

Laws that Require Records to be Kept

Dear Reader:

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

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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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

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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