



## Tennessee Archives Management Advisory

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1999

### **PUBLIC INSPECTION, CONFIDENTIALITY, AND COPYING PUBLIC RECORDS FOR THE PUBLIC**

#### ***THIS TAMA PROVIDES INFORMATION ONLY: IT IS NOT LEGAL COUNSEL***

This TAMA was revised to accommodate changes in TCA § 10-7-504. **Confidential records.** That subsection of Tennessee Code Annotated subsection is very extensive and complex.

#### **County archivists and others in charge of archives should:**

- (a) Read the provision on confidentiality themselves, carefully and thoroughly, even though it is a daunting task;
- (b) Consult the principal legal counsel to the archival institution to obtain a layman's summary of the pertinent provisions; and
- (c) Consult that same legal counsel in all matters of uncertainty or dispute before taking action to open material that may be confidential to the public.

#### **Most public records of the state, county, and municipal governments of Tennessee must be open to the public, unless specifically exempted from inspection by law. [TCA §§ 10-7-503 — 10-7-510 apply]**

*Tennessee Code Annotated* (TCA) specifies that the records must be open "for personal inspection by any citizen of Tennessee". This does *not* limit the right of inspection to Tennessee citizens alone, for Tennessee is obliged by interstate reciprocity under Article IV of the US Constitution and under the 14<sup>th</sup> "equal protection of the laws" amendment to the US Constitution to accord the citizens of other states the same rights it accords its own citizens.

However, by Tennessee law [TCA §§ 10-7-503 & 10-7-504], officials ***must deny*** public inspection of the following kinds of records, unless a court orders that the records be opened to the public, or unless the law provides for some other means of allowing

access or inspection, which it does in some cases and under certain limited conditions.<sup>1</sup>  
[Notations in brackets are to pertinent provisions of TCA.]

1. Records of adoption proceedings [10-7-504 (a) (1)].
2. Records required by federal law to be kept confidential as a condition of receiving federal funds or participating in a federally-funded program [10-7-504 (a) (1)].
3. Medical records of
  - patients in state, county, or municipal hospitals and medical facilities
  - persons receiving medical treatment at state, county, or municipal expense
  - sources or donors of body parts for transplantation [10-7-504 (a) (1)].
4. Criminal investigative files of the
  - Tennessee Bureau of Investigation (TBI)
  - motor vehicle enforcement division of the department of safety that relate to stolen vehicles or parts
  - drivers' license issuance division of the department of safety that relate to bogus drivers' licenses issued to undercover law enforcement officers [10-7-504 (a) (2)].
5. Military department records that involve the security of the United States and/or the state of Tennessee, including (but not limited to) national guard personnel records, staff studies, and investigations. [10-7-504 (a) (3)]
6. Records of students in public educational institutions that relate to a student's
  - academic performance [*such as class grade records*]
  - (or parent's or guardian's) financial status
  - medical or psychological treatment or testing [10-7-504 (a) (4)]
7. Certain materials in the possession of the attorney general and reporter that relate to any pending or contemplated legal or administrative proceeding [10-7-504 (a) (5)].
8. State agency records on the value of real and personal property to be acquired for public purposes (until the acquisition has been fulfilled) [10-7-504 (a) (6)].
9. Proposals received pursuant to personal service, professional service, and consultant service contract regulations (until after completion of evaluation of the same by the state) [10-7-504 (a) (7)].
10. Sealed bids for purchases and leases (until after evaluation of the same by the state) [10-7-504 (a) (7)].
11. Investigative records and reports of the
  - internal affairs division of the department of correction, or
  - department of youth development [10-7-504 (a) (8)].
12. Official health certificates collected and maintained by the state veterinarian pursuant to rule chapter 0080-2-1 of the department of agriculture. [10-7-504 (a) (9)].
13. Capital plans, marketing information, proprietary information, and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University. [10-7-504 (a) (10) (A), (B)]
14. Records specifically prohibited or restricted by federal law [10-7-504 (c)].
15. Records of services for a person for mental illness or mental retardation [10-7-504 (c)].

16. Records maintained by the office of vital records.
17. Records maintained by the Tennessee bureau of investigation.
18. Records of library patrons made confidential by § 10-8-102.
19. Records of historical research value given or sold to public institutions if access is restricted by the donor or seller. [10-7-504 (a)(11)]
20. Personal information in motor vehicle records. [10-7-504(a)(12)]
21. Records relating to mental health intervention group therapy for law enforcement officers and other trauma-event personnel. [10-7-504(a)(13)]
22. Riot, escape, and emergency transport plans for county jails and state prisons, etc. [10-7-504(a)(14)]

### **The seventy-year (70-year) rule**

Provides that no matter what any other provision of the law may say, **all** public records—**except** those in categories (#14 - #17, and #21) above—must be opened to research upon existing for seventy (70) years [10-7-504 (c)].

### **No authority to deny copying unless records are confidential:**

There is no statutory authority to permit any Tennessee government archivist (state or local) to deny to any member of the public a copy of any record that is otherwise open to public inspection in accordance with TCA §10-7-503.

### **Local Public Records Commission has authority to protect records from damage through copying:**

The *mode and manner* of copying *may* be restricted to copying that does not damage or accelerate the deterioration of permanent records that the state and local governments are bound by law to maintain so that they may be open to the public.

- Local public records commissions have rule-making authority over the management of public records.
- A local public records commission may draft a rule to this effect.
- The rule may be further authorized by county resolution or municipal ordinance.
- The rule may be posted prominently in the public area of the archives and brought to the attention of any interested member of the public.

The wording of such rule may be in language such as that found on the following page, subject to the approval and advice of local legal counsel:

### **The copying of records is restricted to such means as will not damage records; and, the [name of county or municipality] archivist is authorized to determine which means are safe for use.**

In order to preserve the material evidence of any record for public inspection by future generations, copying of fragile records shall be restricted to such means, including printing from microfilm, as the archivist may determine in his/her professional opinion do not damage the record or accelerate its deterioration so as to endanger its

long term preservation in the public interest.

When no other form of copying will keep a record safe from damage or accelerated deterioration, the archivist may direct that the record be hand-copied only, and that in the process of such copying the member of the public shall bear the burden and expense of such hand-copying, and record itself shall not be handled or touched by the member of the public inspecting or copying the record.

Nothing in this rule shall be construed to prohibit members of the public from visually inspecting any record that is open to public inspection under the terms of TCA §10-7-503.

By order of the

*[name of county/municipality]*

**PUBLIC RECORDS COMMISSION**

*[date]*

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<sup>1</sup> For example, a student's academic performance record, which is otherwise confidential, may be released to a specific person, agency, or institution at the student's request.