



OPEN RECORDS LEGISLATIVE UPDATE

Office of Open Records Counsel
August 3, 2020

Justin P. Wilson
Comptroller of the Treasury



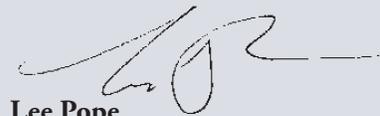
Jason E. Mumpower
Deputy Comptroller

MESSAGE FROM THE OFFICE OF OPEN RECORDS COUNSEL



Below is a summary of new laws passed during the second session of the 111th General Assembly affecting public records and open meetings in Tennessee. The Office of Open Records Counsel provides this summary to educate public officials and citizens about open records and open meetings laws in Tennessee.

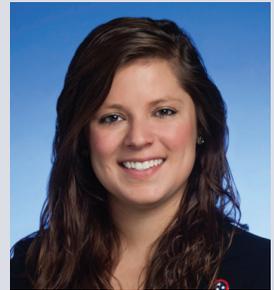
Thank you,



Lee Pope
Open Records Counsel



Rachel Buckley
Assistant General Counsel



1. Tennessee Public Records Act Cleanup

Effective June 15, 2020, Public Chapter 676 allows governmental entities to provide requestors with the time reasonably necessary to produce public records, when such records cannot be made promptly available, by either responding on a response form developed by the Office of Open Records Counsel or responding in writing with the time reasonably necessary to produce the records or information. Tenn. Code Ann. § 10-7-503(a)(2)(B)(iii). The statute previously required governmental entities to respond on the form produced by the Office of Open Records Counsel.

Public Chapter 676 also moves two exceptions to the Tennessee Public Records Act (“TPRA”) from Tenn. Code Ann. § 10-7-503 to Tenn. Code Ann. § 10-7-504, which is where many exceptions to the TPRA are contained. The exceptions that this legislation moved to Tenn. Code Ann. § 10-7-504 make contingency plans of law enforcement confidential and allow a governmental entity to promulgate rules under the Uniform Administrative Procedures Act regarding the confidentiality of records or information made confidential under federal law.

Click [here](#) to view the full language of the new law.

2. Destruction of Public Records

Effective June 22, 2020, Public Chapter 738 prohibits a governmental entity from authorizing the destruction of public records responsive to a public record request if the governmental entity knows the records are responsive to a pending public record request. Prior to authorizing the destruction of public records, the entity must contact the entity’s public records request coordinator to ensure the records are not subject to a pending public record request. The new law does not prohibit records custodians from properly disposing of public records in accordance with established record retention schedules or policies as part of the ordinary course of business when the custodian is without knowledge that the records are subject to a pending public record request. A governmental entity that authorizes the destruction of public records in violation of this new law may be fined up to five hundred dollars (\$500).

This legislation also requires records custodians to retain written or electronic correspondence regarding a public record request, including any forms, emails, letters, facsimiles, and other attachments, for no less than one year.

Click [here](#) to view the full language of the new law.

3. State Employee Harassment

Effective June 11, 2020, Public Chapter 694 allows the state to seek an injunction against an individual who commits harassment against a state employee. “Harassment” is defined as two or more instances of contact serving no legitimate purpose directed at an employee, in connection with that person’s status as an employee, that a reasonable person would consider alarming, threatening, intimidating, abusive, or emotionally distressing and that does or reasonably could interfere with the performance of the employee’s duties. Tenn. Code Ann. § 50-1-502(5).

Click [here](#) to view the full language of the new law.

4. Juvenile Acts of Terrorism

Effective October 1, 2020, Public Chapter 806 grants the public access to otherwise confidential juvenile court records when the conduct constituting the delinquent act, if committed by an adult, would constitute an act of terrorism or attempted terrorism. Tenn. Code Ann. § 37-1-154(b)(2).

Click [here](#) to view the full language of the new law.

5. Release of Minor Victim Information for Memorial Gardens

Effective June 22, 2020, Public Chapter 735 allows a governmental entity to publicly release the otherwise confidential name and photograph of a minor victim of a crime for the purpose of memorializing minor victims of crime in a memorial garden, so long as the parents of the minor victim consent to the release of the information. Tenn. Code Ann. § 10-7-504(t)(3)(E).

Click [here](#) to view the full language of the new law.

6. Charging for Redaction of Private Records of Utilities

Effective March 25, 2020, Public Chapter 624 clarifies that Tenn. Code Ann. § 10-7-504(a)(20) allows utility districts to charge for the redaction of the private records of utilities when responding to a public record request to inspect or obtain copies of the records. Under the previous language of the law, non-utility governmental entities attempted to charge requestors for the redaction of public records related to a request only to inspect public records, which is generally prohibited.

Click [here](#) to view the full language of the new law.

7. Electronic Meetings of Higher Education Boards of Directors

Effective June 11, 2020, Public Chapter 692 allows the governing boards of Austin Peay State University, East Tennessee State University, University of Memphis, Middle Tennessee State University, Tennessee State University and Tennessee Technological University to meet electronically without a physical quorum present at the physical location of the meeting. Tenn. Code Ann. § 49-7-151. In 2016, these universities lost the ability to conduct such electronic meetings when the law changed to make the universities independently governed.

Click [here](#) to view the full language of the new law.

8. Reports of Child Abuse in Schools

Effective August 1, 2020, Public Chapter 708 sets forth procedures for schoolteachers, school officials, and other school personnel to report suspected child abuse to a school child abuse coordinator. Tenn. Code Ann. § 49-6-1601(a). This legislation requires all school personnel to maintain the confidentiality of any reports of child abuse and requires the school child abuse coordinator to maintain reports of abuse in a confidential file separate from the child’s educational file. Tenn. Code Ann. § 49-6-1601(d)(4).

Click [here](#) to view the full language of the new law.

9. Voter Registration Drive Information

Effective April 2, 2020, Public Chapter 654 prohibits organizations collecting voter information as part of a voter registration drive from using a voter's personal information for any purpose other than voter participation, voter engagement, or voter turnout, absent a voter's express consent otherwise. Tenn. Code Ann. § 2-2-142(f). The new law also provides that a voter's social security number is confidential and may only be retained by government election officials for official purposes. Id.

Click [here](#) to view the full language of the new law.

10. Airport Authorities Subject to Open Meetings Act and Public Records Act

Effective June 15, 2020, Public Chapter 680 declares that airport authorities created pursuant to the Airport Authorities Act are public governmental bodies acting as an instrumentality of the creating municipality. Tenn. Code Ann. § 42-3-116(a). Accordingly, these airport authorities are likely now subject to the requirements of the Tennessee Open Meetings Act and Tennessee Public Records Act.

Click [here](#) to view the full language of the new law.

11. Distillery Transfer Records and Reports

Effective July 15, 2020, Public Chapter 774 authorizes distilleries to transfer product between licensed distilling facilities within the state so long as they comply with various requirements including providing notice and appropriate documentation to the Tennessee Alcoholic Beverage Commission ("the commission"). Tenn. Code Ann. § 57-3-202(i)(6)(D). This new law makes any records or reports provided to the commission confidential and not subject to public disclosure. Tenn. Code Ann. § 57-3-202(i)(6)(E).

Click [here](#) to view the full language of the new law.

12. Judicial Review of Sexual Offender Records

Effective April 1, 2020, Public Chapter 636 allows a sexual offender whose victim was a minor to conduct an overnight visit with a minor that is the offender's child if the offender's child was not the victim, the offender's parental rights have not been or are not in the process of being terminated, and a court has not determined the offender presents a threat of substantial harm. Tenn. Code Ann. § 40-39-211(c). If a court proceeding occurs to determine whether the offender presents a substantial threat of harm to the minor, all files and records of the court proceeding are confidential and not subject to public disclosure. Tenn. Code Ann. § 40-39-211(c)(2)(D).

Click [here](#) to view the full language of the new law.

13. Register Indices Maintained Electronically

Effective July 15, 2020, Public Chapter 798 authorizes county registers to maintain indices of documents filed with their offices electronically. Tenn. Code Ann. § 10-7-202(b). Former law required registers to maintain a hardcopy of the indices.

Click [here](#) to view the full language of the new law.

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