



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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Which Records are Subject to Public Access?

Dear Reader:

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

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

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

Sincerely,

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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.

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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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