

New and Amended Exceptions to the Tennessee Public Records Act

Appendix E



November 2022



Appendix E: New and Amended Exceptions to the Tennessee Public Records Act

Source	Effective/Sunset Date	Subject Matter	Government Entity	Description	Exceptions To Exception
10-7-503(a)	July 1, 2022	Public Records Request, Information, Record Creation	All	<p>(4) This section does not require a governmental entity to sort through files to compile information into a new record or to create or recreate a record that does not exist. 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.</p> <p>(7)(A)(vi) 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 in this state.</p>	
8-44-108(c)	July 1, 2022	Public Meetings, Virtual Meetings, Public Participation, Communication	State Boards and Commissions	<p>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.</p> <p>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 contain instructions on how to provide public comment by electronic means of communication, if the board or commission allows for public comment.</p> <p>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.</p>	Does not apply to local governing bodies.
10-7-504(u)	April 27, 2022	Body Camera Footage, Minors	Law Enforcement	<p>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, until July 1, 2027.</p> <p>(5) This subsection (u) is deleted on July 1, 2027, and will no longer be effective on and after that date.</p>	
5-5-105	April 22, 2022	Special Meetings, Publication, Notice	County Legislative Body	<p>(d) If notice of a special meeting under subsection (c) cannot be obtained in a manner timely enough to conduct the necessary business of the special meeting, the county legislative body shall provide notice to the public by:</p> <p>(1) Posting the notice in a location where a member of the community may become aware of such notice and on a website maintained by the county if the county has a website;</p> <p>(2) Including in the contents of the notice a reasonable description of the purpose of the meeting or action to be taken; and</p> <p>(3) 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 (5) days before the county legislative body convenes for the special meeting.</p>	
10-7-504(f)	May 4, 2022	Employment Records	All	<p>(11) For the purposes of this subsection (f), this state or a local governmental entity, as applicable, 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.</p>	
36-1-149	July 1, 2022	Adoption Records	Chancery or Circuit Court Clerk where the adoption proceeding was held	<p>Notwithstanding §§ 36-1-102, 36-1-125, 36-1-126, 36-1-127, 68-3-313, or another law to the contrary, all adoption records, sealed adoption records, and unsealed adoption records deemed to be confidential pursuant to this part will be a public record and open to inspection when one hundred (100) 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</p>	

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10-7-504(ee)	March 24, 2022	Handle With Care Program	Schools, Law Enforcement	Records generated as a result of a Handle With Care Program notification, which is an alert provided to a school system regarding a child's potential exposure to an adverse childhood experience, are confidential, not open or available for public inspection, and must not be released. This subsection (ee) is repealed on July 1, 2027.	
65-25-111	April 8, 2022	Remote Communication, Presence, Voting	Rural Electric and Community Services Cooperative	<p>[A] cooperative may permit a director, and any or all cooperative members, to participate in a regular or special meeting by, and the cooperative may conduct the meeting through the use of, any means of virtual or remote communication if the cooperative:</p> <p>(1) Implements reasonable measures to verify that each person deemed present and permitted to attend or vote at the meeting by means of virtual or remote communication is a director or cooperative member;</p> <p>(2) Implements reasonable measures to provide directors or cooperative members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the board or cooperative members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings; and</p> <p>(3) Maintains a record of any vote or other action taken by a director or cooperative member that is taken by means of virtual or remote communication.</p> <p>(g) A director or cooperative member who participates in a meeting by the means described in subsection (f), whether the meeting is to be held at a designated place or solely by means of virtual or remote communication, is deemed to be present in person at the meeting.</p>	(f) Notwithstanding a bylaw provision to the contrary, and subject to guidelines and procedures as the cooperative may adopt...
63-1-701, <i>et seq.</i>	July 1, 2022	Reimbursement Review Task Force	Healthcare Agencies	<p>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 fixed for the special meeting. A majority of the members of the task force may petition the chair to call a special meeting.</p> <p>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.</p>	
10-7-504(aa)	July 1, 2022	Fatal Accident Reports	Tennessee Department of Safety and Homeland Security, Law Enforcement	<p>(A) 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.</p> <p>(B) Photographic evidence that depicts the remains of a deceased minor shall be treated as confidential and shall not be open for inspection by members of the public.</p>	(2) The estate or, in the case of a minor, the custodial parent or legal guardian of the deceased person whose photograph is made confidential pursuant to subdivision (aa)(1) may waive confidentiality and allow the deceased person's photograph to be used and obtained in the same manner as other public records.
38-10-102	April 20, 2022	Death Record Retention	Law Enforcement	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.	
State of Tennessee Pub. Ch. No. 996 (2022)	January 1, 2023	Property Owner, Online Database	Property Assessors	<p>(a) An assessor of property may display "UNLISTED" for the first and last name in the ownership field of an online searchable database of property when the following conditions are met:</p> <p>(1) The residential property owner files a written request with the assessor to display the ownership field for their property as "UNLISTED"; and</p> <p>(2) The written request includes sufficient information to clearly demonstrate to the assessor that the subject property is the primary residence of the residential property owner making the request pursuant to subdivision (a)(1).</p>	

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				(b) This section does not prohibit an assessor 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.	
55-25-107(b)	May 25,2022	Motor Vehicle Records	Department of Motor Vehicles	Removes permissible 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.	
64-9-101, <i>et seq.</i>	November 3, 2021	Megasite Authority of West Tennessee	All	<p>Creates the Megasite Authority of West Tennessee Act and establishes a board of directors for the authority. Requires that all board meetings of the Authority must comply with the Tennessee Open Meetings Act.</p> <p>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, 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.</p>	
4-5-312	July 1, 2022	Administrative Hearing	Administrative Judges	<p>(c) The administrative judge or hearing officer and agency members may, by agreement of the parties, conduct all or part of the 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. Notwithstanding this authority, the administrative judge or hearing officer may 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.</p> <p>(d) The hearing must be open to public observation pursuant to title 8, chapter 44, unless otherwise provided by state or federal law. To the extent that a hearing is conducted telephonically, electronically, or by audio-visual means, the availability of public observation may be satisfied by giving members of the public an opportunity, at reasonable times, to hear or view a recording, as applicable, and to inspect a transcript obtained by the agency, except as otherwise provided by§ 50-7-701.</p>	
12-3-1207	April 8, 2022	Sealed Bids	Municipalities	<p>(f) Competitive sealed proposals must be opened in a manner that avoids disclosure of the contents to competing respondents during the negotiation. The proposals and all related materials must be open for public inspection after the intent to award the contract to a particular respondent is announced.</p> <p>(g) The request for competitive sealed proposals must state the relative importance of price and other evaluation factors.</p> <p>(h) As provided in the request for competitive sealed proposals and in the procurement code, interviews, presentations, demonstrations and discussions, either oral or in writing, or both, may be conducted for clarification to assure full understanding of, and responsiveness to, the solicitation requirements with the one (1) or more responsible respondents who submit proposals determined by the purchasing agent to be reasonably susceptible of being selected. The respondents must be accorded fair and equal treatment with respect to an opportunity for an interview, presentation, demonstration, discussion, or revision of proposals, and revisions may be permitted after submission and before the intent to award to a particular respondent is announced to obtain the best and final offers. In conducting interviews, presentations, demonstrations, or discussions, the purchasing agent and other municipal personnel shall not disclose to a respondent during the negotiations information derived from proposals submitted by competing respondents.</p>	

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10-7-504(a)	March 18, 2022	Proprietary Information	Department of Environment and Conservation	(33)(A) All records containing proprietary information provided to the department of environment and conservation by a commercial service provider who conducts commercial operations on a park as defined in § 11-3-101 are confidential and are not to be open for inspection by members of the public. As used in this subdivision (33)(a), "proprietary information" means commercial or financial information that is used either directly or indirectly in the business of a person or company submitting information to the department of environment and conservation and that gives the person an advantage or an opportunity to obtain an advantage over competitors who do not know of or use the information.	(B) Subdivision (a)() (A) does not limit: (i) Access to information made confidential pursuant to subdivision (a)() (A): (a) By law enforcement agencies, courts, or other governmental agencies performing official functions; or (b) When a commercial service provider expressly authorizes the release of the information; or (ii) The release of a record made confidential pursuant to subdivision (a)() (A) to persons identified within the record, unless the record is subject to a legal privilege against disclosure.
49-6-6016	July 1, 2022	Testing Materials	Local Education Agency, Department of Education	(a) An LEA or the department of education shall provide any testing materials or proposed testing materials that are in the LEA's or department of education's possession to a member of the general assembly upon the member's request to inspect and review the materials.	(c) The release of assessment information pursuant to this section shall not include: (1) Items required by the department to validate future administrations of the assessments; (2) Items that are being field tested for future administrations of the assessments; (3) Passages, content, or related items if the release would be in violation of copyright infringement laws; or (4) Items that would that impact the validity, reliability, or cost of administering the assessment or proposed assessment.
63-6-1106	January 1, 2023	Abortion-Inducing Drugs	Courts, Distributors of Abortion-Inducing Drugs	(a) In addition to all other remedies available under the laws of this state, failure to comply with this part: (1) Provides a basis for a civil malpractice action for actual and punitive damages; (c) When requested, the court shall allow a patient to proceed using solely the patient's initials or a pseudonym and 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.	
63-22-401, et seq.	May 27, 2022	Interstate Compact Portability Act	Counseling Compact Commission	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 thirty days in advance unless an emergency meeting is necessary. Under certain circumstances, the Commission or 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.	
63-13-501, et seq. and 63-17-301, et seq.	April 19, 2022	Occupational Therapy Licensure Compact, Audiology and Speech-Language Pathology Interstate Compact	Occupational Therapy Compact Commission, Audiology and Speech-Language Pathology Compact Commission	All meetings of the Commission must be open to the public, and public notice of meetings must be given thirty days in advance unless an emergency meeting is necessary. Under certain circumstances, the Commission or 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	

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