, the request may be submitted in any of the ways permitted for a request to inspect. T.C.A. § 10-7-503(a)(7)(A)(ii-iv).

Once a PRRC receives a request for inspection or copies, access to the requested records is required to be provided as "promptly" as possible. If the requested records cannot be promptly made available, the PRRC has seven (7) business days to do one of the following:

- Provide the requested records;
- Provide the requestor a written denial of the requested record that includes the legal basis for the denial; or
- Provide the requestor a completed records request response form that includes the time needed to produce the requested records.^[1]

T.C.A. § 10-7-503(a)(2)(B).

Municipalities are required to make every reasonable effort to produce requested records as quickly as possible. Requests for voluminous or archival records will understandably require additional time. Additionally, factors such as the kind, amount, and nature of the records requested; uncertainty as to what records are requested; the location of the records requested; the format in which the records are requested; the extent of the department head's resources to locate the records at the time the request is made; intervening emergencies, problems, and other events might reasonably delay the production of requested records. However, regardless of the circumstances, records are required to be produced without unnecessary delay. In the event a municipality receives a voluminous request or a request that requires extensive review and redaction, a recommended best practice is to provide the requested records as quickly as possible, incrementally. By providing the records incrementally, as opposed to waiting an extended amount of time to provide all of the requested records at once, a municipality is able to demonstrate a good faith effort towards complying with a request.

When circumstances prevent the use of municipal copying equipment, commercial copying services may be used. In this situation, the PRRC should receive an estimate from the commercial copying service that will be used. The estimate should then be forwarded to the requestor along with an explanation of the need to use the commercial service and a timeframe for completion. Finally, the PRRC should secure an agreement to pay the estimate from the requestor before any copies are made. As with all copying, strict precautions must be taken to ensure the integrity of the records. When possible, the PRRC should oversee the commercial copying process. However, if that is not possible, a detailed inventory of the original records should be taken before they are delivered to the commercial entity, and then inventoried again upon return.

[1] T.C.A. § 10-7-503(a)(2)(B)(iii) requires a municipality to use the records request response form developed by the OORC when it is going to take beyond seven business days to make the requested records available. This form is available as Appendix C.

Maintaining the Integrity of Records

Reference Number: MTAS-447

A municipality's records serve as the legal foundation for all of its actions; therefore, preserving these records is of paramount importance. With few exceptions, original records should never leave the physical custody of the records custodian.^[1]

For guidance on issues related to records maintenance, see the MTAS publication *Records Management for Municipal Governments*. This document is available at <http://www.mtas.tennessee.edu/reference/records-management-municipal-governments> [5].

[1] When a municipality, through its public records policy, allows a requestor to bring in his/her own copying equipment to copy public records, the PRRC remains responsible for maintaining the integrity of the records being copied. As such, the PRRC should be present during the copying process or copies of the originals should be provided to the requestor for copying.

Redaction Process

Reference Number: MTAS-448

Deciding what, if any, information is required to be redacted from a public record is often a difficult decision to make. Records that are otherwise accessible to the public often contain confidential information. However the fact that there is some confidential information in a record generally does not make the entire record confidential. It is the duty of the municipality to redact the confidential information before providing the remaining public information to the requestor. It is important that confidential information be redacted from records before the records are made accessible to the public, given that there are some confidentiality provisions that include criminal penalties for unlawful disclosure.

Before information is redacted from a public record, the PRRC should identify the provision within State law that makes the information confidential. A number of exceptions are included in this publication; however the list is not exhaustive. A more comprehensive list of exceptions is now available on the OORC's website in a searchable database at <https://apps.cot.tn.gov/PublicRecordsExceptions> [6]. In situations where the PRRC is unsure about whether information should be redacted, your municipal attorney and/or your MTAS management consultant should be consulted.

When Requests for Records are Denied

Reference Number: MTAS-449

When a municipality denies a request for records or impedes a requestor's ability to access public records, the Act guarantees the requestor's right to petition a court for access to the records. T.C.A. § 10-7-505(a). At trial, the municipality has the burden of proving that it did not violate the Act. T.C.A. § 10-7-505(c). A court must then weigh the evidence presented by the municipality against the court's duty to construe the Act "to give the fullest possible access to public records." T.C.A. § 10-7-505(d). If the court finds that the municipality "willfully" violated the Act, the "court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the municipality." T.C.A. § 10-7-505(g).

When Requestors Fail to Inspect in a Timely Manner or Pay for Copies

Reference Number: MTAS-3001

For nearly 60 years, there was language in the act that set out the recourse that a citizen had when he/she felt that a municipality failed to provide access to requested records, but there was no language in the Act that provided municipalities any recourse when requestors failed to inspect in a timely manner or failed to pay for requested copies. However, both of these issues are now addressed by the language in T.C.A. § 10-7-503(a)(7)(A)(vii)(a)-(b). Now, if a requestor makes two (2) requests to inspect within a six (6) month period and fails to inspect the records within 15 days of being notified that they are available to inspect, the municipality is not required to comply with any public records request from the requestor for six (6) months from the date that the second request was made, unless the municipality determines that failure to inspect was for a good cause. Additionally, when a request for copies is made, an estimate is provided to the requestor in writing, the requestor agrees to pay the estimate, which should also be in writing, the copies are produced and the requestor fails to pay for the copies, the municipality is not required to comply with any public records request from the requestor until the requestor pays for copies that were produced.

Office of Open Records Counsel

Reference Number: MTAS-450

The OORC is housed within the Office of the Comptroller of the Treasury and receives comments and guidance from a 17 member advisory committee. The OORC provides local governments with information and informal opinions on public records questions. These opinions are available for viewing on the OORC website. Not only are opinions issued by the OORC valuable for the information contained therein, they can also provide a safe harbor for employees who rely on them. If a municipality is sued for violation of the Act, a court may consider guidance provided by the OORC when determining whether a municipality willfully denied a requestor's public records request.

Additionally, the OORC is available to mediate disputes between local governments and requesting citizens. The OORC also developed several policies and a number of forms, one of which is required to be used and others that may be used by municipalities. The forms and policies are found at <https://www.comptroller.tn.gov/openrecords/forms.asp> [7].

Sample Forms, Letters and Policies

Reference Number: MTAS-451

Click on the topics listed below in this section for more information

Establishing Procedures for Inspection of Public Records

Reference Number: MTAS-452

Office of Open Records Counsel Declares Fees for Production of Public Records in the City of Hendersonville Must be Established by Ordinance

In late September the Office of Open Records Counsel (OORC) released an opinion [8] addressing the adoption of a public records policy in the City of Hendersonville. A more recent version [9], updated for clarification, was released on October 14. In the opinion the OORC stated that the city's policy must be adopted by ordinance and that a resolution was inadequate.

To charge a citizen for copies of public records, a city must properly adopt a policy. ⁽¹⁾ Hendersonville, like most cities across the state, adopted the OORC's Schedule of Reasonable Charges by resolution. At the time, there was no suggestion that such a policy be adopted by anything other than a resolution. In fact, the MTAS model policy has been in the form of a resolution since its inception.

The stated question in the opinion was whether language in the Mayor-Aldermanic general law charter requiring an ordinance to establish fees for "copying and certification" is applicable to the adoption of fees for copying public records. ⁽²⁾ The authors of the charter language have indicated that its intent was limited to adopting fees for certified copies. However, when a court is interpreting statutory language and determines that statutory language is clear and unambiguous, the court simply applies its plain meaning. The OORC opinion concludes that the plain language of the provision is clear.

The opinion could have ended with only a finding that the Hendersonville charter requires an ordinance. However, the opinion does not stop there. Rather, the OORC also discusses ordinance adoption versus resolution adoption generally based on a 1982 Tennessee Attorney General Opinion that states the use of a resolution is appropriate only for acts that are "ministerial" and "temporary." ⁽³⁾ Relying on this standard, the OORC suggests that in Hendersonville, the act of adopting fees, "was not intended to be ministerial in nature nor was it meant to be temporary...." The OORC opinion's concluding footnote attempts to limit its applicability to, "the question presented that is specific to the City's charter...." Regardless, the act of fee adoption is universal among cities, as is the question of whether a resolution or ordinance is necessary.

While an opinion of the OORC is not legally binding, it does carry persuasive authority. Furthermore, compliance with OORC policies and guidelines affords a city some safe-harbor protections in the event of a legal challenge. ⁽⁴⁾ A general law city manager-commission or mayor-aldermanic charter city wishing to comply with the holdings of the OORC opinion must adopt any charges related to the production of public records by ordinance. Other cities are encouraged, by the OORC, "to review the process by which fees for copies was established to ensure compliance with all applicable charter provisions."

⁽¹⁾ T. C. A. § 10-7-503

⁽²⁾ The Mayor-Aldermanic general law charter, at T. C. A. § 6-4-204(b), reads "(b) Fees for copying and certification shall be charged as established by ordinance." The City Manager-Commission general law charter, at T. C. A. § 6-21-405 and some private act charters contain similar language.

⁽³⁾ Tenn. Att'y. Gen. Op. 82-286 (June 3, 1982).

⁽⁴⁾ T.C.A. § 8-4-604.

Ordinance Establishing Procedures for Inspection of Public Records

Reference Number: MTAS-1927

Click on the link below to download the ordinance.

Schedule for Charges for Copies of Public Records

Reference Number: MTAS-453

Section 6 of Public Chapter 1179, Acts of 2008 ("Public Chapter 1179") adds T.C.A. Section 8-4-604(a)(1) which requires the Office of Open Records Counsel ("OORC") to establish a schedule of reasonable charges ("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 under the Tennessee Public Records Act (T.C.A. Sections 10-7-503, *et seq.*) ("TPRA"). The Schedule of Reasonable Charges has a development date of October 1, 2008. Notification of the development was given to the Tennessee Code Commission on October 31, 2008. This Schedule of Reasonable Charges will be reviewed at least annually by the OORC. The TPRA grants Tennessee citizens the right to request a copy of a public record to which access is granted under state law. Public Chapter 1179 adds T.C.A. Section 10-7-503(a)(7)(A) which expressly prohibits a records custodian from charging a fee for inspection under the TPRA unless otherwise required by law. However, the TPRA in T.C.A. Section 10-7-506 does permit records custodians to charge for copies or duplication pursuant to properly adopted reasonable rules.

This Schedule of Reasonable Charges should not be interpreted as requiring a records custodian to impose charges for copies or duplication of public records. If a records custodian determines to charge for copies or duplication of public records, such determination and schedule of charges must be pursuant to a properly adopted rule and evidenced by a written policy authorized by the governmental entity's governing authority. Application of an adopted schedule of charges shall not be arbitrary. Additionally, excessive fees and other rules shall not be used to hinder access to nonexempt, public records. A records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity's properly adopted written policy. Pursuant to Tennessee case law, a records custodian may also require payment for the requested copies or duplication prior to the production of the copies or duplication.

Copy Charges

- A records custodian may assess a charge of 15 cents per page for each standard 8 ½ x11 or 8 ½ x14 black and white copy produced. A records custodian may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies.
- If a public record is maintained in color, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy. If the requestor then requests a color copy, a records custodian may assess a charge of 50 cents per page for each 8 ½ x11 or 8 ½ x14 color copy produced.
- If a records custodian's actual costs are higher than those reflected above or if the requested records are being produced on a medium other than 8 ½ x11 or 8 ½ x14 2 paper, the records custodian may develop its own charges. The records custodian must establish a schedule of charges documenting "actual cost" and state the calculation and reasoning for its charges in a properly adopted policy. A records custodian may charge less than those charges reflected above. Charges greater than 15 cents for black and white, and 50 cents for color, can be assessed or collected only with documented analysis of the fact that the higher charges actually represent such governmental entity's cost of producing such material; unless there exists another basis in law for such charges.
- The TPRA does not distinguish requests for inspection of records based on intended use, be it for research, personal, or commercial purposes. Likewise, this Schedule of Reasonable Charges does not make a distinction in the charges assessed an individual requesting records under the TPRA for various purposes. Other statutory provisions, such as T.C.A. Section 10-7-506(c), enumerate fees that may be assessed when specific documents are requested for a specific use. Any distinctions made, or waiver of charges permitted, must be expressly permitted in the adopted policy.

Additional Production Charges

- When assessing fee for items covered under the "Additional Production Charges" section, a records custodian shall utilize the most economical and efficient method of producing the requested records.

- Delivery of copies of records to a requestor is anticipated to be by hand delivery when the requestor returns to the custodian's office to retrieve the requested records. If the requestor chooses not to return to the records custodian's office to retrieve the copies, the records custodian may deliver the copies through means of the United States Postal Service and the cost incurred in delivering the copies may be assessed in addition to any other permitted charge. It is within the discretion of a records custodian to deliver copies of records through other means, including electronically, and to assess the costs related to such delivery.
- If a records custodian utilizes an outside vendor to produce copies of requested records because the custodian is legitimately unable to produce the copies in his/her office, the cost assessed by the vendor to the governmental entity may be recovered from the requestor.
- If the records custodian is assessed a charge to retrieve requested records from archives or any other entity having possession of requested records, the records custodian may assess the requestor the cost assessed to the governmental entity for retrieval of the records.

Labor Charges

- "Labor" is defined as the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.
- "Labor threshold" is defined as the labor of the employee(s) reasonably necessary to produce requested material for the first hour incurred by the records custodian in producing the material. A records custodian is not required to charge for labor or may adopt a labor threshold higher than the one reflected above.
- A records custodian is permitted to charge the hourly wage of the employee(s) reasonably necessary to produce the requested records above the "labor threshold." The hourly wage is based upon the base salary of the employee(s) and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by the required hours to be worked per year. For example, an employee who is expected to work a 37.5 hour work week and receives \$39,000 in salary on an annual basis will be deemed to be paid \$20 per hour. Again, a records custodian shall utilize the most cost efficient method of producing the requested records.
- In calculating the charge for labor, a records custodian shall determine the number of hours each employee spent producing a request. The records custodian shall then subtract the one (1) hour threshold from the number of hours the highest paid employee(s) spent producing the request. The records custodian will then multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage. Finally, the records custodian will add together the totals for all the employees involved in the request and that will be the total amount of labor that can be charged.
- Example: The hourly wage of Employee #1 is \$15.00. The hourly wage of Employee #2 is \$20.00. Employee #1 spends 2 hours on a request. Employee #2 spends 2 hours on the same request. Because employee #2 is the highest paid employee, subtract the one hour threshold from the hours employee #2 spent producing the request. Multiply the number of hours each employee is able to charge for producing the request by that employee's hourly wage and then add the amounts together for the total amount of labor that can be charged (i.e. $(2 \times 15) + (1 \times 20) = \50.00). For this request, \$50.00 could be assessed for labor.

Questions regarding this Schedule of Reasonable Charges should be addressed to the OORC.

Office of Open Records Counsel
505 Deaderick Street, Suite 1700
James K. Polk Building
Nashville, Tennessee 37243

(615) 401-7891, Fax (615) 741-1551 Toll free number: 1-866-831-3750
Email address: open.records@cot.tn.gov [10]

Revised January 2013

Records Request Denial Letter

Reference Number:

MTAS-454

RECORDS REQUEST DENIAL LETTER

(Insert Agency Name and Address)

(Insert Date)

Dear Sir or Madam:

On (insert date) this office received your open records request to inspect/receive copies of (insert type of records). After reviewing the request, this office is unable to provide you with either all or part of the requested record(s). The basis for this denial is:

_____ No such record(s) exist.

_____ This office is not the records custodian for the requested record(s).

_____ Additional information is needed to identify the requested record(s):

_____ The following law (citation and brief description why access is denied):

_____ Tenn. Code Ann. Section: _____

_____ Court Rule: _____

_____ Common Law Provision _____

_____ Federal Law (HIPAA, FERPA, etc.) _____

If you have any additional questions, please contact (insert contact Person and phone number).

Sincerely,

(Record Custodian's signature and title with contact information)

Guidelines for Responding to Requests for Public Records

Reference Number: MTAS-457

In Tenn. Code Ann. Section 10-7-505(d), the Tennessee General Assembly declares that the Tennessee Public Records Act (hereinafter "TPRA") "shall be broadly construed so as to give the fullest possible access to public records." Courts in Tennessee have opined that unless there is a clear exception provided in law, all records of a governmental entity are to be open to citizens for inspection and/or copying. However, these Courts have also acknowledged the ability of records custodians to adopt reasonable rules governing the manner in which records request are to be made and fulfilled.

In an effort to provide records custodians with a resource that can be utilized when responding to public records request made pursuant to the TPRA, the Office of Open Records Counsel (hereinafter "OORC") in conjunction with the Advisory Committee on Open Government (hereinafter "ACOG") has developed "Best Practices Guidelines for Records Custodians Responding to Requests for Public Records." Records custodians must follow the provisions of the TPRA. The guidelines serve as a resource for records custodians, but records custodians are not required to adhere to the guidelines. However, a Court may consider these guidelines in determining whether action by a records custodian is willful [Tenn. Code Ann. Section 10-7-505(g)]. These guidelines will be reviewed at least annually by the OORC.

See https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/BestPractices_1-20-17.pdf [11]

Definitions:

Records custodian: the office, official or employee lawfully responsible for the direct custody and care of a public record and is not necessarily the original preparer or producer of the record. A governmental entity may have more than one records custodian.

Public records: defined in Tenn. Code Ann. Section 10-7-503(a)(1): As used in this part and Title 8, Chapter 4, Part 6, "public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

Redacted record: a public record otherwise open for public inspection from which protected information has been removed or made obscured prior to release or inspection.

Requestor: a Tennessee citizen requesting access to or a copy of a public record.

Governmental entity or agency: this includes but is not limited to the state, any political subdivision, agency, institution, county, municipality, city or sub-entity. Note, certain associations, non-profits, and private entities are also subject to the TPRA.

Best Practices Guidelines (2013):

1. To the extent possible, a governmental entity should have a written public records policy properly adopted by the appropriate governing authority. The policy should be applied consistently throughout the various offices, departments, or divisions within a governmental entity; however, when a particular office, department or division has a need for a policy that is distinct from that of the entire governmental entity, a separate policy should be adopted. The policy should include:

- a. the process for making requests to inspect public records and/or to receive copies of public records (including whether government issued photo ID's are required and whether written requests for copies are required);
- b. the process for responding to requests (including the use of required forms); and
- c. whether and when fees will be charged for copies of public records (including establishment of charges pursuant to the Schedule of Reasonable Charges).

The policy should balance the governmental entity's need to function efficiently and to maintain the integrity of records with the public's right to access records pursuant to the TPRA.

2. Whenever possible, one person within each governmental office, department, or division should be designated as the public records request coordinator. This person will ensure that requests made pursuant to the TPRA are routed to the appropriate records custodian and that requests are fulfilled in a timely manner. It is suggested that this individual be knowledgeable about the TPRA, as well as the records management system being utilized and any written public records policy that has been adopted.
3. A records custodian should make requested records available as promptly as possible in accordance with Tenn. Code Ann. Section 10-7-503.
4. A records custodian should strive to respond to all records requests in the most economical and efficient manner possible. For example, when labor charges are going to be assessed, qualified staff persons with the lowest hourly wage should be utilized to produce the requested records.
5. To the extent possible, when records are maintained electronically, records custodians should produce records request electronically. Records should be produced electronically whenever feasible as a means of utilizing the most "economical and efficient method of producing" records.
6. If a governmental entity maintains a website, records custodians should post as many records, and particularly records such as agendas and minutes from meetings, on the website whenever it is possible to do so. A records custodian Best Practices may direct a requestor to the website for requested records. However, a requestor may still exercise the right to inspect the public record during regular business hours in the office of the records custodian and/or to receive a copy or duplicate made by the records custodian.
7. Whenever possible and especially in situations where redaction is necessary, once a records request has been completed and there is a reasonable expectation that the same records will be requested in the future, a records custodian should maintain a copy of the redacted records so that any future request can be easily located and copied.
8. When a records custodian receives a records request for a large volume of records and reasonably determines that production of the records should be segmented, the requestor should be notified that the production of the records will be in segments and that a records production schedule will be provided as expeditiously as possible.
9. If a records request is made to a records custodian who is not the appropriate custodian of the requested records, the records custodian when denying the request should make the requestor aware of the appropriate records custodian (if known) whenever possible. However, it should be noted that the statutory time frame for responding to the request is not triggered until the request is made by the requestor to the appropriate records custodian.
10. If a records custodian has provided what is thought to be all records responsive to a public records request and then discovers that records were omitted, the requestor should be made aware of the omission and the records produced as quickly as practicable.
11. Whenever a record is redacted, a records custodian should provide the requestor with the basis for redaction when the redacted records are provided to the requestor. A records custodian is not required however to produce a privilege log.
12. Whenever possible, a records custodian should have a designated supervised space available during normal business hours where requestors can inspect public records.
13. To the extent a records custodian does not have the ability to make copies or duplicates of a requested record, a records custodian should notify the requestor of such and identify the vendor that will be used to produce the requested records, as well as the estimated cost. The inability of a records custodian to internally produce a duplicate or copy of a record does not eliminate the obligation to provide a duplicate or copy if requested.
14. When a records custodian is unclear as to the records that are being requested, it is suggested that the custodian contact the requestor in an effort to clarify and/or Best Practices Guidelines narrow the request. If, after attempting to clarify the request, the records custodian is still unable to determine what is being requested, the request should be denied based upon the requestor's failure to sufficiently identify the requested records in accordance with the requirements of the TPRA.
15. For purposes of developing a policy that authorizes the assessment of fees, including charging for labor, it is suggested that a governmental entity consider the following:
 - a. whether waivers or reduction of charges will be permitted, based on:

- (1) number of copies or minimum charge amount; or
 - (2) type of record: whether the requested document is a document that is produced on a regular basis, requested on a regular basis and is easily accessible (i.e. records that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held in the previous calendar month); and
- b. whether the administrative cost of documenting fees and processing the payment (including internal controls) exceeds the cost of copying and labor.
16. Whenever possible, a records custodian should require and receive either full or partial payment of the estimated charges prior to production of copies of the requested records.
 17. If a records custodian is going to segment the production of requested records, the requirement for payment prior to the production of the records also should be segmented.
 18. When a governmental entity has the ability to accept multiple forms of payments, that could include cash, checks, credit or debit cards, and money orders, it is suggested that the governmental entity permit such forms of payment for copies of public records.
 19. A records custodian must provide requestors with an estimate of the charges to be assessed for copies and labor. Whenever possible, a records custodian should provide the estimate prior to producing the requested copies of records and should itemize the estimate.
 20. State records custodians who have questions about how to respond to a records request should contact the Office of Attorney General and Reporter. All other records custodians who have questions about how to respond to a records request should contact the Office of Open Records Counsel.

Revised January 2013

Policy for Frequent and Multiple Requests for Public Records

Reference Number: MTAS-456

Reasonable Charges a Records Custodian May Charge for Frequent and Multiple Requests for Public Records

NOTE: The Office of Open Records Counsel reviews this schedule annually.

See <https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/ScheduleofReasonableCharges.pdf> [12]

Section 6 of Public Chapter 1179, Acts of 2008 ("Public Chapter 1179") adds T.C.A. Section 8-4-604(a)(2) which requires the Office of Open Records Counsel ("OORC") to establish a separate policy related to reasonable charges which a records custodian may charge for frequent and multiple requests for copies of public records under the Tennessee Public Records Act (T.C.A. Sections 10-7-503 *et seq.*) ("TPRA"). This Policy will be reviewed at least annually by the OORC.

This Policy is to be used in connection with the Schedule of Reasonable Charges dated October 1, 2008. This Policy should not be interpreted as requiring a records custodian to impose charges for copies or duplication of public records. However, if the records custodian does determine to impose charges for copies or duplication, this Policy permits the records custodian to calculate labor charges differently for frequent and multiple requests.

If a records custodian determines to charge for frequent and multiple requests for copies or duplication of public records in accordance with this Policy, such determination and charges must be pursuant to a properly adopted rule and evidenced by a written policy authorized by the governmental entity's governing authority. The authority shall specify the level of aggregation (whether by agency, entity, department, office or otherwise); however, such level of aggregation, as well as excessive fees and other rules shall not be used to hinder access to non-exempt public records. A records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity's properly adopted written policy.

The Schedule of Reasonable Charges provides that a records custodian may assess a requestor a fee for any labor reasonably necessary to produce copies of requested records after the records custodian spends one (1) hour (or if the records custodian establishes a threshold higher than one (1) hours, any increment of time over that higher threshold) producing the requested records. For purposes of this policy, during each calendar month records custodians in any department, division, agency, bureau, board, commission or other separate unit of state, county, or municipal government as authorized by the appropriate governing authority may aggregate the number of requests for copies made per requestor. When the total number of requests made by a requestor within a calendar month exceeds four, a records custodian may begin to charge the requestor a fee for any and all labor that is reasonably necessary to produce the copies of the requested records after informing the requestor that the aggregation limit has been met. Request for items that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held in the previous calendar month, are exempt from this policy. A records custodian may adopt a labor threshold higher than one (1) hour or a threshold higher than four (4) requests per calendar month for purposes of aggregation. Disputes as to aggregation shall be brought to the Office of Open Records Counsel.

Additionally, a records custodian may aggregate the total number of public records requests made by a requestor and by any other individual, if the records custodian reasonably believes the requestor to be acting in concert with or as the agent of another person, entity or organization. A records custodian choosing to aggregate requests by multiple requestors must inform the requestors of the determination to aggregate and that they have the right to appeal the decision to aggregate to the Office of Open Records Counsel. When aggregating the labor of multiple requestors, the records custodian must file a Notice of Aggregation of Multiple Requestors with the Office of Open Records Counsel. This form is available on the Office's website.

Policy for Electronic Mail

Reference Number: MTAS-2106

Tennessee governments — including cities — that operate or maintain an electronic-mail (e-mail) system must adopt a written policy about monitoring e-mail communications. Information related to the written policy can be accessed on the MORE page [Written Email Policy Required](#) [13] and a sample acknowledgement for users of the email system can be accessed at the MORE page [Sample Acknowledgement Email Policy](#) [14].

Records Management for Municipal Governments

Reference Number: MTAS-458

Records management is often an overlooked issue in both public and private sector offices; however, this task is becoming more vital every day. In this information age, everyone, from the average citizen to the largest corporation or government, must find a way to preserve, manage, store and organize their records. Whether your city has a population of 1,500 or 650,000, it is necessary to keep accurate wage and hour records on employees and have a comprehensive system for tracking documents. Good managers will expend significant time and effort in planning and making decisions about their labor force and their facilities, but few take the time to think about their records. The records of an office are often as essential to its operation as its employees, facilities and equipment. New employees can be hired and trained to replace those who leave; new office space and equipment can be leased or purchased to replace anything that is lost, even in cases of the worst disasters. If your records are lost or destroyed, however, there is nowhere to go to purchase replacements, and they often cannot be recreated.

For certain city officials, such as the city recorder, record keeping is one of the most important duties and purposes of the office. For others, such as employees of a police department, record keeping is incidental to the fundamental purpose of the job, which is law enforcement. Nevertheless, these offices still must comply with federal and state statutes that require accurate records regarding personnel, finances and other aspects of the office. Good records management practices will benefit both types of offices.

The items listed below will give you a complete guide to Records Management for Municipal Governments.

Reasons for Records Management

Reference Number: MTAS-459

Proper records management not only conveys organizational and management benefits to an office, but also, for local government offices, it is a vital task, necessary for fulfilling important legal requirements and duties.

Space

In many cities, finding sufficient space for records is a real problem. It is rare for a city department to have all the space it needs. Most local officials would complain that the necessary records of the office are rapidly filling up all available space. City halls are overfilled with old and archived records, often found stuffed into basements, storage closets and attics. For this reason alone, it is important and cost effective for a city to implement a records management program.

Records Serve as a Legal Foundation

In a society of laws, both local governments and the citizens they serve are dependent upon good documentation to define their legal status. Court orders, tax records, and minutes of city council meetings are just a few examples of important documents that create relationships, establish rights and liabilities, and authorize certain actions. When disputes arise over legal issues, it is important to have good documentation on which to rely. Local governments have an important responsibility to preserve these records. Proper records management will ensure that these records are preserved and can be found when needed.

Open Records Requirements

Since government records generally are open to public inspection, the task of managing records becomes even more important and more complicated. The principle of allowing public access to government records, combined with the so-called Sunshine Law, which requires open meetings, is considered an important check on government and an important defense against corruption in public office and mismanagement of public resources. Unless there is a specific statutory exemption that makes a record confidential, the public has the right to inspect and copy the records of government agencies. Not only must you, as a municipal official, preserve and keep records, you must allow public access to these records for inspection. Unless your records are well organized and well protected, you may not be able to comply with public requests for information. This can undermine public confidence in government and hinder your city's relationship with the citizens it serves.

Historical Preservation of Documents

Cities play a vital role in preserving our nation's history. The documents and records of local governments give us insights into the lives of our ancestors and the circumstances of their times. Cities with too many records and too little space for them routinely end up placing them wherever they can. In many cases, these storage areas don't adequately protect records from the elements. Heat, moisture, mildew, insects and vermin can quickly render records useless. Your municipality and its citizens may be losing important information as well as a part of the community's heritage. With proper records management, the important records are preserved; the less essential records are destroyed when no longer useful so they do not take up valuable space; the records are cataloged and organized so that officials and the public can access them; and records are stored under proper conditions to enable long-term preservation.

Legal Issues

Reference Number: MTAS-462

City governments and all the secondary offices, boards, committees and commissions of a city are creations of the law. They find their origin in either the Tennessee Constitution or statutory law. It is a long-established principle in Tennessee law that municipalities can do only those things that the law authorizes them to do.^[1] Therefore, it is vitally important to any operation of city government to know what the laws are that authorize the city to perform a function and to know what the laws are that place

limitations around that authority. There are laws that require cities and all local governments to keep records and laws that govern how a city manages its records. Both of these topics are examined in this section.

[1] *Barnes v. City of Dayton*, 216 Tenn. 400, 392 S.W.2d 813 (1965)

Laws that Require Records to be Kept

Reference Number: MTAS-463

Not every record in a government office has a corresponding statute or regulation requiring that it be kept. Many records are generated simply in the ordinary course of business without any formal legal authority mandating their creation. But creating and preserving certain other records are required by specific laws. Since these laws affecting individual records are referenced in the retention schedules at the end of this manual, this chapter discusses the sources of those laws more generally.

Federal Laws and Regulations

Municipal officials should be aware that federal laws and regulations require them to keep certain records. This is particularly true of payroll information and other employment-related records. Most of the laws regarding how we hire, fire, compensate and treat employees are generated at the federal level. The Family and Medical Leave Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act are just a few of the acts that place certain burdens on employers to keep records regarding their employees. These statutes also generate another layer of federal regulations that govern the implementation and enforcement of the acts. In addition to personnel issues, federal laws and regulations also touch topics as diverse as student records and wastewater management. Laws passed by the U.S. Congress are codified in the United States Code (U.S.C. or U.S.C.A. for United States Code Annotated). The massive amounts of rules and regulations generated by the different federal agencies are found primarily in the Code of Federal Regulations (C.F.R.).

State Laws and Regulations

Since municipal governments are instrumentalities of the state, some of the laws addressing what records must be kept by city offices and how those records should be managed are found in the Tennessee Code Annotated (T.C.A.). As with the federal government, the state of Tennessee also has a set of rules and regulations promulgated by state agencies, boards and commissions, which are published by the secretary of state and known as the Official Compilation — Rules and Regulations of the State of Tennessee.

The duties of many city officials are set forth in Title 8 and in the general law charters in Title 6 of the T.C.A. Other duties and responsibilities are found in private act charters. For many offices, there are requirements included in the duties of the office to keep and preserve specific types of records. Certain city officers and employees, such as the city recorder, human resources manager and court clerk have a major record-keeping function. The proper and efficient performance of these duties is necessary not only for the continued operation of the city government, but also for the preservation of order in our society. Even offices without a primary record-keeping function are required to keep records.

Even though city officials may change with every election, the offices themselves must maintain a level of continuity. To ensure this, the responsibility for keeping and turning over the records of city offices was specifically addressed in the statutes requiring officials to be bonded. Part of what is insured by the bond of an official is the fulfillment of a duty to "... faithfully and safely keep all records required in such principal's official capacity, and at the expiration of the term, or in the case of resignation or removal from office, ... turn over to the successor all records and property which have come into such principal's hands..."^[1] Failure to do so can result in recovery against the insurance company or sureties on the bond who may, in turn, proceed against the official in his or her individual capacity for subrogation of the claim.

Basic Record-Keeping Statutes

State laws regarding record keeping are found primarily in Title 10, Chapter 7 of the T.C.A. Parts 1 and 2 of that chapter contain a number of statutes governing preserving, transcribing and indexing records, while Part 7 pertains specifically to municipal records and retention schedules.

The State Public Records Commission

Part 3 of Chapter 7 of the T.C.A., Title 10, establishes the State Public Records Commission and designates the Records Management Division of the Department of General Services as the primary records manager for all state government records.^[2] Currently, these entities do not take jurisdiction over local government records, but they can be looked to for examples of proper records management and preservation.

Public Access

The Freedom of Information Act (FOIA)^[3] was passed by Congress in 1966 and amended in 1974. FOIA creates procedures that allow members of the public to obtain the records of federal government agencies.^[4] The Freedom of Information Act does NOT apply to city governments, nor does it apply to state or other local governments. It applies only to certain federal departments and agencies of the United States government. But you should be aware of the FOIA in the event that citizens try to assert their rights to municipal government records under that act. Different policies and procedures apply to offices under the Freedom of Information Act that are not included in the Tennessee public records statutes that apply to your office(s). Under the FOIA, citizens may request a federal agency covered by the act to perform searches of its records to locate certain information and then disclose the information, providing copies to the person making the request (subject to certain fees). As will be seen, Tennessee statutes allow broad access to public records, but they generally do not require local officials to perform searches or create new reports or responses to requests if those reports are not already a part of the office records.

[1] T.C.A. § 8-19-111.

[2] See T.C.A. §§ 10-7-301, *et seq.*

[3] 5 U.S.C.A. 552(a).

[4] Using the Freedom of Information Act: A Step-by-Step Guide, an American Civil Liberties Union Publication

Tennessee Public Records Statutes

Reference Number: MTAS-464

The Tennessee Public Records Act (hereinafter referred to as "TPRA") is found in Title 10, Chapter 7, Part 5 of the T.C.A. 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:

... All state, county and municipal records shall at all times during business hours ... be open for personal inspection by any citizen of this state, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.^[1]

The TPRA has been construed broadly by 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, however, that public access is totally without limitation.

Who Has the Right to Access Public Records?

The TPRA provides 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 determined that the word citizen includes convicted felons incarcerated as inmates within the Tennessee prison system.^[5] Although certain rights are stripped from individuals when they are convicted of a felony (e.g., 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 TPRA is not as generous with nonresidents, however. Since the language in the statute grants public access to “any citizen of this state,” the Tennessee Attorney General opined that public officials may deny requests for copies of public records based on the lack of state citizenship.^[6] Since there is no fundamental federal right to access of government records and since the TPRA only requires that access be provided to Tennessee 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 people from other states who make requests for Tennessee records. Keep in mind that although the TPRA does not affirmatively require disclosure of public records to noncitizens, neither does it prohibit the release of public records to noncitizens.^[7] Governmental entities are required to have properly adopted policies in place that address who can access municipal records. These policies should be enforced consistently and reviewed regularly.

How Should Access Be Provided?

The TPRA states that records shall be open to inspection “during business hours.” Additionally, in all cases where a person has the right to inspect public records, he or she also has the right to copies of those records.^[8] 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 bring the entire operation of an office to a halt. For this reason, each governmental entity subject to the Act is required to have a properly adopted policy in place that governs how requestors can access public records and obtain copies or duplicates of the records.^[9] 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 of access to 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 be struck down by the courts.

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 for certain historical manuscripts. Across the country, government records are disappearing from government offices and reappearing for sale in antiques stores, flea markets and specialty shops. 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.

The records custodian must promptly make available any public record not exempt from disclosure. If it is not practicable for the record to be made available promptly, the custodian must within seven business days either (1) make the record available, (2) deny the request in writing including the basis for denial, or (3) furnish the requestor with a completed records request response form developed by the Office of Open Records Counsel stating the time necessary to produce the record or information.

The records custodian may not require that a request to **inspect** public records be made in writing, but the custodian may require a request for a **copy** of a public record to be in writing or on a form provided by the Office of Open Records Counsel in the comptroller’s office. The custodian also may require a photo identification of the requestor or other form of identification suitable to the custodian to establish Tennessee residency.

The records custodian may require the requestor to pay the reasonable costs, including certain labor costs of producing and copying public records. The Office of Open Records Counsel has established a recommended schedule of fees for this purpose.

Office of Open Records Counsel

The General Assembly established the Office of Open Records Counsel in the Office of the Comptroller of the Treasury to answer questions and provide information to the public about public records. The Office provides informal opinions, creates forms for records requests and responses, establishes a suggested fee schedule, and mediates disputes about records. Information created by this office is available on its website at <https://www.comptroller.tn.gov/openrecords/> [15].

Denial of Access — Liability

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 to the record.^[10] Petitions may be filed in the chancery court or circuit court for the county where the records are located or in any other court exercising equity jurisdiction in the county.^[11] 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.^[12]

If the court determines that the petitioner has a right to inspect the records, the records must be made available unless the defendant timely files for appeal or the court certifies a question with respect to disclosure of the records to an appellate court.^[13] If a public official is required to disclose records pursuant to these procedures, he or she cannot be held civilly or criminally liable under state law for any damages caused by the release of the information.^[14] If the court determines that the government entity knowingly and willfully refused to disclose a public record, it may, at the discretion of the judge, assess all reasonable costs involved on obtaining the record, including attorney's fees, against the governmental entity.^[15] In determining whether denial of access was willful, the court may consider any guidance provided to the records custodian by the Office of Open Records Counsel.

[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).

[5] *Cole v. Campbell*, 968 S.W. 2d 274 (Tenn. 1998).

[6] Op. Tenn. Atty Gen. No. 99-067 (March 18, 1999).

[7] Op. Tenn. Atty Gen. No. 99-067 (March 18, 1999).

[8] T.C.A. § 10-7-506(a).

[9] T.C.A. § 10-7-503(g).

[10] T.C.A. § 10-7-505(a).

[11] T.C.A. § 10-7-505(b).

[12] T.C.A. § 10-7-505(c).

[13] T.C.A. § 10-7-505(e).

[14] T.C.A. § 10-7-505(f).

[15] T.C.A. § 10-7-505(g).

Which Records are Subject to Public Access?

Reference Number: MTAS-465

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] However, this presumption of openness is overcome wherever State law provides that a record is confidential.

T.C.A. § 10-7-503 itself includes some restrictions on the public's access to certain records. This section makes contingency plans of law enforcement agencies to deal with bomb threats, terrorist acts, and other acts of violence confidential and not open to public inspection. It also requires that certain information relative to law enforcement officers that is made confidential be redacted before the record is inspected. It also requires notice to a police officer within three days after the officer's personnel information has been inspected.

Confidential Records

Another statute in the Tennessee Public Records Act provides a long list of government records that must be kept confidential.^[2] This statute is amended and added to regularly by the Tennessee General Assembly. The following list reflects many of the records designated as confidential by T.C.A. § 10-7-504:

- 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 Tennessee Bureau of Investigation (TBI), 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 Driver's License Issuance Division and the Handgun Carry Permit Division of the Department of Safety relating to bogus driver's licenses and handgun carry permits issued to undercover law enforcement agents;
- Records, documents and papers in the possession of the Military Department that involve national or state security;
- Records of students in public educational institutions;
- 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 of real and personal property intended to be acquired for a public purpose;
- Proposals received by the state pursuant to personal service, professional service and consultant service contract regulations, and related records before the state has finished its complete evaluation;
- 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;
- Capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee Venture Capital Network; Records of historical research value that 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 requires that the records are kept confidential;
- Records of historical research value that 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 requires 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, correction officers, dispatchers, 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;
- 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;

- Employment records of state, county, municipal, or other public employees that contain cell phone numbers, home telephone numbers, addresses, bank account information, Social Security numbers, or driver's license information (except where driving or operating a vehicle is part of the employee's job duties) of the employee or an immediate family or household member. [NOTE: Under the law, this information in employment records should be redacted whenever possible and not be used to limit or deny access to otherwise public information.];
- Certain personnel information of undercover police officers and their immediate family or household members;
- Identifying information, such as unlisted telephone numbers, in the possession of a private or public utility service provider that could be used to locate an individual, when the utility has been provided with a copy of a valid protection document and confidentiality has been requested;
- Those parts of a record identifying an individual as a person who has been or may in the future be directly involved in the process of executing a sentence of death;
- Credit card numbers, Social Security numbers, account numbers, security codes and other identifying information in the hands of a utility;
- Records of a utility that would identify areas of vulnerability or allow disruption of utility service,^[3] and
- Certain personal information relative to law enforcement officers, in addition to that made confidential otherwise, when the information is requested for a professional, business or official purpose, and the chief determines there is a reason not to disclose the information.
- Video taken by a law enforcement body camera that depicts minors, when taken within a school that serves any grades from kindergarten through grade twelve (K–12); the interior of a facility licensed under title 33 (mental health) or title 68 (health); or the interior of a private residence that is not being investigated as a crime scene.
- Examination questions, answer sheets, scoring keys, and other examination data used for the purpose of licensure, certification, or registration of health professionals under title 63 or title 68, however, a person who has taken such an examination has the right to review the person's own completed examination; and final examination scores of persons licensed, certified, or registered as health professionals under title 63 or title 68 shall be open for inspection by members of the public, upon request.

This list of confidential records found in T.C.A. § 10-7-504 is not exclusive, however, and many other statutes, rules, and the common law dealing with specific subjects can also make a specific record confidential. ^[4] The following is a non-exhaustive list of statutes that designate certain records 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 *et seq.*);
- Certain information divulged in paternity proceedings that might be used to locate a victim or an alleged victim of domestic violence (T.C.A. § 36-2-311(e));
- Many records regarding juveniles, children and minors (T.C.A. §§ 37-1-153, 37-1-154, 37-1-155, 37-1-409, 37-1-612, 37-1-615, 37-2-408, 10-7-504);
- 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);
- Certain student information (See Title 49 of the Tennessee Code);
- Whistle-blowing reports of violations of the Education Truth in Reporting Act (T.C.A. § 49-50-1408);
- Certain records of an employer's drug testing program (T.C.A. § 50-9-109. See Op. Tenn. Atty Gen. 99-126);
- Tax returns, audits, letter rulings and other taxpayer identifying information (T.C.A. § 67-1-1702);

- Business tax statements, reports, audits and returns (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).

Note that this list highlights only some of the other provisions of the Tennessee Code that make records confidential. The Tennessee Court of Appeals held that municipal attorney work product is confidential.^[5] Additionally, the Tennessee Supreme Court ruled that sources of legal authority other than statutes may make a record confidential. For example, the Tennessee Supreme Court ruled that the Tennessee Rules of Criminal Procedure and Civil Procedure may also designate certain records as confidential.^[6] The Tennessee Supreme Court also ruled, however, that the common-law law enforcement privilege, which would make certain investigative information gathered by police departments confidential, does not apply in Tennessee.^[7] If you have a question regarding the confidentiality of a specific record not listed above, contact your city attorney or MTAS management consultant.

Maintaining Confidentiality

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.^[8] Once a confidential record has been in existence for 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. This “70-year rule” does not apply to adoption records, records maintained by the office of vital records, and records of the TBI that are confidential.^[9]

Breach of Confidential Personal Information

T.C.A. § 47-18-2901 requires municipalities to create safeguards to ensure the security of personal information on laptop computers. Failure to comply with this requirement creates a cause of action against the municipality if identity theft results.

T.C.A. § 47-18-2107 requires any holder of computerized personal information that is confidential to disclose any breach of the security of the system to any resident of Tennessee whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. If the information holder does not own the personal data, the holder must also notify the owner or licensee of the breach within 45-days following the discovery, unless a longer period of time is required due to the legitimate needs of law enforcement. The code section establishes procedures for giving the notices.

Valid Protection Documents

In addition to this large group of records made strictly confidential by state laws, T.C.A. § 10-7-504 allows persons who have obtained a “valid protection document” to request certain information that could be used to locate them be kept confidential. Protection documents are defined by the act and include orders of protection and affidavits of directors of rape crisis centers or domestic violence shelters. If the individual desiring confidentiality presents one of these documents to the records custodian for the governmental entity and requests confidentiality, the custodian of the records may choose to comply with the request or reject it. If the request is rejected, the custodian must state the reason for denying the request. If the request is granted, the records custodian must place a copy of the protection document in a separate confidential file with any other similar requests, indexed alphabetically by the names of the persons requesting confidentiality. From that point on, until the custodian is notified otherwise, any time someone requests to see records of the office, the records custodian must consult the file and ensure that any identifying information about anyone covered by a

protection document filed with the office is kept confidential before allowing any record to be open for public inspection. "Identifying information" includes any record of home and work addresses, telephone numbers, Social Security number, and "any other information" regarding the person that could reasonably be used to locate an individual. That information must be redacted from the records of the office before anyone can be allowed to inspect the records of the office. Cities and towns are not required to comply with these requests to maintain the identifying information described above as confidential. However, utility service providers are required to comply with such requests.

Student Records

Access to student records is governed by state and federal laws.^[10] The main purpose of these laws is to protect the confidentiality of these records. If your city has a municipal school system and you would like detailed information about the legal requirements affecting student records, contact your MTAS management consultant.

E-mail and Other Documents — Discovery

The Federal Rules of Civil Procedure^[11] specifically require employees to retain electronic communications, including e-mail, that is discoverable in litigation. These rules require employees to meet and confer with plaintiffs in employment litigation within 90 days after the appearance of the defendant or 120 days after a complaint has been issued. At that point, each party must disclose a copy or description of all documents, electronically stored information, and tangible things in its possession that it may use to support its claims or defenses. Therefore, these records not only must be retained, but must be categorized and may be deleted or removed based upon routine operation of a computer system or under an adopted records retention policy. Records custodians should check with their information technology departments to make sure the municipality has the technical ability to comply with the 90- and 120-day rules mentioned above.

Identity Theft Precautions

The federal Fair and Accurate Credit Transactions Act of 2003 (FACTA) — Public Law 108-159 — requires utilities and other municipal departments that defer payments for services to take precautions to protect personal identifying information in their records. The municipality must have a policy that protects personally identifying financial and medical information and provide training on the policy.

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

[2] T.C.A. § 10-7-504 .

[3] T.C.A. § 10-7-504.

[4] Op. Tenn. Atty Gen. No. 99-022 (Feb. 9, 1999).

[5] *Arnold v. City of Chattanooga*, 19 S.W. 3rd 779 (Tenn. App. 1999).

[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).

[7] *Schneider v. City of Jackson*, 226 S.W. 3d 332 (Tenn. 2007).

[8] T.C.A. § 10-7-504(b).

[9] T.C.A. § 10-7-504(c).

[10] T.C.A. § 10-7-504 and 20 U.S.C. §§1232 *et seq.*

[11] See particularly Federal Rules of Civil Procedure, nos. 26, 34 and 37.

Basic Steps in Records Management Process

Reference Number: MTAS-466

Whether or not you realize it, you already have a records management program. The problem is, it may be doing more harm than good. If your records are filed in a haphazard manner, if you don't know

exactly what you have and where you have it, if it takes you too long to find what you need, if your office space is packed to the ceiling with file cabinets and boxes, if records are stored in cabinets and boxes, if records are stored in unsuitable locations, if you throw away records too soon, or if you don't destroy records often enough, you could benefit from spending a little time, effort and resources on implementing a beneficial records management program for your office.

Evaluate Current Records System

Reference Number: MTAS-467

Your first task is to evaluate your current system of records management. In other words, conduct an inventory of the records in your office.

Appoint a Records Manager/Custodian Depending on the size of your city, you will need to appoint one or more persons within the office to serve as a records management coordinator. Having a single person responsible for your office's records management efforts who coordinates communication about your records with entities outside your office (the county public records commission, a records center or an archive) can be a key to achieving success. This person should have good organizational skills but, obviously, should not already be overwhelmed with too many other duties to be able to devote the time necessary to records management. Many city recorders are charged with the responsibility for the city's records management.

Inventory: Once you have selected someone to do the inventory, make sure they understand the information you need and the goals of the inventory.^[1] The general goals of the inventory should include:

- Identifying the various "records series" in each office;
- Describing all record locations and
- storage conditions;
- Providing dates and other useful information;
- Measuring space and equipment occupied by records; and
- Providing a basis for writing records retention schedules.^[2]

The inventory will be beneficial in a number of ways. Most obviously, it will tell you exactly what records you have and where to find them. Even if you go no further, this alone will increase the efficiency of your office. Another desirable result of an inventory is that it will help you locate records that you can throw out or otherwise destroy.

Using the inventory and the records retention schedules for your office that are located in Part Four of this manual, you probably will discover a number of records that are unnecessarily taking up space in your office or storage area. A third benefit is identifying records that are in danger. Paper records can easily be damaged by water or even excessive humidity or other environmental problems. If your inventory finds evidence of water damage to records, mold and mildew, or signs of damage from vermin, insects or other pests, take steps to remedy these problems before your office loses vital information. See the chapters in this section on Proper Storage Conditions and Disaster Preparedness for advice about dealing with these problems and establishing a safe environment for storing records long term.

Filing Systems

After you have evaluated the inventory of the records your office keeps, spend some time evaluating your filing system as well. If improvements can be made to the way you file records, you will improve administrative efficiency and reduce costs. "If every employee of an agency of local governments spends even five percent of the time searching for hard-to-find information, that time translates into very substantial sums of money, and quality of services is sure to suffer."^[3]

A good filing system will provide two major benefits to the people using it: "precise retrieval and timely retrieval."^[4] Another way of thinking about these issues is to ask, "Can I find what I want when I want it?" If your filing system results in records retrieval that takes too long, that gives you only part of what you want, or gives you back much more than you need, it is inefficient. Poor filing system performance generally is attributed to one or more of seven major factors:

- Inadequate management attention;
- Poor organization and structure of files;
- Poor labeling and indexing procedures;
- Uncontrolled growth of records;
- A high incidence of missing, misfiled or lost records;^[5]
- Inadequate or poorly trained files personnel; or
- Inadequate or no formal record- keeping procedures.^[6]

Filing Equipment

You may think all filing cabinets are alike, but that is just not true. Don't simply assume that the storage system you have cannot be improved upon. You have options to consider. Movable shelving, color-coded, open shelving systems, and even bar coding have become common in many offices that handle a large volume of records. The old standard vertical-drawer filing cabinet first came into use in the late 19th century, but many records managers consider these cabinets to be functionally obsolete for most modern office applications. "[The vertical-drawer file cabinet] is the most costly of all filing equipment, since it requires more floor space and more physical time and effort to access the folders. It also does not provide the full benefit of visual retrieval aids, such as special labeling and color coding."^[7] If you know your filing system is inefficient, consider checking into more modern equipment. Although it will cost money initially, it may save money in the long run by saving floor space in your office, thereby postponing the need for expansion or relocation, and by reducing staff time that is wasted on an inefficient filing system with cumbersome storage units.

Footnotes:

[1] You may wish to use the sample Records Inventory Worksheet located in the appendix to this manual as a guide for performing an inventory.

[2] *Managing Records on Limited Resources — A Guide for Local Governments*, p.3.

[3] *The Daily Management of Records and Information — A Guide for Local Governments* issued by the National Association of Government Archives and Records Administrators, p.1.

[4] *Ibid*, p.2.

[5] "Studies show that between one percent and three percent of an organization's records are not available to the users due to one of these causes." *The Daily Management of Records and Information*, p.3.

[6] *The Daily Management of Records and Information*, *ibid*, pp.2–3.

[7] *The Daily Management of Records and Information*, p. 8.

Develop RDAs

Reference Number: MTAS-468

Step Two: Develop RDAs

Your first question is probably "what is an RDA?" The acronym RDA stands for records disposition authorization. At a minimum level, an RDA provides a formal statement of when a record can be destroyed and what authority serves as the basis for its destruction. But these documents can be much more. A comprehensive RDA becomes a plan for the entire life of a record series from creation to final disposition.

Among other things, a comprehensive RDA should include:

- a basic description of a record series;
- how the record is created, how it is used,
- where it should be stored,

- in what format it should be kept,
- who should have access to it,
- how long it is in active use by an office,
- when to move it into inactive storage,
- whether it is vital or confidential,
- and whether or not it can be destroyed.

Fully developed RDAs differ from records retention schedules in a number of ways. Retention schedules uniformly describe the various records of an office, state whether a record is permanent, identify the minimum amount of time a temporary record must be kept, and state a legal authority or rationale for that retention period. They generally do not tell you where to keep a record, how long the record may be in active use, and when a record can be moved to inactive storage or an archive. Those determinations are office specific based on the resources available to you and the operating procedures of your office.

The retention schedules give you the foundation for writing your RDAs, but you are encouraged to consider them only a starting point. If your office handles a large number of records and a lot of people deal with them, consider putting more than the minimum into your RDAs. While they take a significant amount of work to develop, RDAs are fundamental to an efficiently operating records management program in any office with a large volume of records. Once created, they will need only periodic review to ensure that the plan you laid out for a group of records still makes sense and complies with your needs and any applicable legal requirements.

The following general principles and considerations may be helpful in making decisions about how to manage your records. They are quoted verbatim from the Tennessee State Library and Archives, Tennessee Archives Management Advisory (TAMA) 99-08 entitled "Appraisal and Disposition of Records."

If a legislative mandate requires permanent or temporary retention of any record, set of records, or class of records, then the record(s) specified in the mandate must be kept at public expense for at least as long as the mandate requires.

- A record or set of records should be retained by an agency as long as it is useful to performance of its routine functions.
- A decision to retain records beyond their active usefulness or legislative mandate is a decision to maintain them so they can be examined readily by the public. Such a decision requires a commensurate commitment of resources to continuous care and custody for the entire term of retention.
- A decision for permanent retention is a decision for perpetual care.
- Records should not be kept beyond their useful life in the public interest.
- No record that is necessary to the public interest should be destroyed.
- Records that are retained beyond their active usefulness to the routine functions of an agency must be of sufficient public interest to justify the expense of keeping and administering them, and the justification should be clearly stated, understood, and agreed to before accepting responsibility for and paying the cost to retain the record(s).
- The following kinds of records may all be appraised as having archival value for permanent retention:
 - Essential records that are needed to resume or continue operations or to re-create legal and financial status after a disaster, or that are needed to protect or fulfill obligations;
 - Records that have lasting value as legal and fiscal evidence to account for responsible government;
 - Records that are of such high evidential and historical value that they should be retained at public expense for the sake of a sound, reliable, and comprehensive understanding of the political, social, economic and historical context of government and culture.

Develop Written Policies and Procedures

Reference Number: MTAS-469

Step Three: Develop Written Policies and Procedures

Both large and small offices can benefit from having written records management policies on certain issues. The policies should adopt the records retention schedules in this manual; incorporate any RDAs developed by your office; and include policies for dealing with inactive records, for allowing public access to records and guidelines for making copies, for responding to emergencies that threaten records, for maintaining confidential records, for keeping records in alternative storage media, and for interacting with the county public records commission, the State Library and Archives, and a records center or archive if one exists in your city. MTAS recommends that personnel records, other than personnel records of undercover police officers, be kept in the central office repository by the records custodian, rather than by the different departments. Having personnel records scattered in different departments can lead to problems, including lost files and parts of files.

If you think your office has had or may have a problem with files being lost, stolen or misplaced, develop a policy and procedures for tracking files as well. Require anyone removing a file from its storage space to fill out a sign-out sheet indicating who they are, what record they are taking, and the dates of its removal and return. This procedure should help your office track misplaced records and cut down on losses. If you have an active records manager in your city, he or she may already have developed policies on some of these issues. In that case, you could simply incorporate those policies into your office procedures.

Municipalities have a great deal of flexibility in adopting the retention schedule recommended in this publication. It can be adopted by ordinance, resolution, motion, citywide policy or a records commission if the city has one; or applicable portions can be adopted as departmental policy.

Continuing Maintenance

Reference Number: MTAS-470

Step Four: Continuing Maintenance

The best records management program will quickly fall into obsolescence if the office does not make efforts to stay current. Records, particularly government records, grow at an astronomical rate. If you do not take steps regularly to move inactive records to other storage and destroy temporary records when they become eligible for destruction, they soon will fill up your filing equipment, then your office, and bring clutter and disorganization to all operations. Consider implementing an annual "records clean-up day" to reassess the records of the office and identify what can be moved or destroyed. Select a time that is not in the middle of your busy season (perhaps around the holidays), and designate a day for everyone to identify records that can be destroyed, and collect them. Remember, also, that having an appointed records management officer who can designate part of his or her time year round to keeping the office files current will go a long way toward ensuring that your records management program succeeds.

Establishing a Records Management Program

Reference Number: MTAS-471

All cities need to have some system of checks and balances to be sure that records are disposed of on schedule but not destroyed when they still may be needed for administrative, legal or historical purposes.

Cities may want to create a municipal public records commission (PRC) to act as steward of their records. Unlike counties, cities are not required to have a public records commission oversee their records management and disposition. This commission could comprise the following city officials: mayor, city manager, city recorder, city archivist, city judge and a genealogist. This commission should be established by resolution. Of course, the composition of the commission is not mandatory, but cities should strive to choose members who know about the administrative, legal and historical value of the records.

Even a small city that may not be able to marshal a commission should adopt rules and regulations governing the management of the municipal public records. These regulations should establish standards and procedures covering:

- Reproduction of records;
- Security of records;
- Disposal of originals;
- Adoption and dissemination of schedules for the retention and disposition of records; and
- Physical destruction or other disposition of public records.

For cities that create a municipal public records commission and desire to become even more progressive, the State Library and Archives recommends the following list of activities and guidelines in one of its Tennessee Archives Management Advisories.[1] These activities and guidelines were drafted for both municipal and county records commissions and have been edited where necessary for these reasons.

The commission should:

1. Hold meetings at least twice a year or more often as circumstances require.
2. Elect its own officers (at least a chairman and a secretary).
3. Keep records of decisions and transactions.
4. Report at least once a year to the local executive and legislative body on commission activities and the state of records and archives management in the locality.
5. Frame regulations for efficient management of local government records and archives to be adopted as resolutions of the legislative body.
6. Authorize or disapprove requests from municipal offices to destroy original records, using records schedules prepared by MTAS for guidance.
 - Public records commissions may authorize retention of records that are not designated as permanent by MTAS schedules but only if the means to preserve and manage the records for public inspection are assured.
 - Public records commission may NOT authorize destruction of any records that are designated permanent by MTAS schedules unless the records have first been copied onto a durable, archival medium that assures permanent preservation and a readily available means for prompt public inspection.
7. Assure that authorizations for destruction of public records are forwarded to the Tennessee State Library and Archives (TSLA) for review within 90 days of the PRC authorization.
8. Follow-up to assure that
 - TSLA approval of the destruction has been received before records destruction takes place; or
 - If TSLA has deemed the records to be historically valuable, they are properly transferred to TSLA or to another repository designated by mutual agreement of the public records commission and TSLA.
9. Assure the executive and legislative body that actions taken by the commission and local government offices are in accordance with the T.C.A. and with pertinent local resolutions, including the complete destruction of public records that have been authorized for destruction.
10. Review and approve plans by local government offices for electronic imaging or data processing systems to assure that
 - The system employed will protect and preserve records designated as permanent by MTAS schedules.
 - A permanent, archival-standard microfilm of permanent records is produced, and the original camera-image film of any microfilm produced is sent to TSLA for quality control testing and storage in the vault of the state archives.
11. Advise and propose to the local government executive and legislative body the planning, development, site selection, establishment, funding, budget, regulation, and operation of a local central records office and archives
 - For the management and reference servicing of inactive records awaiting final disposition, and
 - For the management of permanent records for long-term preservation and public inspection.

12. Advise and recommend to the local government executive the appointment and removal of personnel, including an archivist as director, for the central records office and archives.
13. Review operations of the local government records office and archives to assure the local legislative body that it meets records management and archives management standards, and satisfies the need of the local government and its citizens.
14. Propose to the local government cooperative arrangements with other local governments or cultural institutions, such as libraries and universities, for storage, management, and public inspection of historically valuable records, including permanent public records of the local government.
15. Work with local government offices and with MTAS, TSLA, and the Records Management Division of the state Department of General Services to draft, review, revise and issue realistic records management schedules for local government records.
16. Review records-keeping practices in local government offices and recommend to the offices and to the local government executive and legislative body remedies to correct faults and improvements to deal with emerging information and records needs.

Lamination

Because lamination too often destroys the documents it is intended to preserve, the Tennessee State Library and Archives recommends that permanent records not be laminated but rather encapsulated in Mylar® sleeves.^[2]

Copying Charges

The Tennessee Attorney General has opined that while a government only has to make public records available to citizens for copying, if a government chooses to make copies of its records upon request it can charge a reasonable fee covering the cost of copying.^[3] T.C.A. § 10-7-503 confirms this and the Office of Open Records Counsel reviews and annually establishes a recommended fee schedule, including certain labor costs. See also T.C.A. § 10-7-702(b). While it is up to the city's governing body to decide how such revenue will be used, cities may want to consider "re-investing" them in equipment, supplies, or personnel expenses related to records management and records preservation. The Safe Harbor Schedule can be located at the Office of Open Records Counsel, currently at <http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePolic...> [2].

Disposing of Records

Even the best planned and operated records management program will fail miserably if it never gets rid of records. To find what you need and to preserve what you need to keep, you have to get everything else out of the way. That is where disposal comes in.

Checks and Balances

Disposing of municipal records is not as simple as hauling them out to the trash. Because these records can be of great importance to many people, there are a number of procedural checks and balances to go through 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 municipal public records commission (if there is one), the State Library and Archives, and, for court records, a judge, all need to be involved in determining the final disposition of the record.

[1] Tennessee Archives Management Advisory 99-015, pp.6-7.

[2] See Tennessee Archives Management Advisory 99-009.

[3] Op. Tenn. Atty Gen. No. 83-002 (January 3, 1983).

Types of Records

Reference Number: MTAS-472

What Kind of Record Is It?

The first step in trying to decide what to do with records, is to identify and classify them. 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: MTAS-473

Working papers are defined as “those records created to serve as input for final reporting documents, including electronic data processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication.” ^[1] This class of records comprises all those little records that come and go in the course of a day that we usually don’t even consider “records.” Whether it is 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 destroy. Any public record defined as a working paper may be destroyed without retaining the originals of the record and without further review by other agencies. City policies regarding working papers should be liberal and allow city officials to eliminate these records as easily as possible before they become burdensome. Many working papers generated by city offices are extremely informal types of records. Due to the informal nature of these documents, 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.

^[1] T.C.A. § 10-7-301.

Temporary Records

Reference Number: MTAS-474

If a record must be kept 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.” ^[1] Financial and payroll records are good examples. Payroll records have fulfilled their immediate purpose once your employees receive their checks. But those records must be kept in order to comply with federal statutes and regulations and are important documents in the case of an audit. ^[2] 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 adopted by the city’s governing body or municipal public records commission. These rules should require approval of the city archivist (if there is one), city attorney, city recorder, city manager (if there is one), head of the department and mayor before the records are destroyed.

Alternative Formats for Temporary Records Generally speaking, if you are keeping a record for only five years or less, it is not cost efficient to microfilm the original paper records or convert them to other media. But certain records that are “temporary” actually have a rather lengthy retention period. Many court records must be kept 10 years, and employee earning records that may be used for computing retirement benefits are kept for the approximate life of the employee.

Even though these records do not have to be kept permanently, you may find it useful to convert them to other, more compact formats for storage and destroy the paper originals shortly after the alternative format is created. Microfilming or electronic storage of these long- term temporary records can be ideal solutions to storage space problems. The governing body or municipal public records commission should adopt a policy requiring approval prior to the destruction of original paper documents. It is not necessary to notify Library and Archives of the destruction of original copies of records of temporary value.

[1] T.C.A. §10-7-301

[2] See the following discussion entitled Special Consideration for more information about audit records.

Permanent Records

Reference Number: MTAS-475

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 original process in a civil or criminal proceeding and the minutes of the city's governing body. Some records, such as 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, historically valuable. 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.

Photographic or Electronic Preservation of Permanent Records

The governing body of any municipality may by resolution authorize the disposal of any permanent paper record of the municipality when the record has been photocopied, photostated, filmed, microfilmed, preserved by microphotographic process, or reproduced onto computer or removable computer media, or any appropriate electronic medium, in accordance with § 10-7-121 [16]. T.C.A. § 10-7-702.

The Tennessee State Library and Archives does not accept records in electronic format.

Retention Schedules

Reference Number: MTAS-525

Using these Retention Schedules

Records in this schedule are grouped by topic.

The records under each topic constitute a records series. Each record in the series is given a number consisting of the series designation plus a number designating the order in which the record is listed within the series. For example, Activity Reports under Animal Control are in Record Series A and have the record number A-1. The series designation and the record number should be useful in referring to records during both storage and disposition.

You may notice that there are topics that appear not to be covered. We have attempted to use general topics to the extent possible to keep the schedule from being too voluminous. If you have a record that appears not to be covered, you should look for the record in a related topic that is included in the schedule. For example, a contract involving the airport authority would have the same retention period as other contracts noted under the General Administration topic.

Under T.C.A. § 10-7-702, records manuals compiled by MTAS must “be used as guides by municipal officials in establishing retention schedules for all records created by municipal governments ...” Since this is a guide rather than the final word, a municipality may add more records or records series to the retention schedule if needed.

The schedules in this section have been reviewed by MTAS staff, the State Library and Archives, and several city officials. We recommend their adoption. The retention periods marked with asterisks are required by state or federal law. All other retention periods are based on the record’s administrative, legal and historical value.

As noted, municipalities have a great deal of flexibility in adopting the retention schedule. It can be adopted, with any needed modification, by ordinance, resolution, motion, citywide policy, or by a records commission if the municipality has one; or applicable portions can be adopted as a departmental policy.

Animal Control

Reference Number: MTAS-681

ANIMAL CONTROL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
A-1. Activity Reports. Monthly reports showing the activity of the animal control operations.	Retain 2 years, unless there is no annual report. If no annual report, retain as permanent record.	Keep to aid in planning.
A-2. Adoption Contracts. May include agreement to have animal spayed/neutered when it is 6 months old.	Retain 4 years.	Keep to show proof of ownership/patterns of behavior of animals or owners.
A-3. Annual Reports. Annual reports showing the activity of the animal control operations.	Permanent record.	Keep to aid in planning.
A-4. Bite Reports. Document investigations of dog bites.	Retain 4 years.	Retention period based on likely time of complaint or legal action.

ANIMAL CONTROL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
A-5. Complaints, Record of. May contain date; time of complaint; complaint's name, address, and telephone number; owner's name and address; animal's license number; and details of problems.	Retain 4 years or until resolution of any litigation, whichever is later.	Record may be used in litigation. Retention period based on statute of limitations for actions for injuries to personal property plus 1 year. T.C.A. § 28-3-105.
A-6. Controlled Substances, Log of	Retain 3 years.	Tenn. Admin. Rule 1730-4-.09.
A-7. Dispatching Logs.	Retain 4 years, unless legal action is pending.	Retention period based on likely time of complaint or legal action.
A-8. Euthanasia Report. Must be kept for each animal euthanized; includes date, estimated age, breed, weight, sex, amount of euthanasia solution administered, and description of verification of death	*Retain for 3 years. May want to retain for 4 years if 4-year retention period adopted for other animal control records.	Tenn. Admin. Rule 1730-4-.09.
A-9. Field Reports (Daily). Report of officer's daily activities.	Retain 1 year.	Used to compile activity reports.
A-10 Impound Log. Log of all animals brought into the animal shelter and whether animal was adopted or euthanized.	Retain 4 years.	Keep as part of history of animals and owners and to track activity at shelter. Can be useful in returning lost animals to owners.
A-11. Rabies Certificate. Rabies vaccination is required by T.C.A. 68-8-104. Certificates are forwarded to animal control by veterinarians.	Retain 4 years.	Keep to provide proof of vaccination and to facilitate return of lost animals to owners. Rabies vaccine lasts 3 years.
A-11. Rabies Certificate. Rabies vaccination is required by T.C.A. 68-8-104. Certificates are forwarded to animal control by veterinarians.	Retain 4 years.	Keep to provide proof of vaccination and to facilitate return of lost animals to owners. Rabies vaccine lasts 3 years.
A-12. Return to Owner, Record of.	Retain 4 years.	Keep to prove ownership and assign liability to owner if the animal is ever in violation of ordinances or statutes.
A-13. Spay/Neuter Deposit, Record of. Deposit is required by T.C.A. § 44-17-503 for every animal not already neutered that is adopted from an animal shelter.	Retain 4 years.	Keep as part of history of animals and owners.
A-14. Surrender of Animal, Record of.	Retain 4 years.	Keep to defend against liability for taking animal. Based on statute of limitations for offenses against property plus 1 year.

*Indicates a mandatory retention period based on state or federal law.

Cemeteries (City-Owned)

Reference Number: MTAS-682

CEMETERIES, CITY-OPERATED RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
B-1. Deed Books. May contain deed number, purchaser's name, deed date, lot number, etc.	Permanent Record.	Establish property rights.
B-2. Interment Records. May contain name of the deceased, burial permit number, dates of death and interment, sex and age of deceased, place of death, location of grave, date and place of birth, owner of lot, deed number, and removal information.	Permanent Record.	Keep for historical purposes.
B-3. Perpetual Care Records. Records regarding funds for the continued upkeep of the cemetery.	Permanent Record.	Keep for historical purposes.

Court Records

Reference Number: MTAS-683

COURTS RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
C-1. Affidavit of Complaint. A written statement alleging that a person has committed an offense and alleging the essential facts instituting the offense charged made upon oath before a magistrate or court clerk.	*Permanent Record.	T.C.A. § 18-1-202(a).
C-2. Appeal Dockets. Record of cases going to appellate courts showing style of case, date, and ruling of the court; may show court costs	*Retain 10 years after last entry.	T.C.A. § 18-1-202(a).

COURTS RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
C-3. Appearance and Rule Dockets. Record of first appearance of all causes in court, showing date filed, names of attorneys, style of case, security, and action taken.	*Permanent Record	T.C.A. § 18-1-202(a).
C-4. Appearance and Bail Bond Records. Bonds and recordings of bonds executed by defendants and sureties showing defendant's name, name of person serving as surety, amount of bond, and signatures of the accused and sureties.	*Retain 10 years after final judgment.	T.C.A. § 18-1-202(a).
C-5. Attachment and Injunction Bonds. Bonds executed in attachment and injunction cases insuring defendant against damages likely to occur as a result of wrongful suing, showing date of bond, name of principal and sureties, amount of bond, condition of the obligation, and signatures of principal and sureties.	*Retain 10 years after final judgment.	T.C.A. § 18-1-202(a).
C-6. Attachments on Personal Property. Writs issued during court action to seize the personal property of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover.	*Retain 10 years after final settlement of case.	T.C.A. § 18-1-202(a).
C-7. Attachments on Real Property. Writs issued during court action to seize the real property of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover.	*Retain 10 years after final settlement of the case.	T.C.A. § 18-1-202(a).
C-8. Bills of Costs-Courts with Concurrent Jurisdiction. Certified bills of cost in criminal cases in courts having concurrent general sessions court jurisdiction and submitted for payment by the city court clerk, showing names of the plaintiff and defendant, offense charged, date of initial action, items of cost, amount of each, date process issued, signature of office issuing warrant, date filed with city court clerk for trial (if applicable), clerk's certification, date judgment paid, and number of warrant issued in payment.	Retain 5 years after close of case.	Keep for audit and review purposes.
C-9. Bills of Costs-Ordinance Violation Cases. Bills of costs submitted for payment showing names of plaintiff and defendant, date of initial action, items of cost, amount of each, date process issued, signature of official issuing warrant, date filed for court for trial, clerk's certification, date judgment paid, and number of warrant issued in payment.	Retain 5 years after close of case.	Keep for audit and review purposes.
C-10. Bond Books, Miscellaneous. Receivers, appearance, costs, etc., bonds, showing names of principal and sureties, style of case, amount and date of bond, condition of the obligation, and signatures of principal and sureties.	*Retain 10 years after release, replacement, or expiration of all bonds in book.	T.C.A. § 18-1-202(a).

COURTS RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
C-11. Briefs, Civil Cases. Statements of the case, legal theory and arguments for a party in a case.	*Maintain for 3 years after final disposition of the case, then destroy after notice is given to parties.	Notice permits parties to retrieve records. T.C.A. § 18-1-202(b).
C-12. Capias. The general name for several types of writs that require an officer to take the body of the defendant into custody; they are writs of attachment or arrest.	*Permanent Record	Original process must be kept permanently. T.C.A. § 18-1-202(a).
C-13. Case Ledgers. Records of case funds received and distributed.	Permanent Record.	Recommended by the comptroller in the Internal Control and Compliance Manual for Tennessee Municipalities.
C-14. Citation. A demand that the defendant cited appear in court at a stated time to answer to a misdemeanor or civil offense charge. The citation states the name and address of the person cited, the name of the issuing officer, and the offense charged.	*Permanent Record	Original process must be kept permanently. T.C.A. § 18-1-202(a).
C-15. Cost Bonds, Civil Cases. Bonds executed to insure payment of court costs, showing names of plaintiff and defendant, amount and date of bond, condition of the obligation, and signatures of principal and sureties.	*Maintain for 3 years after final disposition of the case, then destroy after notice is given to parties.	T.C.A. § 18-1-202(a).
C-16. Court Action Reports.	Retain 10 years	Keep for audit purposes.
C-17. Criminal Actions, Record of. All original process, case papers, and documents in criminal cases, including judge's orders, in both felony and misdemeanor cases.	*Permanent Record	T.C.A. § 18-1-202(a).
C-18. Delinquent Tax Collection Reports. Copies of the reports made by the clerk to the cities, county, and state of tax collections in litigation, showing docket number, case number, names of complainant and respondent, amount collected, total, and date of report.	*Retain 10 years.	T.C.A. § 18-1-202(a).
C-19. Detainer Warrants. Instrument authorizing the keeper of a prison to keep a person in custody. Shows name of person in custody, length of time to be detained, and signature of issuing official.	*Retain 10 years.	T.C.A. § 18-1-202(a).

COURTS RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
C-20. Discovery Records, Civil Cases. Interrogatories, depositions, and other legal devices to obtain information concerning a case prior to trial.	*Maintain for 3 years after final disposition of the case, then destroy after notice is given to the parties.	Notice permits parties to retrieve records. T.C.A. §18-1-202(b).
C-21. Distress Warrants and Warrant Stubs. Original warrants and warrant stubs issued against persons, showing name and address of person for whom warrant is issued, date of issue, amount of tax due, fees, and penalties.	If court action results, retain until final settlement of case; if no court action, retain 5 years.	Keep for audit purposes.
C-22. Executions. Writs or orders providing that an act or course of conduct be carried out.	*Retain 10 years after issuance.	T.C.A. § 18-1-202(a).
C-23. General Account Ledgers (execution docket). Ledger accounts or funds received from payments of judgments and court costs; money distributed by the clerk showing style and number of case, date of collection, name of person from whom received, and amount; date of payment, name of payee, number of check issued, and amount; may show cash book and page number from which entry was posted.	*Permanent Record.	T.C.A. § 18-1-202(a).
C-24. General Index. Index to all original case papers, showing file number and names of complaint and respondent.	*Permanent Record.	Necessary for use of other permanent records.
C-25. Habeas Corpus, Writs of. Writs issued to change the place of trial, to move from custody of one court to another, directing that a detained person be produced, etc.	*Permanent Record.	Original process must be kept permanently. T.C.A. § 18-1-202(a).
C-26. Judge's Opinions. Statements by the judge of the decision reached in regard to a cause heard before him relating the laws as applied to the case and giving reasons on which the judgment is based.	*Permanent Record.	T.C.A. § 18-1-202(a).
C-27. Litigation Tax Reports. A record of all state and city litigation taxes collected by the clerk showing number of cases and amount received.	Retain 10 years after last entry.	Keep for audit purposes.
C-28. Minute Books and Indexes. Minutes show the course and proceedings in all cases from their origin to termination, giving name of defendant, offense charged, date of trial, verdict, and sentence of the court.	Permanent Record.	Necessary for use of other permanent records.
C-29. Mittimuses. Commitments to jail, showing name of person committed, offense charged, name of prosecutor, amount of bail, date, and signature of clerk of the court.	*Retain 10 years.	T.C.A. § 18-1-202(a).

COURTS RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
C-30. Municipal Court with Concurrent Jurisdiction Docket Book, Criminal (State). Dockets showing date of trial, case number, name of defendant, action of the court, name of returning officer, and list of witnesses claiming fees.	Permanent Record.	Keep permanently as a basic record of the actions of the court.
C-31. Processes Served, Record of. Record of warrants, capiases, summonses, and other papers served.	Retain 3 years after last entry. Note: Do not confuse this record with original process that must be kept as a permanent record to comply with T.C.A. § 18-1-202(a).	Keep for audit purposes.
C-32. Receipts for Papers. Record of all files and papers removed from the office, showing date and by whom taken, and date returned.	Retain until all files and papers are returned.	Working papers as defined in T.C.A. § 10-7-301(14).
C-33. Reports, Municipal Court with Concurrent Jurisdiction. Duplicates of monthly reports to the county and the state of all revenue collected by the clerk, showing dates of quarter, from whom received or source of collection, costs, fees and mileage of witnesses, and fees, commissions and emoluments of the sheriff, his deputies, constables, game wardens, state highway patrolmen, and other officers for services to the court, the fines and forfeitures adjudged by the court, and all other funds coming into the hands of the clerk and judge.	Retain 10 years after clerk's tenure is broken.	Keep for audit purposes.
C-34. Rule Dockets and Indexes. A record of original processes issued and files incident to cases tried in court, showing number of case, date and hour filed, names of complainant, respondent, and solicitors; also date and nature of process, names of bondmen, date process served, note of officer's return, and rules and orders of the court.	*Permanent Record	T.C.A. § 18-1-202(a).
C-35. Search Warrants. A written order issued in the name of the state and directed to a law enforcement officer commanding him to search a specific house, business establishment, or other premises.	*Retain 10 years.	T.C.A. § 18-1-202(a).
C-36. Subpoenas. Copies of summonses to appear in court as witnesses in lawsuits, showing name of person summoned, day and hour to appear, in whose behalf, and signature of the clerk.	*In criminal cases, retain 10 years. *In civil cases, retain 3 years.	T.C.A. § 18-1-202.
C-37. Summonses. A writ notifying a person that a court action has commenced against him and that he is required to appear on a day named and answer the complaint in such action.	*Permanent Record	T.C.A. § 18-1-202(a).

COURTS RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
C-38. Trial Exhibits and Evidence. Any evidence and exhibits presented at trial that become part of the record of the case.	*Retain 10 years after final judgment, unless local rule of court provides for a different retention period.	T.C.A. § 18-1-202(a).
C-39. Unclaimed Funds, Record of. Record of funds in hands of clerk unclaimed for 7 years and turned over to the state, showing style of case, case number, respondent, and amount.	*Permanent Record	Keep record for audit purposes and a reasonable period to allow interested parties to make inquiries.
C-40. Warrants. Writs issued in both civil and criminal cases requiring an officer of the law to arrest the person named therein and bring him before the court to answer charges of some offense that he is alleged to have committed.	*Permanent Record	T.C.A. § 18-1-202(a).
C-41. Witness Books. Record of witnesses appearing in court cases, showing date of court term, style of case, names of witnesses for complainant, names of witnesses for respondent, number of days attended, miles traveled, amount due, and date of payment.	*Retain 10 years after last entry.	T.C.A. § 18-1-202(a).

*Indicates a mandatory retention period based on state and federal law.

Election Records

Reference Number: MTAS-684

ELECTIONS RECORDS RETENTION SCHEDULES		
Description of Record	Retention Period	Legal Authority/Rationale
D-1. Candidate List. List of candidates participating in elections	Retain 4 years after election or for duration of term.	Based on standard election cycle.
D-2. Certificate of Election. Copies of original certificate provided to elected officials.	Retain 4 years after election or for duration of term.	Based on standard election cycle.
D-3. Election Result	Permanent Record.	Has historical significance.
D-4. Precinct Maps. Geographical descriptions of polling units.	Permanent Record.	Possible historical significance.
D-5. Public Notices. Copies of all public notices published by the election commission.	Retain 4 years after election or for duration of term.	Based on standard election cycle. May be useful in future elections.
D-6. Reapportioned Records (if city has districts or wards).	Retain until next reapportionment.	May have legal significance until completion of next reapportionment. May assist in next reapportionment.

Engineering

Reference Number: MTAS-685

ENGINEERING RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
E-1. Aerial Photographs. Aerial photographs of flyovers. Negatives may be available at the state Department of Transportation's photographic lab.	Permanent Record.	Keep for operational purposes through reappraisal appeals process and greenbelt recertification appeal period. This record series has high historical and archival value and should be preserved for those reasons.
E-2. Bridge and Street Project Files, Federal, State and Local. Project files, including contracts and invoices.	Retain 7 years after completion of project.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109.
E-3. Building Plans. Blueprints and specifications for all municipal building including school buildings.	Retain for life of the building (plus additional time if litigation arise from building's early demise). Consider donating to archive.	Necessary for maintenance and operation of physical plant.

ENGINEERING RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
E-4. City Street List. Record of all streets under control of the city.	Permanent Record	Necessary for street regulation and maintenance and to protect street department from allegations of working on private property.
E-5. Complaints. Citizen service request for maintenance and repair issues.	Retain 5 years.	Could constitute notice of unsafe condition.
E-6. Deeds, Easements, Highway Rights-of-way, etc. Instruments of conveyance of interests in real property. Show signature of property owner, date, width of easement, and name of road.	Permanent record in city recorder's office.	Recorded copy is necessary to preserve city property rights, City should retain its own copy as record of its property rights.
E-7. Maps and Map Books. City and civil district maps as well as single parcel maps (not part of subdivision).	Permanent Record.	Keep for historical purposes.
E-8. Ownership maps and index, Rural and Urban. These maps reflect the status of real property as of January 1 of each year.	Retain only current and one previous generation of ownership maps and indexes. Older generations of photographs may be removed from the office but if removed, should be transferred to an archive or library.	Useful in office for tracking property changes and as evidence in challenges to tax sales. This record series has a high historical and archival value and should be preserved for those reasons.
E-9. Plats, Plat Books, Surveyors' Books and Indexes. Drawings of subdivisions, cemeteries, utilities, city lots and street improvements showing name of subject, date drawn, boundaries, scale used, location, name of engineer making survey, name of draftsman, and register's certificate of registration.	Permanent Record.	Necessary for maintenance and operation of city infrastructure. Eligible for recordation. T.C.A. § 13-3-402
E-10. Sign Inventory. List of all traffic signs and traffic signals in the city.	Retain a current copy at all times.	Necessary to track inventory and maintenance of signs.
E-11. Underground Utilities, Location of. Record of location of all underground utilities maintained by the city.	Permanent Record.	Necessary for maintenance and operation of city infrastructure. NOTE: Under T.C.A. § 65-31-105, the city must record location of utilities with county, listing where the facilities are located and the name, title, address and telephone number of the operator's representative. The county keeps this record permanently.

ENGINEERING RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
E-12. Work Orders. For repair and maintenance of streets, traffic signs, traffic signals, and utilities.	Retain 5 years.	Evidence in lawsuit.

Finance Records

Reference Number: MTAS-686

FINANCE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
F-1. Accounts Paid Files and Ledgers. Paid invoices filed by vendor showing company, date, amount, date paid, and invoice number. Ledgers show name of vendor, amount of each invoice, amount paid on each account, and amount outstanding.	Retain 7 years.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109.
F-2. Accounts Payable.	Retain 10 years.	Recommendation of the comptroller set forth in the <i>Internal Control and Compliance Manual for Tennessee Municipalities</i> .
F-3. Accounts Receivable.	Retain 10 years.	Recommendation of the comptroller set forth in the <i>Internal Control and Compliance Manual for Tennessee Municipalities</i> .
F-4. Annual Reports to City Officials. Submitted by city departments, boards, or agencies.	Permanent Record.	Keep for historical purposes.
F-5. Appropriation Ordinance or Resolution. Record of appropriations made by the municipal legislative body for maintenance of city offices and departments, and for the payment of claims against the city, showing date of meeting, date claim filed, to whom payable, nature of claim or purpose of appropriation, and amount.	Permanent Record.	Keep for audit and historical purposes.
F-6. Audit Reports. All audit reports relative to city finances. Audit reports show name of office, name of fund or account, account of all receipts and disbursements, date of audit, and signature of auditor.	Permanent Record.	Recommendation of the comptroller set forth in the <i>Internal Control and Compliance Manual for Tennessee Municipalities</i> . Audit working papers of an internal audit staff are confidential. See 2013 Pub. Chptr. 15.

FINANCE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
		NOTE: T.C.A. § 6-56-104 requires the city to place a copy of the audit in the main branch of the public library.
F-7. Bank Deposit Books. Bank books showing name and location of bank, and amounts and dates of deposits.	Retain 6 years plus 1 year after last entry.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109
F-8. Bank Deposit Slips. Slips showing name and location of bank, and amounts and dates of deposits.	Retain 7 years.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109
F-9. Bank Statements. Statements showing name and location of bank, and amounts and dates of deposits, amounts and dates of check withdrawals, and running balance.	Retain 7 years.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109
F-10. Bids, On Equipment and Supplies. Records showing bidder's name, complete description of item(s), delivery date, amount of bid, and any correspondence with bidder. Include record of unsuccessful bids in this file.	Retain 7 years after contract expires.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109
F-11. Bonded Indebtedness, Record of. Register book shows bond issue, date, and amount set up by year; as bonds and coupons are returned, these are shown in the book. Other records include trust indenture, loan agreements, bond counsel opinion, documentation on expenditure of bond proceeds, copies of management contracts and research agreements, documentation of all sources of payment or security for the bonds, and documentation of investment of bond proceeds. Other records may also include documentation specific to any single and multifamily housing bonds and small issue industrial development bonds.	Bonds and coupons may be destroyed 15 years after the maturity date of such bonds.	Based on procedures established in T.C.A. § 9-21-123. Based on the length of time a bond payee has to take action against the issuer T.C.A. § 28-3-113.
F-12. Budget Records and Reports. These pertain to the general fund and the street fund, debt service fund, the general purpose school fund and all other city funds. They show anticipated revenues, anticipated expenditures for the year, and fund balance at the end of the year.	The annual budget is preserved permanently in city legislative body minutes. Retain other budget records and reports 5 years.	Keep for audit purposes.

FINANCE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
F-13. Canceled Checks. Canceled checks showing date check issued, name of bank on which drawn, check number, to whom payable, purpose of payment, amount of check, and date canceled.	Retain 7 years.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109.
F-14. Cash Journals. Records of all receipts and disbursements as distributed to various city accounts, showing date of entry, amount, source of receipt or purpose of payment, amount of debit or credit, and name of account credited or charged.	Permanent record.	Recommendation of the comptroller set forth in the <i>Internal Control and Compliance Manual for Tennessee Municipalities</i> . Comptroller's office considers the record important for demonstrating patterns in investigations of misappropriation of funds. Prior to the advent of general budgetary practices, the Recorder's Cash Journal was the best record for tracking the total revenue stream of the city and has historical value. For this reason, older records should be kept permanently.
F-15. Cash Reconciliation Report. Shows balances at beginning of the month, outstanding checks, cash balances, checks issued during month, checks paid, cash and outstanding checks at end of the month.	Retain 1 year after audit.	Keep for audit and review purposes.
F-16. Check Books. Books containing stubs of checks issued by the recorder showing check number, date issued, name of payee, amount, and purpose of payment.	Retain 7 years after date of last check.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109
F-17. Check Stubs. From all city accounts and accounts of all departments.	Retain 7 years.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109
F-18. Development and Proposal Files. Reports, planning memos, correspondence, studies, and similar records created for and used in the development of grant proposals submitted to state or federal agencies and contracts relating to the grant.	Retain all unsuccessful applications for 5 years. Retain all records regarding grants that are received for life of grant plus 7 years.	Keep unsuccessful proposals in case of appeal or for administrative use in re-application. Keep records of grants received based on statute of limitations for contract actions. T.C.A. § 28-3-109.

FINANCE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
F-19. Financial Report to City Legislative Body. (1) General; (2) Final – Report gives information on different accounts, balances on last report, receipts, disbursements, commissions, transfers, balances on this report, totals, bank balances of city accounts in different banks, and classification of receipts (sources received from, e.g., state, local, etc.). Reports of street department chief administrative officer and other officials when required by law.	Permanent Record.	These reports should be recorded in the minutes of the city legislative body. Permanent retention is recommended by the comptroller in the <i>Internal Control and Compliance Manual for Tennessee Municipalities</i> .
F-20. General Ledger Accounts. Record of all receipts and disbursements for the various city accounts, showing date of entry, amount, source of receipt or purpose of payment, amount of debit or credit, and name of account credited or charged.	Permanent Record.	Recommendation of the comptroller set forth in the <i>Internal Control and Compliance Manual for Tennessee Municipalities</i> .
F-21. General (Miscellaneous) Receipt Ledgers. Record of funds received on general accounts, including such payments as state and city taxes, interest, fees, and penalties on delinquent taxes, showing date of payment, name of payer, amount, funded credited, and balance. This information is included in the journal package of most software in computerized cities. If stored electronically in compliance with electronic data processing standards, paper copy is not necessary.	Retain 7 years after last entry. If stored electronically, retain 7 years after date of creation of record.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109.
F-22. Grant Documentation and Files. Records and materials regarding grants applied for and/or money received through state and federal grants.	Retain for life of grant plus 7 years.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109.
F-23. Investment Ledgers. Surplus cash investments, rate of interest, date, and amount collected.	Retain 10 years.	Keep for audit purposes and to address arbitrage concerns.
F-24. Invoices. Original invoices, purchase orders, and requisitions used in purchasing goods.	Retain 7 years.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109.
F-25. Miscellaneous Receipts from other Offices Receiving Money, Records of. Records of receipts collected by other city offices and departments. Examples: fees collected by the ambulance service, building permits, etc.	Retain 7 years.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109.

FINANCE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
F-26. Receipt Books. Receipts for revenue collected, showing from whom received, date receipt given, receipt number, amount and purpose of payment, and account credited. Receipts may be or may have been issued for funds received from other city offices for payments or transfer tax, delinquent taxes, state funds, utilities tax, etc. Receipts may be loose rather than in books.	Retain 7 years after last entry. If stored electronically, destroy file 7 years after date of creation. Additional copies of the receipts that are not needed for any purpose are working papers that may be destroyed as soon as it is determined they are superfluous.	Based on statute of limitations for legal actions for breach of contract plus 1 year. T.C.A. § 28-3-109.
F-27. Sale Tax report. Report from the state showing total tax collection less cost of state collection. Report shows amounts distributed to incorporated municipalities.	Retain 10 years.	The record series is kept longer than the usual audit standard in case of dispute regarding city/ county distribution of revenues.
F-28. Travel Authorizations.	Retain 5 years.	Keep for audit purposes.
F-29. Unclaimed Funds, Record of. Records of funds in hands of official unclaimed for 7 years and turned over to state, showing information about source of funds and amount.	Retain 10 years.	Keep record for audit purposes and a reasonable period to allow interested parties to make inquiries.

Fire Records

Reference Number: MTAS-687

FIRE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
G-1. Arson Investigation Reports.	Retain 30 years or until the convicted perpetrator is released from prison, whichever is longer.	Keep for use if there is a new trial.
G-2. Bloodborne Pathogens/ Infectious Material Standard. Protects employees who may be occupationally exposed to blood or other infectious materials. Written Exposure Plan		Occupational Safety and Health Act (29 C.F.R. 1910.1030).

FIRE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
<p>Medical Records</p> <p>Training Records</p> <p>Employee Exposure Records</p>	<p>No retention period specified.</p> <p>*Retain for duration of employment plus 30 years.</p> <p>*Retain 3 years.</p> <p>*Retain 30 years.</p>	<p>Occupational Safety and Health Act (29 C.F.R. 1910.1020).</p> <p>Occupational Safety and Health Act (29 C.F.R. 1910.1030).</p> <p>Occupational Safety and Health Act (29 C.F.R. 1910.1020).</p>
<p>G-3. Burn Permits. Record of permission granted for open burning within the city limits.</p>	<p>Retain 2 years unless issued in conjunction with a building permit, in which case retain until certificate of occupancy granted.</p>	<p>General recommendation is based on statute of limitations for malicious burning plus one year. Recommendation for burn permits issued with building permits based on the increased likelihood of a lawsuit against the city before certificate of occupancy is granted.</p>
<p>G-4. Fire Incidents Reports.</p>	<p>Retain 5 years. Consider donating to archive.</p>	<p>Keep to track history of property, loss claims, repeats. Retention term based on statutes of limitations for foreseeable causes of action.</p>
<p>G-5. Fire Safety Inspection and Similar Reports. Reports made by Tennessee Department of Insurance, Division of Fire Prevention, or local fire department showing date, name of inspector, location inspected, etc.</p>	<p>Retain current inspection report until new inspection report is received, as a minimum. Retaining 3 years is recommended.</p>	<p>Keep for enforcement purposes. Keeping one generation back allows the department to show a history of inspection.</p>
<p>G-6. Firefighter Annual Certification of Fitness to Perform Job Functions.</p>	<p>*Retain until next certification completed to comply with OASH. Retaining 3 years is recommended.</p>	<p>Required by OSHA. (29 C.F.R. 1910.156(b)(2)) and (29 C.F.R. 1910.135 (m)). Department of Labor can request information going back 3 years. Retention allows the fire department to show a history of testing and compliance.</p>
<p>G-7. Firefighter Annual Facemask Fit Test Records.</p>	<p>Retain until next certification completed to comply with OSHA. Retaining 3 years is recommended.</p>	<p>Required by OSHA.</p>

FIRE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
		(29 C.F.R. 1910.156 (f)) and (29 C.F.R. 1910.135 (m)). Department of Labor can request information going back 3 years. Retention allows the fire department to show a history of testing and compliance.
<p>G-8. Material Safety Data Sheets (MSDSs). Employers must have an MSDS on file for each hazardous chemical they use and ensure that copies are readily accessible to employees in their work area.</p> <p>Employer must keep records of chemicals used, where they were used, when they were used and for how long.</p>	<p>No specific time-must be maintained in a current fashion.</p> <p>Retain for 30 years.</p>	<p>Occupational Safety and Health Act (29 C.F.R. 1910.1020(d)(1)(ii)(B)).</p> <p>Occupational Safety and Health Act (29 C.F.R. 1910.1020(d)(1)(ii)(B)).</p>
<p>G-9. Physical/ Medical Records. Complete and accurate records of all medical examinations require by OSHA law.</p>	<p>Retain for duration of employment plus 30 years unless specific OSHA standard provides a different time period.</p>	<p>Occupational Safety and Health Act (29 C.F.R. 1910.1020).</p>
<p>G-10. Medical Records of Patients in EMS Run Records. Patients medical histories, reports, summaries, diagnosis, prognosis, records of treatment, medication, X-ray and radiology interpretation, physical therapy charts and lab reports.</p>	<p>Retain 10 years following discharge of patient or patient's death during treatment.</p> <p>For patients under mental disability or minority, records should be retained for period of minority or disability plus 1 year or 10 years following discharge, whichever is longer.</p> <p>X-ray film may be disposed of after 4 years when radiologist's interpretation is made.</p>	<p>T.C.A. §§ 68-11-305 and 68-140-519.</p>
<p>G-11. Radio and Telephone Logs. Dispatching and telephone communications with outside agencies.</p>	<p>Retain 5 years.</p>	<p>Keep for use in defense of lawsuits. Retention term based on statutes of limitations for foreseeable causes of action.</p>
<p>G-12. Training Records.</p>	<p>Retain for duration of employment plus 3 years.</p>	<p>Proof of training for ISO and OSHA.</p>

FIRE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
G-13. Vehicle and Equipment Maintenance Records.	Retain for life of vehicle or equipment plus 1 year.	Determination of replacement, proof of maintenance; possible tort action.

*Indicates a mandatory retention period based on state or federal law.

Fleet Services

Reference Number: MTAS-688

FLEET SERVICES RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
H-1. Vehicle and Equipment Purchase and Maintenance Records.	Retain for life of vehicle or equipment plus one year.	Determination for replacement, proof of maintenance; possible tort action.

General Administration

Reference Number: MTAS-689

GENERAL ADMINISTRATION RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
I-1. Affidavits of Exemption from Business Licenses under T.C.A § 67-4 – 712. Affidavits of blind persons or disabled former members of the armed services made for the purpose of obtaining free ad valorem or privilege license, showing duration of service, nature of disability, if any, amounts of affidavit, signature of affiant, and clerk's acknowledgment.	If license is granted, retain until expiration of license plus 10 years; if license not granted, retain 1 year.	Keep for audit purposes. T.C.A. § 67—4-712 (a).
I-2. Alcoholic Beverage Commission Applications.	If application granted, retain for life of permit. If application denied, retain for 1 year past final action.	Retain successful applications for audit purposes. Retain denied applications to have available in case of appeal(s) under T.C.A. § 27-9-101 <i>et seq.</i>

GENERAL ADMINISTRATION RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
I-3. Bankruptcy, notice of.	Retain 11 years.	Based on statute of limitations for collection of property taxes, plus 1 year. T.C.A. § 67-5-1806.
I-4. Beer Applications and Permits. The application and permits issued to persons selling legalized beverages (beer), Showing name of licensee, business address, date issued, permit number, and signature of beer board approving the issuance of the license.	Retain 5 years after the permit is terminated.	Keep for audit purposes.
I-5. Beer Tax Reports and Receipts. Reports from wholesale beer distributors showing brands of beer, number of units sold, unit prices, and tax remitted. Receipts from money submitted should also be in file.	Retain 3 year.	Source documents must be kept by wholesalers and retailers for 2 years T.C.A. § 57-5-206(b).
I-6. Business and Privilege Licenses. Original applications and licenses to engage in business or for exercising taxable privileges, showing name of applicant, kind of license, duration of license, date filed, and signature of applicant; fee/tax paid; and license number.	Retain 5 years after license has expired.	Keep for audit purposes.
I-6A. Business tax returns. Returns filed under the Business Tax Act under T.C.A. § 67-4-715.	Retain 7 years after January of the year in which the taxes accrue.	T.C.A. § 67-1-1501(a); Westinghouse Electric Corp. v. King 678 S.W. 2nd 19 (Tenn. 1984).
I-7. Contracts. Contracts between the city and other contractors.	Retain 7 years after termination of contract.	Based on statute of limitations for breach of contract plus 1 year. T.C.A. § 28-3-109.
I-8. Contracts, Construction. Contracts between the departments and contractors for construction work, showing name contractor, date, building specifications, and amount of consideration.	Retain 7 years or until expiration of guarantees. If no guarantees are involved, retain 7 years after completion of contract.	Based on statute of limitations for actions for breach of contract plus 1 year. T.C.A. § 28-3-109.

GENERAL ADMINISTRATION RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<p>I-9. Correspondence Files. Correspondence with citizens and government officials regarding policy and procedures or program administration.</p>	<p>Generally retain based on subject matter or 5 years, whichever is longer, but appraise for continuing administrative usefulness or historical value. (See "E-mail" below.)</p>	<p>Maintain for reasonable period of time in case of continued action related to the correspondence.</p>
<p>I-9A. E-mail.</p> <p>[1] Spam and other e-mails that will not be relevant to any litigation.</p> <p>[2] E-mails relative to contracts.</p> <p>[3] E-mails that might be relevant to tort litigation.</p> <p>[4] E-mails relative to personnel status of employees.</p> <p>[5] Other e-mails.</p>	<p>[1] May be discarded immediately.</p> <p>[2] Retain seven years or until expiration of guarantee.</p> <p>[3] Retain 2 years.</p> <p>[4] Retain 5 years.</p> <p>[5] Retain based upon subject matter (see other provisions in retention schedule) or 5 years, whichever is longer, but appraise for continuing usefulness or historical value.</p>	<p>[1] No requirement for retention.</p> <p>[2] Based on statute of limitations for breach of contract plus 1 year. T.C.A. § 28-3-109.</p> <p>[3] Based on statute of limitation for tort action plus 1 year.</p> <p>[4] Various statutes of limitations and requirements in differing statutes.</p> <p>[5] Maintain for reasonable time in case of continued action.</p>
<p>I-10. Deeds for City Properties, Copies of. Copies of warranty deeds.</p>	<p>Destroy when obsolete or when purpose of retention has been served.</p>	<p>Working papers as defined in T.C.A. § 10-7-301(14). Filed permanently with the county register of deeds.</p>
<p>I-11. Facility Inspection and Maintenance Records. Records documenting inspection of and repairs or improvements made to municipal buildings and structures.</p>	<p>Retain 5 years.</p>	<p>Possible significance in tort cases.</p>

GENERAL ADMINISTRATION RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
I-12. Fixed Assets. Comprehensive inventory of all fixed assets.	Retain 5 years after disposal of property.	Audit standard authorized by Tenn. Admin. Rule 0520-1-2-.13.
I-13. General (Nonfinancial) Monthly and Quarterly Reports to City Officials. Reports from all departments, boards, or agencies of the city. These reports should be recorded in the minutes of the legislative body.	These are working papers to keep until the information is incorporated into the minutes or an annual report. If not included in the minutes or no annual report is prepared, retain monthly and quarterly reports for 2 years.	Useful in preparing budgets in following years.
I-14. Insurance Policies. Insurance policies of all types insuring the city and all its departments for various risks of loss, showing name of company, name of agent issuing policy, date of policy, date of expiration, amount of premium, amount of coverage, and description of any property covered.	Retain 10 years after expiration or replacement of policy.	Based on statute of limitations for breach of contract actions plus 1 year. T.C.A. § 28-3-109.
I-15. Leases (Real Property). Copies of leases or rental contracts on real estate, showing names of lessor and lessee, description of property, terms of the contract, date of execution, and signatures of parties involved.	Permanent record.	Keep to track property rights. Note: If lease is more than 3 years, eligible for recordation under T.C.A. § 66-24-101(a) (15).
I-16. Leases and Agreements for Use of Equipment.	Retain 7 years after completion or expiration of lease or agreement.	Based on statute of limitations for breach of contract actions plus 1 year. T.C.A. § 28-3-109.
I-17. Legal Opinions and Court Decisions. Records, including correspondence, stating or referencing court decision or legal opinions dealing with or affecting the department.	Retain 20 years or until record no longer relevant, whichever is later.	Court opinions can have continuing impact on operations.

GENERAL ADMINISTRATION RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
I-18. Liens, Tax. Record of tax lien notices filed against property owners, including violators of the internal revenue law, showing name and address of property owner, date of filing, amount of assessment and penalty, and discharge notice date.	Permanent record.	Impractical to ascertain expiration of lien to know when record could be destroyed.
I-19. Minutes of City Legislative Body. Recorded minutes of the meetings of the municipal legislative body, including special call meetings. All recorded actions of the legislative body, including records of members present and their votes on matters of business presented, nature and results of votes; various items such as fixing the tax levy, adopting a budget, receiving financial reports from city officials and departments, appropriating funds for the maintenance and operations of city offices and institutions, and other items of a similar nature.	Permanent record.	City charter requirement, T.C.A. §§ 8-44-101, et seq. (Open Meetings law). Keep also for historical purposes.
I-20. (Rough) Minutes and Roll Calls of City Legislative Body. Notes taken at meeting of city legislative body and used to compile minutes. Includes audio tapes.	Retain until minutes are approved by city legislative body.	Working papers as defined in T.C.A. § 10-7-301(14).
1-21. Minutes of Other Boards. Minutes of the meetings of other boards, such as a planning commission, utility board, beer board, etc., including members present, votes, and actions taken.	Permanent record. NOTE: Rough minutes are working papers and may be destroyed after final version of minutes is approved.	Actions recorded in minutes are effective until superseded/ amended or rescinded/ repealed. Also keep for historical purposes.
I-22. Motor Vehicle City Stickers. Copies of applications for city stickers for motor vehicles; evidence of compliance.	Retain 5 years.	Keep for audit purposes.
I-22A. Mutual Aid Documents. Declarations of a state of emergency, written requests for assistance, invoices for reimbursement.	Retain 2 years.	Keep for possible litigation purposes.
I-23. Official Bonds and Oaths of City Officials. Loose and bound original and recorded copies of the bonds and oaths of all officials required to file official bonds and/or oaths with the city recorder. Originals of many of the official bonds of city officials and constables have been deposited with the state comptroller of the treasury since 1957. Bonds generally show name of principal and sureties, amount of bond, date executed, condition of the obligation, date acknowledged and approved, signatures of principals, sureties and attorney-in-fact for bonding company, if any.	Retain 10 years after term covered by bond or oath.	Based on statute of limitations for actions on public officers' bonds. T.C.A. § 28-3-110.

GENERAL ADMINISTRATION RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<p>I-24. Ordinances. Code of Ordinances and ordinance books, copies of amended and repealed ordinances; resolutions.</p>	<p>Permanent record.</p>	<p>Charter requirements. Ordinances must be retained to provide evidence of their existence and proof of their lawful enactment. Superseded ordinances have historical and legal value.</p>
<p>I-25. Pawnbroker’s Licenses, Applications for and related Records. Record of application for pawnbroker’s license, related affidavits and certificates, copies of bonds or insurance policies.</p>	<p>Retain 5 years after license is terminated.</p>	<p>Permits do not expire after a certain term. Keep record for audit purposes and to maintain accurate record of licensed pawnbrokers.</p>
<p>I-26. Powers of Attorney, Record of. Record of legal appointment of persons to act as agents for individuals or estates in such matters as signing documents, giving receipts, collecting and distributing funds, paying utility deposits and bills; shows name of appointee and person making appointment, date of appointment, and contains requirements of notarization.</p>	<p>Retain permanently or until power of attorney is formally revoked.</p>	<p>Keep for audit purposes.</p>
<p>I-27. Privilege Licenses – See Business and Privilege Licenses.</p>		
<p>I-28. Reports of City Officials, Departments, Commissions, and Committees. Reports submitted to the municipal legislative body containing date on finances, work performed, plans, personnel, etc. Some reports submitted annually at the end of the fiscal year. These reports should be recorded in the municipal legislative body’s minutes.</p>	<p>If reports are not recorded in legislative body’s minutes, preserve permanently one copy of annual reports, or if there is no annual report, preserve permanently one copy of all monthly, quarterly, or semiannual reports.</p>	<p>The city recorder’s office serves as a repository of these reports, which constitute a historical record of the operation of the various offices, departments, and committees of the city.</p>

GENERAL ADMINISTRATION RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
I-29. Settlement Agreements. Instruments evidencing the settlement of claims against the city.	Retain 7 years after the terms of the agreement have been met.	Based on statute of limitations for breach of contract plus 1 year. T.C.A. § 28-3-109.

Permits Records

Reference Number: MTAS-690

PERMITS RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
J-1. Approval Permit Applications for Solid Waste Disposal Facilities. Records of all data and supplemental information used to complete permit applications. Includes copy of permit and the approved Part I and Part II application. Maintain as the facility or another location with the approval of the department.	Retain throughout active life of the facility and through the post-closure care period.	Keep to show compliance with regulations in order to defend against Superfund liability. Tenn. Admin. Rules 1200-1-7-.02(2)(a)4, 1200-7-7-.02(4) (a)7.
J-2. Building Permits, Inspections, Certificates of Occupancy, Copies of. Show name of owner, amount of money to be expended, type of structure, location, date, and name of contractor.	Retain 5 years after issuance of certificate of occupancy or final inspection.	These are used to find new construction. These records are also used in state audits, which must occur at least once every 3 years, of cities that choose to enforce their own codes. T.C.A. § 68-120-101(b)(2)(C). In addition, T.C.A. § 28-3-202 provides for a four year statute of limitations on injuries from the date of substantial completion. Retention of one additional year will allow for any dispute of such date. NOTE: Notify property assessor of completion before record is destroyed.
J-3. Contractor License Books. Recorded copies of certificates of license issued to general contractors by the state Board for Licensing General Contractors showing certificate number, name of contractor, names of chairmen and secretary of the state board, date certificate issued, date recorded, and signature of the clerk.	Retain 5 years after all licenses in the book have expired.	Keep for audit purposes.

PERMITS RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
J-4. Demolition Orders. Documentation for municipal-ordered and privately initiated demolitions of substandard and/or hazardous buildings.	Retain 5 years.	Retain for research and litigation purposes.
J-5. Violation Notices. Notices of violations of building codes.	Retain 5 years.	Retain to document municipal actions concerning violations and for reference purposes.

Personnel

Reference Number: MTAS-691

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
K-1. Advertisements Regarding Job Openings, and records of Promotions, Training Programs, and Overtime Work.	Retain 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
K-2. Age Records.	*Retain 3 years.	Fair Labor Standards Act (29 C.F.R. 516); Age Discrimination in Employment Act (29 C.F.R. 1627.3).
K-3. Americans with Disabilities Act – Employer Records. Request for reasonable accommodations.	*Retain 2 years.	Same employer record retention requirements as the Civil Rights Act of 1964 as Amended; Title VII of the Civil Rights Act (29 C.F.R. 1602.31).
K-4. Applications, Resumes, or Other Replies to Job Advertisements, including Temporary Positions, etc.	Retain 5 years from date record was made or human resources action was taken, whichever is later. NOTE: If the city has adopted a policy of not accepting unsolicited resumes, they do not have to be retained. Otherwise, they should be kept 5 years.	28 U.S.C § 1658; <i>Jones v. R.R. Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
K-5. Bloodborne Pathogens/Infectious Material Standard. Protect employees who may be occupationally exposed to blood or other infectious materials. [1] Written exposure plan.	[1] Retention period not specified. Must be available to workers and kept current. [2] *Retain for duration of employment plus 30 years. [3] *Retain 3 years.	[1] Occupational Safety and Health Act (29 C.F.R. 1910.1030)

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<p>[2] Medical records.</p> <p>[3] Training records.</p> <p>[4] Employee exposure records.</p>	[4] *Retain 30 years.	<p>[2] Occupational Safety and Health Act (29 C.F.R. 1910.1020)</p> <p>[3] Occupational Safety and Health Act (29 C.F.R. 1910.1030)</p> <p>[4] Occupational Safety and Health Act (29 C.F.R. 1910.1020)</p>
<p>K-6. Citizenship or Authorization to Work. Immigration and Naturalization Services Form I-9 (employment eligibility verification form) for all employees hired after November 6, 1986.</p>	Retain 3 years from date of hire or year after separation, whichever is later. (Minimum 3 years.)	Immigration Reform and Control Act (8 C.F.R. 274A.2).
<p>K-7. Contracts, Employee. Contracts between city and employee.</p>	Retain until 7 years after termination of employment.	Based on statute of limitations for breach of contract plus 1 year. T.C.A. § 28-3-109.
<p>K-8. Contracts, Personal Service of Independent Contractor. Contracts between the city and independent contractors.</p>	Retain 7 years after termination of contract.	Based on statute of limitations for breach of contract plus 1 year. T.C.A. § 28-3-109.
<p>K-9. Demotion Records (See also transfer, layoff, termination).</p>	Retain 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley & Sons Co.</i> , 541 U.S.—(2004).
<p>K-10. Discrimination or Enforcement Changes. Personnel records relevant to a charge of discrimination or enforcement against employer, including records relating to charging party and to all other employees holding positions similar or sought after, such as application forms or performance documentation.</p>	*Retain until final disposition of charge of action.	Age Discrimination in Employment Act (29 C.F.R. 1627.3(b) (3)). Title VII of the Civil Rights Act (29 C.F.R. 1602.31). Executive Order 11246.
<p>K-11. Drug Testing Records (Required by Department of Transportation).</p> <ul style="list-style-type: none"> • Breath alcohol test with results of .02 or higher. • Positive controlled substance test. • Documentation of refusal of test. 	<p>*Retain 5 years.</p> <p>*Retain 2 years.</p>	<p>Omnibus Transportation Employee testing Act of 1991 (49 C.F.R. 40.83, 49 C.F.R. 653.71(b)).</p> <p>49 C.F.R. 40.83</p>

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<ul style="list-style-type: none"> • Calibration documentation. • Evaluation of referrals. • Copy of calendar year summary. • Substance abuse professional reports. • Records related to administration of drug and alcohol testing. • Follow-up tests and schedules for follow up. • Information on the alcohol and controlled substances testing process. • Records of inspection and maintenance. • Information on training. • Negative and canceled controlled test results. • Alcohol test results of less than .02 alcohol concentration. 	<p>*Retain as long as individual performs the function plus 2 years.</p> <p>*Retain 1 year.</p>	<p>.49 C.F.R. 40.83</p> <p>49 C.F.R. 653.71 (b).</p>
<p>K12. EEOC Information. Records kept by local governments. Any political subdivision with 15 or more employees must keep records and information that are necessary for completion of Report EEO-4 (Local Government Information Reports) regardless of whether or not the political jurisdiction is required to file a report.</p>	<p>*Retain 2 years from the date making the record or personnel action whichever occurs later.</p>	<p>29 C.F.R. 1602.31</p>
<p>K-13. Employee Earnings Records.</p>	<p>*Retain office record for 3 years.</p> <p>After this time, microfilm or archive record and keep for 70 years.</p>	<p>Age Discrimination in Employment Act (29 C.F.R. 1627.3); Fair Labor Standards Act (29 C.F.R. 516.5). Retention period of 70 years is due to retirement concerns and is based on approximate lifespan of employee. May destroy earlier if employee and any potential claimants are deceased</p>

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<p>K-14. Employer Information Report. For political jurisdictions with 100 or more employees and other political jurisdictions with 15 or more employees from whom the commission requests as EEO-4 report, a copy of EEO-4 form (Employer Information Report) must be kept.</p>	<p>*Retain a copy of the report as each central office for 3 years.</p>	<p>Title VII of the Civil Rights Act (29 C.F.R. 1602.32).</p>
<p>K-15. Employer Records of leave Under FMLA – Non-Exempt Employees. Employers shall keep records pertaining to their obligations under the act in accordance with the record keeping requirements of the Fair Labor Standards Act (FLSA). Records kept must disclose the following.</p> <ul style="list-style-type: none"> • Basic payroll identifying employee data (name, address, and occupation), rate or basis of pay and terms of compensation, daily and weekly hours worked per pay period, additions to or deductions from wages, total compensation paid. • Dates FMLA leave is taken. • Hours of the leave if FMLA is taken in increments. • Copies of employee notices of leave furnished to the employer and copies of all general and specific notices given to employees. • Documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave. • Premium payments of employee benefits. • Records of any dispute between employer and an employee regarding the designation of leave as FMLA leave. 	<p>*Retain 3 years. No particular order or form of records is required.</p>	<p>Family and Medical Leave Act (29 C.F.R. 825.500)</p>

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<p>K-16. Employment Contracts –FLSA. Individual employment contracts (where contracts or agreements are not in writing, a written memorandum summarizing the terms), including collective bargaining agreements, plans and trusts.</p>	Retain for 5 years.	<p>Fair Labor Standards Act (29 C.F.R. 516.5) Equal Pay Act (29 C.F.R. 1620.32 (b)) 28 U.S.C. § 1658.</p>
<p>K-17. Employment Tax Record.</p>	Retain 4 years.	Internal Revenue Code (29 C.F.R. 31.6001-1).
<p>K-18. Family and Medical Leave Act (FMLA) Employer Records of Leave Under FMLA – Exempt Employees. If employees are not subject to FLSA's record-keeping regulations for purposes of minimum wage or overtime compliance, an employer need not keep a record of actual hours worked provided that:</p> <ul style="list-style-type: none"> • Eligibility for F MLA leave is presumed for any employee who has been employed for 12 months; and • A written record is maintained as to the agreement between the employer and employee regarding reduced or intermittent leave and the employee's normal schedule or average hours. 	*Retain 3 years. No particular order or form of record is required.	<p>Family and Medical Leave Act (29 C.F.R. 825.500)</p> <p>Family and Medical Leave Act (29 C.F.R. 825.110)</p> <p>Family and Medical Leave Act (29 C.F.R. 825.206)</p>
<p>K-19. Garnishment Documents. Federal garnishment laws are enforced under the Fair Labor Standards Act. (Refer to "Payroll Records – Additions or Deductions from Wages Paid.")</p>	*Retain 3 years.	<p>Fair Labor Standards Act (29 C.F.R. 516.5) requires 3-year retention. Equal Pay Act (29 C.F.R. 1620.32 (c)) requires 2-year retention. Keep to comply with longer period.</p>
<p>K-20. Group Health Insurance Coverage After Certain Qualifying Events. Employers need records showing covered employees and their spouses and dependents:</p> <ul style="list-style-type: none"> • Have received written notice of continuing group health insurance and COBRA rights; and • Whether the employee and his or her spouse and dependents elected or rejected coverage. 	Retain 7 years.	Internal Revenue Code (26 C.F.R. 54.4980B).

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
K-21. Hiring Records.	Retain 5 years from date records are made or personnel action is taken, whichever is later.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
K-22. Insurance/Retirement Plans. <ul style="list-style-type: none"> • Benefit plan descriptions. • Records providing the basis for all required plan descriptions and reports necessary to clarify the information, including vouchers, worksheets, receipts, and applicable resolutions. 	*Retain during the period that the plan or system is in effect, plus one year after the termination of the plan. *Retain not fewer than 6 years after filing date of documents	Age Discrimination in Employment Act (29 C.F.R. 1627.3 (b) (2)). Employee Retirement Income Security Act (29 C.F.R. 2520.101-1 through 2520.104b-30).
K-23. Layoff Selection.	Retain 5 years from date record made or professional action taken.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
K-24. Material data Safety Sheets (MSDSs). <ul style="list-style-type: none"> • Employers must have MSDSs on file for each hazardous chemical they use and ensure that copies are readily accessible to employees in their work area. • Employer must keep records of chemicals used, where they were used, when they were used and for how long. 	No specific retention time set by statute. Must be maintained in a current fashion. *Retain 30 years.	Occupational Safety and Health Act (29 C.F.R. 1910.1020 (d) (1) (ii) (B)). Occupational Safety and health Act (29 C.F.R. 1910.1020 (d) (1) (ii) (B)).
K-25. Minimum Wage and Overtime Charges. See also the following in this section: <ul style="list-style-type: none"> • Citizenship or authorization to work. • Americans with Disabilities Act – Employer Record • Insurance/Retirement Plans • Occupational Injuries and Illness. • Payroll – Basis on which wages are paid. • Physical/Medical Exams. Veterans – Military Leave. 	*Retain 3 years.	Fair Labor Standards Act (29 C.F.R. 516.6) requires retention for 2 years, but Department of Labor can request documents going back 3 years.
K-26. Occupational Injuries and Illness Records. OSHA Form 300 Log of Work Related Injuries and Illnesses.	*Retain 5 years following the end of the year to which records relate.	Occupational Safety and Health Act (29 C.F.R. 1904.9)

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<p>OSHA Form 300A Summary of Work Related Injuries and Illnesses.</p> <p>OSHA Form 301 Injury and Illness Incident Report (effective January 1, 2002).</p>	<p>*Retain 5 years following the end of the year to which records relate.</p> <p>*Retain 5 years.</p>	<p>Occupational Safety and Health Act (29 C.F.R. 1904.9)</p> <p>Occupational Safety and Health Act (29 C.F.R. 1904.9)</p>
<p>K-27. Older Workers Benefit Protection Act – Employer Records. Same employer records retention requirements as the Age Discrimination in Employment Act (ADEA). Waiver of Age Discrimination in Employment Acts rights.</p>	<p>*Retain 3 years to comply with statute.</p> <p>Retaining as a personal record is recommended.</p>	<p>Age Discrimination in Employment Act (29 C.F.R. 1627.3, 29 C.F.R. 1602.30)</p> <p>Keeping waiver forever will assure that record is available to use in defense of an Older Workers Benefit Protection Act waiver of rights discrimination charge.</p>
<p>K-28. Payroll Records – Additions or Deductions from Wages Paid. All records used by the employer in determining additions to or deductions from wages paid.</p>	<p>Retain 5 years.</p>	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i>, 541 U.S. 369 (2004).</p>
<p>K-29. Payroll Records – Age Discrimination in Employment Act. Payroll or other records containing each employee's name, address, date of birth, occupation, rate of pay, and compensation earned per week.</p>	<p>Retain 5 years.</p>	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i>, 541 U.S. 369 (2004).</p>
<p>K-30. Payroll Records – Basis on Which Wages are Paid.</p> <ul style="list-style-type: none"> • The basis on which wages are paid must be documented in sufficient detail to permit calculation for each pay period. The records may include payments of wages, wage rates, job evaluation, merit and incentive programs, and seniority systems. • The basic reason for these records is to give the Wage and Hour Division an indication of whether or not sex discrimination exists. 	<p>Retain 5 years.</p>	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i>, 541 U.S. 369 (2004).</p>

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<ul style="list-style-type: none"> Although there is no specific form furnished by the Wage and Hour Division to calculate benefits costs, the data necessary to calculate these costs should be readily available to Wage and Hour audit personnel. 		
<p>K-31. Payroll Records for FLSA-Exempt Employees. (Bona fide executive, administrative, and professional employees).</p> <ul style="list-style-type: none"> Name of employee (as used for Social Security purposes) and identifying number or symbol, if such is used on payroll records. Home address, including ZIP code. Date of birth if under 19 years of age. Sex and occupation. Time of day and day of week in which employee's workweek begins, if this varies between employees; otherwise, a single notation for the entire establishment will suffice. Total wages paid each pay period. Dates of payment and pay period covered. 	Retain 5 years.	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i>, 541 U.S. 369 (2004).</p> <p>Records of hours worked are recommended for Department of Labor Wage and Hour Audits.</p>
<p>K-32. Payroll Records – FLSA Non-Exempt Employees. All required for exempt employees plus:</p> <ul style="list-style-type: none"> Regular hourly rate of pay for any week when overtime is worked and overtime compensation is due. (May be in the form of vouchers or other payment data.) Daily hours worked and total hours worked each work week. (Workday may be any consecutive 24-hour period, and work week is any fixed and regularly recurring period of 7 consecutive days.) 	Retain 5 years.	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i>, 541 U.S. 369 (2004).</p>

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<ul style="list-style-type: none"> • Total daily or weekly straight-time earnings or wages due for hours worked during the work-day or work week. • Total premium pay for overtime hours. This premium pay for overtime hours excludes the straight-time earnings for overtime hours recorded under the above item. • Total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amount, and nature of the items that make up the total additions and deductions. 		
<p>K-33. Payroll Records – Title VII Purposes. Rates of pay or other terms of compensation.</p>	Retain 5 years from date record is made or personnel action taken, whichever is later.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
<p>K-34. Permit – Required Confined Space. Canceled permit entry forms and training certification.</p>	*Retain 1 year.	Occupational Health and Safety Act (29 C.F.R. 1910.146(e) (6)), (29 C.F.R. 1910.146 (g) (4).
<p>K-35. Personnel Files. File for each employee tracking pay, benefits, performance evaluations, personnel actions, and employee's hiring and termination.</p>	Retain 7 years after termination. NOTE: *Retain medical records for 30 years after termination. *Retain exposure records for at least 30 years.	Based on 5-year statute of limitations for personnel actions plus 2 years. (29 C.F.R. 1910.1020 (d) (1)).
<p>K-36. Personnel Policies. Policies of the office regarding hiring procedures, leave, benefits, personnel rules and regulations, fair and reasonable complaint conference and hearing procedures for employees dismissed, demoted, or suspended, etc. Certain policies are required under T.C.A. §§ 6-54-123, et seq. Additional policies would be optional. The policy may not grant a property right or contract rights to a job to any employee.</p>	Retain 3 years after the policy is superseded.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
	NOTE: A copy of the resolution or ordinance adopting the policy, or its caption, shall be published in a newspaper of general circulation in the municipality before final adoption. A copy of the personnel policy shall be kept in the office of the city recorder or clerk and made available to an employee upon request.	
K-37. Physical/Medical Records. Results of physical examinations considered in connection with personnel action.	Retain 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
K-38. Physical/Medical Records Under FMLA. Records and documentation, including an FMLA leave request relating to medical certifications, re-certifications, or medical histories of employees or employee's family members shall be maintained in separate files/records and be treated as confidential medical records, except that: <ul style="list-style-type: none"> • Supervisors and managers may be informed regarding necessary restrictions and accommodations, not the true nature of the condition. • First aid and safety personnel may be informed (when appropriate) if the employee might require emergency treatment. • Government officials investigating compliance with FMLA shall be provided relevant information. 	*Retain 3 years. No particular order or form of records is required.	Family and Medical Leave Act (29 C.F.R. 825.500)
K-39. Physical/Medical Records Under OSHA. Complete and accurate records of all medical examinations required under OSHA law.	Retain for duration of employment plus 30 years unless specific OSHA standard provides a different time period.	Occupational Safety and Health Act (29 C.F.R. 1910.1020).
K-40. Promotion records or Notices.	Retain 5 years from date record is made or personnel action is taken, whichever is later.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).

PERSONNEL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
K-41. Seniority or Merit rating Systems.	Retain for the period that the plan or system is in effect plus 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
K-42. Termination Records.	Retain 5 years from the date the record is made or personnel action taken, whichever is longer.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
K-43. Time Worked Records. All basic time and earnings cards or sheet and work production sheets of individuals where all or part of the employee's earnings are determined.	Retain 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
K-44. Transfer Records.	Retain 5 years from the date record is made or personnel action taken, whichever is later.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley & Sons Co.</i> , 541 U.S. 369 (2004).
K-45. Travel Authorizations.	Retain 5 years after creation of record.	Keep for audit purposes.
K-46. Veterans, Military Leave. Organizations must grant leaves of absence to perform military obligations. Service limits are set on the amount of time an employee may spend on active duty and still be eligible for reemployment. Employees are reemployed to their former positions or a position of like status and pay with seniority and vacation as if they had not taken military leave.	Retain 7 years.	Uniform Services Employment and reemployment Rights Act (5 C.F.R. 1208). NOTE: Retention period not specified by regulations. The service limit on the time an employee may spend in active duty and still be eligible for reemployment can be up to 5 years.
K-47. W-2s. Annual wage and tax statements.	Retain 7 years.	Keep for audit purposes.
K-48. W-4s. Withholding allowance certificates.	Retain 5 years after superseded or upon separation of employee.	Keep for audit purposes.
K-49. Wage Rate Tables. All tables or schedules (from their last effective date) of the employer that provide rates used to compute straight-time earnings, wages, or salary or overtime compensation.	*Retain 3 years.	Fair Labor Standards Act (29 C.F.R. 516.6) requires 2-year retention, but Department of Labor can request records going back 3 years.

*Indicates a mandatory retention period based on state and federal law.

Planning and Zoning Schedule

Reference Number:

MTAS-692

PLANNING and ZONING RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
L-1. Board of Zoning Appeals Action. Application or documentation for hearing and decision before Board of Zoning Appeals.	Application – 1 year after the application. Disapproval – 1 year after action. Approved Action – permanent record.	Statute of Limitations. Variance runs with land.
L-2. Minutes of Commissions and Boards. Recorded minutes of the planning commission and board of zoning appeals. All recorded actions of planning commission and board of zoning appeals, including records of members present and their voted on matters presented, the nature and results of votes.	Permanent record.	Actions recorded in minutes are effective until superseded or rescinded. Keep for historical purposes.
L-3. Plan and Plat Records. Drawings and blueprints of farms, subdivisions, cemeteries, city lots, and street improvements, showing name of subject, date of drawing, boundaries, scale used, location, name of engineer making survey, name of draftsman, and certificate of registration.	Permanent record.	Could have bearing on land title.
L-4. Reports/Recommendations of the Planning Commission to the Governing Body. All transmittals to governing body with recommendations regarding zoning, annexations, etc.	Permanent record.	Keep for historical purposes.
L-5. Request for Zoning Change. Request for permanent change to zoning map.	Retain for 5 years.	Appeals.
L-6. Studies and Reports of the Planning Commission. All studies and reports, including comprehensive plans, future facilities plans, etc.	Permanent record.	Keep for historical purposes.
L-7. Subdivision Regulations.	Permanent record.	Documents must be retained to provide evidence of their existence and proof of their lawful enactment. Superseded documents have historical and legal value.

PLANNING and ZONING RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
L-8. Zoning Map and Ordinance.	Permanent record.	Documents must be retained to provide evidence of their existence and proof of their lawful enactment. Superseded documents have historical and legal value.

Police Records Schedule

Reference Number: MTAS-693

POLICE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
M-1. Accident Reports. Motor vehicle accident reports giving location of the accident, persons and vehicles involved, time of accident, injuries, witnesses, diagram of accident, and condition of persons involved.	Retain 4 years unless needed longer for local statistical analysis.	Record may be used in litigation. Retention period bases on statute of limitations for actions for injury to personal property plus 1 year. T.C.A. § 28-3-105.
M-2. Armory Records. Records regarding acquisitions, requisitions, check-ins, etc.	Retain for 10 years.	Keep in case of potential liability.
M-3. Arrest Records. Includes offense and incident reports and indexes citation in lieu of arrest form. Information includes name, alias, address, date and time of offense, date of birth, age, place of birth, description, place of arrest, charge, disposition at time of arrest, warrant number, name of court, accomplices, vehicle information, arresting officer, remarks, signature of arresting officer.	Retain 100 years. If subject is found "not guilty", then original arrest records should be retained until the records are transferred to an acceptable storage medium such as microfilm. If subject is convicted, retain original until exhaustion of all appeals or termination of probation or sentence; further, the originals are not to be destroyed thereafter until transferred to an acceptable space-saving medium for storage or the retention period has elapsed. Arrest index card should remain active until the death of the subject, which can be presumed 100 years after the event. Consider donating to the archive.	Retaining originals is necessary for continuing investigation purposes. Retaining record in space-saving storage medium is based on life if individual.

POLICE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<p>M-4. Case Files. Copies of all pertinent records for whatever nature relevant to a particular case under or pending investigation, accumulated in a single file by the investigator or the agency to facilitate the investigation or prosecution of offenders. May include copies of incident reports; supplementary report; missing persons/ runaway report; arrest report if part of criminal case file; copies of citation-in-lieu of arrest; property receipt; vehicle tow slip; statement form; blood alcohol test and accident report; other relevant reports; and relevant photos or drawings.</p>	<p>Retain originals until 1 year after statute of limitations has run.</p> <p>After statute of limitations has run, retain in an acceptable space-saving medium 100 years except for Missing Persons/ Runaway records; which are not to be destroyed if needed by juvenile authorities, and destruction should not violate National Crime Information Center (NCIC) requirements. (NCIC requirements may vary based on specific contract provisions.) Consider donating to archive.</p>	<p>Retaining originals is necessary for continuing investigation purposes. Retaining record in space-saving storage medium is based on life of individual.</p>
<p>M-5. Fingerprint Records.</p>	<p>Death of subject or reasonable presumption of death, i.e., 100 years.</p> <p>NOTE: See T.C.A. § 37-1-155 for detailed information regarding treatment of fingerprint records of juveniles.</p>	<p>Retention period based on life of subject.</p>
<p>M-6. Identification Files. Records kept for identification purposes, including fingerprints, photographs, measurements, descriptions, outline pictures, and other available information.</p>	<p>Death of subject or reasonable presumption of death, i.e., 100 years.</p>	<p>Retention period based on life of subject.</p>
<p>M-7. In Patrol Dash Camera Video.</p>	<p>Retain as long as needed for administrative purposes when the video captures no criminal activity, arrest, conduct related to criminal activity, acts that could create civil liability for the law enforcement agency or conduct that could result in an internal affairs investigation.</p> <p>When a video captures criminal activity or acts that create potential civil liability for the law enforcement agency, the video should be maintained until the statute of limitations runs on the criminal activity or the civil liability (one year for civil rights claims or three years for property damage claims). See Tennessee Code Annotated Title 39 for classifications of criminal offenses and T.C.A. §§ 40-2-101 and 40-2-102 for applicable statute of limitations for the offenses.</p>	

POLICE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
	<p>When the video captures conduct that could result in an internal affairs investigation, the video should be maintained until the investigation is concluded.</p> <p>When the video captures an arrest, the video should be maintained until the final adjudication of the case, through the appeals process.</p>	
<p>M-8. Incident Reports (Offense or Complaint Reports). Show name and address of person reporting offense, file and case number, place of occurrence, investigating officer, time, date, how report was made, and officer assigned to the case. May include dispatcher cards regarding calls. This includes Tennessee Basic Law Enforcement Records System (TBLERS) Complaint, Offense, Supplementary, Missing Person, Runaway Reports (individual and collective).</p>	<p>Retain misdemeanors for 2 years. Retain felonies for 16 years. Retain capital offenses permanently.</p> <p>If record is unrelated to a felony or other case under investigation, retain original 5 years if stored in an acceptable space-saving storage medium. If record is related to a felony or other case under investigation, retain 100 years except for Missing Person/Runaway Records, which are not to be destroyed if needed by juvenile authorities, and destruction should not violate National Crime Information Center (NCIC) requirements. (NCIC requirements may vary based on specific contract provisions.)</p>	<p>Retention period based on statute of limitations of incident.</p>
<p>M-9. Internal Investigation Records. Records of investigations resulting from a complaint against an employee of the police department. Includes notification of complaint, investigation files, any associated medical files, and any written decisions, orders, or disciplinary actions. Maintain security and confidentiality of files.</p>	<p>Retain for term of employment of officer or 10 years, whichever is longer.</p>	<p>Record retains significance in personnel decisions, promotion, dismissal, etc., and for defense of litigation.</p>
<p>M-10. Missing Persons/Runaway Records.</p>	<p>Retain 100 years but not to be destroyed if needed by juvenile authorities or to comply with National Crime Information Center (NCIC) requirements. Moving information to an acceptable space-saving storage medium is recommended.</p>	<p>Retention is necessary for continuing investigation purposes and is based on life of individual.</p>

POLICE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
M-11. Mittimuses (Committal Records). Commitments to jail, showing name of person committed, offense charged, name of prosecutor, amount of bail, date, and signature of judicial officer.	Retain 10 years.	Record may be used as back-up documentation for board bill and cost summaries.
M-12. Parking Tickets.	Retain 3 years.	Statistical data.
M-13. Processes Served, Record of. Record of warrants, capiases, summonses, and other papers served.	Retain 3 years after last entry.	Keep for nonfinancial audit purposes.
M-14. Radio Logs. A record of radio calls giving time called, car or station calling, car or station called, car location, nature of call, and acknowledgement.	Retain 3 years, unless legal action is pending.	Retention period based on likely time of complaint or legal action.
M-15. Traffic Citations, Copies. (Originals are kept by court. See page 36 on court records.)	Retain 3 years.	Statistical data.
M-16. Training Records. Records of participation in training programs, sign-in sheets, lesson plans, videotapes, certifications, etc.	Retain for career of officer plus 10 years where information is kept in personnel file.	Records useful to make employment and promotion decisions and for continuing education program. Also, vital record in defending lawsuits against department alleging improper actions of employees.

Property Tax Records

Reference Number: MTAS-695

PROPERTY TAX RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
N-1. Aerial Photographs. Aerial photographs of flyovers. Negatives may be available at the State Department of Transportation' photographic lab.	Permanent record.	Keep for operational purposes through correction period and greenbelt recertification to cover appeal period. This record series has high historical and archival value and should be preserved for those reasons.
N-2. Appeals and Reports to the State Board of Equalization and Court Appeals. These records consist of notice of hearing, name of property owner, appeal from county board of equalization, assessment, address, and time and place of hearing. Also included in this group of documents are documents involving appeal to the courts. Consider getting copies from the assessor's office.	Retain until final determination of issue.	Keep to make certain the ruling is properly applied and that all parties understand the final determination of the issue.
N-3. Assessment Exemptions, Applications for. Copies of applications showing property owner's name, address, ward or district, date acquired, lot size or acreage, value, how property used, other purposes to be used for, signature of applicant, and notarization. Consider getting copies from the assessor's office.	Retain 2 years.	Keep to identify exempt property owners.
N-4. Board of Equalization, Certification of Assessment, Copies of. Certificate required by T.C.A. § 67-5-1410 wherein members of board of equalization certify that all appeals of assessments and classifications of property have been examined and changes made that are proper, just, and equitable and are prescribed by law. Consider getting copies from the assessor's office.	Retain 2 years.	Keep for audit purposes.
N-5. Certificates of Public Utilities Tax Valuations by Office of State Assessments, Copies of. Tax roll listing total assessment of public utilities in the city by the Office of State Assessed Properties.	Retain annual assessment 1 year then destroy. State office maintains the record.	This record is like a tax roll for public utilities that are assessed by the state.
N-6. Delinquent Real Estate Tax Reports. Annual reports to the county trustee by the collector of city taxes of all delinquent taxpayers.	Retain 15 years after date of creation.	Keep for audit purposes. Report is required by T.C.A. § 67-5-1903 (a). Collection is barred after 10 years past due date. T.C.A. § 67-5-1806.

PROPERTY TAX RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
N-7 Delinquent Tax Receipt Books. Receipts issued for payment of delinquent realty and personal taxes, showing receipt number, date issued, name of taxpayer, amount, year of assessment, etc. Does not have to be kept in book. The book or receipt is obsolete if computerized and in compliance with electronic data processing (EDP) standards.	Retain 15 years after issuance of last receipt in book or 15 years after creation of receipt if not in book or information is stored electronically.	Keep for audit purposes. Collection is barred after 10 years past due date. T.C.A. § 67-5-1806.
N-8. General (Miscellaneous) Receipt Ledgers. Record of funds received on general accounts, including such payments as state and city taxes, interest, fees, and penalties on delinquent taxes, showing date of payment, name of payor, amount, fund credited, and balance. The information is included in the journal package of most software in computerized cities. If stored electronically in compliance with electronic data processing (EDP) standards, paper copy is not necessary.	Retain 15 years after last entry. If stored electronically, retain 15 years after date of creation of record.	Keep for audit purposes. Collection is barred 10 years past due date. T.C.A. § 67-5-1806.
N-9. Land Sold for Taxes, Record of. Record of court land sales, showing name of the court, style of case, location and description of property, by what process land was sold, and date of sale.	Permanent record.	Record affects land title.
N-10. Liens, Tax. Record of tax lien notices filed against property owners, including violators of the internal revenue law, showing name and address of property owner date of filing, amount of assessment and penalty, and discharge notice date.	Permanent record.	Impractical to ascertain expiration of lien to know when record could be destroyed.
N-11. Personal Property, Audit Records. Supporting information and documentation for audit. Consider getting copies from the assessor's office.	Retain 2 years.	Retain in case of forced assessments. Destroy after use.
N-12. Property Tax Relief Application and Reports. Record of property tax deferrals for elderly low-income homeowners, disabled homeowners, and disabled veterans.	Retain until audited and updated version received.	Working paper as defined in T.C.A. § 10-7-301—(14). Tenn. Admin. Rules 0600-03.-10(1)(c).
N-13. Tax/Assessment Rolls. Record of all assessments on real and personal property., showing name of taxpayer, civil district or ward, location and description of property, assessed valuation, date of assessments, acreage of farm land, and number of town lots.	Retain 4 years.	Retention based on time period for corrections and rollback issues. This record is stored for a longer term with the trustee.
N-14. Tax Bills.	Retain 1 year.	Working papers.

PROPERTY TAX RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
<p>N-15. Tax Cases Sent to Clerk and Master, Record of. Record of delinquent land tax cases filed in chancery court (sometimes circuit court) showing property owner's name, district or ward, property boundaries, acres, valuation, total tax due, and remarks.</p>	<p>Retain 15 years.</p>	<p>General statute of limitations on property tax actions is 10 years from April 1 of year taxes following year became delinquent. T.C.A. § 67-5-1806. Additional time is given for cases that may be delayed due to bankruptcy.</p>
<p>N-16. Tax maps (Ownership Maps and Index, Rural and Urban). These maps reflect the status of real property as of January 1 of each year.</p>	<p>Consider keeping as working papers. Retain only current and one previous generation of ownership maps and indexes. Older generations of photographs may be removed from office but if removed should be transferred to archive or library.</p>	<p>As working papers, no mandatory retention required. Useful in office for tracking property changes and as evidence in challenges to tax sales. This record series has a high historical and archival value and should be preserved for those reasons, although it is not necessary to maintain the older records that are in assessor's office.</p>

Purchasing Records

Reference Number: MTAS-696

PURCHASING RECORDS RETENTION SCHEDULE		
Description of record	Retention Period	Legal Authority/ Rationale
O-1. Bids. Records showing bidder's name, complete description of item(s), delivery date, amount of bid, and any correspondence with the bidder. Includes any advertisements. Includes unsuccessful bids.	Retain 7 years after contract expires.	Based on statute of limitations for legal action based on breach of contract plus 1 year. T.C.A. § 28-3-109.
O-2. Contracts. Contracts between the city and other contractors.	Retain 7 years after termination of contract.	Based on statute of limitations for actions for breach of contract. T.C.A § 28-3-109.
O-3. Minutes of Bid Openings. Record of bid openings showing item, vendor, bid price, and whether bid was successful.	Retain 1 year after award.	Necessary in case of challenge to bid award.
O-4. Purchase Orders.	Retain 5 years after creation of the record.	Keep for audit purposes.
O-5. Requisitions and Requisitions for Purchase. Records for requests for supplies and equipment in cities with centralized purchasing departments or offices.	Retain 5 years after creation of the record.	Keep for audit purposes.
O-6. Street Contracts and Bonds. Contracts entered into between city and street contractors for the construction and upkeep of roads. May include bonds of contractors guaranteeing compliance with terms of contracts, showing names of principals and sureties, description, specifications, amount of consideration, dates of bonds, and signatures of principals and sureties, showing name of contractor, date, building specifications, and amount of consideration.	Retain contracts until expiration of guarantees. If no guarantees are involved, destroy 7 years after completion of the contract. Retain bonds 7 years after release, replacement, or expiration.	Based on statute of limitations for breach of contract actions plus 1 year. T.C.A. § 28-3-109.

Recreation and Parks

Reference Number: MTAS-699

RECREATION and PARKS RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
P-1. Liability Releases. Forms signed by participants in recreation activities absolving municipality of liability.	Retain 2 years. (If subject of lawsuit, keep until final determination.)	Based upon statute of limitations for tort actions plus 1 year.
P-2. Rosters of Activity Participants. Lists of persons participating in recreation activities.	Retain 2 years. (If subject of lawsuit, keep until final determination.)	Based upon statute of limitations for tort actions plus 1 year.
P-3. Safety Inspections of Playgrounds and Equipment. Records of inspections and maintenance or repairs to grounds and equipment.	Retain 5 years. (If subject of lawsuit, keep until final determination.)	Possible significance in tort actions based upon defective structure.
P-4. Swimming Pool Records. Records relative to swimming pool use, including users, safety measures, and chemicals.	Retain 2 years. (If subject of lawsuit, keep until final determination.)	Based upon statute of limitations for tort actions plus 1 year.

School Records

Reference Number: MTAS-700

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
Q-1. Accountability for 200 Days. Record details use of 200 days and in-service training.	Retain 5 years.	Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13. T.C.A. § 49-6-3004.
Q-2. Annual Report of Professional Personnel. Report made to the Tennessee Department of Education listing alphabetically all teachers and other professional personnel in the school system. This report shows for each professional the name of the school assigned, grades taught, whether full time or part time,	Retain 10 years before eligible for destruction. NOTE: This record may be useful as a back-up to payroll records for determining retirement status. Consider keeping this record 40 years if there is any question of availability or accuracy of payroll records.	Audit standard authorization by Tennessee Department of Education Administration Rule 0520-1-2-.13. (No retention schedule in rule.)

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
and the number of months paid. The report also shows the number of principals, the number of teachers or other professionals in the school, kinds of certificates or permits, expiration date, and data on training, experience, salary, and such other information as required by the Tennessee Department of Education.		
Q-3. Attendance Agreements of Out-of-District and Out-of-State Students. Agreements from the superintendent of education regarding students attending schools out of the district or state in which student resides.	Retain 5 years.	Audit standard authorized by Tennessee Department of Education Administration rule 0520-1-2-.13.
Q-4. Audits of Internal School Activity Funds. Audit report of activity funds handled by individual schools.	Permanent record.	T.C.A. § 6-56-105.
Q-5. Audits of Local School Systems. Audits of funds administered by superintendent of education showing date of audit, balances under previous audits, receipts and disbursements, balances carried forward, and total figures.	Permanent record.	T.C.A. § 6-56-104.
Q-6. Budget, Annual Operating. Annual approved budget document conforming to standards of the Tennessee Department of Education. Document shows anticipated revenues from all sources and estimated expenditures for the fiscal year.	Retain 5 years.	Audit standard authorization by Tennessee Department of Education Administration Rule 0520-1-2-.13.
Q-7. Building Plans. Blueprints and specifications for buildings in the city school system.	Retain for life of building (plus additional time if litigation could arise from a building's early demise). Consider donating to archive.	Necessary for maintenance and operation of physical plant.
Q-8. Bus Operator's Bonds (Blanket Bonds). Yearly bonds, executed by school bus drivers acting as independent contractors, to insure faithful performance of the driver as specified in contract with the city school system.	Retain 3 years after release, replacement, or expiration of the bond, or 3 years after termination of the contract.	Keep for reasonable period of time for claims to be made against bond.

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
Q-9. Career Ladder – Certification Recommendation Form. Record advances of licensed personnel through credentialing system.	Permanent record. Must be photographically recorded in procedure approved pursuant to T.C.A. § 10-7-501. Keep originals for 1 year, then either return originals to educator if requested, or destroy them.	Tennessee Department of Education Administration Rule 0520-2-2-.07.
Q-10. Career Ladder – Local Evaluation Report Form for Probationary, Apprentice and Career Level I Teachers. Report results of local evaluation of teachers.	*Permanent record. Must be photographically recorded in a procedure approved pursuant to T.C.A. § 10-7-501. Keep originals for 1 year after certification decision including appeals, then return originals to educator, if requested, or destroy them.	Tennessee Department of Education Administration Rule 0520-2-2-.07.
Q-11. Census Records. Census of all school-age children in the city, showing name, age, and address of child; district number, names of parents, grade in school, and name of school attended. This record is no longer required.	Permanent record.	Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13.
Q-12. Certificates and Certificated Personnel. Permanent certificates issued to employed teachers and other certificated personnel by the Tennessee Department of Education.	Retain until employment of the person is terminated; then return to the person or to the next of kin if the person is deceased.	Necessary record for length of employment.
Q-13. Contracts, Construction. Contracts between the school system and contractors for construction work, showing name of contractor, date, building specifications and amount of consideration.	Retain 7 years or until expiration of guarantees. If no guarantees are involved, retain 7 years after completion of contract.	Based on statute of limitations for actions for breach of contract plus 1 year. T.C.A. § 28-3-109.
Q-14. Contracts, Employee. Contracts between board of education and all employees.	Retain until 7 years after termination of employment.	Based on statute of limitations for actions for breach of contract plus 1 year. T.C.A. § 28-3-109.

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
Q-15. Contracts, Personal Service of Independent Contractor. Contracts between the board of education and operators of school buses and other independent contractors.	Retain 7 years after termination of contract.	Based on statute of limitations for actions for breach of contract plus 1 year. T.C.A. § 28-3-109.
Q-16. Cumulative Pupil Record. Record of each pupil in the school system, showing the pupil's name, address, parents' names and occupations, complete school record, achievement test results, health record, school activities and counselors' notes, and other information deemed appropriate by the Tennessee Department of Education.	Permanent record.	Historical document. Proof of education. Keep permanently to comply with procedures established by the Tenn. Dept. of Education Office of Accountability.
Q-17. Deeds. Original deeds to school property, showing date, description, and location of property, consideration, and signature of grantor.	Permanent record.	Establishes property rights.
Q-18. Eighth Grade Graduates Report. Duplicates of reports to the Tennessee Department of Education of those eligible to receive diplomas, showing year of graduation, name of school, name of student, and date of report. This record is no longer required.	Permanent record.	Historical document. Proof of education.
Q-19. Federal Title Projects Records. Record of federal "title" projects of all types, including funds received and disbursed.	Current year records plus the previous 3 years of records must be maintained. Other records to facilitate an effective audit, whether in process or not, must be maintained. (An example of this is International Association of Sound and Audiovisual Archives (IASA), Title I projects, which are written for 5 years. Toward the end of the 5 – year cycle, records should not be destroyed so that an effective audit can be conducted.)	Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13.

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
Q-20. Final BEP Accountability Summary. Report showing how the local school district has spent improvement funds received from the state through the Basic Education Program (BEP).	Retain 5 years.	Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13.
Q-21. Financial Report, Annual Public School. An annual report of the school system's financial condition made to the Tennessee Commissioner of Education.	Retain 10 years. NOTE: These reports can be important for research purposes and performing statistical analysis of the school system. May want to keep for 25 years for those purposes.	Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13.
Q-22. Fire Safety Inspection and Similar Reports. Duplicates of reports made by the Tennessee Department of Insurance, Division of Fire Protection, showing date, name of inspector, name and location of school, condition, etc.	Retain until new inspection report is received.	Important for liability purposes to keep a record of the most recent inspection.
Q-23. Fixed Assets. Comprehensive inventory of all school assets.	Retain 5 years.	Audit standard authorized by Tennessee Department of Education Administration Role 0520-1-2-.13.
Q-24. General Ledger Accounts. Record of all receipts and disbursements for the department, showing date of entry, amount, source of receipt or purpose of payment, amount of debit or credit, and name of account credited or charged. (Also see F-15 and F-21.)	Permanent record.	Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13. Permanent retention is recommended by comptroller in the Internal Control and Compliance Manual for Tennessee Municipalities.

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
Q-25. High School Diploma Certification and Roster of Graduates. List of graduating seniors and preparation of diplomas.	Permanent record.	Important historical value and useful proof of graduation.
Q-26. Home School Registration Form. Application for conducting a home school as described in T.C.A. § 49-6-3050(b). Approved home schools must also provide test results for students at grades 2, 5, 7, and 9. Request for waivers should be included in records as appropriate.	Retain 5 years after student graduates or drops.	Keep for audit purposes.
Q-27. Immunization Records. Described in T.C.A. § 49-6-5002. Original record of immunizations must remain with each pupil's active cumulative folder. Original accompanies pupil's cumulative folder when transferring to another school. A copy of the immunization record should be kept with the pupil's inactive cumulative record.	Retain 100 years after student graduates or drops.	Important health record for establishing proof of immunization.
Q-28. Insurance Policies. Policies of all types insuring the school system against various risks of loss.	Retain 7 years after expiration or replacement by a new policy; then destroy if all claims on the policy have been settled.	Based on statute of limitations for breach of contract actions plus 1 year. T.C.A. § 28-3-109.
Q-29. Invoices (Also Purchase Orders, Requisitions, etc.). Original invoices, purchase orders, and requisitions used in purchasing goods for the school system.	Retain 5 years.	Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13.
Q-30. Legal Opinions and Court Decisions. Records, including correspondence, stating or referring court decisions or legal opinions dealing with or affecting the school system.	Retain 20 years or until record no longer relevant, whichever is later.	Court opinions can have continuing impact on operations.
Q-31 Membership/Attendance Reports. Described in T.C.A. § 49-6-3007. [1] Superintendent's Membership /Attendance Report (S MAR) – District-wide report of membership and attendance in academic, vocational, special education, and adult education for each 20-day reporting period of the school year.	[1] *Retain 5 years. [2] *Retain 5 years. [3] *Retain 5 years. [4] *Retain 5 years.	Procedures established by Tennessee Department of Education Administration, Office of Accountability.

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<p>[2] Superintendent’s Annual Membership/ Attendance report (SAMAR) – District-wide year-end cumulative report of membership and attendance in academic, vocational, special education, and adult education.</p> <p>[3] School-level Monthly Attendance Report – Report of membership and attendance in academic, vocational, special education, and adult education at the school-level.</p> <p>[4] Transportation Report Generated by the Membership/Attendance Information System--School-level report generated by the automated membership/attendance information system that provides statistical data on students transported.</p> <p>[5] Attendance records (teachers’ attendance records, sign-in/out rosters, absentee lists) –records of original entry that document student attendance on a daily basis.</p> <p>[6] Average Daily Membership Special Education Options by Primary and Secondary Report—Report generated by the D&A Census Program showing average daily membership of students receiving special education services for each 20-day reporting period of the school year.</p> <p>[7] File dump from the Membership/Attendance Information System—An electronic file dump from the membership/attendance information system data file, including demographic and event data for each student.</p>	<p>[5] *Retain 5 years</p> <p>[6] *Retain 5 years</p> <p>[7] *Permanent record</p>	
<p>Q-32. Minutes, Board of Education. Record of regular and called meetings of the board of education, showing place of meeting, date, members present, record of proceedings and action taken, date of final approval and signature of chairman and secretary.</p>	<p>Permanent record.</p>	<p>Actions recorded in minutes are effective until superseded or rescinded. Keep for historical purposes.</p>
<p>Q-33. Monthly Trustee’s Report. Monthly record of funds collected, showing amounts distributed to the city school system and to any special school district in the county.</p>	<p>Retain 5 years.</p>	<p>Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13.</p>

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
Q-34. Petitions. Petitions submitted to the superintendent or the board of education requesting the superintendent or the board to take certain actions.	If attached to minutes, retain until acted upon by the board of education. Otherwise, retain 3 years from the submittal date.	Keep for reasonable time in case there are inquiries regarding the petition.
Q-35. Preliminary Report-Grades PK-12 School Report. Report made to Tennessee Department of Education showing school's name, the number of full-time and part-time teachers, the number of boys and girls in each grade for each school, and such other information as the state requires for school approval decisions.	Retain 3 years.	Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13.
Q-36. Preliminary Staff Report. Report prepared by each teacher in the local school district and sent to the Tenn. Dept. of Education. The report shows the teacher's classroom assignments period by period.	Retain 3 years.	Keep for reasonable review period.
Q-37. Report of School System/School Compliance. Local school district report to the Tennessee Department of Education certifying that the district/school is in compliance with the laws, rules, regulations and minimum standards governing K-12 education.	Retain 5 years.	Audit standard authorized by Tennessee Department of Education Administration Rule 0520-1-2-.13.
Q-38. Requisitions for Equivalency High School Diplomas. Record of students passing GED examination and earning equivalent diplomas.	Permanent record.	Historical document. Proof of education.
Q-39. School Food Service Reports. Described in T.C.A. § 49-6-2303. Record of all pertinent information required by the Tennessee Department of Education dealing with school food service.	Retain all items except payroll records for the current year plus 3 previous years unless there is an active audit or investigation, in which case, the records must be retained until the audit or investigation is completed.	Audit standard is authorized by the Tennessee Department of Education Administration Rule 0520-1-2-.13.
Q-40. School Registers. Obsolete record. A daily record showing name, grade, age, and address of each pupil, name of parent(s) or guardian(s), school attended, and record of attendance. School records may be computerized or on paper.	Permanent record. This record is no longer created, but old copies should be kept permanently.	Keep for historical purposes.

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
Q-41. Special Education Census. Detailed account of all students with disabilities with option(s) of service. Required by T.C.A. § 49-10-302 (c) (2) and Tennessee Department of Education Administration Rule 0520-1-9-.03 (4). This record is the basis for state and federal funding.	Permanent record.	Keep in case of litigation regarding services rendered to or withheld from student.
Q-42. Special Education – Certification of Services and Listing of Inappropriately Served and of Suspended Students with Disabilities. Court requires report of number of students with disabilities in special category.	Permanent record..	Keep in compliance with court order.
Q-43. Special Education Record. A cumulative record that contains all specific information relating to the referral process, assessment, placement, and option of service for each special education child. Required by T.C.A. § 49-10-302 (c) (2) and Tennessee Department of Education Administration Rule 0520-1-9.	Permanent record.	Keep in case of litigation regarding services rendered to or withheld from student.
Q-44. Statistical Report, Annual. Report submitted to the Tennessee Department of Education by the superintendent showing for each school system the grades in the schools, total enrollment, number of students previously enrolled elsewhere, net enrollment (boys and girls), total number of days present, number of days in the school session, average daily attendance, and other statistical information.	Retain 3 years.	Keep as supporting documentation for the annual report by the commissioner of education, which is required by T.C.A. § 49-1-211.
Q-45. Superintendent’s Report of Suspensions and Expulsions. End-of-year report containing statistical data on suspensions and expulsion as required by the Tennessee Department of Education.	Retain 3 years.	Keep as supporting documentation for annual report by the commissioner of education, which is required by T.C.A. § 49-1-211(a)(8)(a).
Q-46. System-Wide Personnel Compliance Sheet. Report shows the system-wide personnel by name and teacher number for positions for which there is a state employment standard.	Retain 3 years.	Keep as supporting documentation for annual report required by T.C.A. § 49-1-302 (a) (5) (A) (I).

SCHOOL RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
<p>Q-47. Textbook Reports.</p> <p>[1] Certification of Adoption by Local Board of Education – Official list of adopted textbooks required by T.C.A. § 49-6-2207.</p> <p>[2] Certification of Compliance-Assurance that local system has furnished required textbooks to students, signed by the superintendent.</p> <p>[3] Plan for Estimating School System Expenditures for Library and Instructional Material and Supplies and School Health Services – Report details estimated expenditures for funds allocated for the items noted above.</p>	Retain 7 years after termination date of contract.	T.C.A. § 28-3-109 (a) (3).
<p>Q-48. Transportation Report, Annual Pupil. Report to the Tennessee Department of Education giving information on the age, size, condition, etc. of school buses; average daily transported; and miles traveled.</p>	*Retain 5 years.	Procedure set by Tennessee Department of Education Administration, Office of Accountability, requires that the report be kept for 5 years.
<p>Q-49. Vocational Education Final Expenditure Report. Reports final expenditures for federal reporting and any carryover funds to be allocated.</p>	Retain 3 years.	Audit standard authorized by the Tennessee Department of Education Administration Rule 0520-1-2-.13.
<p>Q-50. Vocational Education – Mgt. Info. Svs. (MIS) Enrollment Form. Record provides statistical data on students and class enrollment necessary for funding purposes.</p>	Retain 3 years.	Audit standard authorized by the Tennessee Department of Education Administration Rule 0520-1-2-.13.
<p>Q-51. Vocational-Technical Education (Adult) Statistical Report. Report class titles, student demographic information, total hours, and funding sources for adult vocational education classes provided by local school districts.</p>	Retain 3 years.	Audit standard authorized by the Tennessee Department of Education Administration Rule 0520-1-2-.13.

*Indicates a mandatory retention period based on state and federal law.

Solid Waste Records

Reference Number: MTAS-701

SOLID WASTE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
R-1. Amount of Solid Waste (in Tons) Received at Municipal Solid Waste Facilities, Record of. Required by T.C.A. § 68-211-871 (e). Records for the current month shall be maintained at the facility and open for inspection by the Tennessee Department of Environment and Conservation. All other records shall be maintained at suitable office space to protect them from damage or loss.	Retain 3 years.	Tenn. Admin. Rule 1200-1-7-.08 (3) Mandatory only if city operates a landfill.
R-2. Annual Report of Materials Collected at Recycling Center by Operator. Copy of annual report of recovered materials processed at the facility, listed by type of material, sent to the Department of Environment and Conservation. Report is required by T.C.A. § 68-211-871.	Retain 10 years.	Retention period based on planning cycle of 10-year regional plan. Mandatory only if city operates a landfill.
R-3. Approved Permit Applications for Solid Waste Disposal Facilities. Records of all data and supplemental information used to complete permit applications. Includes copy of the permit and the approved Part I and Part II application. Maintain at the facility or another location with the approval of the department.	*Retain throughout the active life of the facility and through the post-closure care period.	Tenn. Admin. Rules 1200-1-7-.02 (a) (2) 4. and 1200-1-7-.02 (4) (a) 7. Keep to show compliance with regulations in order to defend against Superfund liability. Mandatory only if city operates a landfill.
R-4. Closure/Post-Closure Landfill Plan. Plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life, identifying the activities that will be carried on after closure and the frequency of these activities.	*Retain up-to-date plan throughout the active life of the facility and through the post-closure care period.	Tenn. Admin. Rule 1200-1-7-.03 (2) (b) 2. (iii). Keep to show compliance with regulations in order to defend against Superfund liability. Mandatory only if city operates a landfill.
R-5. Gas Migration Control Standard. Records of monitoring to ensure compliance with gas migration control standards. Monitoring must occur at least quarterly and must conform to standards for Monitoring Records listed in R-7.	*Retain throughout the active life of the facility and through the post-closure care period.	Tenn. Admin. Rule 1200-1-7-.04(5) (a) 4. Keep to show compliance with regulations in order to defend against Superfund liability.

SOLID WASTE RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/ Rationale
		Mandatory only if city operates a landfill.
R-6. Groundwater Sampling Records. Records of all groundwater sampling activities conducted, sample analysis results, and associated groundwater surface elevation. Keep at the facility or another approved location.	*Retain throughout the active life of the facility and through the post-closure care period.	Tenn. Admin. Rule 1200-1-7-.04 (7) (a) 4. (vii). Keep to show compliance with regulations in order to defend against Superfund liability. Mandatory only if city operates a landfill.
R-7 Monitoring Records. Records of facility monitoring, including date, place, and time of sampling or measurements; individual performing the measurement; date of analysis; individual performing the analysis; analytical techniques used; and the results of the analysis.	*Retain throughout the active life of the facility and through the post-closure care period.	Tenn. Admin. Rule 1200-1-7-,02(4)(a)9. Keep to show compliance with regulations in order to defend against Superfund liability. Mandatory only if city operates a landfill.
R-8. Permit-By-Rule Authorizations and Records. Copy of authorization from Dept. of Environment and Conservation to operate as a permit-by-rule facility and additional related records required by the department.	Retain throughout active life of the facility and through the post-closure care period.	Tenn. Admin. Rule 1200-1-7-,02(1)(c)1. Keep to show compliance with regulations in order to defend against Superfund liability. Mandatory only if city operates a landfill.
R-9. Special Waste Approvals and Records. Copies of approvals from the Dept. of Environment and Conservation authorizing a facility to accept special wastes and records of receipt and management of certain special wastes.	Retain throughout active life of the facility and through the post-closure care period.	Tenn. Admin. Rule 1200-1-7-.01 (4) (d) 2. Keep to show compliance with regulations in order to defend against Superfund liability. Mandatory only if city operates a landfill.

*Indicates a mandatory retention period based on state and federal law.

Utilities (Billing and Collection)

Reference Number:

MTAS-702

UTILITIES (Billing and Collection) RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authorization /Rationale
S-1. Application for Service. Customer requests for service, including name, address, phone, services, and signatures.	Retain 3 years after service is discontinued but may want to keep in electronic format longer in case customer returns to service.	Keep in case of billing errors. Tennessee courts have allowed utilities to back bill customers 3 years.
S-2. Audit Reports. Independent audit of financial records.	Permanent record.	Recommended by comptroller in Internal Control and Compliance Manual for Tennessee Municipalities.
S-3. Billing Adjustment Reports. Customer names and adjustment information.	Retain 3 years.	Keep in case of billing errors. Tennessee courts have allowed utilities to back bill customers 3 years.
S-4. Billing Stubs. Collection stubs of accounts paid.	Retain 3 years.	Keep in case of billing errors. Tennessee courts have allowed utilities to back bill customers 3 years.
S-5. Billing Register. Listing of monthly customer billings (account number, amount, etc.).	Retain 7 years. If record kept in electronic format, the paper copy may be destroyed after audit.	Keep to help resolve billing disputes with customers.
S-6. Collection Agency Reports. Listing of accounts turned over for collection and how resolved.	Retain 7 years.	Keep to help resolve billing disputes with customers.
S-7. Complaints by Customers. Records of meter rechecks, billing inquiries, service problems, etc.	Retain 5 years.	Keep in case of litigation.
S-8. Deposits from Customers. Customer name, date, services, amount of deposit.	Retain 3 years after service is discontinued and deposit applied or refunded.	Keep in case of billing errors. Tennessee courts have allowed utilities to back bill customers 3 years.
S-9. Disconnection Notices. Notice to discontinue service after non-payment of bill.	Retain 3 years.	Keep in case of billing errors. Tennessee courts have allowed utilities to back bill customers 3 years.
S-10. General Ledger. Financial information of utility. (Also see G-14 and G-21.)	Permanent record. If maintained in electronic format may destroy paper record after 7 years. NOTE: The Tennessee State Library and Archives does not favor keeping permanent records in electronic format.	Recommended by comptroller in Internal Control and Compliance Manual for Tennessee Municipalities.

UTILITIES (Billing and Collection) RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authorization /Rationale
S-11. Meter Reading Records. Meter sheets or printouts from hand-held devices.	Retain 3 years.	Keep in case of billing errors. Tennessee courts have allowed utilities to back bill customers 3 years.
S-12. Meter Records. Size, type, meter number, dates service began and ended, serial number.	Retain 1 year after meter is retired and disposed of.	Keep to aid in settling billing disputes involving the accuracy of the meter.
S-13. Meter Tests/Repairs. Record of any meter testing and any repairs.	Retain 1 year after meter is retired and disposed of.	Keep to aid in settling billing disputes involving the accuracy of the meter.
S-14. Rate Schedules. Listing of rates for utility services.	Permanent record.	Keep for historical purposes.
S-15. Tap Records. Including when tap installed, size, location.	Permanent record.	Keep for historical purposes.
S-16. Work Orders for Customer Service. Detail of meter number, installation date, readings, etc.	Retain 3 years.	Keep in case of billing errors. Tennessee courts have allowed utilities to back bill customers 3 years.

Utilities (Operation and Maintenance)

Reference Number: MTAS-703

UTILITIES (Operation and Maintenance) RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
T-1. Bacteriological Records. Records indicating disinfection of mains, tanks, filters, wells.	*Retain 5 years.	Tenn. Admin. Rule 1200-5-1-.17(8).
T-2. Complaint Logs.	*Retain 5 years.	Tenn. Admin. Rule 1200-5-1-.20(1) (h).
T-3. Daily Worksheets and Shift Logs.	*Retain until next sanitary survey.	Tenn. Admin. Rule 1200-5-1-.20 (1) (g).
T-4. Facility maintenance Records.	*Retain 5 years.	Tenn. Admin. Rule 1200-5-1-.20(1) (h).
T-5. Flush and Free Chlorine Residual for New Taps Where Main Is Uncovered. Measurement of.	*Retain until next sanitary survey or 3 years.	Tenn. Admin. Rule 1200-5-1-.17(32).
T-6. Lead and Copper. Original records of all sampling data and analyses, reports, surveys, letter, evaluations, schedules, state determinations, and any other information required by Tenn. Admin. Rules 1200-5-1-.33(2) through (9).	*Retain for 12 years.	Tenn. Admin. Rule 1200-5-1-.33(12).
T-7. Underground Utilities, Location of. Record of location of all underground utilities maintained by the city. NOTE: Under T.C.A. § 65-31-105, the city must record location of utilities with county, listing where facilities are located and the name, title, address, and telephone number of operator's representative. The county keeps this record permanently.	Permanent record.	These records allow the city to know the location and history of its underground facilities.

*Indicates a mandatory retention period based on state and federal law

Utilities (Wastewater and Water)

Reference Number: MTAS-704

UTILITIES (Wastewater and Water) RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
	WASTEWATER RECORDS	
U-1. Discharge Monitoring Reports (DMRs).	Retain 3 years or longer if so requested by Water Pollution Control as a minimum to comply with permit. Retention for life of the facility is recommended.	NPDES Permit Requirements Part I Subpart B.5.

UTILITIES (Wastewater and Water) RECORDS RETENTION SCHEDULE		
Description of Record	Retention Period	Legal Authority/Rationale
		Provides record of operations and loading to assist in planning.
U-2. Industrial Pretreatment. All information resulting from monitoring activities.	*Retain 3 years, longer in cases of unresolved litigation.	40 C.F.R. 403.12 (o) (1-3).
U-3. Laboratory Bench Sheets, Calibration and Maintenance of Instruments. QA/QC Data, Flow Charts.	Retain 3 years or longer if requested by Water Pollution Control.	NPDES Permit Requirements Part I Subpart B.5.
U-4. Land Application of Cumulative Pollutant Loading Rate Sludge under 40 C.F.R. 503.13.(a) (2) (I).	*Permanent record.	40 C.F.R. 503.17 (a) (5) (ii).
U-5. Monthly Operating Reports (MORs).	Retain 3 years or longer if requested by Water Pollution Control as a minimum to comply with permit. Retention for the life of the facility is recommended.	NPDES Permit Requirements Part I Subpart B.5. Provides record of operations and loading to assist in planning.
U-6. Wastewater Sludge Disposal via Land Application, Surface Disposal, Incineration.	*Retain 5 years.	(40 C.F.R. 503.17) Land Application; (503.27) Surface Disposal; (503.47) Incineration.
UTILITIES (Water and Wastewater Records)		
Description of Record	Retention Period	Legal Authority/Rationale
	DRINKING WATER RECORDS	
U-7. Bacteriological Analysis.	*Retain 5 years.	Tenn. Admin. Rule 1200-5-1-.20 (1) (b).
U-8. Chemical Analysis.	*Retain 10 years.	Tenn. Admin. Rule 1200-5-1-.20 (1) (a).
U-9. Consumer Confidence Reports.	*Retain 5 years.	Tenn. Admin. Rule 1200-5-.35 (5) (h).
U-10. Cross Connection Records.	*Retain 5 years.	Tenn. Admin. Rule 1200-5-.20 (1) (h).
U-11. Monthly Operating Reports MORs).	Retain until next survey at a minimum. Retention for life of the facility is recommended.	Provides record of operations and loading to assist in planning.

U-12. Storage Tank Inspections.	Retain 5 years to comply with rule. Retention for life of the tank is recommended.	Tenn. Admin. Rule 1200-5-1-.20 (1)(h). Retention for life of the tank is recommended to track depreciation and repairs.
U-13. Turbidity. Records include daily worksheets, calibration data, and strip charts.	*Retain until the next sanitary survey.	Tenn. Admin. Rule 1200-5-1-.20 (1) (f).
U-14. Variance or Exceptions Granted.	*Retain 5 years following the expiration of such variance or exemption.	Tenn. Admin. Rule 1200-5-1-.20 (1) (d).
U-15. Violation, Corrective Action. Records of actions taken to correct violations of primary drinking water regulations.	*Retain 3 years after action.	Tenn. Admin Rule 1200-5-1-.20 (1) (b).
U-16. Written Reports, etc., Related to Sanitary Survey.	*Retain 10 years after sanitary survey.	Tenn. Admin. Rule 1200-5-1-.20 (1) (c).

*Indicates a mandatory retention period based on state or federal law.

Disposing of Certain Records

Reference Number: MTAS-476

The law provides for some special considerations for certain records before they are eligible for destruction.

Audits

Reference Number: MTAS-477

Records that are important for audits need to be maintained through the time of the audit plus about three years afterward in case any problems arise. Formerly, the retention period for these records was three years after the audit was 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.

Exhibits and Evidence in Court Cases

Reference Number: MTAS-478

The law includes a number of special considerations for materials that have become evidence and exhibits in judicial proceedings. Although some of these materials technically are not “records,” this information is related to records management for court clerks. Exhibits are treated differently depending on whether they are documents, 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 a case has been finally disposed of for a period of 10 years. “Finally disposed of” means a final order adjudicating a case has been entered, and the time for filing appeals, if any, has lapsed for all parties. The court 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. ^[1] In civil cases, a judge may order the clerk to destroy discovery materials, briefs, cost bonds, subpoenas, and other temporary records three years after the final disposition of the case. ^[2] In addition to these procedures, clerks must comply with T.C.A. § 18-1-204. This statute requires them to notify Library and Archives of the records they intend to destroy and gives them 90 days to examine and remove any significant historical records if they so choose.

For physical evidence other than documents and firearms

There is a more complicated set of procedures for physical evidence, but the good news is that it can be destroyed 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 pick up anything 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 that have been filed) to the court for the judge to approve or reject each item on the list and decide if it should be:

- Returned to the owner or the owner’s attorney;
- Be preserved by an organization for historical purposes;
- Sold; or
- 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 advertises and sells the items, or destroys them and files an affidavit with the court concerning destruction of the items.

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. §§ 39-17-1317–1318.

Original Process

Records and documents of proceedings in a court of record can be destroyed only after a judge has issued an order authorizing their destruction. ^[3] Regardless of who approves it, however, the law explicitly prohibits the destruction of any original process in a civil action or criminal proceeding.

^[1] T.C.A. § 18-1-202.

^[2] T.C.A. § 18-1-202(b).

^[3] T.C.A. § 18-1-202.

City Hospital and Other Health Records

Reference Number: MTAS-479

Special rules apply to medical records. They generally are governed by T.C.A. §§ 68-11-301 et seq. The definition of “hospital” used in these provisions is broad enough to include city hospitals and health departments. ^[1] Certain hospital records are not public records. ^[2] Generally, the law requires that a hospital or health department is required to retain and preserve records that relate directly to the care and treatment of a patient for 10 years following the discharge of the patient or the patient’s death during the period of treatment within the hospital. ^[3]

Mental health records are treated differently. Hospitals and health departments are given the option of retaining records for a longer period if they wish. ^[4]

^[1] T.C.A. § 66-11-302.

^[2] T.C.A. § 68-11-304.

^[3] T.C.A. § 68-11-305.

^[4] T.C.A. § 68-11-307.

Proper Storage Conditions

Reference Number: MTAS-480

Like everything else on this planet, records must be in the proper environment to survive. Most of the time, the records that your office uses on a regular basis are kept in the same area in which people work. This is good because, generally, the conditions that are comfortable for humans are also acceptable for storage of records in most formats.

Unless conditions are very severe, temperature and humidity are not factors affecting records scheduled for destruction in a few years. ... Wide fluctuation in temperature and high humidity can result in severe damage to these records. Ideally, the temperature range should be 65 to 75 degrees, and the humidity should be kept at 45 to 55 percent. ^[1]

These conditions, at least the temperature ranges, are similar to those in the typical office environment. Unfortunately, the records we use most regularly and keep close around us in our offices are often those that we need only temporarily. Concerns about storage conditions become more important the longer you plan to keep a record. The problem is, those long-term or permanent retention records that need better care are often the ones we use less often, so they are moved out of the way into conditions that are less hospitable.

City halls and county courthouses, with their attics and basements, were never designed to accommodate this ever-increasing volume of semi-active and inactive records. This records growth, plus inadequate records programs, has resulted in the misuse of existing office and storage areas and the use of unimproved warehouses, jail cells, fire stations, abandoned school buildings, and hospital rooms as inactive records storage sites, including storage of records of archival value. The undesirable features of these kinds of storage facilities and inadequate programs become apparent once it is necessary to obtain information from records in storage. It takes only a few unsuccessful attempts to locate records in poorly maintained areas to discourage further use. Time, neglect and lack of maintenance will take their toll on records stored there. ^[2]

For these reasons, cities should consider setting up facilities designed specifically for storing records on a long-term basis. Rather than using basements, attics, or whatever space is available, the city may want to establish a records center for its inactive temporary records and an archive for its permanent value records.

^[1] A Guide for the Selection and Development of Local Government Records Storage Facilities, compiled by A.K. Johnson, Jr., CRM, issued by the National Association of Government Archives and Records Administrators (2nd printing, 1991), p.9.

^[2] Ibid, 2.

Records Centers

Reference Number: MTAS-514

A records center is essentially a central area for storing records. It is a place where all city officials can send their inactive records as an alternative to keeping them in their own offices where they take up valuable space and interfere with operations. By default, the basement or bell tower of the city hall may have become an ersatz records center, but the city should consider investing in a true record center. A well-run records center can result in significant savings of both time and money while it protects and preserves records. "The effectiveness of a records center is based upon (a) its use of low- cost equipment which makes maximum use of space, (b) its ability to provide an orderly arrangement and control of records, and (c) its ability to employ procedures which assure prompt and efficient handling of records." ^[1]

Setting up a records center may sound like a project that only large cities might try to tackle. But small- and medium-sized governments also can benefit from saving money. One federal government study on cost avoidance estimated that "... for every cubic foot of records stored in a records center there is a savings of \$16.08." ^[2] When you consider the reams and reams of records in local government offices, including the school system and the court system, the savings can add up quickly.

A records center does not have to be a separate building. "A small government can usually convert an existing room quite easily since less space is required. There are many cities, towns, or counties that need no more than 1,000 cubic feet of records storage space. A records center of that capacity can be placed in a room about the size of a two- car garage." [3] If your city likes the idea but still thinks it doesn't have a great enough need to justify the expense of a records center, consider doing something radical: cooperate with other local governments. If the county, the school system, and all the municipalities within a county worked together through an interlocal agreement to establish a records center, costs would be spread among them, and enough inactive records should be found to justify establishing the center.

The Rome/Floyd County Records Program is an excellent example of a cooperative venture supported by four Georgia local governments (population 81,250). This innovative records management program serves Floyd County, the city of Rome and two school districts (Rome City Schools and Floyd County Schools). Each government partially funds the program. Service features included a records center with a capacity for 18,000 cubic feet (providing for records transfer, reference, selected microfilming and records disposal) and technical assistance (a records management officer) on the proper management of records. These four local governments, by combining resources to create a professional program which none could individually afford, achieve most of their essential records management goals. All records placed in the records center still remain the property of the respective originating governments, however. The program has received the National Association of Counties achievement award, and it saved over \$68,000 for the four local governments in 1990. [4]

[1] See *A Guide for the Selection and Development of Local Government Records Storage Facilities*, p. 2

[2] *Ibid.*, 4.

[3] *Ibid.*, 11.

[4] *Managing Records on Limited Resources*, Stephen E. Haller, CRM, issued by *The National Association of Government Archives and Records Administrators* (November 1991), p.10.

Establishing Archives

Reference Number: MTAS-515

In addition to or in conjunction with setting up a records center, your city should consider establishing a city archive if one is not already in existence. An archive differs from a records center in that the records center generally keeps inactive records temporarily before their final disposition. An archive usually is dedicated to preserving records of such historical value that they should be maintained permanently. The two may be located in the same facility and be virtually indistinguishable to the public, or they may be separately located and operated facilities. An archive provides many of the same benefits as a records center, namely, removing records that are not regularly used by an office from expensive and cluttered office space and providing proper storage conditions for the records.

An archive also serves an important role in preserving the history of our country and our communities and provides a valuable resource for members of the community researching our past. By providing another location for this research, the archive indirectly helps city officials by allowing them to refer genealogists, students, and other researchers to another office rather than diverting time and effort from their daily tasks to assist those people in accessing the older, historical records of the city.

Specifications

Since the primary purpose of the archive is to preserve records permanently, environmental conditions for the archive are even more important than those for a record center. The following considerations for archival space are recommended by the Tennessee State Library and Archives. [1]

Archives Storage and Management Space

The following archival standards should be met to preserve local archives for future use. The closer local archives come to meeting these standards, the more likely the records will survive. [2]

- Distinctly exclusive space: An entirely separate building is desirable, but not essential, and some cities may not be able to afford it. In an existing building, a separate, exclusive space that can be secured from unauthorized entry and that meets the general specifications that follow is the minimal requirement to assure proper maintenance. The space should not be combined or confused with any other use. ^[3]
- A strong, durable building that is earthquake and storm resistant: Heavy (i.e., masonry and steel) construction is desirable, not only to resist storm and earthquake damage, but also to help meet the standards below with greater economy of operating costs.
- Secure against theft and other hostile intrusion: A safe and secure locking system is highly desirable. Entry to and exit from the space should be controlled by official staff so that patrons are not free to come and go without surveillance, so as to assure that documents are not stolen or removed without proper authorization.
- As damp proof as possible with a consistently moderate relative humidity: The best relative humidity for archival materials is a constant RH of 45 percent to 55 percent; excessive ranges and changes in humidity tend to speed deterioration of archived materials. Leaky roofs, walls, and foundations that invite seepage and mold are natural enemies of archives. The site of the archive space should be chosen to protect it from flooding, either from nearby rivers or from excessive ground water during heavy rains. Care should be taken to see that water pipe systems that serve the space are sound and leak free.
- Consistently moderate temperature: The best temperature for archival materials is a constant temperature between 65 degrees and 70 degrees Fahrenheit. Excessive ranges and temperature swings tend to speed deterioration. ^[4]
- Free of pollutants: As much as possible, air circulation systems should be filtered to remove contaminating acids, dust and other airborne dangers to archive materials.
- Free of biological pests: As much as possible, the archive should be protected against and free from insects, rodents, mold and other biological dangers to records.
- Free from ultraviolet light: As much as possible, sunlight and other sources of ultraviolet light, such as fluorescent tubes, that tend to damage film and paper documents must be excluded from the archive by shielding and filtration. ^[5]
- Fireproof: To the greatest extent possible, construction materials should be of masonry, steel, and other fire-retardant or fire-resistant materials. Care should be taken to see that heating and electrical systems that serve the space are not likely to cause accidental fires.
- Protected by a reliably tested fire suppression system. The most commonly recommended system is a reliable water sprinkler system with proper drainage for the water to be eliminated readily. Desirable fire protection includes rapid response by local fire fighting teams and briefing and orientation of local fire departments by local government officials on the nature of the archive and the need to preserve the content materials. ^[6]
- Shelves and other containers should meet archival specifications: Shelving should be of strong, baked enamel steel construction. ^[7] Enough space should be left between shelves for convenient access and to inhibit the spread of fire. Shelves should be deep enough so that there is no overhang of boxes. Oversized materials (such as engineering drawings) should be in oversized shelving or metal cabinets.
- Filing and boxing of records: To the extent possible, records should be kept in acid-neutral paperboard boxes and folders (available from archives suppliers). This often requires removing records from original folders and boxes to new ones and labeling the new containers.
- Disaster plan: A well-devised disaster plan for actions to take in case of fire, flood, water leakage, earthquake, theft, bomb threats or other dangers to archives should be written. There are good models of disaster plans already in existence. Local archives can acquire one of these and adapt it to local conditions. ^[8] Archive staff should be trained in its provisions and should know what to do in any emergency.

Technical Assistance

The Tennessee State Library and Archives is making an active effort to encourage the development of local and regional archives across the state. It is an excellent source of technical assistance and advice in developing an archive. The State Library and Archives has produced a series of Tennessee Archives Management Advisories that provide a wealth of information on a number of topics. Much of the material in this chapter has been adapted from those publications, but it only scratches the surface of the information available from the State Library and Archives on archives and preserving records. A listing of the archives management advisories is in the appendix to this manual under Sources of Additional Information. For further information, contact the Tennessee State Library and Archives at adp.tsla@tn.gov [17].

[1] These recommendations are from the Tennessee State Library and Archives, Tennessee Archives Management Advisory (TAMA) 99-004 Basic Archives Management Guidelines, p.5.

[2] More detailed standards are available from the Tennessee State Library and Archives at adp.tsla@tn.gov [17].

[3] In the past, some people have regarded archives as “dead” storage and put valuable records into rooms with old furniture, cleaning equipment, or fuel stores, or into fire-trap attics and basements with dirt, vermin, and the like. That kind of negligence endangers the very evidence that public interest needs to save and protect.

[4] There are stricter archival standards, with narrower ranges of tolerance for ideal conditions. Some materials may also require slightly different optimum temperature and humidity. However, these present standards are tolerable for local archives that do not have the resources for highly sophisticated environmental control systems.

[5] Incandescent lights do not produce strong ultraviolet rays, but fluorescent lamps do, and they must be shielded with ultraviolet ray filters if they are used.

[6] Much damage has been done to records when local firefighters treat archives as they would any other storehouse of replaceable goods.

[7] Wood is flammable, and it often gives off gasses and oils that may damage archives.

[8] The University Library of Tennessee Technological University in Cookeville has a well-developed disaster plan that may be used as a model. Other models are available from TSLA and MTAS. For more discussion on disaster contingency planning and vital records preservation plans, see the next chapter.

Alternative Storage Formats

Reference Number: MTAS-519

Paper is not the only medium in which records can be stored. As has been mentioned in earlier chapters, many offices are choosing to store records in either photographic (microfilm, microfiche, etc.) or electronic media. Each medium offers different advantages and disadvantages. Cities should thoroughly research either system before investing revenue and entrusting its vital records to different storage media.

Electronic Records

Reference Number: MTAS-522

City governments can now use computers as a tool for both creating and maintaining original records and for reproducing existing paper records onto other storage media. Any records required to be kept by a government official in Tennessee may be maintained on a computer or removable computer storage media, including CD-ROMs, instead of in bound books or as paper records. [1] But in order to do so, the following standards must be met:

1. The information must be available for public inspection, unless it is required by law to be a confidential record;

2. Due care must be taken to maintain any information that is a public record for the entire time it is required by law to be retained;
3. All data generated daily and stored within the computer system must be copied to computer storage media daily, and computer storage media more than one week old must be stored off site (at a location other than where the original is maintained); and
4. The official with custody of the information must be able to provide a paper copy of the information to a member of the public requesting a copy. ^[2]

These standards, however, do not require the government official to sell or provide the computer media upon which the information is stored or maintained.

Caveats and Concerns

All of these new technologies bring our offices new capabilities but also new problems and dangers. As the provisions regarding each of these new developments indicate, extra safeguards are necessary with electronic records. If you consider for a moment the true nature of electronic records, you can see why precautions are necessary.

Fragility

Computer records are nothing more than magnetic impulses embedded in a chemical medium. Doesn't sound like something that's going to last through the ages, does it? The truth is, electronic records are much more convenient to use, but they also are more fragile than paper records. Like paper records, fire and water can destroy them, but so can magnetic impulses, power surges, heat and moisture. Unlike paper records, a little bit of damage goes a long way. A spilled cup of coffee may ruin a few papers on your desk, but spill the same cup onto your computer and the equivalent of volumes and volumes of information can be destroyed in a moment.

Another manner in which computer records are unlike paper records is the possibility of damaging the records through use. Continuous use over a long period of time may cause the deterioration of a bound volume, but that in no way compares to the amount of damage that can be done to a disk of computer records by a negligent or malicious user.

Computer Records Are Not "Human Readable" When you use computer records, you need a third party involved, namely, a computer. If something happens to your computer system, you can't access the records until it is replaced. If the problem is a lightning strike that knocks out a few PCs in your office, it's no big deal. They may be expensive to replace, but they are definitely replaceable. If the problem is a bug in a proprietary record-keeping software package and the company that wrote your software is out of business, you may have an insurmountable problem. No matter how well you preserve the computer media containing the data, you can't read it without a program.

[1] T.C.A. §§ 10-7-121 and 47-10-112.

[2] T.C.A. § 10-7-121.

Data Migration

Reference Number: MTAS-524

If you still think computer records are safe and reliable for long-term use, consider this: Even if you have your magnetic tapes and computer disks and CD-ROMs in 10 or 20 years time and they have been perfectly preserved in pristine condition, will you still be running the same computer? This is a problem that may prove to be the most serious technological issue of this century. Imagine the difficulty of finding a way to access computer records that are 30, 40 or — in the not too distant future — 100 years old.

To avoid falling victim to rapid changes in technology, you must have a system of data migration. Whether you use a computer for keeping the current financial records of your office or you use an imaging system to capture information from old records, you must anticipate and plan on being able to transfer that information from one computer system to the next as you upgrade your equipment and software. Failing to recognize this need will lead to disaster.

For long-term retention, permanent-value municipal records must be in a durable format such as paper or microfilm. Scanned or digitized records do not meet national archival standards for viability after 15 to 20 years, much less for permanent storage. T.C.A. § 10-7-121 does, in fact, authorize keeping permanent-value records on “computer or removable computer storage media, including CD-ROMs, instead of bound books or paper records” if the records are available for public inspection, can be reproduced in paper form, and are backed up in off-site storage. See also T.C.A. § 47-10-112.

These laws, in our view, leave officials vulnerable to losses of vitally important records for whose long-term safekeeping these same officials are legally responsible. Despite what these laws allow, records cannot be safely maintained solely in digital form for long periods of time.

Consider these issues seriously, seek technical assistance for working with technology, and question vendors thoroughly about these problems when considering any technology purchase.

Microfilm

Reference Number: MTAS-520

MICROFILM ^[1]

Microfilming can offer as much as a 98 percent reduction in storage space over storing records in their original paper format. ^[2] And by having a back-up copy of microfilm stored off site, a government can almost immediately recover from any disaster or occurrence that damages its vital records. Produced correctly, microfilm is considered to be archival quality, meaning it is a suitable format for storing permanent retention documents.

But microfilm has disadvantages. No alternative format is going to be a perfect solution for all your records management problems. Microfilming is not cheap. It is a labor-intensive process that requires expertise of the person doing the work. Additionally, if microfilm is not properly produced, developed and stored, it will not stand the test of time.

^[1] In this text, the terms “microfilm” and “microfilming” are used generally to discuss the various micro-photographic processes available.

^[2] Using Microfilming, p.1.

State Microfilming Program

Reference Number: MTAS-521

The law provides that the State Library and Archives is charged with providing trained staff and appropriate equipment necessary to produce and store microfilm reproductions of official, permanent value bound volume records created by county and municipal governments.

To implement this security microfilming program, the state librarian and archivist are authorized to develop a priority listing of essential records based on retention schedules developed by the UT County Technical Assistance Service and the UT Municipal Technical Advisory Service. This priority listing of essential records may be revised from time to time to accommodate critical needs in individual counties or municipalities or to reflect changes in retention schedules. The camera negative of the microfilmed records shall be stored in the security vault at the State Library and Archives, and duplicate rolls of these microfilmed records shall be made available to county and municipal governments on a cost basis. ^[1]

^[1] T.C.A. § 10-7-511.

Technical Guidelines

Reference Number: MTAS-523

The following guidelines for producing and storing microfilm are considered crucial by the Tennessee State Library and Archives: ^[1]

- **Microfilm must conform to national archival processing and storage standards if it is to survive:** Tennessee law requires that “photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the National Bureau of Standards (now the National Institute of Standards and Technology), and the device used to reproduce such records on film shall be one which accurately reproduces the original thereof in all details. [2]
- **Good preparation of records to be filmed is crucial:** If needed, records should be cleaned and flattened before filming. You must film the records in their correct order and arrangement. At the beginning of each group, series and sub-series, identify the records by filming descriptive “targets” that also include notes on physical condition and arrangement of the records.
- **All records in a group or series, regardless of condition, must be filmed in proper orientation, order and focus:** If a page is omitted or improperly filmed and the original destroyed after filming, there is no way to recover the permanent record that should have been preserved.
- **Archival quality silver-gelatin film must be used for the camera-image negative film, and it must be processed according to archival standards:** Diazo film and other inexpensive process films will not endure. Residual chemicals on film from poor processing will destroy film. However, reference copies may be on any sort of commercial film that is convenient and affordable. It will have to be replaced from time to time, since heavy use in readers will wear out the film.
- **The original negative (camera-image) film must be reserved in archival storage conditions and should be kept at a site removed from the main archives:** Only positive copies of the original negative should be used for reference, otherwise the original may deteriorate. High humidity and changes in temperature that are wide or frequent tend to hasten the destruction of film. The original negative (camera image) film must be used only to produce reference copies as needed. Indeed, it is still better to have a second negative copy from which to produce reference-use positives, so that the camera- image negative original is itself preserved. Off-site storage under archival conditions offers the best chance for survival of the original negative film. The Tennessee State Library and Archives is a good storage option for counties and municipalities that wish to preserve their original camera-image, negative film.

For more information on microfilming, contact the National Association of Government Archives and Records Administrators, and request a copy of its publication entitled *Using Microfilm* by Julian L. Mims, CRM, issued in February 1992.

For general information about the Archives Development Program, including how to schedule a visit to your community, please contact adp.tsla@tn.gov [17]. Tennessee Archives Management Advisories (TAMAs) can be viewed at: <https://sos.tn.gov/products/tsla/tennessee-archives-management-advisories-tamas> [18].

[1] Tennessee Archives Management Advisory 99-005, Microfilming Permanent Records, 11 January 1999.

[2] T.C.A. § 10-7-501.

Disaster Preparedness

Reference Number: MTAS-516

By their very nature, disasters are unexpected events. Severe weather, earthquakes, floods or fire can strike anywhere at any time with little or no warning. Disasters can irreparably change individual lives and halt the normal commerce of business, industry and government. Disasters cannot be prevented, but you can prepare for them and mitigate their impact.

To lessen the impact of a disaster, every city should do two things:

1. Develop a disaster contingency plan; and
2. Institute a vital records protection program.

Contingency Plans

Reference Number: MTAS-517

Disaster Contingency Plans

Contingency plans should be detailed and instructive, and address the specific needs of every office of city government. They should anticipate the various types of disasters your city might face. Response to a flood will be different from response to a fire, earthquake or tornado. In addition to officials and staff having copies of the plan, duplicates should be stored off site in case of disasters of truly catastrophic proportions. The best recovery plan is no good if the only copy is locked inside a file cabinet in an office that is on fire.

A good disaster contingency plan will:

- Designate who is in charge of recovery operations and who will be working on recovery teams. It should include all necessary information for contacting these people at any hour of the day or night;
- Anticipate the types of disaster the city may face and provide basic instructions for the first responders to an emergency to ensure that everything possible is done to minimize damage and preserve the safety of individuals responding to the disaster (e.g., evacuation plans, directions for shutting off electrical current in case of a flood, locations of shut-off valves in case of a broken water line);
- Include an inventory of supplies and equipment that are available for use in salvage efforts. The inventory should identify locations of important supplies and equipment — everything from heavy machinery to fire extinguishers to mops and buckets;
- Identify alternative office space and other facilities that might be used if the city needs temporary space for relocation or salvage operations;
- Include current contact information for experts in emergency management such as those at the Tennessee Emergency Management Agency (TEMA), the Federal Emergency Management Agency (FEMA), and other governmental entities, plus commercial entities that can provide expertise in recovery and salvage if the disaster is too large for the city to handle by itself; and
- Plan for acquiring replacement office equipment and supplies quickly and efficiently. This will be essential if computer equipment is damaged.

Vital Records Protection

Reference Number: MTAS-518

A companion to the disaster contingency plan is the vital records protection program. The records of a local government are one of its most vital and vulnerable resources. If steps have not been taken to protect important records prior to a disaster, the resumption of regular operations after a disaster will be far more difficult and costly.

Whereas a contingency plan will provide instructions on how to respond immediately after a disaster, a vital records protection plan will inform government offices of ongoing practices to preserve the important information of the office. Records protection plans will vary depending on the volume and format of the records to be protected, the resources available to the city, and the technology present in offices. Any plan should, at a minimum, provide procedures for identifying, duplicating and safeguarding vital records.

No office can afford to expend the amount of resources it would take to ensure the protection of every record in the office. For that reason, it is important to determine which records are truly vital and which are not.

Records management experts divide records into four classes:

1. Nonessential records — those that if lost would not really be missed. Most convenience files, internal memos and many routine papers of completed transactions fall into this category.
2. Useful records — records containing information that if lost would cause some difficulty but that could easily be replaced.
3. Important records — records that cannot be dispensed with and that can be replaced only through the expenditure of substantial time, money or manpower.
4. Vital records — records that are essential and cannot be replaced. Vital records contain information essential to the continuity of operations or to the protection of the rights of the government or of individual citizens. ^[1]

Begin by protecting records that are indispensable. Since you cannot anticipate and prevent every possible disaster, the best course of action is to make sure there are off-site archival quality copies of the city's most important records. ^[2]

If some records are stored in electronic format, state laws require that certain back-up procedures are followed to prevent loss of data. ^[3] For obvious reasons tape or disk backups of electronic data should not be stored in the same location as the computer system itself. While less fragile than electronic records, paper records and microfilm also must be properly stored and cared for in order to prevent destruction of the records in the event of a disaster or by the ravages of time. Wherever possible, a city should archive its permanent records in a location or facility that is designed for records preservation. ^[4]

If you need assistance developing these plans for your city, both MTAS and the Tennessee State Library and Archives can help. Copies of contingency plans and other publications on records protection are available upon request. In addition, there are a number of commercial, nonprofit, government, and educational sites on the Internet that provide a wealth of contacts and links to valuable information. The following Internet sites are places you might want to start: ^[5]

- <http://www.nagara.org> ^[19]
- <http://palimpsest.stanford.edu/bytopic/disasters/index.html> ^[20]

Recovery of Stolen or Misappropriated Records

While they usually don't reach disastrous proportions, there also are certain human behaviors for which a prepared response is necessary. If records are inappropriately removed from the office where they belong, the official who has custody of the records is not without remedy. Of course, criminal theft charges can be brought against someone who steals city documents. Tennessee law makes it unlawful for any person to intentionally and unlawfully destroy, conceal, remove, or otherwise impair the verity, legibility, or availability of a governmental record. A violation of that law is a Class A misdemeanor. ^[6]

What may prove to be a more practical remedy is to pursue an action to recover personal property. ^[7] This action, also known as replevin, is a judicial proceeding whereby property that is in the wrong hands can be returned to the rightful owner or custodian. It is initiated by filing a complaint in the circuit or chancery court or by causing a warrant to issue in the general sessions court. ^[8] Ultimately, the proceeding may result in the issuance of a writ of possession that directs the proper officer to take the property from the defendant and return it to the plaintiff. ^[9] If you need to pursue such an action to recover misappropriated city records, contact your city attorney.

^[1] Protecting Records, Harmon Smith, Issued by the National Association of Government Archives and Records Administrators (March 1992), p.3.

[2] According to the State Library and Archives, the only media that will assure long-term survival of vital records are carbon-based ink on acid neutral paper and archival quality silver gelatin microfilm created and kept under conditions that meet archival standards. See Tennessee Archives Management Advisory 99-07.

[3] For information regarding these procedures, see the chapter in this part regarding alternative storage media.

[4] See the discussion in a previous chapter in this manual on archives.

[5] Sites were current and available as of the date of publication. The Internet is the most temporary of media. If these sites no longer exist, call MTAS for more information.

[6] T.C.A. § 39-16-504.

[7] T.C.A. §§ 29-30-101 *et seq.*

[8] T.C.A. § 29-30-103.

[9] T.C.A. § 29-30-107.

Public Record Forms

Reference Number: MTAS-710

Click on the listing below for sample forms.

Records Inventory Worksheet

Reference Number: MTAS-711



RECORDS INVENTORY WORKSHEET

City, Town, etc. _____ Number _____

1. Department _____ Division _____ Section _____

2. Name and title of officer immediately responsible for series _____

3. Records series title _____ 4. Series number _____

5. Description of records series (content, purpose, by whom created, form numbers, etc.) _____

6. Earliest date/Latest date _____ 7. Records still being created? Yes No

8. Annual accumulation _____ cubic feet

9. Arrangement: Alphabetic by _____ Numeric by _____ Other _____

10. Reference frequency (check, insert number, circle appropriate words)
 _____ times daily, weekly, monthly, annually for _____ months, years.
 Never after _____

11. If there are other copies of these records, including microfilm, identify them. _____

12. Relationship to other records series (indexed, summarized, listed, etc.) _____

13. Location of records (building, room, file section, etc.) _____

14. Volume _____ cubic feet

15. Size and format of record _____

16. Type and quantity of file equipment occupied _____

17. Statutory or state archival requirements for retention _____

18. Suggested retention period with justification _____

19. Additional comments _____

20. Inventory taken by and date _____

21. Reviewed by/date _____

22. Appraisal Confirms suggestion retention period or Substitutes following _____

23. Department head and date _____

24. Records officer and date _____

25. Other local authority and date _____

26. State archivist and date _____

From H.G. Jones, *Local Government Records: An Introduction* (Nashville: American Association for State and Local History, 1979) as it appeared in *Managing Records On Limited Resources — A Guide for Local Governments*, Stephen E. Haller, CRM, issued by NAGARA (November 1991). Local officials are welcome to reproduce this worksheet. This constitutes formal permission from author and publisher for its reproduction, with proper acknowledgment to source.

Records Disposition Request and Authorization Form

Reference Number: MTAS-712



RECORDS DISPOSITION REQUEST AND AUTHORIZATION FORM

Name of person requesting disposition authority: _____

Title: _____

Action requested: One-time records disposition authority
 Continuous records disposition authority based upon retention schedule
 Other disposition authority (explain) _____

For one-time authority, describe records: _____

Record group and series title: _____

Date span of records: _____ Volume: _____

Proposed disposition (cite pertinent guidance in MTAS Retention Schedule): _____

Signature of person making request: _____

Approved Not approved

Chairperson of Records Commission
(or official with authority for records disposition)

Date

e-mail, that would become discoverable in litigation. Under the amended Rule 26 (a) (1) (A)(ii), parties “shall, without awaiting a discovery request, provide to the other parties...a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;.” This places cities and other potential parties to litigation on notice that pertinent communications must be saved.

In the unfortunate occurrence of a legal action, notice should be given to all city department personnel to put a litigation hold on documents, meaning that no documents or electronic documents should be destroyed, altered or otherwise disposed without the consent of the attorney representing the city. Because of the short time frame, the departments should start to think about all places where this information may be kept and begin to be collected. The parties will meet and provide descriptions and locations of all relevant correspondence at or within 14 days after the parties’ Rule 26(f) conference unless a different time is set by the rules, such as late-added defendants. (See Rule 26 for information about those deadlines and procedures.). With the often voluminous amount of e-mails cities produce, an organized system for locating and retrieving relevant e-mails is crucial. Many software systems have such features. Check with your information technology (IT) department to ensure that your city has the technical ability to comply with the short deadlines set by the Rules of Civil Procedure.

The amendments also provide an exception to this required disclosure if such disclosure would place an undue burden or cost on the disclosing party. However, even if such a showing is made, the court may nonetheless order discovery if the requesting party shows good cause. Rule 26(b)(2). The amended Rule 34 further expands the scope of discovery to allow parties the opportunity to test or inspect electronic information, even to the point of allowing entry upon land or premises. Rule 37 (f) provides a safeguard for parties who fail to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic system. Note that the rule specifically mentions the operation of an electronic system, implying that one must be in place and that this exception would not apply to cities that fail to enact one.

Under Rule 45(d), cities receiving a subpoena to produce documents or electronically stored information must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms, but a person responding need not produce the same electronically stored information in more than one form. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery for good cause and may place conditions upon the release.

The underlying importance of these amendments is that electronic communications must be added to every city’s current retention schedule. The subject matter, not the format, is the decisive factor in retention. For further information on records retention and a model retention schedule, see Records Management for Municipal Governments [21].

Links:

- [1] https://www.comptroller.tn.gov/openrecords/internet_forums.asp
- [2] <http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePoliciesGuidelines/20170119ScheduleofReasonableCharges.pdf>
- [3] <https://www.mtas.tennessee.edu/knowledgebase/sample-resolution-adopting-public-records-policy>
- [4] <http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePoliciesGuidelines/20170119SafeHarbor.pdf>
- [5] <http://www.mtas.tennessee.edu/reference/records-management-municipal-governments>
- [6] <https://apps.cot.tn.gov/PublicRecordsExceptions>
- [7] <https://www.comptroller.tn.gov/openrecords/forms.asp>
- [8] http://www.comptroller.tn.gov/openrecords/pdf/20131015ResolutionVOrdinance13_01.pdf
- [9] http://www.comptroller.tn.gov/openrecords/pdf/20131015ResolutionVOrdinanceAmendedClean13_02.pdf

- [10] <mailto:open.records@cot.tn.gov>
- [11] https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/BestPractices_1-20-17.pdf
- [12] <https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/ScheduleofReasonableCharges.pdf>
- [13] <https://www.mtas.tennessee.edu/reference/written-email-policy-required>
- [14] <https://www.mtas.tennessee.edu/reference/sample-acknowledgement-email-policy>
- [15] <https://www.comptroller.tn.gov/openrecords>
- [16] <https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS10-7-121&originatingDoc=N370575E013C411>
- [17] <mailto:adp.tsla@tn.gov>
- [18] <https://sos.tn.gov/products/tsla/tennessee-archives-management-advisories-tamas>
- [19] <http://www.nagara.org/>
- [20] <http://palimpsest.stanford.edu/bytopic/disasters/index.html>
- [21] <https://www.mtas.tennessee.edu/reference/records-management-municipal-governments>

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