

Electronic Records

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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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:

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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.

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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