

September 30, 2002

Pam Carr
City of Sevierville
P.O. Box 5500
Sevierville, Tennessee 37864

Dear Pam,

You want to know if exemption provisions of the open records law extends to personnel within the city workforce. In particular you have had a request for records from the City's Risk Manager, who would like to review a variety of employee records, indicating to you that such a review is needed in order to help manage the City's risk.

The law says that certain employee records are to remain confidential, that is, under the protection of the City (see the attached list). This is a huge responsibility because the risk to the City can be substantial if certain records are not protected. So even though someone in the City's workforce wants to see records, if you give them this right you are essentially transferring the responsibility to protect records to that person. Since the responsibility is so significant (because the liability is great), you should not do this unless it is necessary.

I have spoken with our attorney to determine if you can keep the confidential parts of employee records from another city employee. And the answer is yes, you can. Normally someone in the City is designated as the official custodian of employee records (it is usually the City Recorder or Personnel Director). This person should be responsible for determining if a record should be distributed to another employee such as the Risk Manager. If the official custodian does not feel comfortable making this decision then they should ask the City Manager to intervene with a determination.

I must tell you that I have not had this request before. Although I am not a Risk Manager I am having a difficult time imagining what particular employee records would help reduce the City's risk enough to make all of this worth it. I have spoken with the MTAS person who is our most knowledgeable risk management person and he agrees with this assessment.

Based on this I would recommend that the new Risk Manager be required to ask for a specific type of employee record rather than for the entire group of employee files (including

portions which are not “open records”), and that a decent description be provided about how the information will be used and specifically how it will reduce the City’s risk. In addition I would recommend that the City Manager be informed of the Risk Manager’s requests and make a determination regarding this person’s “need to know. A request based on a general “need to know” is not adequate. The request must be much more specific.

You may also want to think about having the Risk Manager, or other employee to whom you release such records, sign a statement indicating that they assume responsibility for these records and understand the confidential nature of such.

In summary then I would be very cautious about letting protected employee records become open to another employee without a very good reason for doing so.

I hope this discussion helps as you work to maintain the integrity of employee records which are under your protection. If I can be of any other assistance as you work to do so please feel free to call.

Sincerely,

Patrick Hardy
Municipal Management Consultant

enc: List of records which are to be kept confidential (from the MTAS *Municipal Handbook*)