



OPEN RECORDS LEGISLATIVE UPDATE

Office of Open Records Counsel
SUMMER 2022

Jason E. Mumpower
Comptroller of the Treasury



Justin P. Wilson
Comptroller Emeritus

MESSAGE FROM THE OFFICE OF OPEN RECORDS COUNSEL



Below is a summary of new laws passed during the second session and the second extraordinary session of the 112th 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 recent changes to the open records and open meetings laws in Tennessee.

Thank you,

A handwritten signature in blue ink that reads "Maria Bush".

Maria Bush

Open Records Counsel

1. Tennessee Public Records Act Procedural Clarification

Effective July 1, 2022, Public Chapter 721 clarifies that a governmental entity may require a person making a request to view or make a copy of a public record to present a government-issued photo identification, if the person possesses photo identification, that includes the person's address. If a person does not possess photo identification, then the governmental entity may require other forms of identification evidencing the person's residency.

The new law also provides that a governmental entity is not required to sort through files to compile information into a new record or to recreate a record that does not exist. Furthermore, it requires that a request for inspection or copying of a public record must be sufficiently detailed to enable the governmental entity to identify responsive records for inspection and copying.

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

2. Tennessee Open Meetings Act Virtual Attendance

Effective July 1, 2022, Public Chapter 856 revises provisions for state boards or commissions that allow member participation by electronic means. Electronic means of communication include video or audio conference and the use of an internet-based platform but does not include email. The new law requires that when a meeting allows for member participation by electronic means, members of the public must be able to view and listen to the meeting by electronic means in real time, if video conference is used, or listen to the meeting in real time, if the meeting is conducted with audio only. Additionally, members of the public must be able to participate or provide comment by electronic means if participation or public comment would normally be allowed at the meeting.

The notice and agenda for a meeting conducted using electronic means must state that the meeting will include members of the board or commission who are participating by electronic means, contain information necessary for the public to access the meeting by electronic means, and include instructions on how to provide public comment by electronic means of communication, if the board or commission allows for public comment.

If the board or commission holds a meeting allowing electronic participation, it must make a recording of the meeting and post the recording or a link to the recording on its website where it contains information about the board or commission and its meetings. The recording or link to the recording must be posted within three business days after the meeting. The recording must be retained for at least three years after it was created.

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

3. Confidentiality of Body Camera Footage Related to Minors

Effective April 27, 2022, Public Chapter 916 extends the date for repeal of a subsection of the Tennessee Public Records Act that specifies certain law enforcement body camera video must be treated as confidential and not subject to public inspection from July 1, 2022 to July 1, 2027.

The new law also makes confidential body camera video that depicts a minor in a child care agency, child care program, preschool, or nursery school.

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

4. County Legislative Body Meeting Notice

Effective April 19, 2022, Public Chapter 830 provides an alternative if notice of a special meeting for a county legislative body by publication in a newspaper cannot be obtained in a timely manner. The alternative notice shall be provided to the public by posting the notice in a location where a member of the community may become aware of such notice as well as on a website maintained by the county, if the county has a website; including in the contents of the notice a reasonable description of the purpose of the meeting or action to be taken; and posting the notice at a time sufficiently in advance of the special meeting in order to give citizens an opportunity to become aware of and attend the meeting but at least five days before the county legislative body convenes for the special meeting.

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

5. Confidentiality of Personal Information of Public Employees

Effective May 4, 2022, Public Chapter 989 amends Tenn. Code Ann. § 10-7-504(f) to define “records and information” as employment records containing certain information that has been collected by the employing governmental entity. The new law clarifies that the state or local governmental entity is considered to be the employing governmental entity regardless of which department, branch, agency, or other recognized part of state government or local government keeps or maintains the requested employment records and information.

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

6. Adoption Records Public Record After One Hundred Years

Effective July 1, 2022, Public Chapter 937 states that adoption records, sealed adoption records, and unsealed adoption records deemed to be confidential shall be public record when one hundred years have elapsed since the date the adoption was finalized. If an adoption was not finalized, or the date the adoption was finalized is not clearly indicated in the adoption record, then the adoption record will be a public record and open to inspection when one hundred years have elapsed since the creation of the oldest dated item in the adoption record.

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

7. Handle With Care Program Records Confidential

Effective March 24, 2022, Public Chapter 740 requires that records generated from the Handle With Care Program, which is an alert provided to a school system regarding a child’s potential exposure to an adverse childhood experience, are confidential, are not open or available for public inspection, and must not be released. Contains a sunset provision effective July 1, 2027.

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

8. Rural Electric and Community Service Cooperative Meetings

Effective April 8, 2022, Public Chapter 811 authorizes a rural electric and community services cooperative to allow directors or cooperative members to participate in cooperative meetings by means of virtual or remote communication if the identity of the director or cooperative member can be verified, the director or cooperative member has the opportunity to participate concurrently with the proceedings, and a record of any vote or action taken by the virtual attendee is maintained.

The new law states that a director or cooperative member who participates in a meeting virtually is deemed to be present in person at the meeting.

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

9. Healthcare Task Force Meeting Requirements

Effective July 1, 2022, Public Chapter 1138 creates a healthcare task force to review the reimbursement of health professionals employed by agencies performing health care services in this state. The new law provides that the task force shall meet at least monthly, and the chair may call special meetings whenever necessary for the transaction of business. The chair shall notify each member of the task force of any special meeting at least five days before the time set for the special meeting. A majority of the members of the task force may also petition the chair to call a special meeting.

The task force may conduct regular or special meetings by conference call or video conference in accordance with the requirements of Tenn. Code Ann. § 8-44-108.

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

10. Confidentiality of Photographs of Deceased Minors and Victims of Fatal Motor Vehicle Accidents

Effective July 1, 2022, Public Chapter 1064 specifies that photographic evidence depicting the remains of a deceased minor is confidential and not open for inspection by members of the public. Furthermore, photographic evidence of a fatal motor vehicle accident that depicts a deceased victim at the scene of the accident shall be treated as confidential and shall not be open for inspection by members of the public. The estate, or in the case of a minor, the custodial parent or legal guardian of the deceased minor, may waive confidentiality and allow the minor's photograph to be used and obtained in the same manner as other public records.

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

11. Law Enforcement Related-Deaths Record Retention

Effective April 20, 2022, Public Chapter 850 requires all state, county, and municipal law enforcement and correctional agencies and courts to submit to the director of the Tennessee Bureau of Investigation reports setting forth their activities in connection with law enforcement and criminal justice, including uniform crime reports and reports of law enforcement related deaths. The government entity submitting the report must maintain a record of deaths of individuals in custody that is open for public inspection. The record must contain the identity and age of the deceased individual, the time and date of the death, and the cause of death as determined by the county or state medical examiner.

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

12. Display of Property Owner Name in Online Searchable Databases

Effective January 1, 2023, Public Chapter 996 authorizes an assessor of property to display “UNLISTED” for the first and last name in the ownership field of an online searchable database of property when the residential property owner files a written request with the assessor and includes sufficient information to clearly demonstrate to the assessor that the subject property is the primary residence of the residential property owner.

The new law specifies that an assessor is not prohibited from responding to an open records request regarding the subject property or from providing other information otherwise available for public inspection through an open records request.

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

13. Disclosure of Records Housed by the Department of Motor Vehicles

Effective May 25, 2022, Public Chapter 1077 removes certain exemptions to the prohibition against a department of motor vehicles knowingly disclosing or otherwise making available to any person or entity personal information about any person obtained by the department in connection with a motor vehicle record. Specifically, the new law removes disclosure of individual motor vehicle records if the state has obtained the express consent of the person to whom the personal information pertains as well as bulk distribution for surveys, marketing, or solicitations.

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

14. Megasite Authority of West Tennessee Act of 2021

Effective November 3, 2021, Public Chapter 1, passed in the second extraordinary session, creates the Megasite Authority of West Tennessee Act and establishes a board of directors for the authority. The new law requires that all board meetings comply with the Tennessee Open Meetings Act.

Records maintained, received, or produced by the authority are deemed public records with certain exceptions. Specifically, a binding contract or agreement entered into or signed by the authority that obligates public funds, together with all supporting records and documentation, is not a public record until the contract or agreement is entered into or signed. Additionally, a public record, including proprietary information, that is received, produced, or maintained by the authority is confidential for a period of five years if the chief executive officer, with the agreement of the Attorney General and Reporter, determines that the record is of such a sensitive nature that the record’s disclosure or release would seriously harm the ability of the authority to effectuate its purpose. All trade secrets received, maintained, or produced by the authority must remain confidential. Capital plans and marketing information are to remain confidential until such time as the provider of the records no longer requires the record’s confidentiality.

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

15. Uniform Administrative Procedures Act

Effective July 1, 2022, Public Chapter 833 amends the Uniform Administrative Procedures Act by allowing the administrative judge or hearing officer and agency members, by agreement of the parties, to conduct all or part of a hearing telephonically, electronically, or by audio-visual means if each participant in the hearing has an opportunity to participate in, hear, and, if technically feasible, see the entire proceedings while the proceedings are taking place.

It further allows for an administrative judge or hearing officer to permit the testimony of a witness by contemporaneous audio-visual transmission from a different location when the absence of the witness would otherwise cause a delay to the hearing.

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

16. Competitive Sealed Bid Proposals

Effective April 8, 2022, Public Chapter 779 requires that materials related to competitive sealed bid proposals be open for public inspection after the intent to award the contract is announced. Furthermore, it authorizes local governments to require interviews, presentations, or demonstrations for purposes of clarifying or understanding the bid proposal and prohibits disclosure of such information to another respondent during negotiations for the contract.

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

17. Proprietary Information Submitted to the Department of Environment and Conservation

Effective March 18, 2022, Public Chapter 708 requires that proprietary information submitted by commercial operators to the Department of Environment and Conservation regarding the operators' commercial or financial information be treated as confidential and not be open for inspection by members of the public. However, it does not limit access by law enforcement agencies, courts, or other governmental agencies performing official functions, when a commercial service provider expressly authorizes the release of the information, or when the record is requested by an individual identified in the record unless the record is subject to a legal privilege against disclosure. Contains a sunset provision effective July 1, 2027.

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

18. School Testing Materials

Effective July 1, 2022, Public Chapter 1032 requires a local education agency or the Department of Education to provide testing materials or proposed testing materials in its possession to a member of the General Assembly upon the member's request to inspect and review the material. The new law exempts certain specified materials from release.

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

19. Tennessee Abortion-Inducing Drug Risk Protocol Act

Effective January 1, 2023, Public Chapter 1001 enacts the Tennessee Abortion-Inducing Drug Risk Protocol Act. The new law allows for a patient to initiate a civil malpractice action for damages and requires that, when requested, the court shall allow a patient to proceed using solely the patient's initials or a pseudonym. Additionally, the court may close any proceedings in the case and enter other protective orders to preserve the privacy of the patient on whom the chemical abortion was attempted or performed.

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

20. Interstate Compact for License Portability Act for Licensed Professional Counselors

Effective May 27, 2022, Public Chapter 1088 establishes the Interstate Compact for License Portability Act for professional counselors. The new law creates a Counseling Compact Commission for participating member states.

A Commission delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

All meetings of the Commission must be open to the public, and public notice of meetings must be given 30 days in advance unless an emergency meeting is necessary. Under certain circumstances, the Commission, the Executive Committee, or other committees of the Commission may convene in a closed, non-public meeting. If a meeting, or portion of a meeting, is closed, the Commission's legal counsel or designee must certify that the meeting may be closed and reference each relevant exempting provision.

The Commission must keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

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

21. Occupational Therapy Licensure Compact and Audiology and Speech-Language Pathology Interstate Compact

Effective April 19, 2022, Public Chapter 839 enacts the Occupational Therapy Licensure Compact and the Audiology and Speech-Language Pathology Interstate Compact.

All meetings of the Commission must be open to the public, and public notice of meetings must be given 30 days in advance unless an emergency meeting is necessary. Under certain circumstances, the Commission, the Executive Committee, or other committees of the Commission may convene in a closed, non-public meeting. If a meeting, or portion of a meeting, is closed, the Commission's legal counsel or designee must certify that the meeting may be closed and reference each relevant exempting provision.

The Commission must keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

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

22. Pharmacy Benefits Manager Audit Record Confidentiality

Effective January 1, 2023, Public Chapter 1070 makes confidential any information obtained or produced by the Department of Commerce and Insurance pursuant to an audit of a pharmacy benefits manager. Audit findings by the Department of Commerce and Insurance based upon a completed audit of a pharmacy benefits manager are public records subject to public disclosure.

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

Office of Open Records Counsel
Tennessee Comptroller of the Treasury
Cordell Hull Building
425 Rep. John Lewis Way N.
Nashville, TN 37243

★ ★ ★

Office: 615.401.7891
Fax: 615.741.1551
Email: Open.Records@cot.tn.gov

★ ★ ★

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