

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

TENNESSEE

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

TENNESSEE

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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

Public records. Tennessee's Public Records Act, originally passed by the legislature in 1957, mandates that governmental entities grant full access to public records to every citizen of Tennessee. The legislative policy behind the Act is enunciated in the enforcement provision that directs courts to construe the Act broadly "so as to give the fullest possible access to public records." Tennessee Code Annotated ("T.C.A.") § 10-7-505(d) (1999). The original 1957 Act provided that "[a]ll state, county and municipal records" shall be open for inspection "unless otherwise provided by law or regulations made pursuant thereto." (Emphasis added.) In 1984, the legislature amended the emphasized portion to read: "unless otherwise provided by state statutes." The Tennessee Supreme Court has construed this amendment as reserving to the legislature alone the power to make exceptions to the accessibility of public records. *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513, 517 (Tenn. 1986). In 1991, however, the specific language was further amended to read: "unless otherwise provided by state law." The change from "state statute" to "state law" arguably broadens the means of limiting access beyond the holding in *Holt* to include exemptions under common law privileges. The Public Records Act continues to go through many revisions. In addition to separate statutes throughout the Tennessee Code that create new exemptions to the Act, the Act itself was subjected to at least ten different pieces of legislation between 2001 and 2004 that modified the Act.

In 2008 the Public Records Act received substantial revisions to make it more user friendly. Changes to the Act included imposing a deadline for records custodians to respond to a request, and provisions to set a reasonable price for copies of records. Also in 2008, Tennessee created the Office of Open Records Counsel, as a department of the State Controller, to assist and advise public officials and the public, including the media, with open records issues. The Open Records Counsel serves as an ombudsman that can mediate open records disputes and issue written opinions concerning open records issues. The office of Open Records Counsel, and its Advisory Committee,

may also review and make comments to the General Assembly on any legislation affecting Open Meetings.

Open meetings. When the General Assembly enacted the Sunshine Law in 1974, Tennessee became the 46th state to fashion such legislation. A 1957 attempt to draft open meeting legislation died in committee. The legislature's source of authority to enact the Sunshine Law is Article 1, Section 19 of the Tennessee Constitution which provides: "That the printing presses shall be free to every person to examine the proceedings of the legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof." The opening policy statement of the Tennessee Sunshine Act echoes and specifies this broad grant of the public's right to open government:

The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret. This part shall not be construed to limit any of the rights and privileges contained in Article I, § 19, of the constitution of the state of Tennessee.

T.C.A. §§ 8-44-101(a) and (b) (1995). The broad legislative mandate that "all meetings of any governing body . . . [be] open to the public at all times, except as provided by the Tennessee Constitution," T.C.A. § 8-44-102(a) (1995), has survived vigorous constitutional challenges that the law was vague, ambiguous, unreasonable, and arbitrary and chilled free speech. *Dorrier v. Dark*, 537 S.W.2d 888 (Tenn. 1976); *Memphis Publishing Co. v. City of Memphis*, 513 S.W.2d 511 (Tenn. 1974).

Thus, from its enactment, the Tennessee Sunshine Law has been construed as embodying the will of the people, speaking through their elected legislative representatives, that the benefits of open government be safeguarded through a statute that secures these benefits in broad terms. The definitional provisions of the Sunshine Law are equally sweeping. Instead of listing those government entities subject to public scrutiny, the law as enacted defines governing body to include "members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration." T.C.A. §§ 8-44-102(b)(1) (1995). This legislative history can be viewed as reflecting the lawmakers' intent that those governmental entities covered by the mandate of openness be construed expansively. *Dorrier v. Dark*, 537 S.W.2d at 891. Unfortunately, case law establishes that the Sunshine Law does not apply to the General Assembly itself. *Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001).

Open Records

I. STATUTE -- BASIC APPLICATION

The Tennessee open records law (the “Act”) provides for a Tennessee citizen’s personal inspection of all state, county and municipal records, and of all records maintained by the Tennessee Performing Arts Center management corporation at all times during business hours unless the records are statutorily declared to be confidential. A public record is defined as follows:

“Public record(s)” or “state record(s)” means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

T.C.A. § 10-7-301(6), *See also* T.C.A. § 10-7-403 (defining “Public records within the county”). The determination of whether a document has been received “in connection with the transaction of official business” requires an examination of the totality of the circumstances. *Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn. 1991) (suicide notes taken into police custody are public records). Tennessee courts have had occasion to determine that certain records claimed to be exempt were in fact intended to be open: applications of those seeking the position of school superintendent, *Board of Education of Memphis City Schools v. Memphis Publishing Co.*, 585 S.W.2d 629 (Tenn. Ct. App. 1979); payroll records of a public hospital, *Cleveland Newspapers Inc. v. Bradley County Memorial Hospital Board of Directors*, 621 S.W.2d 763 (Tenn. Ct. App. 1981); and closed investigative files of a police department, *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986). Thirty-three categories of exceptions to the mandate of openness are contained in the Act itself under the rubric of “confidential records.” T.C.A. § 10-7-504. The legislature has enacted numerous other statutes providing that certain records be deemed confidential or closed. A 1987 survey by a special committee of the Tennessee General Assembly found that 80 other statutes either limiting or barring public access to various public records have accrued over the past 30 years since the enactment of the Public Records Act. Since that time, the General Assembly has enacted additional exemptions. There now appears to be approximately 352 exceptions to the Act. *See* Appendix for list of Exemptions.

A. Who can request records?

Any citizen of the state of Tennessee can request access to any records that are deemed to be records of public bodies. In 1998, the Supreme Court overturned earlier case law and held that a convicted felon is still a citizen for purposes of being able to seek access to public records. *Cole v. Campbell*, 968 S.W.2d 274 (Tenn. 1998) (overturning *Roberson v. Rose*, 17 TAM 3-28 (Tenn. Ct. App. Dec. 31, 1991) and *Ray v. Stanton*, C.A. No. 88-285-II (Tenn. Ct. App. Feb. 24, 1989)); Corporations and other entities may be citizens of Tennessee for purposes of the Act. *See Curve Elementary School Parent & Teachers Org. v. Lauderdale County Sch. Bd.*, 608 S.W.2d 855, 859-60 (Tenn. Ct. App. 1980) (granting standing to an unincorporated association of state residents to sue under Tennessee open meetings law, which requires state citizenship to bring suit); *Metropolitan Air Research Testing Authority Inc. v. The Metropolitan Government of Nashville and Davidson County*, 17 TAM 31-21 (Tenn. Ct. App. July 8, 1992) (standing granted to a Tennessee corporation to sue under the open meetings law). *Cf. Huntsville Util. Dist. v. Gen. Trust Co.*, 839 S.W.2d 397 (Tenn. Ct. App. 1992) (holding that the T.C.A. § 10-7-504 term “members of the public” does not include the courts and public officials in the performance of official duties and therefore such officials have access to confidential records that are not available to “members of the public”).

1. Status of requestor.

Must be a citizen of Tennessee. *But see, Lee v. Miner*, 33 Med. L. Rptr. 1839 (D. Del. May 31, 2005) (holding similar provision in Dela-

ware law to be unconstitutional). The special study committee of the General Assembly that proposed the 2008 revision recommended that the state citizenship requirement be eliminated, but it was retained. In 2009, the ACLU prepared a lawsuit to challenge the constitutionality of the state citizenship requirement. In the face of this potential litigation, in May, 2009, the State Attorney General reversed its position denying a journalist’s request for access to public records regarding the assassination of Martin Luther King, Jr. because the journalist was not a Tennessee citizen. However, the requirement for state citizenship, although likely indefensible if challenged, remains in the statute.

2. Purpose of request.

Neither the statute nor case law imposes restrictions as to the requester’s purpose for requesting access or the use he makes of the information obtained under the open records law. *See The Capital Case Resource Center of Tennessee Inc. v. Woodall*, 17 TAM 8-8, p.14 (Tenn. Ct. App. Jan., 29, 1992) (“There is no statute which provides that exemption from disclosure is or may be premised on the purpose for which the citizen intends to use the requested documents”).

3. Use of records.

There is no limitation of use of public records.

B. Whose records are and are not subject to the act?

The Act grants full access to the public of all governmental records “unless otherwise provided by state law.” T.C.A. § 10-7-503(a) (1999). Thus, no Tennessee agencies are entirely exempted from the mandate of the Act.

1. Executive branch.

Copies of any act, record, or paper in the office of the secretary of state are available to any person, “except papers relating immediately to the executive department, and, in the governor’s judgment, requiring secrecy.” T.C.A. § 8-3-104(10). All law enforcement personnel records are open, however, special rules apply when inspections are made of these records. T.C.A. § 10-7-503(c)(1). Applications of applicants for city school superintendent are subject to the Act. *Board of Education of Memphis City Schools v. Memphis Publishing Co.*, 585 S.W.2d 629 (Tenn. Ct. App. 1979) (holding that applications of those seeking the position of superintendent of city schools in the possession of a search committee created by the board of education were public records).

a. Records of the executives themselves.

See above.

b. Records of certain but not all functions.

See above.

2. Legislative bodies.

The joint legislative services committee has sole authority to determine whether any member of the public may be permitted access to the legislative computer system in which confidential information is stored or processed. T.C.A. § 3-10-108(a). Direct access to such a computer may not be permitted unless protection of any confidential information is ensured. § 3-10-108(b). No information available in printed form may be obtained from the legislative computer system pursuant to the Open Records Act. § 3-10-108(c). A legislator’s e-mail is subject to the Act if it was made or received in connection with the transaction of official business. Op. Atty Gen. No. 05-099 (June 20, 2005).

3. Courts.

Judicial records that are exempt from the Act are: complaints of judicial disability to the Court of the Judiciary, T.C.A. § 17-5-303; proceedings involving allegations of misconduct by or the disability of an attorney, Sup. Ct. R. 9 § 25; proceedings of the court of the judiciary, Jud. Ct. R. 8; and predisposition reports of investigations and evaluations of juveniles, Juv. Proc. R. 33(e). Arguably, the separation of powers doctrine might prohibit additional judicial records from being

disclosed by the legislature's enactment of the Public Records Act. *See* Art. II § 1, 2, Tennessee Constitution; Op. Att'y Gen. No. U92-131, 18 TAM 3-34 (Dec. 28, 1992). In *Ballard v. Herzke*, 924 S.W.2d 652 (Tenn. 1996), the Supreme Court held that the Tennessee Rules of Civil Procedure are state law which can except documents from the Public Records Act. Any conflict between provisions of the Rules of Civil Procedure and provisions of the Tennessee Code which cannot be harmoniously construed shall be resolved in favor of the Rules of Civil Procedure. Therefore, documents sealed by a state court are not subject to inspection under the Act. *Knoxville News Sentinel v. Huskey*, 982 S.W.2d 359 (Tenn. Crim. App. 1998)

The Supreme Court ruled that the documents filed with the clerk of a court are public records but that the Act does not apply to documents that were sealed subject to a protective order. *See also Memphis Publishing Co. v. City of Memphis*, 19 TAM 9-2 (Tenn. Feb. 22, 1994) (deposition transcripts taken during course of bankruptcy proceedings in which city was a creditor were public records and city could not claim that deposition constituted attorney work product).

4. Nongovernmental bodies.

In 2008 the Act was revised to state, "A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity." T.C.A. § 10-7-503(a)(6) This amendment seems to incorporate a 2002 decision of the Tennessee Supreme Court.

a. Bodies receiving public funds or benefits.

Even before the above stated amendment, Tennessee courts construed the Act to cover the records of nongovernmental bodies in receipt of public funds and of advisory boards of quasi-governmental bodies. In *Memphis Publishing v. Cherokee Children & Family Services*, 87 S.W.3d 67 (Tenn. 2002), the Tennessee Supreme Court held that a "functional equivalency test" should be used to determine if the Act would apply to a private company retained by a government agency to perform governmental services. Whether a private entity operates as the functional equivalent of a government entity, so as to render its records subject to the Act, will be judged in light of the totality of the circumstances. Factors relevant to this analysis are: 1) level of government funding, 2) extent of government involvement or control, and 3) whether the entity was created by the government. However, not all records of non-government entities who assist government operation will be public. In early 2011, the Tennessee Supreme Court ruled a nonprofit foundation that merely acted as a bookkeeper, paying a university medical school facility for services the facility rendered as a public hospital and securing reimbursement from the school for payments to the facility was not the functional equivalent of a governmental agency. *Gautreaux v. Internal Medicine Education Foundation, Inc.*, 336 S.W.3d 526 (Tenn. 2011).

A private company that managed a city sports arena under a contract with a metropolitan government acted as the functional equivalent of that governmental agency, because it assumed responsibility for the day-to-day operation of the arena. *Allen v. Day*, 213 S.W.3d 244 (Tenn. Ct. App. 2002).

Cases addressing this issue but decided before *Cherokee Children & Family Services*, and therefore before the 2008 amendment, may be of questionable validity. However, these cases include: Tenant subleases of city-owned property are open records. *Creative Restaurants Inc. v. Memphis*, 795 S.W.2d 672 (Tenn. Ct. App. 1990) (tenant subleases of city-owned property in the possession of private, for-profit corporations that served as the city's leasing agent are public records under the Act). *But see Webber v. Bolling*, C.A. No. 177 (Tenn. Ct. App. December 13, 1989) (working papers of certified public accountants retained by Anderson County to conduct an audit of a department of the county government were not subject to disclosure under the Act). The payroll records of a public hospital have been held to be open under the Act. *Cleveland Newspapers Inc. v. Bradley County Memorial Hospital Board of Directors*, 621 S.W.2d 763 (Tenn. Ct. App. 1981), *cert. denied*, (Tenn.

1981) (holding that only the legislature can designate records confidential and that a hospital created by the state legislature and financed with public funds is an arm of the state carrying on a governmental function). However, employee personnel records of a hospital operated by a nonprofit corporation under a 50-year lease agreement with Shelby County are not subject to the Act. *Memphis Publ'g Co. v. Health Care Corp.*, 799 S.W.2d 225 (Tenn. Ct. App. 1990) (reasoning that hospital that was not created by the general assembly and never claimed governmental immunity from tort actions was a private rather than governmental entity).

b. Bodies whose members include governmental officials.

Not subject to the Act, however, this is one factor courts will consider in determining if the body is the functional equivalent of government.

5. Multi-state or regional bodies.

The Act presumably does not include the records of multistate or regional bodies, however, records of such bodies might also be maintained by state offices that are subject to the Act.

6. Advisory boards and commissions, quasi-governmental entities.

Presumably open. A sports authority created pursuant to the Sports Authorities Act, T.C.A. § 7-67-109, is a governmental agency within the meaning of the Act. Op. Att'y Gen. No. 96-011 (Feb. 6, 1996).

7. Others.

The records of any association or nonprofit corporations established for the benefit of local governmental entities or as a municipal bond financing pool, who receive government funding amounting to at least 30 percent of their income, and who are authorized to allow their employees to participate in the state retirement system are subject to the Act. T.C.A. § 10-7-503(d)(1). *See Fodness v. Newport and Cocke County*, 2005 Tenn. App. LEXIS 148 (Tenn. Ct. App. Dec. 9, 2004). However, this section of this statute also allows such organization to exempt themselves from the Act if they meet certain criteria.

C. What records are and are not subject to the act?

1. What kind of records are covered?

All "state, county and municipal records" are public unless otherwise exempted. Broad categories of records legislatively mandated to be excluded from the Public Records Act include medical records of patients in state institutions, investigative files of the Tennessee Bureau of Investigation, records of students in public educational institutions, federal military and state militia records, state attorney general records, and investigative records of the internal affairs division of the department of corrections. T.C.A. § 10-7-504 (1999). Additionally, T.C.A. § 10-7-403 defines and enumerates county records that are public.

2. What physical form of records are covered?

Records covered by the Act include "all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, sound recordings, or other materials regardless of physical form" made or received pursuant to law or ordinance or in connection with the transaction of official business by a governmental agency. T.C.A. § 10-7-301(6). A records custodian will be required to disclose certain information maintained in a computer database even though it does not maintain the information in the exact format in which the request has been made. *The Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); *See Real Estate Search System Inc. v. Baltimore*, 8 TAM 5-13 (Tenn. Ct. App. December 27, 1982) ("raw data" in the form of computer printouts are available under the Act).

Only records are covered by the Act: A requester cannot demand the government agency to provide information. *Shabazz v. Campbell*, 63 S.W.3d 776 (Tenn. Ct. App. 2001).

3. Are certain records available for inspection but not copying?

The right to inspect public records includes the right to make copies. T.C.A. § 10-7-506(a). Therefore, all records that may be inspected should be available for copying.

D. Fee provisions or practices.

There is no charge for merely reviewing public records (electronic or otherwise) at the locations they are maintained and stored. T.C.A. §§ 10-7-123(a)(3), 10-7-503(a)(7)(A). The custodian of public records has the right to adopt and enforce reasonable rules governing the making of copies. T.C.A. § 10-7-506(a). *See* Op. Att’y Gen. No. 95-88, 20 TAM 48-39 (Oct. 19, 1995) (board of directors of emergency committee has authority to adopt and enforce rules governing copy making of its public records, including fees assessed and the time allowed to make them, as long as the requirements are reasonable). This includes the right to require the requesters to pay a reasonable charge for copying and delivery of the requested records. *Waller v. Bryon*, 16 S.W.3d 770, 773 (Tenn. Ct. App. 1999).

1. Levels or limitations on fees.

The custodian of public records of convictions of traffic violations or other offenses can charge a reasonable fee per copy to defray the costs of producing and delivering the copy or copies. T.C.A. § 10-7-507 (1995).

However, an electric power board was not permitted to charge a requester for costs, totaling \$86,400, incurred in notifying customers about whom information had been requested, as it was required to do in accordance with its own privacy policy. *The Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998).

2. Particular fee specifications or provisions.

Under T.C.A. § 8-4-604(a), the Office of Open Records Counsel was required to establish a schedule of reasonable charges for copies of Public Records (“Schedule of Charges”), and it has done so. This Schedule of Charges may be found on the Open Records Counsel’s website, www.comptroller1.state.tn.us/openrecords.

a. Search.

The Schedule of Charges allows a “Labor Charge” for “the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.” There is no charge, however, for the first hour of such labor. The charge will be the hourly rate of such public employee involved in the search.

b. Duplication.

Generally, the Schedule of Charges allows \$.15 for black and white copies and \$.50 for color copies. Oversized documents will cost more. The records custodian may charge less. Also, the custodian may charge more if it can document its actual cost is higher.

c. Other.

If the requester can identify the records requested with specificity, he need not personally appear to have copies of the records sent to him. *Waller v. Bryan*, 16 S.W.3d at 773. The Schedule of Charges confirms that the records may be mailed to the requestor.

If records have “commercial value” the custodians may also charge fees to offset the cost of developing and updating the records. T.C.A. § 10-7-506. This additional cost, however, may not be charged if the requestor is the news media. T.C.A. § 10-7-506(c)(4).

3. Provisions for fee waivers.

The Act has no provision for either requiring or waiving fees. The Schedule of Charges permits a custodian to waive fees only pursuant to a written policy.

4. Requirements or prohibitions regarding advance payment.

There are no requirements or prohibitions regarding advance fees, and the Schedule of Charges permits this.

5. Have agencies imposed prohibitive fees to discourage requesters?

Sometimes. *See The Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998).

E. Who enforces the act?

Individual citizens.

1. Attorney General’s role.

None. Other than to participate in any open records litigation where the constitutionality of any statute is challenged, or to represent the State when it (as opposed to local government) is the records custodian.

2. Availability of an ombudsman.

Yes. Office of the Open Records Counsel T.C.A. §§ 8-4-601 to -604.

3. Commission or agency enforcement.

None.

F. Are there sanctions for noncompliance?

Yes. The Act allows for the recovery of court costs and attorney’s fees, but only if the refusal to disclose was willful. T.C.A. § 10-7-505(g).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

Records exempted by the Tennessee Open Records Act itself are specific and are listed in 33 categories that deal with confidential records.

b. Mandatory or discretionary?

The withholding of these records is not generally left to the discretion of the custodian; rather, the withholding is mandated unless otherwise indicated.

c. Patterned after federal Freedom of Information Act?

The Tennessee Open Records Act has little resemblance to the federal Freedom of Information Act. *See Schneider v. City of Jackson*, 226 S.W.3d 332 (Tenn. 2007) (court noted differences and refused to apply FOIA exemption rationale to state Act).

2. Discussion of each exemption.

a. The medical records of patients in state institutions, including those containing the source of organ donations for transplantation and information concerning organ donors, T.C.A. § 10-7-504(a)(1);

b. All investigative records of the Tennessee Bureau of Investigation and all criminal investigative files of the motor vehicle division of the department of safety, T.C.A. § 10-7-504(a)(2). *See Abernathy v. Whitely*, 838 S.W.2d 211 (Tenn. Ct. App. 1992) (court of appeals upheld denial that particular parts of records constitute investigation records of the Tennessee Bureau of Investigation);

c. Records of the military department involving national or state security, including national guard personnel records and staff studies and investigations, T.C.A. § 10-7-504(a)(3);

d. The academic, financial, and medical or psychological records of students in public educational institutions, T.C.A. § 10-7-504(a)(4);

e. Books, records, and other materials in the possession of the attorney general's office relating to any pending or contemplated legal or administrative proceeding in which the office may be involved, including (1) records designated confidential or privileged by state law, (2) records related to federal investigations and designated confidential or privileged under federal law, (3) the work product of the attorney general or his subordinates, (4) communications to or by the attorney general covered by the attorney-client privilege, and (5) records available for public inspection in other departments and agencies, T.C.A. § 10-7-504(a)(5);

f. Agency records containing opinions of the value of real and personal property intended to be acquired for public purposes, until acquisition is complete, T.C.A. § 10-7-504(a)(6);

g. Sealed bids for the purchase of goods and services and leases of real property, until completion of evaluation, T.C.A. § 10-7-504(a)(7);

h. All investigative records and reports of the internal affairs division of the department of corrections or department of youth development, T.C.A. § 10-7-504(a)(8);

i. Official health certificates obtained and maintained by the state veterinarian, T.C.A. § 10-7-504(a)(9);

j. The capital plans, marketing, and proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University, T.C.A. § 10-7-504(a)(10);

k. Records of historical research value given or sold to public archival institutions or libraries when the owner or donor of such records wishes to place restrictions on access to the records, T.C.A. § 10-7-504(a)(11);

l. Personal information contained in motor vehicle records which shall be open only pursuant to Title 55 of the Tennessee Code Annotated, T.C.A. § 10-7-504(a)(12);

m. Memoranda, work notes, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide counseling and therapy to law enforcement officers, firefighters, paramedics and other emergency medical technicians, T.C.A. § 10-7-504(a)(13);

n. Riot, escape, and emergency transport plans of county jails and workhouses or prisons, T.C.A. § 10-7-504(a)(14);

o. A utility department's records of address, telephone number and Social Security number that might be used to locate someone who has a protection order from a court to protect such person from violence, T.C.A. § 10-7-504(a)(15);

p. A governmental entity's records of address, telephone number and Social Security number that might be used to locate someone who has a protection order from a court to protect such person from violence, T.C.A. § 10-7-504(a)(16);

q. The telephone number, address and any other information which might be used to locate the whereabouts of a domestic violence shelter or rape crisis center, T.C.A. § 10-7-504(a)(17);

r. Computer programs sold, licensed or donated to the state, T.C.A. § 10-7-504(a)(18);

s. Credit card numbers of persons doing business with the state or any subdivision, T.C.A. § 10-7-504(a)(19);

t. The private records of any utility, T.C.A. § 10-7-504(a)(20);

u. Records identifying structural or operational vulnerability of a utility, T.C.A. § 10-7-504(a)(21);

v. the audit working papers of the comptroller of the treasury and state, county, and local government internal audit staffs. T.C.A. § 10-7-504(a)(22).

w. Records of employees' identity, treatment, or referral for treatment maintained by state or local government employee assistance program, T.C.A. § 10-7-504(d);

x. Unpublished telephone numbers in the possession of emergency communications districts, T.C.A. § 10-7-504(e);

y. Telephone numbers, residential addresses, Social Security numbers, bank account numbers, and driver's license information of public employees or his immediate family member, T.C.A. § 10-7-504(f);

z. Personnel information of undercover police officers may be restricted, T.C.A. § 10-7-504(g), however, such information is generally available. TCA § 10-7-503

aa. Identifying information about someone who "has been or may in the future be directly involved in the process of executing a sentence of death," T.C.A. § 10-7-504(h);

bb. Information that would allow a person to obtain unauthorized access to confidential information or government property, including electronic information processing systems T.C.A. § 10-7-504(i).

cc. Identifying information of anyone who has requested the department of correction or the department of probation and parole to provide information regarding the status of a criminal proceeding or a convicted felon, T.C.A. § 10-7-504(j).

dd. Addresses, phone numbers, Social Security Numbers, and the criminal offense at issue for those persons seeking compensation as crime victims, T.C.A. § 10-7-504(k)

ee. Identifying information of those persons receiving services from the department of children's services, T.C.A. § 10-7-504(l).

ff. Information directly related to the security of any government building, T.C.A. § 10-7-504(m).

gg. Documents concerning pricing and other financial arrangements submitted to the state for health related procurements or requests for proposal, T.C.A. § 10-7-504(n)(o).

B. Other statutory exclusions.

In addition to the 33 exemptions provided in the Act itself, 319 other statutes and court rules designate certain records confidential. In order to override the Act, the legislature must enact a statute that exempts the material. *See* Appendix; *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513, 514 (Tenn. 1986) (holding that neither the expungement statute nor Rule 16(a)(2) of Tenn. R. Crim. P. was authority for denying access to closed police investigative files). *But see Appman v. Worthington*, 746 S.W.2d 165 (Tenn. 1986) (Tenn. R. Crim. P. 16(a)(2) was sufficient to deny access to investigative files while investigation was in progress).

The Work Product Doctrine, Rule 26.02(3) of the Tennessee Rules of Civil Procedure, protects certain documents and papers prepared by an attorney in anticipation of litigation or in preparation for trial. This doctrine extends to reports or investigations made by, or on behalf of any party, where such documents have been prepared in anticipation of litigation or in preparation for trial. *Cf. Arnold v. City of Chattanooga*, 19 S.W.3d 779 (Tenn. Ct. App. 1999) (City waived work product protection for a report prepared by city attorney by making the report a focal point at two public meetings). The fact that a document may have been created before a complaint was actually filed does not exempt it from the scope of the work product doctrine. *Id.* The possibility of avoiding litigation would not render the document any less "work product" created in anticipation of litigation than if the suit had already been filed. An attorney and client should not be disadvantaged simply because they were hoping to settle a case without filing a suit. *Id.* Documents considered work product may be protected from discovery under the Public Records Act. However, the holder of the documents may waive their confidentiality. One way confidentiality may be waived is if the party uses the documents to further its cause offensively, as a "sword," and also asserts the benefit of privilege as a

“shield.” *Id.* See also *Coats v. Smyrna/Rutherford County Airport*, 2001 Tenn. App. LEXIS 911 (Tenn. App. Dec. 13, 2001) (records concerning a lien on airport property were not protected by attorney client privilege or work product doctrine.)

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

The Act has been construed as precluding courts from exempting records from public inspection. *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513, 517 (Tenn. 1986). Arguably, however, the 1991 amendment to the statute now allows exemptions based upon common law. In *Schneider v. City of Jackson*, 226 S.W.3d 332 (Tenn. 2007), however, the Supreme Court refused to recognize a “law enforcement privilege” as a part of Tennessee’s common law. Therefore, such records of local police departments are not exempt.

Courts have adopted federal statutes requiring certain records to be kept confidential. In *Seaton v. Johnson*, 20 TAM 8-20 (Tenn. Ct. App. Jan. 27, 1995), the court, adopting the holding in *Southern Pacific Transportation Co. v. Yarnell*, 863 P. 2d 271 (Ariz. App. 1993), ruled that 23 U.S.C. § 409 protected disclosure of reports compiled for the purpose of identifying potential highway or railway accident sites.

D. Are segregable portions of records containing exempt material available?

The Act does not generally address whether segregable portions of records containing exempt material are available. However, courts have approved of the redaction of confidential information from public records. *Eldridge v. Putnam County*, 86 S.W.3d 572, 574 (Tenn. Ct. App. 2002). This redaction might be subject to court review. *Green v. Metropolitan Gov’t of Nashville*, 2002 Tenn. App. LEXIS 556 (Tenn. Ct. App. July 30, 2002). In *The Tennessean*, 979 S.W.3d at 303, the Tennessee Supreme Court noted that if redaction and deletion of confidential information was not require, a records custodian could defeat the purposes of the Act by merely inserting some confidential information in the records. This obligation to delete information is especially true with electronic records where deletion might be simple, although maybe not easy. *Hickman v. Board of Probation*, 2003 Tenn. App. LEXIS 187 (Tenn. Ct. App. March 4, 2003).

Moreover, several specific provisions of the Act allow for redaction. T.C.A. §§ 10-7-504(a)(20)(C), (f)(1). The Schedule of Charges acknowledges the cost of copies includes the cost of making redactions.

E. Homeland Security Measures.

In 2002 the General Assembly amended the Act to address Homeland Security issues. T.C.A. § 10-7-504(a)(21). Generally, plans of a governmental entity for response to violence or terrorist activities are confidential, as are records exposing a structural or operational vulnerability of a utility service provider. See also T.C.A. § 10-7-503(e) (concerning terrorists incidents and weapons of mass destruction).

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

The Act has no provision for allowing the requester to choose a format to receive records. In *Wells v. Warton*, 2005 WL 3309651 (Tenn. Ct. App. Dec. 7, 2005), the court stated the Act “does not require a custodian of records to provide public records in a manner a citizen requests.” The custodian can chose the manner so long as it does not distort the information or inhibit access. *Id.*

B. Can the requester obtain a customized search of computer databases to fit particular needs?

The Act has no provision to allow a requester to obtain a customized search of computer databases to accommodate particular needs.

The Supreme Court held that if there is information that is stored on computer but not in the format desired by the requester, the agency

is required to provide the information in the format requested. *The Tennessean v. Electric Power Board of Nashville*, 979 S.W. 2d 297 (Tenn. 1998) (electric power board was required to disclose its customer names, addresses, and telephone numbers as a public record, even though it did not have a list of only that information.). This 1998 decision probably overturns *Seaton v. Johnson*, 20 TAM 8-20 (Tenn. Ct. App. Jan. 27, 1995) (stating that the Act does not require that state conduct a computer search for a particular type of record).

C. Does the existence of information in electronic format affect its openness?

The existence of information in electronic format does not seem to affect its openness. See T.C.A. § 10-7-121 (providing that government records kept on computer or removable computer storage media is available for public inspection, unless it is confidential according to law); T.C.A. § 6-1-126(b)(3) (providing that adoption records maintained by electronic media are confidential and must be secured as such); Op. Att’y Gen. No. 95-01, 20 TAM 6-46 (Jan. 1, 1995) (State Public Records Commission and various county public records commissions have discretion to authorize records to be stored on optical discs and destruction of such records stored in this manner would have to be in accordance with statutory requirement).

D. How is e-mail treated?

The Act has no provision specifically dealing with e-mail, except for a provision that specifies that e-mail may be a public record. T.C.A. § 10-7-512.

1. Does e-mail constitute a record?

Yes.

2. Public matter on government e-mail or government hardware

Yes. Email of public employees is subject to a case-by-case review to determine whether the record qualifies as a public record. *Brennan v. Giles County*, 2005 WL 1996625 (Tenn. Ct. App., Aug. 18 2005).

3. Private matter on government e-mail or government hardware

Probably not. *Id.* (adopting a Florida case’s rationale that private or personal email is not a public record).

4. Public matter on private e-mail

Maybe. *Id.*

5. Private matter on private e-mail

Not likely. *Id.*

E. How are text messages and instant messages treated?

Text messages will likely be treated the same as email messages for purposes of public records.

1. Do text messages and/or instant messages constitute a record?

Text messages will likely be treated the same as email messages for purposes of public records.

2. Public matter message on government hardware.

See above.

3. Private matter message on government hardware.

See above.

4. Public matter message on private hardware.

See above.

5. Private matter message on private hardware.

See above.

F. How are social media postings and messages treated?

No reported cases, but if the posting could qualify as a public record, then it would not likely be exempt.

G. How are online discussion board posts treated?

No reported cases, but if the posting could qualify as a public record, then it would not likely be exempt.

H. Computer software

Computer programs sold, licensed or donated to the state are closed. T.C.A. § 10-7-504(a)(18)

1. Is software public?

See above.

2. Is software and/or file metadata public?

See above.

I. How are fees for electronic records assessed?

The Schedule of Charges does not address this, except to the extent there is a labor charge for searching and redacting such records.

J. Money-making schemes.**1. Revenues.**

If the request is made for public records that have commercial value, agency may charge “reasonable fees for the reproduction of such record” on top of search and copying fees allowed elsewhere under the statute. The additional fees can include development costs, labor costs, and other costs, but the statute also caps the total fees at between 10 and 20 percent of those costs. *See* T.C.A. §§ 10-7-506(c)(1)-(3).

2. Geographic Information Systems.

This type of record is specifically mentioned in the statute that allows for “reasonable fees” on top of search and copying fees allowed by the statute. Those fees can include development costs, labor costs, and other costs, but the statute also caps the total fees at between 10 and 20 percent of those costs. *See* T.C.A. §§ 10-7-506(c)(1)-(3)

K. On-line dissemination.

A few government agencies have websites with some public records available from those sites.

IV. RECORD CATEGORIES -- OPEN OR CLOSED**A. Autopsy reports.**

Presumably open, however, medical examiners will not release these records if they are a part of an active law enforcement investigation.

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

Several provisions close such records (especially health care provider disciplinary boards), but make no distinction between open and closed investigations. T.C.A. § 63-1-117. Also, records of TennCare investigations of fraud and abuse are confidential. T.C.A. § 71-5-2516.

1. Rules for active investigations.

No distinction between open and closed investigations.

2. Rules for closed investigations.

No distinction between open and closed investigations.

C. Bank records.

Many such records are generally closed. *See generally* T.C.A. § 45-2-103(a)(3)(C) (information obtained by the Commissioner of Financial

Institutions when acting upon application for change of control of a bank is confidential); T.C.A. §§ 45-2-1603(a), 45-2-1713 (criminal penalty for disclosure of conditions of bank), 45-3-814, 45-7-225 (information obtained by bank examiner when examining the affairs of a bank or savings and loan is confidential); T.C.A. § 45-2-1717 (violations of banking laws reported by Commissioner of Department of Financial Institutions are confidential even when transmitted to district attorney); T.C.A. §§ 45-3-807, 45-3-814, 45-3-1308 (savings and loan associations may decline to disclose their records except under certain circumstances); T.C.A. § 45-7-117 (reports of investigation and examination conducted by Commissioner of Financial Institutions on issuers of money orders are confidential); T.C.A. § 45-7-216 (information contained in examinations, reports, applications, credit, investments, financial statements, and balance sheets is confidential).

D. Budgets.

Presumably open.

E. Business records, financial data, trade secrets.

Some such records are closed. *See* T.C.A. §§ 4-3-712 *et seq.* (proprietary information acquired by the Department of Economic and Community Development is confidential); T.C.A. § 13-27-113 (information submitted to or compiled by the Tennessee Competitive Export Corporation pertaining to commercially sensitive information is confidential); T.C.A. § 45-7-216 (information contained in examinations, reports, applications, credit, investments, financial statements, and balance sheets is confidential); T.C.A. § 49-7-120 (trade secrets, patentable information, proprietary information, and commercial or financial information used in research done at state colleges and universities are closed); T.C.A. § 50-3-504, 914 (trade secrets or other privileged information disclosed to or obtained by the Department of Labor pursuant to enforcement of occupational safety and health laws are closed); T.C.A. § 50-3-2013 (information containing or revealing trade secrets obtained by the Commissioner of Labor while enforcing the Hazardous Chemical Right to Know Law is closed). However, the name and address of an owner of a business tax license on deposit with the county clerk is public record. T.C.A. § 67-1-1707(f).

A request for the identities of all licensed tobacco wholesale distributors in the state was denied because it would have resulted in disclosure of tax return information, as defined by T.C.A. § 67-1-1702. *McLane v. State*, 115 S.W.3d 925 (Tenn. Ct. App. 2002).

F. Contracts, proposals and bids.

Generally closed. *See* T.C.A. § 12-3-202.

G. Collective bargaining records.

Presumably open.

H. Coroners reports.

Presumably open.

I. Economic development records.

In *Coleman v. Kisber*, 338 S.W.3d 895 (Tenn. Ct. App. 2010) the court ruled such records of companies selected to participate in TN-Investco, an economic and job creation program, were exempt from disclosure.

J. Election records.**1. Voter registration records.**

In *Chattanooga Publ'g Co. v. Hamilton County*, 2003 Tenn. App. LEXIS 767 (Tenn. Ct. App. May 8, 2003) the court granted a request for records of registered voters and a list of all persons who voted in a Democratic primary despite the fact that these records had been delivered to the Tennessee Bureau of Investigation *after* the request had been made. To hold otherwise, the court ruled *would* allow a records custodian to avoid the requirements of the Act by merely sending the records to the TBI, which does have an exemption for its records.

2. Voting results.

Presumably open, *but see* T.C.A. § 2-11-202(a)(5) (reports of election law violation investigation conducted by the Coordinator of Elections are closed).

K. Gun permits.

All TBI investigative records and records of the handgun carry permit division of the Department of Safety “relating to bogus handgun carry permits . . . issued to undercover law enforcement agents shall be treated as confidential.” T.C.A. § 10-7-504(a)(2). Otherwise, there is no restriction on public access to gun permits, although certain information in the application for the permit might be kept confidential by other provisions of law.

L. Hospital reports.

Generally closed. *See* T.C.A. § 68-11-304(c). *See also* T.C.A. § 68-11-210(a)(5)(C) (Joint Commission on Accreditation of Hospital’s report concerning the accreditation of a hospital or nursing home is closed); T.C.A. § 68-29-107 (reports made by medical laboratories to the Commissioner of Health and Environment concerning infectious diseases are closed); T.C.A. § 68-30-111 (sources of body parts for transplantation are confidential); T.C.A. § 10-7-504(a)(1) (medical records of patients in state hospitals or medical facilities or receiving medical treatment at state expense are confidential).

M. Personnel records.

Open. *See* T.C.A. §§ 10-7-503(a) and (c)(1). There is an exception for undercover police officers. But this exemption is not to be construed as a general closure of personnel files of all police officers. *Henderson v. Chattanooga*, 133 S.W.3d 192 (Tenn. Ct. App. 2003) (allowing access to officers’ photographs), *But see Contemporary Media v. Giles*, 30 Med. L. Rptr. 2149 (Tenn. Ct. App. June 3, 2002) (denying access to photos of all newly hired deputy sheriffs).

Based on a case from the U.S. Court of Appeals for the Sixth Circuit, *Kallstrom v. City of Columbus*, 136 F.3d 1055 (6th Cir. 1998), the Attorney General stated that § 10-7-503(c) of the Open Records Act, which requires custodians of law enforcement personnel information to allow the public to inspect it, but to obtain information regarding the person making the request for information and to notify the officer whose records have been inspected within three days, may not comply with the due process requirements of the U.S. Constitution in certain situations. This requirement applies where the custodian knows or should know that release of information could potentially threaten the personal security of a law enforcement officer. In those circumstances, the officer must receive prior notice and an opportunity to be heard. Op. Att’y Gen. No. 98-230 (December 10, 1998). In response to *Kallstrom* the exception for undercover officer was created, as explained in *Henderson*.

1. Salary.

Open.

2. Disciplinary records.

The State’s investigation of a harassment claim against one of its employees was protected from disclosure under the attorney client privilege or work product doctrine. *The Tennessean v. Tenn. Dept. of Personnel*, 2007 Tenn. App LEXIS 267 (Tenn. Ct. App. 2007).

3. Applications.

Open.

4. Personally identifying information.

Generally open, but not Social Security Numbers. T.C.A. § 4-4-125.

5. Expense reports.

Generally open.

6. Other.

Civil service tests are closed. T.C.A. § 8-30

N. Police records.

Telephone records of a drug task force are public records. *Eldridge v. Putnam County*, 86 S.W.3d 572 (Tenn. 2002).

1. Accident reports.

Generally open. T.C.A. § 55-10-108

2. Police blotter.

Generally open.

3. 911 tapes.

Generally open, however, frequent legislative attempts are made to close these records.

4. Investigatory records.

a. Rules for active investigations.

Closed. Tenn. R. Crim. P. 16(a)(2).

b. Rules for closed investigations.

Open. *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986). However, Attorney General investigations are closed T.C.A. § 8-6-407. And so are TBI records. T.C.A. § 10-7-504(a)(1). And so are investigation of the department of corrections, internal affairs division. T.C.A. § 10-7-504(a)(8).

5. Arrest records.

Open.

6. Compilations of criminal histories.

Open, *but see* T.C.A. §§ 4-51-103, 109, 110

7. Victims.

Some are closed. T.C.A. §§ 16-20-103; 40-28-504; 40-38-110

8. Confessions.

See investigative records, above.

9. Confidential informants.

No specific provision, so provisions concerning investigations would seem to cover this.

10. Police techniques.

Generally open. *See Schneider v. City of Jackson*, 226 S.W.2d 332 (Tenn. 2007)

11. Mug shots.

Open.

12. Sex offender records.

Presumably open.

13. Emergency medical services records.

Generally treated the same as non-emergency records, which are generally closed.

O. Prison, parole and probation reports.

Access to such records held by a private company running state prisons is limited under T.C.A. § 41-24-117, which is a part of Private Prison Contracting Act. *Friedmann v. Corrections Corp. of America*, 310 S.W.3d 366 (Tenn. Ct. App. 2009).

P. Public utility records.

Generally open.

Q. Real estate appraisals, negotiations.

Records related to value of real or personal property to be acquired for public purpose are closed. T.C.A. § 10-7-504 (a)(6).

1. Appraisals.

See above.

2. Negotiations.

See above.

3. Transactions.

Confidential information of parties to a real estate transaction is closed. T.C.A. § 62-14-403

4. Deeds, liens, foreclosures, title history.

Open.

5. Zoning records.

Open.

R. School and university records.**1. Athletic records.**

No separate exemption.

2. Trustee records.

Some records are closed T.C.A. § 49-14-103 (related to investigations of waste and fraud).

3. Student records.

Records of students in public schools are closed. T.C.A. § 10-7-504(a)(4); *See also* T.C.A. §§ 49-1-302; 49-6-3051; 49-6-2313; 49-6-5105

4. Other.

Health report cards of students are closed. T.C.A. § 49-6-1401

S. Vital statistics.**1. Birth certificates.**

Generally closed. T.C.A. § 68-3-205

2. Marriage & divorce.

Generally closed. T.C.A. § 68-3-205

3. Death certificates.

Generally closed. T.C.A. § 68-3-205

4. Infectious disease and health epidemics.

Frequently closed. T.C.A. §§ 68-5-604, 703; 68-10-113, 116, 117; 68-11-222.

V. PROCEDURE FOR OBTAINING RECORDS**A. How to start.****1. Who receives a request?**

Requests for the right of personal inspection should be addressed to the official and/or designee of the official in charge of the records. If the request is not submitted to the office that is the records custodian, in a latter lawsuit to obtain the records, a court will not have jurisdiction to hear the case *State v. Odom*, 2007 Tenn. Crim. App. LEXIS 305 (Tenn. Crim. App. April 13, 2007).

2. Does the law cover oral requests?**a. Arrangements to inspect & copy.**

The Act does not require requests to be written. *Wells v. Wharton*, 2005 WL3309651 (Tenn. Ct. App. Dec. 7, 2005). Requests can be oral, during business hours.

b. If an oral request is denied:

There is no specified procedure to follow if an oral request is denied, however, a written request would be beneficial to further the request or establish facts for judicial review.

(1). How does the requester memorialize the refusal?

See above.

(2). Do subsequent steps need to be in writing?

See above.

3. Contents of a written request.**a. Description of the records.**

Written requests should be clear as to the specific records sought. If specific enough, the requester does not have to appear personally to inspect the records, but may have copies delivered to him. *Jackson v. Root*, 2001 Tenn. App. LEXIS 871 (Tenn. Ct. App. Nov. 26, 2001). The requester may ask for the complete file of a particular matter and, if he is unable to personally appear to select documents to be copied from that file, can have the custodian copy and deliver the entire file, so long as the requester pays for copying and delivering. *Rutter v. Wells*, 2004 Tenn. App. LEXIS 626 (Tenn. Ct. App. Sept. 27, 2004).

b. Need to address fee issues.

Requests should contain offers to pay reasonable fees for duplication. The Act has no provision for fee waivers or advance payments. There is no evidence that agencies or other entities have imposed prohibitive fees to discourage requests.

c. Plea for quick response.

A plea for quick response may be effective, depending upon the particular records custodian.

d. Can the request be for future records?

There is no provision in the Act regarding requests for future records. Presumably, a request could be for future records, but as a practical matter, such a request could easily be overlooked, and therefore, someone seeking future records would be advised to periodically renew the request.

B. How long to wait.**1. Statutory, regulatory or court-set time limits for agency response.**

The custodian has seven business days to: 1) make the records available; 2) Deny the request in writing, or; 3) state in writing the time it will need to produce the records. T.C.A. § 10-7-503(a)(2)(B).

2. Informal telephone inquiry as to status.

Informal telephone inquiries as to the status of the request would be appropriate.

3. Is delay recognized as a denial for appeal purposes?

If the custodian fails to comply with the seven day requirement for a response, the requestor may pursue a legal action for the records. T.C.A. § 10-7-503(a)(3).

4. Any other recourse to encourage a response.

To encourage a response, the requester could communicate with the custodian to understand what records exist in an effort to narrow the search.

C. Administrative appeal.

The Tennessee Public Records Act makes no provision for administrative review of denials. Requestors might seek assistance of the state open records counsel to facilitate getting the records.

1. Time limit.

Not applicable.

2. To whom is an appeal directed?

Not applicable.

3. Fee issues.

Not applicable.

4. Contents of appeal letter.

Not applicable.

5. Waiting for a response.

Not applicable.

6. Subsequent remedies.

Not applicable.

D. Court action.**1. Who may sue?**

Any citizen of Tennessee may request to inspect a record and shall be entitled to request access subject to judicial review. T.C.A. § 10-7-505(a).

2. Priority.

The Act provides for expedited hearings. T.C.A. § 10-7-505(b).

3. Pro se.

Pro se representation is possible. The success of such *pro se* actions may depend upon the receptivity of the judge to such representation and how well settled the issues of law are.

4. Issues the court will address:

The courts are directed to address the issue of denial of access. T.C.A. § 10-7-505(b). *See Quillen v. Crocket*, 20 TAM 22-22 (Tenn. Ct. App. May 20, 1995) (Court reversed a dismissal of case in which the respondent failed to provide petitioner with all information in criminal action).

a. Denial.

This will be addressed by Court.

b. Fees for records.

This may be addressed by Court.

c. Delays.

This may be addressed by Court.

d. Patterns for future access (declaratory judgment).

Court is “empowered to exercise full injunctive relief and remedies.” T.C.A. § 10-7-505(d).

5. Pleading format.

The Act denominates a pleading to obtain access to records as a petition. The petitioner should allege Tennessee citizenship. T.C.A. § 10-7-505(a). After the individual has filed a petition with the proper court, that court shall “issue an order requiring the defendant or respondent party or parties to immediately appear to show cause . . . why the petition should not be granted.” T.C.A. § 10-7-505(b). In the interest of *expeditious* hearings, a formal written response to the petition is not required, and the generally applicable periods of filing such responses do not apply. T.C.A. § 10-7-505(b). The party in charge of keeping the records bears the burden of proving, by a preponderance

of the evidence, that the records sought are exempted from the Act or that there is some other justification for non-disclosure. T.C.A. § 10-7-505(c).

Individuals serving as records custodian may be named as defendants in the lawsuit. *Kersey v. Jones*, 2007 Tenn. App. LEXIS 402 (Tenn. Ct. App. July 23, 2007).

The petition must allege that the custodian refused the requestor’s request to see or have copies of the records. *Kersey v. Bratcher*, 253 S.W.3d 625 (Tenn. Ct. App. 2007).

6. Time limit for filing suit.

The Act provides no time limit for filing suit. *See Konvalinka v. Chattanooga – Hamilton County Hospital Authority*, 2006 Tenn. App. LEXIS 600 (Tenn. Ct. App. Sept. 11, 2006) (noting absence of limitations period merely requires the requestor to make another request). A six-year statute of limitations for malfeasance and nonfeasance of public officials may be applicable. T.C.A. § 28-3-109. Presumably, however, a new cause of action could accrue with each request.

7. What court.

The petition should be filed in either the chancery or circuit court of the county in which the records are located. If the records are state records kept by a state department or agency, an individual may petition the courts of Davidson County (Nashville), the courts of the county where the records are kept, or the courts of the county of the petitioner’s residence to obtain access. T.C.A. § 10-7-505(b). *But see Alcorn v. State*, 20 TAM 52-59 (Tenn. Ct. App. Nov. 29, 1995) (holding that criminal court was proper place to petition for transcripts of *voir dire* held in that court).

8. Judicial remedies available.

The court, upon a finding for the petitioner, shall order the records to be made available and afford the petitioner whatever additional relief is necessary “to give the fullest possible access to public records.” T.C.A. § 10-7-505(d) (1999).

9. Litigation expenses.**a. Attorney fees.**

The Act makes an award of attorney’s fees discretionary with the court, if “the court finds that a governmental entity, or agent thereof, refusing to disclose a record knew that such record was public and willfully refused to disclose it.” T.C.A. § 10-7-505(g) (1999). This provision was added in 1988. *See The Capital Care Resource Center of Tennessee v. Woodall*, 17 TAM 8-8, pp. 16-18 (Tenn. Ct. App. Jan. 29, 1992) (discussing standard for award of attorneys’ fees under § 10-7-505(g)); *Memphis Publishing Co. v. City of Memphis*, 17 TAM 37-5 (Tenn. Ct. App. August 26, 1992) (reversing trial court’s award of attorneys’ fees under § 10-7-505(g) after the appellate court reversed the trial court’s ruling allowing access to depositions); *Abernathy v. Whitley*, 19 TAM 19-10 (Tenn. Ct. App. April 24, 1992) (denying attorney’s fees because the refusal of opposing attorneys to grant respondent access to records was not willful); *Combined Communications Inc. v. Solid Waste Region Board*, 19 TAM 19-10 (Tenn. Ct. App. April 13, 1994) (affirming award of attorney’s fees where records custodian had no legitimate basis for claiming that non-confidential letter was protected by the attorney client privilege).

The “knowing and willfully” standard is synonymous with “bad faith.” *See Black’s Law Dictionary* 127 (5th ed. 1979). *Contemporary Media Inc. v. City of Memphis*, 1999 Tenn. App. LEXIS 298. In one case, a city’s refusal to disclose certain documents claiming that it was bound by a court order declaring confidentiality (such a defense was flawed since only the legislature can declare records to be confidential) was considered willful refusal to disclose, and therefore, attorney fees were awarded. *Contemporary Media Inc. v. City of Memphis*, 1999

Tenn. App. LEXIS 298. In another case, the court did not assess attorney fees because the city did not know that confidentiality of certain documents had been waived by its actions, and that the documents in question had become public record. *Arnold v. City of Chattanooga*, 19 S.W.3d 779. Attorney's fees were appropriate where a city filed a lawsuit to obtain an ex parte protective order to keep confidential a settlement agreement between the city and the widow of a police shooting victim. *Tennessean v. Lebanon*, 32 Med. L. Rptr. 2304 (Tenn. Ct. App. Feb. 13, 2004) (court found no basis for city's refusal to provide settlement agreement).

In 2008 the statute was amended to state, "In determining whether the action was willful, the court may consider any guidance provided to the records custodian by the office of open records counsel." T.C.A. § 10-7-505(g). Presumably, a court would likely find a refusal to grant access to the records willful if the open records counsel had told the custodian to grant access and the custodian failed to follow that advice.

b. Court and litigation costs.

The same willful standard for attorney's fees also applies to "all reasonable costs involved in obtaining the record." T.C.A. § 10-7-505(g).

10. Fines.

There is no provision for the imposition of fines. Before the 1985 amendments, refusal or failure to release public records for inspection was a misdemeanor; however, this criminal sanction was eliminated.

11. Other penalties.

There is no provision for other penalties in the Act; however, if a records custodian fails to obey a court order to release records, the government agency and the custodian himself might be fined for contempt of court. *Moody v. Hutchison*, 159 S.W.3d 15 (Tenn. Ct. App. 2005). (imposing criminal contempt penalties).

12. Settlement, pros and cons.

Given the large number of exceptions to the Act and the fact that there is little or no court interpretation for most exceptions, and given

that courts sometimes interpret statutes and rules to find exceptions that were not previously understood to exist, it may be advisable to compromise open records disputes when the custodian is willing to provide some of the records requested.

E. Appealing initial court decisions.

1. Appeal routes.

Appellate review is available, as the court's decision on the petition is a final judgment on the merits. T.C.A. § 10-7-505(b).

2. Time limits for filing appeals.

The time limit for filing an appeal is within 30 days after the date of entry of the final judgment. Tenn. R. App. P. 4(a). Appeals must be made pursuant to the Tennessee Rules of Appellate Procedure, which make no distinctions for open records cases. Appeal as of right would be to the Tennessee Court of Appeals. Thereafter, permissive appeal may be made to the Tennessee Supreme Court within 30 days after the Court of Appeals' decision.

3. Contact of interested amici.

Interested *amici* can apprise themselves of Open Record issues that might appear before the Tennessee Supreme Court by reviewing the decisions of the Tennessee Court of Appeals that appear in *Tennessee Attorneys Memo*, a weekly publication containing a synopsis of decisions of that court. Additionally, the Tennessee appellate courts have a Web site (www.tsc.state.tn.us) on which recently released opinions are available.

The Reporters Committee for Freedom of the Press has filed *amicus* briefs in cases involving significant media law issues before Tennessee's highest court. Also, the Tennessee Press Association, the Tennessee Association of Broadcasters, and the Tennessee Coalition For Open Government have participated as amici on open records cases.

F. Addressing government suits against disclosure.

The author is not aware of any lawsuits brought by the government to prevent disclosure.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

The Tennessee Open Meetings Law (the “Act”) requires that all meetings of any governing body be open to the public at all times, except as provided by the Tennessee Constitution. The Open Meetings Act does not prescribe when governing bodies must conduct meetings. Instead, it defines when meetings must be open to the public. *Griffin v. Traugbber*, 1996 Tenn. App. LEXIS 382, * 15.

A. Who may attend?

Any person may attend any open meeting that any governing body conducts. See T.C.A. § 8-44-102(a) (meetings open to “the public”).

B. What governments are subject to the law?

All governing bodies — state, county, and local — are required to hold open meetings. See T.C.A. § 8-44-102(a); *City of Hendersonville v. City of Goodlettsville*, 19 TAM 32-5 (Tenn. Ct. App. July 13, 1994) (City violated Act by not conducting public meeting, but the purpose of the Act was served when the decision to purchase property was ratified at a public meeting).

1. State.

State governing bodies are subject to the law. However, the Act does not apply to the Tennessee General Assembly. *Maybew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001).

2. County.

County governing bodies are subject to the law.

3. Local or municipal.

Local or municipal governing bodies are subject to the law.

C. What bodies are covered by the law?

The Act applies to any member of any governing body. “Governing body” is defined as “members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration and also means a community action agency which administers community action programs under the provisions of 42 U.S.C. § 2790.” T.C.A. § 8-44-102(b). Specifically excluded from the ambit of “governing body” are administrative officers who do not formulate policies for a governing body. *Fain v. Faculty of the College of Law of the University of Tennessee*, 552 S.W.2d 752 (Tenn. Ct. App. 1977) (holding that law school dean was not a governing body and faculty and committee meetings of law school were not subject to the Act); *Mid-South Publishing Co. v. The Tennessee State University*, 1990 WL 207410 (Tenn. Ct. App. 1990) (holding that university chancellor was not governing body and that his meetings with advisory committee were not subject to the Act).

The Act does not define the term “member.” According to an Attorney General opinion, an individual becomes a member of a governing body when he or she has completed all the requirements necessary to qualify to perform the official duties of a member and his or her term of office has begun. Op. Att’y Gen. No. 99-043 (Feb. 25, 1998). More specifically, in the case of an elected official, the electee is not qualified to serve until his or her term has begun and he or she has taken the oath of office. *Id.* (holding that meetings of the Memphis Center City Development Corporation are subject to the Act). A governing body also specifically includes any nonprofit corporation authorized by state law to act on behalf of any local government other than Nashville for the purpose of Resource Recovery and Solid Waste Disposal or Energy Production Facilities. T.C.A. § 8-44-102(b)(1)(C).

Also, the Act provides that it applies to the board of directors of any non-profit corporation that provides Nashville with heat, steam

or incineration of refuse, T.C.A. § 8-44-102(b)(1)(D), or the board of directors of any non-profit corporation or association authorized to obtain coverage for government employees in the Tennessee consolidated retirement system. T.C.A. § 8-44-102(b)(1)(E).

1. Executive branch agencies.

Covered by the Act. The term governing body has been construed to include “any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.” *Dorrier v. Dark*, 537 S.W.2d at 892. The Act applies to administrative agency proceedings. L. Harold Levinson, *Contested Cases Under the Tennessee Uniform Procedures Act*, 6 Mem. St. U. L. Rev. 215, 234 (1976).

a. What officials are covered?

See above.

b. Are certain executive functions covered?

See above.

c. Are only certain agencies subject to the act?

See above.

2. Legislative bodies.

Covered by the Act. *Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976). However, a single legislator’s presence does not convert an otherwise private meeting of an interest group in a public facility into a public meeting under the Act. Op. Att’y Gen. No. 02-131 (Dec. 12, 2002).

3. Courts.

It does not seem that a court would be a public body or a governing body as those terms are used in the Act. *Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976). Access to courts in Tennessee is governed by the state and U.S. Constitutions. *Tennessee v. Drake*, 701 S.W.2d 604 (1985).

4. Nongovernmental bodies receiving public funds or benefits.

The board of directors of any non-profit corporation that contracts with a state agency to receive community grant funds that comprise at least 30 percent of the corporation’s annual income are “governing bodies” under the Act. However, such board of directors meetings are exempt from the Act if called “solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state [laws or regulations].” T.C.A. § 8-44-102(B).

5. Nongovernmental groups whose members include governmental officials.

Not covered by the Act.

6. Multi-state or regional bodies.

No authority has addressed whether the Tennessee Act covers multistate or regional bodies.

7. Advisory boards and commissions, quasi-governmental entities.

Covered by the Act. *Forbes v. Wilson County Emergency Communications Dist.*, 966 S.W.2d 417 (Tenn. 1998) (Personnel Policy Committee of County Emergency Communications District 911 Board was subject to Act); See Richard L. Hollow & Rudolph L. Ennis, *Tennessee Sunshine: The People’s Business Goes Public*, 42 Tenn. L. Rev. 527, 538 (1975) (citing legislative history that gives a broad reading to the term “public body” but does not indicate any specific bodies); see also Op. Att’y Gen. No. 94-77, 19 TAM 31-29 (July 8, 1994) (partisan caucuses

given authority to make recommendations to or decisions for county legislative bodies are subject to Open Meetings Act); *but see Perdue v. Quorum Health Resources Inc.*, 934 F. Supp. 919 (M.D. Tenn. 1996) (no violation of act where City Hospital Board of Trustees did not meet to consider termination of employee of a private company that provided management services to the hospital).

8. Other bodies to which governmental or public functions are delegated.

Covered by the Act. T.C.A. § 8-44-102(b) (1995). *See also Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976) (involving local board of education); *Metropolitan Air Research Testing Authority Inc. v. Metropolitan Gov't of Nashville*, 17 TAM 31-12 (Tenn. Ct. App. July 8, 1992) (questioning what is a governing body); Op. Att'y Gen. No. 94-94, 19 TAM 39-55 (Aug. 30, 1994) (governing body may be a partisan caucus if the county legislative body gives them authority to make decisions, but not as to informal caucuses). The board of directors of a preferred provider organization that contracts with insurance companies and employers and provides contracting third-party payers with a network of physicians is considered a governmental body because the organization is a non-profit, public benefit organization which acts on behalf of and is, in essence, a division or subsidiary of the county hospital district that created it. *Souders v. Health Partners Inc.*, 997 S.W.2d 140 (Tenn. Ct. App. 1998). A high school assembly called by a principal to address the faculty and student body is not a meeting of a government body subject to the Open Meetings Act. Op. Att'y Gen. No. 99-128 (June 18, 1999).

The board of directors of a "City Development Corporation" was subject to the Open Meetings Act because it satisfied the definition of a governing body under *Dorrier* by engaging in various activities related to public development and acting on behalf of the city. Op. Att'y Gen. No. 99-043 (Feb. 25, 1999). Members of the board of a rural electric cooperative operating under T.C.A. §§ 65-25-201 are not subject to the Act. Op. Att'y Gen. No. 97-154 (November 10, 1997). An "Economic Development Council," a nonprofit corporation organized by a County Commission and whose members are authorized to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector, is subject to the Act. Op. Att'y Gen. No. 99-012 (January 25, 1999). Meetings of the commissioners of a county airport authority and meetings of the airport authority advisory board are subject to the Act. Op. Att'y Gen. No. 96-131 (November 14, 1996).

9. Appointed as well as elected bodies.

Covered by the Act. *See* Op. Att'y Gen. No. 94-94, 19 TAM 39-55 (Aug. 30, 1994).

D. What constitutes a meeting subject to the law.

The Act defines meeting as "the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter." T.C.A. § 8-44-102(C)(2).

1. Number that must be present.

a. Must a minimum number be present to constitute a "meeting"?

Two or more people may constitute a meeting. T.C.A. § 8-44-102(b)(1)(A).

b. What effect does absence of a quorum have?

A quorum is necessary for a decision or deliberation toward a decision. T.C.A. § 8-44-102(b)(2). However, a quorum is not required for there to be a meeting within the meaning of the Act.

2. Nature of business subject to the law.

Meetings subject to the Act are those that are called to make a decision or to deliberate toward a decision on any matter. T.C.A. § 8-44-102(C).

a. "Information gathering" and "fact-finding" sessions.

Meetings for "information gathering" and "fact-finding" are open except for on-site inspections of any project or program. T.C.A. § 8-44-102(C).

b. Deliberations toward decisions.

The Act covers meetings to deliberate toward a decision on any matter. The Act, however, does not require the members of the public body to verbalize or discuss a matter before a vote. *Baltrip v. Norris*, 23 S.W.3d 336, 341 (Tenn. Ct. App. 2000). Chance meetings of two (2) or more members of a public body are not to be considered meetings, but such chance meetings, informal gatherings, or electronic communications cannot be used to circumvent the spirit or requirement of the Act. T.C.A. § 8-44-102(c)(1995). This subsection of the Act has been construed not to bar separate solicitations of commission members' votes by one who wished an appointment to the commission. *Jackson v. Hensley*, 715 S.W.2d 605 (Tenn. Ct. App. 1986) (holding that no statutory meeting occurred until the commission met to elect the new trustee). However, the Act was violated when three of five councilmen discussed and agreed to an item in advance of a city council meeting. Op. Att'y Gen. No. 83-033 (Jan. 24, 1983). However, the Attorney General has opined that an exit conference between the State Comptroller and members of a governing body which was conducted for the limited purpose of imparting information to local government officials, with the officials not deliberating toward or making a decision, was not subject to the Act. Op. Att'y Gen. No. 99-090 (April 12, 1999). Job interviews conducted by a county airport committee are considered meetings because they clearly involve deliberation toward employment decisions. Op. Att'y Gen. No. 96-040 (March 12, 1996).

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

Under T.C.A. § 8-44-108, participants in a meeting may use electronic or other communications as long as every participant is capable of simultaneously hearing the other members of the meeting and it is possible to speak among the participants throughout the meeting. Further, if a physical quorum is not present at the meeting, the governing body must make a finding of "necessity" for electronic participation. *Id.* This statute, by its terms, applies only to state government, and not to local government. Op. Att'y Gen. No. 99-152 (Jan. 24, 1983). Also, each part of the meeting required to be open to the public must be audible to the public at the location specified in the notice of the meeting.

b. E-mail.

Under T.C.A. § 8-44-109, a governing body may allow members to communicate by means of a forum over the Internet if this forum is at all times available to the public (other than for reasons of technical maintenance or unforeseeable technical limitations). Such postings on a forum shall not be a substitute to decision making by a governing body in a meeting held under the Act. Unless the provisions of this section are followed, emails between members of a governing body will violate the Act. *Johnston v. Metro Gov't of Nashville and Davidson County*, 2009 Tenn. App. LEXIS 832 (Tenn. Ct. App. Dec. 10, 2009) (emails discussing proposed zoning changes violated Act).

c. Text messages.

Only if such communications meet the requirements for email, as stated above.

d. Instant messaging.

Only if such communications meet the requirements for email, as stated above.

e. Social media and online discussion boards.

Only if such communications meet the requirements for email, as stated above.

E. Categories of meetings subject to the law.

Both regular and special meetings are subject to the Sunshine Law. T.C.A. § 8-44-103 (1995).

1. Regular meetings.

a. Definition.

A regular meeting is one that is previously scheduled by statute, ordinance, or resolution. T.C.A. § 8-44-103(a).

b. Notice.

Governing bodies are required to give adequate public notice of all meetings. T.C.A. § 8-44-103(a). See *Kinser v. Town of Oliver Springs*, 19 TAM 9-16 (Tenn. Ct. App. Feb. 10, 1994) (holding that notice of city council meeting posted inside City Hall “where everybody pays their water bill” and over entrance to police department “where people come to pay their tickets” was adequate because the meeting concerned a police personnel matter); *Neese v. Paris Sch. Dist.*, 813 S.W.2d 432 (Tenn. 1990) (notice was inadequate); *Hillsboro West End Neighborhood Ass’n Inc. v. Metro. Bd. of Zoning Appeals*, 20 TAM 12-17 (Tenn. Ct. App. Feb. 24, 1995) (reasoning that notice of conditional permit being sought was sufficient when placed in newspapers and mailed to property owners). In *Englewood Citizens For Alternate B v. The Town of Englewood*, 1999 Tenn. App. LEXIS 406, the court set forth a three-prong test. To qualify as adequate public notice, the notice given must: (1) be posted in a location where a member of the community could become aware of such a notice; (2) reasonably describe the purpose of the meeting or the action proposed to be taken; (3) be posted at a time sufficiently in advance of the actual meeting in order to give citizens both an opportunity to become aware of and attend the meeting. Failure to specifically state in the notice every issue to be discussed in a meeting does not necessarily make notice inadequate when the meeting has several purposes. *Souder v. Health Partners, Inc.*, 997 S.W.2d 140, 149-50 (Tenn. Ct. App. 1998).

(1). Time limit for giving notice.

There is no specified time limit for notice.

(2). To whom notice is given.

Notice need only be “public notice.”

(3). Where posted.

Notice must be “adequate public notice.” See *Franklin County v. The Town of Monteagle*, 2001 Tenn. App. LEXIS 379 (Tenn. Ct. App. May 23, 2001) (publication of notice of regular meeting in local monthly newsletter and publication of two notices in newspaper of general circulation with time and place of meeting was adequate notice.)

(4). Public agenda items required.

None.

(5). Other information required in notice.

Merely because there is “one passing comment” about the substance of a particular issue, with further discussion of the procedural or evidentiary matters related to the issue, with no decision regarding the ultimate disposition of the issue, there was no violation of the notice requirement of the Act when that issue had not been placed on the meeting agenda. *Dunn v. Knox County*, 2005 Tenn. App. LEXIS 254 (Tenn. Ct. App. Dec. 8, 2004). A “misleading notice is not adequate public notice.” *Englewood Citizens v. Town of Englewood*, 1999 Tenn. App. LEXIS 406 (Tenn. Ct. App. June 24, 1999) (holding that agenda item identified as only “Letter to State concerning Hwy 411,” was too cryptic to be adequate notice).

(6). Penalties and remedies for failure to give adequate notice.

Same as for other violations of the law.

c. Minutes.

The Act mandates that minutes of a governmental body’s meetings be promptly and fully recorded. Furthermore, all votes must be by public vote or public ballot or public roll call with no secret votes, ballots, or roll calls allowed. T.C.A. § 8-44-104 (1995). Failure to include an account of the vote in the minutes from a meeting in accordance with the Act might not necessarily render action taken at the meeting void but might result in the imposition of other sanctions in accordance with § 8-44-106(c) and (d). *Zselvay v. Metropolitan Government of Nashville and Davidson County*, 986 S.W. 2d 581 (Tenn. Ct. App. 1998). But see *Allen v. City of Memphis*, 2004 Tenn. App. LEXIS 403 (Jan. 22, 2004) (holding that failure to record minutes could void action taken at meeting). “Strict compliance with [the Act] is necessary with respect to the matters required to be recorded and included in the minutes The Act does not distinguish between technical and substantive violations.” *Grace Fellowship Church v. Lenoir City*, 2002 Tenn. App. LEXIS 49 (Tenn. Ct. App. Jun 23, 2002) (quoting *Zselvay*).

(1). Information required.

Minutes shall include a record of persons present, motions, proposals, and resolutions made, results of votes taken and individual votes cast. The Act requires that meetings be “fully recorded” but does not require that the minutes be “complete and exact” *Hutsell v. Jefferson County*, 2005 Tenn. App. LEXIS 243 (Tenn. Ct. App. Feb. 15, 2005) (noting that the Act does not require recording by audio or video means).

(2). Are minutes public record?

Yes.

2. Special or emergency meetings.

a. Definition.

A special meeting is one that is not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law. T.C.A. § 8-44-103(b) (1995).

b. Notice requirements.

Any governmental body that holds a special meeting “shall give adequate public notice of such meeting.” T.C.A. § 8-44-103(b) (1995). “Adequate public notice means adequate public notice based on the totality of the circumstances as would fairly inform the public. . . .” *Memphis Publishing Co. v. City of Memphis*, 513 S.W.2d 511, 513 (Tenn. 1974). Notice of a special meeting need not be published in a local newspaper to be adequate. *State ex rel. Moser v. Brewer*, No. 85-335-II (Tenn. Ct. App. Mar. 26, 1986) (holding that notices posted on bulletin boards of nursing home, hospital, and county court house and radio broadcast of the meeting were adequate). See *Rock Abou-Sakher v. Humphreys County*, 955 S.W. 2d 65 (Tenn. Ct. App. 1997) (notice of meeting of airport authority for 4:00 p.m. in one member’s office was invalid when the meeting was actually held at 4:30 in the courthouse annex). The notice requirements of the Act are in addition to, and not in substitution of, any other notice required by law. T.C.A. § 8-44-103(c).

(1). Time limit for giving notice.

The Act does not provide specific time limits for the giving of notice for meetings, but under case law, the notice must be posted at a time sufficiently in advance of the actual meeting in order to give citizens both an opportunity to become aware of and attend the meeting. See *Englewood Citizens* 1999 Tenn. App. LEXIS 406, * 12 (two days’ notice was not considered sufficient).

(2). To whom notice is given.

The Act does not specify to whom notice of a special meeting must be made, other than the “public.” T.C.A. § 8-44-103(b).

(3). Where posted.

The Act does not specify where notice of a special meeting must be posted. *But see State ex rel. Moser v. Brewer*, No. 85-385-II (Tenn. Ct. App. Mar. 26, 1986). According to case law, notice must be posted in a location where a member of the community could become aware of such a notice. *Englewood*, 1999 Tenn. App. LEXIS 406.

(4). Public agenda items required.

The Act does not require that notice of a public meeting include an agenda, but the notice must describe the purpose of meeting or the proposed action. *Id.*

(5). Other information required in notice.

There are no other requirements for notice information.

(6). Penalties and remedies for failure to give adequate notice.

The Act contains no special penalties for failure to give proper notice; however, the Act generally states that any action taken at a meeting in violation of the Act shall be null and void and of no effect. T.C.A. § 8-44-105 (1995).

c. Minutes.

The same requirement that minutes be recorded for regular meetings applies to special meetings. T.C.A. § 8-44-104.

(1). Information required.

Minutes shall include a record of persons present, motions, proposals, and resolutions made, results of votes taken and individual votes cast.

(2). Are minutes a public record?

Yes.

3. Closed meetings or executive sessions.

The Act makes limited provision for executive sessions but provides no procedural guidelines for such meetings or sessions.

a. Definition.

No definition for executive sessions is provided in the Act.

b. Notice requirements.

Any executive session must be provided in the agenda for the meeting. T.C.A. § 8-44-102(b)(1)(E)(ii).

(1). Time limit for giving notice.

Same as for notice of open meeting.

(2). To whom notice is given.

Same as for notice of open meeting.

(3). Where posted.

Same as for notice of open meeting.

(4). Public agenda items required.

Same as for notice of open meeting.

(6). Penalties and remedies for failure to give adequate notice.

Same as for any other failure to give adequate notice under the Act.

c. Minutes.

(1). Information required.

Minutes of a secret meeting will not reflect the substance of what was discussed in an executive session, but no votes may be taken in

executive session. T.C.A. § 8-4-104. For example, a governing body might meet in a closed session with its attorney to discuss the pros and cons of a case to consider whether to appeal an adverse trial court result. Then, the body would return to an open session to vote on whether to pursue the appeal, without discussing what was said in the closed session.

(2). Are minutes a public record?

Yes.

d. Requirement to meet in public before closing meeting.

This will frequently happen, where it will be announced why the executive session is being held.

e. Requirement to state statutory authority for closing meetings before closure.

No.

f. Tape recording requirements.

No.

F. Recording/broadcast of meetings.

The Act makes no provision for recording or broadcast of meetings, but those means of public access have been employed, especially by the media. *See* Op. Att’y Gen. No. 95-126 (Dec. 28, 1995) (proposed city ordinance to ban video or photographic equipment at meeting of alderman would violate Tennessee Constitution and Open Meetings Act).

1. Sound recordings allowed.

Yes, subject to reasonable restrictions.

2. Photographic recordings allowed.

Yes, subject to reasonable restrictions.

G. Are there sanctions for noncompliance?

Yes. Actions taken at meeting will generally be void, and the court can enjoin further violations, and impose future reporting requirements upon the public body. T.C.A. § 8-44-106.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

Tennessee’s Sunshine Law provides that the only exceptions to the Act must be based solely on constitutional grounds; however, the legislature has provided specific statutory exemptions to the Act.

1. Character of exemptions.

a. General or specific.

The exemptions are specific.

b. Mandatory or discretionary closure.

No such closure provisions exist.

2. Description of each exemption.

The Act allows certain meetings subject to the Act to protect the confidentiality of proprietary information or trade secrets that relate to coverage of government employees under the Tennessee consolidated retirement system. T.C.A. § 8-44-102(b)(1)(E). Additionally, there are several other express exemptions contained in the Tennessee Code. Staff meetings of the Tennessee Industrial Finance Corporation held to consider applications for financing are not subject to the Act. T.C.A. § 4-17-408 (e). Under the Hazardous Chemical Right To Know Law, administrative hearings that involve trade secrets can be closed. T.C.A. § 50-3-2013(c)(1). Screening panels of the Board of Chiropractic Examiners utilized to investigate, mediate or arbitrate

complaints are not subject to the Act. T.C.A. § 63-4-115(g). Similar screening panels of the state Board of Nursing are not subject to the Act. T.C.A. § 63-7-115(b)(3).

B. Any other statutory requirements for closed or open meetings.

Although the Act requires that meetings be open to the public, the Act does not require governing bodies to permit members of the public to speak, comment, or actively participate in the meeting. *Whittemore v. Brentwood Planning Comm'n.*, 835 S.W.2d 11 (Tenn. Ct. App. 1992). It is not a violation of the Act for a governing body to order the removal of a person who is disrupting the meeting.

C. Court mandated opening, closing.

The Tennessee Supreme Court in *Smith County Education Ass'n v. Anderson*, 676 S.W.2d 328 at 335 (Tenn. 1984), held the attorney-client privilege to be a constitutionally required exception to protect discussion between governmental bodies and their attorneys concerning pending litigation. The court held that because the legislature has no authority to enact laws that interfere with the judicially imposed duty on an attorney to maintain clients' confidences and secrets, a construction of the Act requiring abrogation of this duty is an unconstitutional breach of the separation of powers and authority doctrines. *Id.* at 334. This attorney-client exception is a "narrow" one applying only when "the public body is a named party in a lawsuit" and only when the discussions in the meetings deal with "present and pending litigation." *Id.* at 334-35. In another similar case, the Tennessee Supreme Court continued to adhere to the *Smith* doctrine. *Van Hooser v. Warren County Bd. of Education*, 807 S.W.2d 230 (Tenn. 1991). The Court held that the school board properly conducted a closed meeting to discuss a pending controversy pertaining to a suspended school teacher. The Court seems to have eased the requirement that a group be a named party to a lawsuit to close a discussion. However, for the attorney-client privilege exception to apply, the group must actually be discussing only the pending controversy with its attorney in the closed session. Once any discussion begins concerning other matters, the meeting must be open to the public. In another case, during a public session of a school board meeting, members of the board recessed to discuss the matter at hand with their counsel. Immediately after reconvening, the board voted on the matter without verbalizing or discussing it. The court held that because this private meeting with counsel concerned a pending controversy that might result in litigation, the meeting did not violate the Act. *Baltrip v. Norris*, 23 S.W.2d at 341.

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

Open, T.C.A. § 4-5-312. *See* Op. Att'y Gen. No. V94-21 (Feb. 4, 1994) (city civil service board, even when acting in quasi-judicial capacity, may not meet in closed session).

1. Deliberations closed, but not fact-finding.

See above.

2. Only certain adjudications closed, i.e. under certain statutes.

See above.

B. Budget sessions.

Presumably open.

C. Business and industry relations.

Closed executive sessions if discussion or consideration of commercial or financial information or trade secrets. T.C.A. § 4-17-109(b). But meetings of county economic development board during which it carries out its function as a joint economic and community development board under T.C.A. § 6-58-114 are subject to the Act. Op. Att'y Gen. No. 03-091 (July 24, 2003).

D. Federal programs.

Presumably open. Specifically, the Act provides that community action agencies that administer community action programs under 42 U.S.C. § 2790, are governing bodies subject to the openness requirements of the Act. T.C.A. § 8-44-102(b).

E. Financial data of public bodies.

Presumably open.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Fact-specific, case-by-case determination. *See* T.C.A. § 8-44-102(b)(1)(E)(ii) (protecting trade secrets).

G. Gifts, trusts and honorary degrees.

Presumably open, but such discussions are not addressed in the Act.

H. Grand jury testimony by public employees.

Closed. Tenn. R. Crim. P. 6(k)(1).

I. Licensing examinations.

Presumably open.

J. Litigation; pending litigation or other attorney-client privileges.

Closed if discussion is between public body and attorney concerning pending litigation when public body is named party in a lawsuit. Tenn. Const. Art. II, §§ 1 and 2, as construed by *Smith County Education Ass'n v. Anderson*, 676 S.W.2d 328 (Tenn. 1984).

K. Negotiations and collective bargaining of public employees.

Open, except that strategy sessions of either the union committee or the governmental entity committee, meeting separately, may be closed. T.C.A. § 8-44-201(a) and (b).

1. Any sessions regarding collective bargaining.

Open, except strategy sessions.

2. Only those between the public employees and the public body.

Yes.

L. Parole board meetings, or meetings involving parole board decisions.

The enabling statute of the Board of Paroles does not require that parole decisions be made by meeting, and therefore the Open Meetings Act does not apply to the board's procedure for making parole decisions. *Arnold v. Tennessee Board of Paroles*, 956 S.W.2d 478 (Tenn. 1997). But when the board does meet, proper notice of the meetings is required. *Id.* Also *see* T.C.A. § 40-28-105(b) (requiring that meetings of the board of paroles be conducted with notice and public ballots or public roll calls). *See also Smith v. Harter*, 20 TAM 8-35 (Tenn. Ct. App. Jan. 27, 1995) (definition of "meeting" not so broad as to cover any alleged discussion among parole board members); Op. Att'y Gen. No. 95-10, 20 TAM 12-59 (March 3, 1995) (requests to members of Board of Paroles to involve parolees as informants in investigations is subject to the Act).

M. Patients; discussions on individual patients.

The Open Meetings Act makes no specific exemption for discussion of individual patients. *But see* T.C.A. § 10-7-504(a)(1) (1995) (making medical records of patients at state hospitals or medical facilities confidential); T.C.A. § 33-3-104(10) (making identity of present or former patients treated for mental illness or retardation confidential); T.C.A. § 8-44-102(B) (concerning meetings of private nonprofit corporations receiving money from the government).

N. Personnel matters.

Open. *See Dorrier v. Dark*, 537 S.W.2d 888 (Tenn 1976) (holding that public school teacher's termination hearing was void because in violation of Open Meetings law). But meetings of private, nonprofit corporations receiving money from the government may not always be open. T.C.A. § 8-44-102(B) (1995).

1. Interviews for public employment.

If conducted by a governing body, it must be open.

2. Disciplinary matters, performance or ethics of public employees.

If conducted by a governing body, it must be open.

3. Dismissal; considering dismissal of public employees.

If conducted by a governing body, it must be open. A Civil Service Commission was not a governing body under the Act. Therefore, its deliberation over an employee's termination was not a meeting under the Act. *Redmon v. City of Memphis*, 2010 Tenn. App. LEXIS 122 (Tenn. Ct. App. Feb. 19, 2010).

O. Real estate negotiations.

State board of equalization meetings are subject to the Act. Op. Att'y Gen. No. 85-105 (April 8, 1985); however, T.C.A. § 10-7-504(a) (6) makes confidential state agency records containing opinions of value of real and personal property intended to be acquired for public purposes prior to final acquisition.

P. Security, national and/or state, of buildings, personnel or other.

The Open Meetings Act makes no specific exemption for such matters. *But see* T.C.A. § 10-7-504(a)(3) (making confidential papers, documents, and papers of the military department that involve the security of the United States or State of Tennessee, including national guard personnel records, staff studies, and investigations).

Q. Students; discussions on individual students.

The Open Meetings Act makes no specific exemption for such matters. *But see* T.C.A. § 10-7-504(a)(4) (making most records of students in public educational institutions confidential).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

The Act makes no provision for expedited review of a request to attend upcoming meetings.

2. When barred from attending.

The only specified remedy for public exclusion from meeting covered by the Act is court review.

3. To set aside decision.

This is the primary remedy under the Act. T.C.A. § 8-44-105. In 1990, however, the Tennessee Court of Appeals stated:

We do not believe that the legislative intent of this statute was forever to bar a governing body from properly ratifying its decision made in a prior violative manner. However, neither was it the legislative intent to allow such a body to ratify a decision in a subsequent meeting by a perfunctory crystallization of its earlier action. We hold that the purpose of the act is satisfied if the ultimate decision is made in accordance with the Public Meetings Act, and if it is a new and substantial reconsideration of the issues involved, in which the public is afforded ample opportunity to know the facts and to be heard with reference to the matters at issue.

Neese v. Paris Special Sch. Dist., 813 S.W.2d 423 (Tenn. Ct. App. 1990). In *Allen v. City of Memphis*, 2004 Tenn. App. LEXIS 403 (Jan. 22, 2004), the court concluded that a governing body's subsequent action to correct a failure to record minutes was nothing more than a "perfunctory crystallization of its earlier action" when there was no substantial reconsideration of the issue. Therefore, the court considered the action taken by the body to be void. If the body were to repeal its action taken in violation of the Act, however, this would render moot a claim under the Act. *Cathey v. City of Dickson*, 2002 Tenn. App. LEXIS 342 (Tenn. Ct. App. May 10, 2002).

Where a city held five subsequent public meetings to consider the sale of public building, this cured any violation of the Act by several officials meeting in private earlier with investors about the sale. *Dossett v. City of Kingsport*, 258 S.W.3d 139 (Tenn. Ct. App. 2007).

If the governing body rescinds its action taken at a meeting in violation of the Act, this will moot the violation. *Person v. Board of Commissioners*, 2009 Tenn. App. LEXIS 652 (Tenn. Ct. App. Sept 28, 2009).

4. For ruling on future meetings.

Permanent injunction for this purpose is also available. T.C.A. § 8-44-106.

5. Other.

The court will retain jurisdiction for one year to confirm compliance with the law. T.C.A. § 8-44-106.

B. How to start.

Tennessee has no administrative review of denial of access. Therefore, the way to seek review is to file an action in court.

1. Where to ask for ruling.

Not applicable.

a. Administrative forum.

Not applicable.

(1). Agency procedure for challenge.

Not applicable.

(2). Commission or independent agency.

Not applicable.

2. Applicable time limits.

Not applicable.

3. Contents of request for ruling.

Not applicable.

4. How long should you wait for a response?

Not applicable.

5. Are subsequent or concurrent measures (formal or informal) available?

Not applicable.

C. Court review of administrative decision.

This is the starting place for any formal challenge to a closed meeting.

1. Who may sue?

Any citizen of Tennessee can bring suit to enforce the Act. T.C.A. § 8-44-106(a) (1995). "[A] threshold showing of an Open Meetings Act violation is sufficient to confer standing on any citizen." *Fannon v. City of LaFollette*, 2010 Tenn. LEXIS 1207 (Dec. 21, 2010); *See Curve Elementary School Parent & Teachers Org. v. Lauderdale County Sch. Bd.*, 608 S.W.2d 855 (Tenn. Ct. App. 1980) (school parent and teacher association had standing to bring an action to enforce the Act because

its individual members had standing); *Metropolitan Air Research Testing Auth. Inc. v. Metro. Gov't of Nashville*, 17 TAM 31-12 (Tenn. Ct. App. Feb. 10, 1994) (Tennessee corporation whose principal place of business is in Tennessee has standing to sue under the Sunshine Act); *Helton v. City of East Ridge*, 18 TAM 20-28 (Tenn. Ct. App. April 22, 1993) (stating that plaintiffs had standing based on Tenn. Code Ann. § 8-44-106(a)); *City of Hendersonville v. City of Goodlettsville*, 19 TAM 32-6 (Tenn. Ct. App. July 13, 1994) (requiring distinct palpable injury and a causal connection between the injury and challenged conduct in order to have standing).

2. Will the court give priority to the pleading?

The Act has no provision for priority to the pleading. *But see* Tenn. R. Civ. P. 65.03 (aggrieved party may seek restraining order without notice to opposing party if applicant will suffer immediate and irreparable injury before a hearing can be held).

3. Pro se possibility, advisability.

Pro se representation is possible. The success of such *pro se* actions may depend upon the receptivity of the judge to such representation and how well settled the issues of law are.

4. What issues will the court address?

Courts have authority to nullify any action taken in violation of the Act, provided that nullification of actions does not apply to otherwise legal commitments affecting the public debt of the entity concerned. T.C.A. § 8-44-105. Furthermore, the court shall permanently enjoin any person found to be in violation of the Act, and each separate occurrence of meetings held in violation of the Act shall constitute a separate violation. T.C.A. § 8-44-106(c).

a. Open the meeting.

Yes.

b. Invalidate the decision.

Yes. *See Abou-Sakher v. Humphreys County*, 995 S.W.2d 65 (Tenn. Ct. App. 1977) (County's decision to hire airport manager violated Act and was thus invalid.)

c. Order future meetings open.

Yes.

5. Pleading format.

The statute provides for no specific pleading format, but Tennessee citizenship should be included in the allegations since that status is necessary for standing to enforce the Act. *See Curve Elementary School Parent & Teachers Org. v. Lauderdale County Sch. Bd.*, 855 S.W.2d at 858; T.C.A. § 8-44-106(a).

6. Time limit for filing suit.

The Act provides no time limit for filing suit; however, the six-year statute of limitations for malfeasance or nonfeasance by public officials may be applicable.

7. What court.

Suit can be brought in the circuit courts, chancery courts, and other courts having equity jurisdiction, and these courts have the power "to issue injunctions, impose penalties, and otherwise enforce the purposes" of the Act. T.C.A. § 8-44-106. There is a right to a jury. *Smith County Educ. Ass'n v. Anderson*, 676 S.W.2d 328, 337 (Tenn. 1984).

8. Judicial remedies available.

Judicial remedies include power to nullify any action taken in the unlawfully held meeting and to permanently enjoin further violations. An action taken by a governing body which is later determined to be void under the Open Meetings Act can still serve as the basis for another claim, such as discrimination. *Forbes v. Wilson County Emergency District 911 Board*, 966 S.W.2d 417 (Tenn. 1998).

9. Availability of court costs and attorneys' fees.

In *Fannon v. City of LaFollette*, 2010 Tenn. LEXIS 1207 (Tenn. Dec. 21, 2010), the court (with one justice dissenting) denied an award of attorney's fees because the Act did not provide for attorney's fees. The court did allow discretionary court costs, which typically are allowed in Tennessee litigation.

10. Fines.

Arguably, fines are available under a liberal reading of T.C.A. § 8-44-106(a), however, there is no reported case indicating that this has been done. Based upon the Supreme Court's ruling in *Fannon* as it relates to attorney's fees, fines would be unlikely.

11. Other penalties.

The Act mandates that the court retain jurisdiction over the case for one year and order the defendants to report in writing to the court semiannually of their compliance with the Act. T.C.A. § 8-44-106(d).

D. Appealing initial court decisions.

Appellate review is available from the trial court's final judgment on the merits. *See* T.C.A. § 8-44-106 (this section would permit both final and non-final judgments).

1. Appeal routes.

Appeals must be made pursuant to the Tennessee Rules of Appellate Procedure, which make no distinctions for meetings cases. Appeal as of right would be to the Tennessee Court of Appeals. Thereafter, permissive appeal may be made to the Tennessee Supreme Court within 60 days after the Court of Appeals' decision.

2. Time limits for filing appeals.

The time limit for filing an appeal is within 30 days after the date of entry of the final judgment. Tenn. R. App. P. 4(a).

3. Contact of interested amici.

Interested *amici* can apprise themselves of open meetings issues that might appear before the Tennessee Supreme Court by reviewing the decisions of the Tennessee Court of Appeals that appear in *Tennessee Attorneys Memo*, a weekly publication containing a synopsis of decisions of that court.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court. The Tennessee Press Association, Tennessee Association of Broadcasters, and the Tennessee Coalition for Open Government might also join as *amici*.

V. ASSERTING A RIGHT TO COMMENT.

The statute does not address a right to comment, although governing bodies have traditionally allowed citizen comment.

A. Is there a right to participate in public meetings?

No. The Act does not require governing bodies to permit members of the public to speak, comment, or actively participate in the meeting. *Whittemore v. Brentwood Planning Comm'n.*, 835 S.W.2d 11 (Tenn. Ct. App. 1992). It is not a violation of the Act for a governing body to order the removal of a person who is disrupting the meeting.

B. Must a commenter give notice of intentions to comment?

Act does not address.

C. Can a public body limit comment?

Yes.

D. How can a participant assert rights to comment?

Express desire to comment to the governing body.

E. Are there sanctions for unapproved comment?

Removal from meeting.

Appendix

Exceptions to the Public Records Act

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This list was current as of April 2011. The Tennessee General Assembly, however, has averaged adding approximately eight new exceptions each year since 1988.

There are a number of exceptions to the general right of access to public records under the Tennessee Public Records Act. While many of these exceptions are set forth in T.C.A. §§ 10-7-503 and 504 of the act, many more exist outside the act. Moreover, these exceptions are always changing and/or evolving. The following is a list of the exceptions to the Tennessee Public Records Act:

T.C.A. § 2-10-211(d) Information entered by any candidate to the Registry of Election Finance electronic filing system until the information is filed with the Registry of Election Finance.

T.C.A. § 2-11-202(a)(5) Report of any election law violations investigation conducted by the Coordinator of Elections.

T.C.A. § 2-6-202(c)(6) Requests and applications for absentee ballots until the end of the early voting period.

T.C.A. § 2-6-502(b) Social security number, date of birth, mailing address and electronic mailing address contained on application for absentee ballots from armed forces personnel.

T.C.A. § 2-10-212(e) Working papers of the registry of election finance audits and investigations.

T.C.A. § 3-6-115(d) Information in the ethics commission electronic filing system.

T.C.A. § 3-6-202(a)(1) Records relating to a state ethics commission preliminary investigation.

T.C.A. §§ 3-6-308(a) & (c) Audit and investigatory audit information held by the ethics commission in performing its duties under the Comprehensive Governmental Ethics Reform Act of 2006.

T.C.A. § 3-2-111(b)(1) Data received by General Assembly's Fiscal Review Committee related to health benefits.

T.C.A. §§ 3-10-108 (a) & (b) Certain information stored or processed in legislative computer system.

T.C.A. § 3-12-105 Work papers and intraoffice memoranda of Office of Legal Services for the General Assembly.

T.C.A. § 3-12-106. Legislative legal services communications with general assembly members.

T.C.A. § 3-14-109 Work papers and intraoffice memoranda of Office of Program Evaluation within General Assembly.

T.C.A. § 4-3-304 (7) Working papers created, obtained or compiled by an internal audit staff within the state department of audit.

T.C.A. § 4-3-712, -730 Proprietary information acquired by the Department of Economic and Community Development is confidential only if so designated by the Department Commissioner and the Attorney General.

T.C.A. § 4-4-125 Social security numbers.

T.C.A. § 4-5-218 Permits state agencies to delete portions of agency documents and records, which other provisions of law designate as confidential. Allows agency to charge fee for documents.

T.C.A. § 4-6-140 Permits Commissioner of Correction to restrict access to records if access would result in jeopardy to lives of inmates and officers.

T.C.A. § 4-14-308 Trade secrets or commercial or financial infor-

mation regarding the operation of any business conducted by an applicant for any form of assistance from the Tennessee Technology Development Corporation.

T.C.A. § 4-17-408(e) Applications (except the identity of the applicant) with supporting documents including personal financial records, trade secrets or proprietary information of applicants and all staff meetings or portions thereof for financing from the Tennessee Industrial Finance Corporation.

T.C.A. § 4-21-303(d) Human Rights Commission conciliation agreements if the complainant and respondent agree and the Commission determines that disclosure is not required to further the purposes of the Human Rights Act.

T.C.A. § 4-35-107 Information received by a state audit committee concerning illegal, improper, wasteful or fraudulent activity or any investigation thereof, except those matters disclosed in the final reports.

T.C.A. § 4-35-108 Information from confidential, nonpublic executive sessions of an audit committee.

T.C.A. §§ 4-51-103; 4-51-109; 4-51-110 Results of criminal history records checks for lottery director, chief executive officer, or lottery employees.

T.C.A. § 4-51-124(a), -205 Certain information of the Tennessee Education Lottery Corporation.

T.C.A. § 4-51-125 (b) Lottery Corporation information received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement with government agencies of any jurisdiction.

T.C.A. § 4-51-126(f) Tennessee Education Lottery Corporation's procurement documents, contracts and any other documentation filed with the Lottery Procurement Panel.

T.C.A. § 7-54-107(2)(c) All proposals for construction operation or maintenance of an energy production facility are open for public inspection after the contract is awarded except for trade secrets and confidential information contained in the proposals and identified as such.

T.C.A. § 7-59-305(d)(2) Deployment plans submitted by a cable or video service provider applying for a state-issued certificate of franchise authority.

T.C.A. § 7-59-306(c)(2) Supporting statements submitted to determine cable or video franchise fees due to a municipality or county.

T.C.A. § 7-59-311(d)(4) Proprietary information concerning denial of cable or video service to certain groups of residential subscribers or potential subscribers.

T.C.A. § 7-86-317 A local emergency communications district board shall determine whether any proprietary information submitted to it shall remain confidential.

T.C.A. § 8-3-104(10) Permits Governor to determine what records relating to the executive branch that are maintained by the Secretary of State require secrecy.

T.C.A. § 8-4-116(c) State comptroller's confidential work papers.

T.C.A. § 8-4-404 Information received pursuant to Comptroller's toll-free hotline for detecting improper actions by employees of community grant agencies.

T.C.A. § 8-4-406 Information received from the toll-free hotline number to report illegal, improper, or wasteful activity related to state agency or community grant supported services.

T.C.A. § 8-4-407 Annual report by comptroller of the treasury summarizing calls reporting improper or wasteful activity of a state agency or community grant supported services.

T.C.A. § 8-6-112 The notice to the Executive Director of the District Attorney's General Conference, the application for appointment

of a District Attorney General Pro-Tem, and the proceedings on an application for criminal prosecution of a judge.

T.C.A. § 8-6-407 All documents, records, or tangible objects obtained by the Attorney General pursuant to his investigative authority.

T.C.A. § 8-25-109(a) All medical records submitted or compiled by any person or entity providing deferred compensation plans.

T.C.A. § 8-25-307 All information contained in medical records obtained from government employees by entities with profit sharing plans.

T.C.A. § 8-25-502 All medical diagnosis, treatment, or referral information contained in records obtained from employees pursuant to cafeteria benefit plans.

T.C.A. § 8-30-303(d) All Department of Personnel civil service promotional and entrance tests and answers.

T.C.A. § 8-36-510(a) All medical records obtained and kept pursuant to a consolidated retirement program.

T.C.A. § 9-3-405 Records of nonpublic executive sessions of local government audit committees.

T.C.A. § 9-4-518 Any information contained in a report by a qualified public depository which is confidential by any law of the United States or Tennessee.

T.C.A. § 9-8-307(a)(3) All records relating to the amount of funds reserved for each claim against the state prior to its final adjudication by the Claims Commission.

T.C.A. § 9-19-109 Identity of owner of any public obligation.

T.C.A. § 10-8-102 Library records identifying any person as having requested or obtained specific materials or information.

T.C.A. § 10-8-102(a) Library records showing who requested or obtained specific materials.

T.C.A. § 10-7-503(b) Permits head of governmental entity to promulgate rules to maintain the confidentiality of records concerning adoption proceedings.

T.C.A. § 10-7-503(d) Limits access to certain non-profit organizations if the organization follows certain requirements.

T.C.A. § 10-7-503(e) Contingency plan of law enforcement agencies to respond to violence, bomb threats, weapon of mass destruction, or terrorist incidents.

T.C.A. § 10-7-504(a)(1) Medical records of patients in state hospitals or medical facilities or receiving medical treatment at state expense.

T.C.A. § 10-7-504(a)(2) Investigative records of TBI, criminal investigative files of motor vehicle enforcement division of Department of Safety relating to stolen vehicles or parts, and all files of the driver's license issuance division of the Department of Safety relating to bogus licenses issued to undercover agents.

T.C.A. § 10-7-504(a)(3) Records in possession of the Military Department involving state or national security.

T.C.A. § 10-7-504(a)(4) Records of students in public educational institutions.

T.C.A. § 10-7-504(a)(5) Records in possession of the office of Attorney General and Reporter relating to a pending or contemplated legal or administrative proceeding in which such office may be involved.

T.C.A. § 10-7-504(a)(6) State agency records containing opinions of value of real and personal property intended to be acquired for public purposes prior to final acquisition.

T.C.A. § 10-7-504(a)(7) Proposals for service contracts and sealed bids for the purchase of goods and services until the contract is fully

executed or awarded.

T.C.A. § 10-7-504(a)(8) Investigative records of the internal affairs division of the department of correction or department of youth development.

T.C.A. § 10-7-504(a)(9) Official health certificates obtained and maintained by the state veterinarian.

T.C.A. § 10-7-504(a)(10) The capital plans, marketing and proprietary information, and trade secrets submitted to the Tennessee capital network at Middle Tennessee State University.

T.C.A. § 10-7-504(a)(11) Records of historical research value given or sold to public archival institutions or libraries when the owner or donor of such records wishes to place restrictions on access to the records.

T.C.A. § 10-7-504(a)(12) Personal information contained in motor vehicle records which shall be open only pursuant to Title 55 of the Tennessee Code Annotated.

T.C.A. § 10-7-504(a)(13) Memoranda, work notes, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide counseling and therapy to law enforcement officers, firefighters, paramedics and other emergency medical technicians.

T.C.A. § 10-7-504(a)(14) Riot, escape, and emergency transport plans of county jails and workhouses or prisons.

T.C.A. § 10-7-504(a)(15) A utility department's records of address, telephone number and Social Security number that might be used to locate someone who has a protection order from a court to protect such person from violence.

T.C.A. § 10-7-504(a)(16) A governmental entity's records of address, telephone number and Social Security number that might be used to locate someone who has a protection order from a court to protect such person from violence.

T.C.A. § 10-7-504(a)(17) The telephone number, address and any other information which might be used to locate the whereabouts of a domestic violence shelter or rape crisis center.

T.C.A. § 10-7-504(a)(18) Computer programs sold, licensed or donated to the state.

T.C.A. § 10-7-504(a)(19) Credit card numbers of persons doing business with the state or any subdivision.

T.C.A. § 10-7-504(a)(20) The private records of any utility.

T.C.A. § 10-7-504(a)(21) Records identifying structural or operational vulnerability of a utility.

T.C.A. § 10-7-504(d) Records of employees' identity, treatment, or referral for treatment maintained by state or local government employee assistance program.

T.C.A. § 10-7-504(e) Unpublished telephone numbers in the possession of emergency communications districts.

T.C.A. § 10-7-504(f) Unpublished telephone numbers, Social Security numbers, and driver's license information of public employees or his immediate family member.

T.C.A. § 10-7-504(g) Personnel information of undercover police officers.

T.C.A. § 10-7-504(b) Identifying information about someone who "has been or may in the future be directly involved in the process of executing a sentence of death."

T.C.A. § 10-7-504(i) Information that would allow a person to obtain unauthorized access to confidential information or government property.

T.C.A. § 11-1-102 Department of environment and conservation records about radioactive materials regulated under the Atomic Energy Act and the specific location of threatened, endangered, or rare species that would not be available to the public under the federal law or regulation.

T.C.A. § 10-7-508 Director of records management has access to records where it is otherwise not available to the public.

T.C.A. § 12-3-2 Sealed bidding for state contracts generally.

T.C.A. § 12-4-414 Payroll records submitted to the Prevailing Wage Commission of the Department of Labor pursuant to the Prevailing Wage Act.

T.C.A. §§ 16-10-213; 16-11-206; 16-16-120 Information collected and reported to the federal bureau of investigation-NICS Index and the department of safety by chancery, county and probate, circuit and criminal courts.

T.C.A. § 16-20-103 Memorandum, work notes or products or case files of victim/offender mediation centers.

T.C.A. § 17-4-201 Information collected for evaluation of appellate judges.

T.C.A. § 17-5-303(b) Complaints of judicial disability to the Court of the Judiciary.

T.C.A. § 17-5-307(g)(4) Affidavits of judges who voluntarily consent to state sanctions.

T.C.A. § 22-2-102(a) Prevents court personnel from divulging any secrets of the proceedings of the Jury Commissioners.

T.C.A. § 22-1-103 (c) Documentation to support excuse from jury duty.

T.C.A. § 22-2-302(4)(B) Jury book of Board of Jury Commissioners.

T.C.A. § 23-3-105 The attorney-client privilege which presumably would restrict access to documents maintained by the government when the attorneys are government employees.

T.C.A. § 23-4-105 Records, proceedings, and all communications of any lawyer's assistance program.

T.C.A. § 24-1-207(b) Communications between psychiatrist and patient when disclosed in a judicial or quasi-judicial hearing.

T.C.A. § 29-20-401 Records of examination, audit, or investigation regarding reserve or special funds maintained by a governmental entity for the purpose of making payment of claims against it.

T.C.A. § 33-3-103 Applications, certificates, records, reports, legal documents received in connection with mental health services applied for. *But see, T.C.A. § 33-3-105* Allows disclosure in very limited circumstances.

T.C.A. § 33-3-104(10) Records identifying a present or former patient or resident treated for mental illness or mental retardation.

T.C.A. § 33-3-108(b) Identity of persons who report abuse, exploitation, fraud, neglect, or mistreatment to the Department of Mental Health.

T.C.A. § 33-6-601 Patient information relating to outpatient treatment.

T.C.A. § 33-10-408 The registration and other records of alcohol abuse treatment facilities.

T.C.A. § 36-1-102(6)(B); 36-1-111(a)(3); 36-1-116(e); 36-1-118(e)(4)(B)(ii); 36-1-125(a); 36-1-126(a)(5) Adoption records are confidential. *But see T.C.A. § 36-1-127* Such records are available to those persons and family of those involved in the adoption.

T.C.A. § 36-1-116 Surrender information in adoptions.

T.C.A. § 36-1-125, -126 Records relating to an adoption proceeding after the final order of adoption or dismissal is entered. See Op. Att'y Gen. No. 94-15 (Feb. 4, 1994).

T.C.A. § 36-1-304 Information contained in the adoption advance notice registry.

T.C.A. § 36-3-604 Any document required for filing in an order of protection case.

T.C.A. § 36-3-621(f)(1) The identity of a person who reports domestic abuse, neglect or exploitation and the information so reported.

T.C.A. § 36-3-623 Records of domestic violence shelters and rape crisis centers.

T.C.A. § 36-3-624(e) Documents shared within or produced by a Domestic Abuse Death Review Team or a document provided by a third party to a Domestic Abuse Death Review Team.

T.C.A. § 36-4-130(a) Confidential communications during divorce mediation proceedings.

T.C.A. § 36-6-107 The address of the child and non-perpetrating parent in a case of child abuse or child sexual abuse.

T.C.A. § 36-6-224 Identifying information in an affidavit in a child custody case unless court ordered after a hearing.

T.C.A. § 37-1-131 Whether a delinquent child is on probation or in the custody of a state agency.

T.C.A. § 37-1-153 Limits access to Juvenile Court files to only those persons working on the case or with the juvenile, except as to acts of delinquency which would constitute one of nine serious crimes if committed by an adult.

T.C.A. § 37-1-154 Limits access to law enforcement records at the Juvenile Court to only those persons working on the case, or with the juvenile, or law enforcement officers of other jurisdictions.

T.C.A. § 37-1-155 All fingerprint and photograph records of a delinquent child.

T.C.A. § 37-1-409(a) Reports of harm and the identity of the reporter of child abuse.

T.C.A. § 37-1-506 Information identifying delinquents received by the Council for Juvenile and Family Court Judges.

T.C.A. § 37-1-612(a) Records concerning reports of child sexual abuse and all records generated as a result of such reports. See Op. Atty Gen. No. 11-21 (Mar. 11, 2011).

T.C.A. § 37-1-705(d) Records used in or related to teen court proceedings except as necessary to permit functioning of the teen court.

T.C.A. § 37-2-408(a) Records prepared in connection with the planning, placement, or care of a child in foster care.

T.C.A. § 37-2-411(b) Records obtained by the Department of Human Services for preparation of the annual report on foster care.

T.C.A. § 37-2-415 Records provided by the department of children's services to foster parents.

T.C.A. § 37-2-414 Information gathered in investigation of prospective kinship foster care parent.

T.C.A. § 37-5-107 Application, certificates, records, reports and all legal documents, petitions, and records identifying a child or family receiving services from the Department of Children's Services.

T.C.A. § 37-5-607 Confidential information in cases reviewed by an independent local advisory board for a multi-level response system for children and families.

T.C.A. § 37-10-304 The record of evidence submitted to a court in connection with an application for a minor to have an abortion.

T.C.A. § 38-1-304 Reports and the identity of persons filing reports concerning statutory rape and statutory rape prevention.

T.C.A. § 38-1-402 Name of a child or adult protective services employee who reports known or reasonably suspected animal cruelty, abuse or neglect.

T.C.A. § 38-6-106(c) The background investigation by a Judicial Nominating Commission delivered to the Governor.

T.C.A. § 38-6-118 (d) The Tennessee bureau of investigation database of expunged criminal offender and pretrial diversion records.

T.C.A. § 38-7-110(d) Court may order that portions of County Medical Examiner's report of autopsy may be held as confidential.

T.C.A. § 39-13-112 HIV testing of assault victims.

T.C.A. § 39-13-521 HIV testing of persons convicted of sexual offenses.

T.C.A. § 39-14-144(f) Any agreement between a merchant and a person responsible for minor's theft of retail merchandise concerning the liability of such person and the payment of such damages.

T.C.A. § 39-14-145(c) Written agreement entered into between a merchant and a person responsible for damages to a retail merchant for theft.

T.C.A. § 39-15-202 The written consent of a pregnant woman to have an abortion.

T.C.A. § 39-15-203 Abortion records and reports.

T.C.A. § 39-15-210 All identifying information concerning minors pursuant to the Child Rape Protection Act of 2006.

T.C.A. § 40-6-304 All recordings of wire, oral, or electronic communications received through a judicially authorized wiretap.

T.C.A. § 40-12-209 All written records of applications, committee action, petition, and orders to convene an investigative grand jury.

T.C.A. § 40-28-119(c) Permits parole board to promulgate rules relative to the confidentiality of records of parolees.

T.C.A. § 40-28-401 Interstate compact information regarding the supervision of adult offenders that would adversely affect personal privacy rights or proprietary interests.

T.C.A. § 40-28-504 Written victim impact statements.

T.C.A. § 40-32-101 Expungement of records.

T.C.A. § 40-38-110 Identifying information pursuant to the Crime Victims' Bill of Rights.

T.C.A. § 40-35-313 Discharge or dismissal of a criminal charge by court-ordered probation.

T.C.A. § 40-35-205 Pre-sentence investigation reports prepared prior to an adjudication of guilt.

T.C.A. § 40-38-114(b) Information received by the victim of a crime from the prosecuting attorney relating to the substance of the case.

T.C.A. § 40-39-206(d) Information reported on the Tennessee Bureau of Investigation Registration Form for the sex offenders registry.

T.C.A. § 41-1-121 Results of drug tests of department of correction security personnel.

T.C.A. § 41-21-107 HIV testing of inmates.

T.C.A. § 41-21-240 Identifying information concerning a crime victim or a crime victim's representative who requests notification of an inmate's pending release.

T.C.A. § 41-21-242 Identifying information concerning a person who has been notified of the release of certain felons from correc-

tional facilities.

T.C.A. § 41-21-408 Reports of violence within correctional facilities if in the discretion of the warden or chief administrative officer the release of information would endanger or compromise the security of an inmate or the institution.

T.C.A. § 41-51-102(e), -103(b) The results of a correctional facility inmate's test for infectious disease.

T.C.A. § 43-35-101 Information furnished to or received by the Southern Dairy Compact Commission.

T.C.A. § 40-36-302 Notices given to local law enforcement officials by community-based programs that provide housing for alternatively sentenced criminal offenders.

T.C.A. § 43-8-114 Confidential information or product composition regarding local regulation of pesticides.

T.C.A. § 45-1-117 Criminal history records information gathered as a condition of employment with the department of financial institutions.

T.C.A. § 45-1-126 Compliance review documents of an audit, loan review, or compliance committee appointed by the board of directors of a depository institution whose functions are to evaluate and seek to improve loan underwriting, asset quality, financial reporting, and compliance with federal or state regulatory requirements.

T.C.A. § 45-2-103(a)(3)(C) Information obtained by the Commissioner of Financial Institutions when acting upon application for change of control of a bank.

T.C.A. § 45-2-614 Any regulatory rating established, assigned, or accepted pursuant to agreement with a federal regulatory agent by the Tennessee Department of Banks and Financial Institutions.

T.C.A. § 45-2-614(b) Regulatory rating assigned by Commissioner of Financial Institutions to any bank.

T.C.A. § 45-2-1603; 45-7-216 Information obtained by bank examiner when examining the affairs of a bank.

T.C.A. § 45-2-1717(c) Violations of banking laws reported by Commissioner of Department of Financial Institutions.

T.C.A. § 45-3-807; 45-3-814 Allows savings and loan associations to decline to disclose their records except under certain circumstances.

T.C.A. § 45-3-814 Information obtained by bank examiner when examining the affairs of a savings and loan association.

T.C.A. § 45-7-216 Information contained in examinations, reports, applications, credit, investments, financial statements, and balance sheets are confidential.

T.C.A. § 45-8-221 Information obtained by the banking commissioner or any financial institution's examiner for the purposes of ascertaining the true condition of the affairs of a business and industrial development corporation.

T.C.A. § 45-8-221(a) Information obtained by the Commissioner of Financial Institutions or any financial institutions examiner of a business and industrial development corporation obtained for the purpose of ascertaining the true condition of the affairs of such corporation.

T.C.A. § 45-17-119 Annual reports by deferred presentment services licensees.

T.C.A. § 45-18-119 Confidential information communicated in compliance with the Check Cashing Act.

T.C.A. § 46-1-218 Financial information concerning cemetery care trust funds.

T.C.A. § 47-18-106(g) Information received at the request of the Consumer Affairs Division pursuant to enforcement of the Tennessee

Consumer Protection Act.

T.C.A. § 47-23-101 Information concerning insurance required to be kept on real estate

T.C.A. § 47-25-1706 In litigation courts must preserve the secrecy of trade secrets that otherwise would be filed or submitted to the Court. Throughout the Code trade secrets are protected.

T.C.A. § 48-2-118(a)(1)(A) Information obtained through private investigation by Commissioner of Commerce and Insurance to determine if a violation of the Tennessee Securities Act has occurred.

T.C.A. § 49-1-302(f) Statewide tests and answers developed by the Department of Education to measure student progress.

T.C.A. § 49-4-903 Individual student records submitted to TSAC and THEC under state lottery scholarship and grant programs.

T.C.A. § 49-6-808 Building-level emergency response safety plans for schools.

T.C.A. § 49-6-1401 Health report cards identifying public school children at risk for obesity.

T.C.A. § 49-6-3051 Information received by a school concerning a student's adjudication for delinquency.

T.C.A. § 49-6-3114 School transition plan for a child leaving a treatment program who in the opinion of a hospital or treatment resource poses a substantial likelihood of serious harm.

T.C.A. § 49-6-4213 (k) All records of a test, request for a test or indication that a student has been tested for drugs.

T.C.A. § 49-6-5105 Student identification numbers for tracking students.

T.C.A. § 49-6-6001(c) Department of Education student achievement tests and answers.

T.C.A. § 49-7-120(b) Trade secrets, patentable information, and commercial or financial information used in research done at state colleges and universities.

T.C.A. § 49-9-14. Information concerning the research mission of the University of Tennessee.

T.C.A. § 49-7-140 Personally identifiable information about the donor or donor's family of gifts made to public institutions of higher education or foundations.

T.C.A. § 49-7-216 Confidential student data or records concerning students enrolled in TICUA institutions provided by the Tennessee Independent Colleges and Universities Association or any of its member institutions as to the Tennessee higher education commission.

T.C.A. § 49-11-613 Names or any information concerning persons applying for or receiving vocational rehabilitation.

T.C.A. § 49-10-804 Register of blind persons in the state prepared and maintained by the commissioner of human services.

T.C.A. § 49-14-103 Information received by internal auditor of University of Tennessee Board of Trustees or the Board of Regents relating to illegal, improper, wasteful or fraudulent activity or any ongoing investigation thereof.

T.C.A. § 49-50-1408 Reports of alleged falsification, waste, or mismanagement of public education funds, but only to the extent the person reporting requests that the person's reporting name not be revealed.

T.C.A. § 50-3-302 Name, job title and other information that may be used to identify a witness interviewed during the course of an investigation of the Tennessee Department of Labor and Workforce Development.

T.C.A. § 50-3-304(a)(3) Name of employee giving notice to Commissioner of Labor of possible violation of Occupational Safety and Health Act, if the employee requests.

T.C.A. § 50-3-504 Trade secrets or otherwise privileged information in the labor and workforce development office.

T.C.A. § 50-3-702 An employer's first report of work injury records maintained by the worker's compensation division.

T.C.A. § 50-3-914(a) Information containing or revealing trade secrets obtained by the Commissioner of Labor while enforcing the occupational safety and health laws.

T.C.A. § 50-3-2013 Information containing or revealing trade secrets obtained by the Commissioner of Labor while enforcing the Hazardous Chemical Right to Know Law.

T.C.A. § 50-6-131 Medical records provided to the Division of Workers Compensation.

T.C.A. § 50-6-405 Statements showing an employer's financial ability to pay workers compensation claims.

T.C.A. § 50-7-701(a)(1)(B) Information obtained by the Commissioner of the Department of Employment Security while enforcing the Employment Security Law.

T.C.A. § 50-9-106 Records of the observations leading to a controlled substances reasonable suspicion test.

T.C.A. § 53-10-306 Information of controlled substance database of the Commissioner of Commerce and Insurance. *But see*, T.C.A. § 53-10-308 Allowing release of such information under certain circumstances.

T.C.A. § 54-1-403 Reports to the department of transportation regarding littering offenses.

T.C.A. § 55-10-114 Accident reports made by a person or garage to the Department of Safety. *But see* T.C.A. § 55-10-108 which allows such access but without liability insurance information.

T.C.A. § 55-19-112 Written examinations of commercial driver training schools.

T.C.A. § 55-25-104; 55-25-107 Motor vehicle records and personal information retained by department of safety and department of revenue.

T.C.A. § 56-1-402(g)(7) Information relating to opinion of Commissioner of Commerce and Insurance related to insurance companies' reserve liabilities and evaluations.

T.C.A. § 56-1-411 The commissioner of insurance may not disclose the contents of an examination report, preliminary examination, or report of any insurance company, except to law enforcement officials and only if they agree to maintain the confidentiality of such reports.

T.C.A. § 56-3-111 Report of insurance companies to the Board of Medical Examiners concerning medical malpractice settlements in excess of a certain amount.

T.C.A. § 56-5-405 Filings relating to insurance companies' scoring models and processes.

T.C.A. § 56-6-117(g) Information obtained by the Department of Commerce and Insurance as furnished by an insurer, producer, employee or agent thereof for the purposes of terminating the appointment, employment or contract or other insurance business relationship with a producer.

T.C.A. § 56-6-702; 56-6-705 Health-related records possessed by agents complying with the Health Care Service Utilization Review Act.

T.C.A. § 56-6-803 Insurance commissioner's summary of the basis

for denying a reinsurance intermediary license.

T.C.A. § 56-8-107 Statements filed by the department of commerce and insurance with the National Association of Insurance Commissioners.

T.C.A. § 56-9-202 Insurance department files and court records and papers in proceedings and judicial reviews of insurance companies.

T.C.A. § 56-9-504(a) Records, correspondence, reports, and proceedings relating to supervision of insurers in the possession of the Commissioner of Commerce & Insurance.

T.C.A. § 56-10-301(d) Insurer's material transactions and reports to Commission.

T.C.A. § 56-11-103(b)(2) Identity of lender where loan is consideration for merger or acquisition of control of an insurance holding company, if the lender requests.

T.C.A. § 56-11-104(c) Information submitted in the pre-acquisition notification that may be filed when there is a change in control of an insurer authorized to do business in this state.

T.C.A. § 56-11-108 Information obtained by the Commissioner of Commerce and Insurance pursuant to an examination of the financial condition of an insurance company.

T.C.A. § 56-12-211(a)(4) Information furnished by the Department of Commerce and Insurance to National Association of Insurance Commissioners concerning regulatory information system ratios and listings of companies not included in the ratios.

T.C.A. § 56-22-115 Information, materials, documents compiled by the department of commerce and insurance during examination of a county mutual insurance company.

T.C.A. § 56-32-135 Information obtained by the Department of Commerce and Insurance concerning investigations of any health maintenance organization or person providing services under TennCare.

T.C.A. § 56-44-105 Insurance reciprocity of Commissioner of Commerce and Insurance with out-of-state confidential requirements.

T.C.A. § 56-46-109 All risk-based capital reports and risk-based capital plans with respect to any domestic insurer or foreign insurer which are filed with the commissioner of insurance.

T.C.A. § 56-50-107(b) Names and individual identification data for owners and insureds for purposes of life settlements.

T.C.A. § 56-51-150 Information pertaining to the diagnosis, treatment or health of any enrollee of a prepaid limited health service organization or any state investigation of such organization by law enforcement, regulatory, licensing or other governmental agency for purposes of prosecuting or preventing insurance fraud.

T.C.A. § 56-53-109(c) Information submitted to or generated by law enforcement or insurance department for the purposes of detecting or prosecuting insurance fraud.

T.C.A. § 56-54-107 Information submitted to the department of commerce and insurance pursuant to the Tennessee Medical Malpractice Reporting Act.

T.C.A. § 59-8-406 Information which pertained to only the analysis of the chemical and physical properties of coal seams, test borings, core samples, or soil samples.

T.C.A. § 59-8-413 The identity of any person supplying information concerning a violation of any requirement of the Coal Surface Mining Act.

T.C.A. § 60-1-504(b)(4) Data maintained by the State Geologist on the drilling of mineral test holes for a period of six months.

T.C.A. § 60-1-505(c) All information pertaining to the application for and issuance of permits for mineral test holes maintained by the Oil and Gas Board.

T.C.A. § 62-1-116 The accountant's privilege, which presumably applies to accountants employed by the government.

T.C.A. § 62-1-201(b)(3) Documents concerning the peer review process for accountants.

T.C.A. § 62-1-202 Records and work papers of review committee of the Board of Accountancy.

T.C.A. § 62-6-124 Financial statements submitted by contractors to the Board for Licensing Contractors.

T.C.A. § 62-13-403 Confidential information of parties in a real estate transaction.

T.C.A. § 62-18-213 Applications and other personal information submitted by applicants for a soil scientist license.

T.C.A. § 62-20-119 Financial information submitted to the Collection Service Board by an applicant for or license holder.

T.C.A. § 62-21-129 Confidential information regarding pesticide sale or use.

T.C.A. § 62-27-124(b) Records obtained by law enforcement officers during official polygraph examinations.

T.C.A. § 62-35-131 Any written notice notifying a registered, armed security officer/guard that he or she has been denied authorization to carry a firearm.

T.C.A. § 62-36-115 Applications and other personal information submitted by applicants for a geologist license.

T.C.A. § 62-35-134 Information acquired during a security officer's employment that may compromise the security of any premises to which the security officer has been assigned by the employer.

T.C.A. § 62-43-105 Financial or client information obtained from staff leasing companies.

T.C.A. § 62-43-113(b)(2)(A)(i)(g) Information furnished to the Department of Labor and Workforce Development related to staff leasing companies or groups.

T.C.A. § 62-43-117 All materials compiled by the Commissioner of Commerce and Insurance in determining whether a person has violated or is in danger of violating statutes related to employee leasing.

T.C.A. § 63-1-117(b)(2) Identifying information of complainant and medical records concerning an allegation against a practitioner of the healing arts to the Division of Health Related Boards until introduced at disciplinary proceedings.

T.C.A. § 63-1-136(d) Information provided to non-profit association for the purpose of assisting in the rehabilitation of impaired health care practitioners.

T.C.A. § 63-1-138 (c) Documents produced by health practitioner screening panels before a filing of a notice of charges and such documents or records form the basis for such filing of a notice of charges.

T.C.A. § 63-2-101 A healthcare provider's patient's medical records.

T.C.A. § 63-4-115 Activities of screening panels regarding suspension, revocation, or denial of a certificate of a health practitioner.

T.C.A. § 63-5-124 Confidential information regarding drug or alcohol treatment of dentist or dental assistant.

T.C.A. § 63-5-131(d) Information furnished to and conclusions of a Dental Peer Review Committee proceeding.

T.C.A. § 63-6-214 All materials, documents, and other matters relating to an investigation conducted by the Board of Medical Examin-

ers concerning any healthcare practitioner.

T.C.A. § 63-6-219(e); 71-5-158 Information furnished to and conclusions of a Medical Review Committee proceeding.

T.C.A. § 63-6-221; 63-9-117 Results of complaint investigations of office-based surgeries.

T.C.A. § 63-6-228 Health care data in the community health management information system.

T.C.A. § 63-7-115 Activities of screening panels regarding suspension, revocation, or denial of a certificate of a nurse.

T.C.A. § 63-7-125 Communications between a registered nurse and his or her client, which presumably would apply to any nurses employed by the government.

T.C.A. § 63-10-405 Information furnished to Board of Pharmacy peer review committee, association board or organization board.

T.C.A. § 63-11-213 Communications between a licensed psychologist or psychological examiner and his or her client are privileged, which presumably would apply to any psychologist or psychological examiner employed by the government.

T.C.A. § 63-11-220(d)(2) Interviews, reports, or other information furnished to psychologist peer review committees.

T.C.A. § 63-12-110(d) Information received by the Board of Veterinary Medical Examiners through inspections and investigations.

T.C.A. § 63-12-138 Information furnished to Board of Veterinarian Medical Examiners peer review committees.

T.C.A. § 63-13-317 Information relating to the physical therapist/patient relationship, which presumably would apply to any physical therapist employed by the government.

T.C.A. § 63-22-114 Marital and family therapist communications with client.

T.C.A. § 63-23-107 Communications between certified social workers and clients.

T.C.A. § 65-3-109 Contracts, leases, or engagements obtained by the Department of Transportation while engaged in regulations of the railways, if the interests of the company would be injured.

T.C.A. § 65-4-118 The Consumer Advocate Division may enter into agreements regarding the non-disclosure of trade secrets or other confidential commercial information obtained by the division.

T.C.A. § 65-15-126 Notification of shipments of highly radioactive material.

T.C.A. § 66-7-107 The identity of any person who provides evidence or other information that results in an eviction or other termination of residency where the premises or the area immediately surrounding the premises are knowingly used in violation of criminal statutes prohibiting drug use and prostitution.

T.C.A. § 66-29-154 Treasurer's office working papers concerning an audit for unclaimed property and information that identifies a particular person, institution, business, or entity as the subject of an audit.

T.C.A. §§ 67-1-110, 67-1-703, and 67-1-1704 A taxpayer's confidential financial information.

T.C.A. § 67-1-1702 Returns and tax information filed with or in the possession of the Commissioner of Revenue.

T.C.A. § 67-1-1705(c) Investigative records of the special investigations unit of the Department of Revenue relating to potential criminal prosecutions of persons for violation of the tax laws.

T.C.A. § 67-4-722(d)(1) Statements, reports, or returns of taxpayers and all audits of their records and files.

T.C.A. § 67-4-2808 Information obtained from the taxation of unauthorized substances, e.g. assuming a drug dealer would pay taxes on illegal gains, he should not have to worry that his reporting of income from illegal activity will result in prosecution because he reported such illegal activity for tax purposes.

T.C.A. § 67-5-402 Property tax information furnished local authorities.

T.C.A. § 67-8-109 Permits Commissioner of Revenue to determine what portions of his records concerning transfer taxes should remain closed.

T.C.A. § 67-8-404 Permits Commissioner of Revenue by rule to determine what portion of his records concerning inheritance taxes are closed.

T.C.A. § 68-1-108(a) Individual medical information contained in UB-92 claims data filed by health insurance entities with the Commissioner of Health and Environment.

T.C.A. § 68-1-112 Advance notice that a health care facility will undergo inspection by the department of health.

T.C.A. § 68-1-119(a) Information that might reveal the identities of the patient of an ambulatory surgical treatment center.

T.C.A. § 68-1-1006; 68-1-1007 Data obtained from the reports required by the Tennessee Cancer Reporting System Act of 1983.

T.C.A. § 68-1-1010(b) Patient specific information relating to interstate sharing of cancer reporting.

T.C.A. § 68-3-205 Vital records (records of birth, death, marriage, divorce, annulment) except that the fact and date of a birth or death is not confidential. Permits Commissioner of Health and Environment to determine by rule what portion of vital records is not confidential.

T.C.A. § 68-3-313 Pre-1951 original birth certificates in adoption cases in custody of Department of Health. See Op. Att'y Gen. No. 94-15 (Feb. 4, 1994).

T.C.A. § 68-5-506(e)(1) Patient identity information collected and analyzed for the birth defects registry.

T.C.A. § 68-5-604 Laboratory reports of serological tests submitted to local health departments.

T.C.A. § 68-5-703(c) Results of HIV testing of pregnant women.

T.C.A. § 68-10-113 All records held by the Department of Health and Environment and local health departments concerning known or suspected cases of sexually transmitted diseases.

T.C.A. § 68-10-116 The results of hepatitis B or HIV testing on any arrested person who may have exposed his or her blood or other bodily fluid to a law enforcement officer.

T.C.A. § 68-10-117 The HIV or hepatitis B test results of any person who may have exposed an emergency worker to any potentially life-threatening, airborne or bloodborne diseases. The HIV or hepatitis B virus test results of any employee of a healthcare facility who is exposed to the blood or other bodily fluid of a patient.

T.C.A. § 68-11-207 Privileged or confidential information in reports submitted to the commissioner of health by a health-care facility during probation of its license.

T.C.A. § 68-11-210(b)(5)(C) Joint Commission on Accreditation of Hospital's report concerning the accreditation of a hospital or nursing home.

T.C.A. § 68-11-211(c) Information obtained to assist health care providers and states to collect meaningful health care data to minimize the frequency and severity of patient abuse and to improve the delivery of health care services.

- T.C.A. § 68-11-222(c)(2)* Results of HIV tests.
- T.C.A. § 68-11-238* Marketing strategies and strategic plans of hospitals subject to the open meetings laws.
- T.C.A. § 68-11-259* Trauma registry information that reasonably could be expected to reveal the identity of a patient or identities of specific reporting facilities.
- T.C.A. § 68-11-255(c)* The identity of the parents or infant concerning the surrendering of custody of an unwanted infant.
- T.C.A. § 68-11-262* Amount of charges for services to uninsured patients.
- T.C.A. § 68-11-263* Medical record information abstracted by or reported to the centers for disease control's national nosocomial infection surveillance/national healthcare safety network.
- T.C.A. § 68-11-304(c)* Hospital records.
- T.C.A. §§ 68-11-804, 68-11-901, and 68-11-910* Patients of a nursing home have the right to keep their personal records confidential.
- T.C.A. § 68-11-904* The identity of the complainant and the identity of any patient or resident who is the subject of a complaint concerning any nursing home.
- T.C.A. § 68-11-909* Nursing home resident morbidity and mortality data gathered to aid enforcement of quality care standards for nursing homes.
- T.C.A. § 68-11-1503* Name, address and other identifying information or medical records of a patient in a licensed health care facility.
- T.C.A. § 68-24-301* Information related to student drug overdoses.
- T.C.A. § 68-29-107* Reports made by medical laboratories to the Commissioner of Health and Environment concerning infectious diseases.
- T.C.A. § 68-30-111* Sources of body parts for transplantation.
- T.C.A. § 68-55-204* Information obtained by the Commissioner of Health, Safety and Environmental Health concerning treatment of a person with traumatic brain injury.
- T.C.A. § 68-140-514(b)(1)* Information from an investigation conducted by the Department of Health concerning the authority of any provider of any emergency medical services.
- T.C.A. § 68-141-105* Information about persons to whom poison control provides services.
- T.C.A. § 68-142-108* Information required by a child fatality review team.
- T.C.A. § 68-142-205* Confidentiality required under the federal Health Insurance Portability and Accountability Act (HIPAA).
- T.C.A. § 68-202-217* Proprietary information regarding atomic energy and nuclear materials.
- T.C.A. § 68-212-306, 68-212-311* Annual waste reduction progress report or plan.
- T.C.A. § 68-212-205(d)(1)(A)* On-site technical assistance provided to hazardous waste generators by Commissioner of Health or the Solid Waste Disposal Control Board.
- T.C.A. § 69-3-113* Secret formulae or proprietary manufacturing processes obtained by the Commissioner of Health and Environment pursuant to enforcement of the Water Quality Control Act.
- T.C.A. § 69-7-305 (1)* Water quantity data deemed by the commissioner of environment and conservation to contain trade secret information.
- T.C.A. § 71-1-118* Prohibits copying of the list of public welfare recipients maintained by the Commissioner of Human Services.
- T.C.A. § 71-1-131* Records of the Department of Human Services concerning child or spousal support services.
- T.C.A. § 71-3-119* Any information derived from the Department of Human Services concerning persons applying for or receiving aid and services to needy families with children.
- T.C.A. § 71-5-107(f)(2)(G)* Information generated by a member of TennCare Foundation in the course of the Foundation's work.
- T.C.A. § 71-5-142(a)* Provider reimbursement information and other proprietary information for the purpose of administering the TennCare program.
- T.C.A. § 71-5-143(e)* Information provided to or acquired by a member of the TennCare Commission staff.
- T.C.A. § 71-5-197(d)* Information relating to pharmaceutical drugs contained in the records of the TennCare Bureau relating to pricing, trade secrets and proprietary information.
- T.C.A. § 71-5-304(5)* Requires Department of Human Services to prevent unauthorized disclosure of information concerning food stamp recipients.
- T.C.A. § 71-5-2516* Investigative records regarding TennCare fraud and abuse.
- T.C.A. § 71-6-118* Identity of person reporting abuse or neglect under the Adult Protection Act.
- T.C.A. § 71-6-203(8)(B)* Information submitted by child abuse services for the Department of Children Services relating solely to recipients of child abuse prevention services for the narrow purposes of tracking the effectiveness of child abuse prevention services.
- Tenn. R. Crim. P. 16(a)(2) Investigative files relevant to pending or contemplated criminal action.
- Rules of the Court of the Judiciary #7* Matters that come before the Court of the Judiciary.
- Rules of Juvenile Procedure #33* Predisposition reports prepared on a juvenile.
- Rules of the Supreme Court #9, sec. 25* Proceedings involving allegations of misconduct by or the disability of an attorney until a certain time.

Statute

Open Records

Tennessee Code

Title 10. Public Libraries, Archives and Records

Chapter 7. Public Records

Part 5. Miscellaneous Provisions (Refs & Annos)

§ 10-7-503. Inspection by citizens; confidentiality; law enforcement personnel records

(a) (1) As used in this part and title 8, chapter 4, part 6, “public record or records” or “state record or records” means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(2) (A) All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

(B) The custodian of a public record or the custodian’s designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days:

(i) Make the information available to the requestor;

(ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or

(iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.

(C) [Deleted by code commission.]

(3) Failure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the right to bring an action as provided in § 10-7-505.

(4) This section shall not be construed as requiring a governmental entity or public official to sort through files to compile information; however, a person requesting the information shall be allowed to inspect the nonexempt records.

(5) This section shall not be construed as requiring a governmental entity or public official to create a record that does not exist; however, the redaction of confidential information from a public record or electronic database shall not constitute a new record.

(6) A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.

(7) (A) A records custodian may not require a written request or assess a charge to view a public record unless otherwise required by law; however, a records custodian may require a request for copies of public records to be in writing or that the request be made on a form developed by the office of open records counsel. The records custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, that includes the person’s address. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.

(B) Any request for inspection or copying of a public record shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied.

(C) (i) A records custodian may require a requestor to pay the custodian’s reasonable costs incurred in producing the requested material and to assess the reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.

(ii) The records custodian shall provide a requestor an estimate of the reasonable costs to provide copies of the requested material.

(b) The head of a governmental entity may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to maintain the confidentiality of records concerning adoption proceedings or records required to be kept confidential by federal statute or regulation as a condition for the receipt of federal funds or for participation in a federally funded program.

(c) (1) Except as provided in § 10-7-504(g), all law enforcement personnel records shall be open for inspection as provided in subsection (a); however, whenever the personnel records of a law enforcement officer are inspected as provided in subsection (a), the custodian shall make a record of such inspection and provide notice, within three (3) days from the date of the inspection, to the officer whose personnel records have been inspected:

(A) That such inspection has taken place;

(B) The name, address and telephone number of the person making such inspection;

(C) For whom the inspection was made; and

(D) The date of such inspection.

(2) Information made confidential by this chapter shall be redacted whenever possible, but the costs associated with redacting records or information, including the cost of copies and staff time to provide redacted copies, shall be borne as provided by current law.

(3) Any person making an inspection of such records shall provide such person’s name, address, business telephone number, home telephone number, driver license number or other appropriate identification prior to inspecting such records.

(d) (1) All records of any association or nonprofit corporation described in § 8-44-102(b)(1)(E)(i) shall be open for inspection as provided in subsection (a); provided, that any such organization shall not be subject to the requirements of this subsection (d) so long as it complies with the following requirements:

(A) The board of directors of the organization shall cause an annual audit to be made of the financial affairs of the organization, including all receipts from every source and every expenditure or disbursement of the money of the organization, made by a disinterested person skilled in such work. Each audit shall cover the period extending back to the date of the last preceding audit and it shall be paid out of the funds of the organization;

(B) Each audit shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9) for local governments;

(C) The comptroller of the treasury, through the department of audit, shall be responsible for ensuring that the audits are prepared in accordance with generally accepted governmental auditing standards, and determining whether the audits meet minimum audit standards which shall be prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until such audit has been approved by the comptroller of the treasury;

(D) The audits may be prepared by a certified public accountant, a public accountant or by the department of audit. If the governing body of the municipality fails or refuses to have the audit prepared, the comptroller of the treasury may appoint a certified public accountant or public accountant or direct the department to prepare the audit. The cost of such audit shall be paid by the organization;

(E) Each such audit shall be completed as soon as practicable after the end of the fiscal year of the organization. One (1) copy of each audit shall be furnished to the organization and one (1) copy shall be filed with the comptroller of the treasury. The copy of the comptroller of the treasury shall be available for public inspection. Copies of each audit shall also be made available to the press; and

(F) In addition to any other information required by the comptroller of the treasury, each audit shall also contain:

(i) A listing, by name of the recipient, of all compensation, fees or other remuneration paid by the organization during the audit year to, or accrued on behalf of, the organization’s directors and officers;

(ii) A listing, by name of recipient, of all compensation and any other remuneration paid by the organization during the audit year to, or accrued on behalf of, any employee of the organization who receives more than twenty-five thousand dollars (\$25,000) in remuneration for such year;

(iii) A listing, by name of beneficiary, of any deferred compensation, salary continuation, retirement or other fringe benefit plan or program (excluding qualified health and life insurance plans available to all employees of the organization on a nondiscriminatory basis) established or maintained by the organization for the benefit of any of the organization's directors, officers or employees, and the amount of any funds paid or accrued to such plan or program during the audit year; and

(iv) A listing, by name of recipient, of all fees paid by the organization during the audit year to any contractor, professional advisor or other personal services provider, which exceeds two thousand five hundred dollars (\$2,500) for such year. Such listing shall also include a statement as to the general effect of each contract, but not the amount paid or payable thereunder.

The provisions of this subsection (d) shall not apply to any association or nonprofit corporation described in § 8-44-102(b)(1)(E)(i), that employs no more than two (2) full-time staff members.

(2) The provisions of this subsection (d) shall not apply to any association, organization or corporation that was exempt from federal income taxation under the provisions of § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) as of January 1, 1998, and which makes available to the public its federal return of organization exempt from income tax (Form 990) in accordance with the Internal Revenue Code and related regulations.

(e) All contingency plans of law enforcement agencies prepared to respond to any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident shall not be open for inspection as provided in subsection (a).

(f) All records, employment applications, credentials and similar documents obtained by any person in conjunction with an employment search for a director of schools or any chief public administrative officer shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. For the purposes of this subsection (f), the term "person" includes a natural person, corporation, firm, company, association or any other business entity.

§ 10-7-504. Confidentiality of certain records

(a)

(1) The medical records of patients in state, county and municipal hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, county or municipality, shall be treated as confidential and shall not be open for inspection by members of the public. Any records containing the source of body parts for transplantation or any information concerning persons donating body parts for transplantation shall be treated as confidential and shall not be open for inspection by members of the public.

(2) (A) All investigative records of the Tennessee bureau of investigation, the office of inspector general, all criminal investigative files of the department of agriculture and the department of environment and conservation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, and all files of the handgun carry permit and driver license issuance divisions of the department of safety relating to bogus handgun carry permits and bogus driver licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; provided, however, that such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except to the governor and to those directly involved in the investigation in the specified agencies.

(B) The records of the departments of agriculture and environment and conservation referenced in subdivision (a)(2)(A) shall cease to be confidential when the investigation is closed by the department or when the court in which a criminal prosecution is brought has entered an order concluding all proceedings and the opportunity for direct appeal has been exhausted; provided, however, that any identifying information about a confidential informant or undercover law enforcement agent shall remain confidential.

(C) The Tennessee bureau of investigation, upon written request by an authorized person of a state governmental agency, is authorized to furnish and disclose to the requesting agency the criminal history, records and data from its files, and the files of the federal government and other states to which it may have access, for the limited purpose of determining whether a license or permit should be issued to any person, corporation, partnership or other entity, to engage in an authorized activity affecting the rights, property or interests of the public or segments thereof.

(3) The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including, but not restricted to, national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(4) (A) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto, and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(B) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by the federal Family Educational Rights and Privacy Act (FERPA), an institution of post-secondary education shall disclose to an alleged victim of any crime of violence, as that term is defined in 18 U.S.C. § 16, or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(C) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an institution of post-secondary education shall disclose the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence, as that term is defined in 18 U.S.C. § 16, or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(D) For the purpose of this section, the final results of any disciplinary proceeding:

(i) Shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student;

(ii) May include the name of any other student, such as a victim or witness, only with the written consent of that other student; and

(iii) Shall only apply to disciplinary hearings in which the final results were reached on or after October 7, 1998.

(E) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an educational institution shall disclose information provided to the institution under § 40-39-106 [repealed], concerning registered sex offenders who are required to register under § 40-39-103 [repealed].

(F) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an institution of higher education shall disclose to a parent or legal guardian of a student information regarding any violation of any federal, state, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if:

(i) The student is under the age of twenty-one (21);

(ii) The institution determines that the student has committed a disciplinary violation with respect to such use or possession; and

(iii) The final determination that the student committed such a disciplinary violation was reached on or after October 7, 1998.

(G) Notwithstanding subdivision (a)(4)(A), § 37-5-107 or § 37-1-612, the institution shall release records to the parent or guardian of a victim or alleged victim of child abuse or child sexual abuse pursuant to § 37-1-403(i)(3) or § 37-1-605(d)(2). Any person or entity that is provided access to records under this subdivision (a)(4)(G) shall be required to maintain the records in accordance with state and federal laws and regulations regarding confidentiality.

(5) (A) The following books, records and other materials in the possession of the office of the attorney general and reporter which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved shall not be open for public inspection:

(i) Books, records or other materials which are confidential or privileged by state law;

(ii) Books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;

(iii) The work product of the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control;

(iv) Communications made to or by the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control in the context of the attorney-client relationship; or

(v) Books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506. It is the intent of this section to leave subject to public inspection and copying pursuant to §§ 10-7-503 and 10-7-506 such books, records and other materials in the possession of other departments even though copies of the same books, records and other materials which are also in the possession of the office of the attorney general and reporter are not subject to inspection or copying in the office of the attorney general and reporter; provided, that such records, books and materials are available for copying and inspection in such other departments.

(B) Books, records and other materials made confidential by this subsection (a) which are in the possession of the office of the attorney general and reporter shall be open to inspection by the elected members of the general assembly, if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

(C) Except for the provisions of subdivision (a)(5)(B), the books, records and materials made confidential or privileged by this subdivision (a)(5) shall be disclosed to the public only in the discharge of the duties of the office of the attorney general and reporter.

(6) State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose shall not be open for public inspection until the acquisition thereof has been finalized. This shall not prohibit any party to a condemnation action from making discovery relative to values pursuant to the Rules of Civil Procedure as prescribed by law.

(7) Proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda, shall be available for public inspection only after the completion of evaluation of same by the state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to same, shall be available for public inspection only after the completion of evaluation of same by the state.

(8) All investigative records and reports of the internal affairs division of the department of correction or of the department of children's services shall be treated as confidential and shall not be open to inspection by members of the public. However, an employee of the department of correction or of the department of children's services shall be allowed to inspect such investigative records and reports if the records or reports form the basis of an adverse action against the employee. An employee of the department of correction shall also be allowed to inspect such investigative records of the internal affairs division of the department of correction, or relevant portion thereof, prior to a due process hearing at which disciplinary action is considered or issued unless the commissioner of the department of correction specifically denies in writing the employee's request to examine such records prior to the hearing. The release

of reports and records shall be in accordance with the Tennessee Rules of Civil Procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. The information contained in such records and reports shall be disclosed to the public only in compliance with a subpoena or an order of a court of record.

(9) (A) Official health certificates, collected and maintained by the state veterinarian pursuant to rule chapter 0080-2-1 of the department of agriculture, shall be treated as confidential and shall not be open for inspection by members of the public.

(B) Any data or records provided to or collected by the department of agriculture pursuant to the implementation and operation of premise identification or animal tracking programs shall be considered confidential and shall not be open for inspection by members of the public. Likewise, all contingency plans prepared concerning the department's response to agriculture-related homeland security events shall be considered confidential and shall not be open for inspection by members of the public. The department may disclose data or contingency plans to aid the law enforcement process or to protect human or animal health.

(C) Information received by the state that is required by federal law or regulation to be kept confidential shall be exempt from public disclosure and shall not be open for inspection by members of the public.

(10) (A) The capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University shall be treated as confidential and shall not be open for inspection by members of the public.

(B) As used in this subdivision (a)(10), unless the context otherwise requires:

(i) "Capital plans" means plans, feasibility studies, and similar research and information that will contribute to the identification of future business sites and capital investments;

(ii) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships;

(iii) "Proprietary information" means commercial or financial information which is used either directly or indirectly in the business of any person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University, and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information;

(iv) "Trade secrets" means manufacturing processes, materials used therein, and costs associated with the manufacturing process of a person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University.

(11) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Tennessee board of regents or the University of Tennessee, when the owner or donor of such records wishes to place restrictions on access to the records shall be treated as confidential and shall not be open for inspection by members of the public. This exemption shall not apply to any records prepared or received in the course of the operation of state or local governments.

(12) Personal information contained in motor vehicle records shall be treated as confidential and shall only be open for inspection in accordance with the provisions of title 55, chapter 25.

(13) (A) All memoranda, work notes or products, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, county and municipal correctional officers, dispatchers, emergency medical technicians, emergency medical technician-paramedics, and firefighters, both volunteer and professional, are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless all parties waive such privilege. In order for such privilege to apply, the incident counseling and/or therapy shall be conducted by a qualified mental health professional as defined in § 33-1-101;

(B) For the purposes of this section, "group setting" means that more than one (1) person is present with the mental health professional when the incident counseling and/or therapy is being conducted;

(C) All memoranda, work notes or products, case files and communications pursuant to this section shall not be construed to be public records pursuant to this chapter.

(D) Nothing in this section shall be construed as limiting a licensed professional's obligation to report suspected child abuse or limiting such professional's duty to warn about dangerous individuals as provided under §§ 33-3-206 — 33-3-209, or other provisions relevant to the mental health professional's license;

(E) Nothing in this section shall be construed as limiting the ability of a patient or client, or such person's survivor, to discover under the Rules of Civil Procedure or to admit in evidence under the Rules of Evidence any memoranda, work notes or products, case files and communications which are privileged by this section and which are relevant to a malpractice action or any other action by a patient against a mental health professional arising out of the professional relationship. In such an action against a mental health professional, neither shall anything in this section be construed as limiting the ability of the mental health professional to so discover or admit in evidence such memoranda, work notes or products, case files and communications.

(14) All riot, escape and emergency transport plans which are incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the department of correction or under private contract shall be treated as confidential and shall not be open for inspection by members of the public.

(15) (A) As used in this subdivision (a)(15), unless the context otherwise requires:

(i) "Identifying information" means the home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual;

(ii) "Protection document" means:

(a) An order of protection issued pursuant to title 36, chapter 3, part 6, that has been granted after proper notice and an opportunity to be heard;

(b) A similar order of protection issued by the court of another jurisdiction;

(c) An extension of an ex parte order of protection granted pursuant to § 36-3-605(a);

(d) A similar extension of an ex parte order of protection granted by a court of competent jurisdiction in another jurisdiction;

(e) A restraining order issued by a court of competent jurisdiction prohibiting violence against the person to whom it is issued;

(f) A court order protecting the confidentiality of certain information issued upon the request of a district attorney general to a victim or witness in a criminal case, whether pending or completed; and

(g) An affidavit from the director of a rape crisis center or domestic violence shelter certifying that an individual is a victim in need of protection; provided, that such affidavit is on a standardized form to be developed and distributed to such centers and shelters by the Tennessee task force against domestic violence; and

(iii) "Utility service provider" means any entity, whether public or private, that provides electricity, natural gas, water, or telephone service to customers on a subscription basis, whether or not regulated by the Tennessee regulatory authority.

(B) If the procedure set out in this subdivision (a)(15) is followed, identifying information compiled and maintained by a utility service provider concerning a person who has obtained a valid protection document shall be treated as confidential and not open for inspection by the public.

(C) For the provisions of subdivision (a)(15)(B) to be applicable, a copy of the protection document must be presented during regular business hours by the person to whom it was granted to the records custodian of the utility service provider whose records such person seeks to make confidential, and such person must request that all identifying information about such person be maintained as confidential.

(D) The protection document must at the time of presentation be in full force and effect. The records custodian may assume that a protection document is in full force and effect if it is on the proper form and if on its face it has not expired.

(E) Upon being presented with a valid protection document, the records custodian shall accept receipt of it and maintain it in a separate file containing in alphabetical order all protection documents presented to such records custodian pursuant to this subdivision (a)(15). Nothing in this subdivision (a)(15) shall be construed as prohibiting a records custodian from maintaining an electronic file of such protection documents provided the records custodian retains the original document presented.

(F) Identifying information concerning a person that is maintained as confidential pursuant to this subdivision (a)(15) shall remain confidential until the person who requested such confidentiality notifies in person the records custodian of the appropriate utility service provider that there is no longer a need for such information to remain confidential. A records custodian receiving such notification shall remove the protection document concerning such person from the file maintained pursuant to subdivision (a)(15)(E), and the identifying information about such person shall be treated in the same manner as the identifying information concerning any other customer of the utility. Before removing the protection document and releasing any identifying information, the records custodian of the utility service provider shall require that the person requesting release of the identifying information maintained as confidential produce sufficient identification to satisfy such custodian that he or she is the same person as the person to whom the document was originally granted.

(G) After July 1, 1999, if information is requested from a utility service provider about a person other than the requestor and such request is for information that is in whole or in part identifying information, the records custodian of the utility service provider shall check the separate file containing all protection documents that have been presented to such utility. If the person about whom information is being requested has presented a valid protection document to the records custodian in accordance with the procedure set out in this subdivision (a)(15), and has requested that identifying information about such person be maintained as confidential, the records custodian shall redact or refuse to disclose to the requestor any identifying information about such person.

(H) Nothing in this subdivision (a)(15) shall prevent the district attorney general and counsel for the defendant from providing to each other in a pending criminal case, where the constitutional rights of the defendant require it, information which otherwise would be held confidential under this subdivision (a)(15).

(16) (A) As used in this subdivision (a)(16), unless the context otherwise requires:

(i) "Governmental entity" means the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee;

(ii) "Identifying information" means the home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual;

(iii) "Protection document" means:

(a) An order of protection issued pursuant to title 36, chapter 3, part 6, that has been granted after proper notice and an opportunity to be heard;

(b) A similar order of protection issued by the court of another jurisdiction;

(c) An extension of an ex parte order of protection granted pursuant to § 36-3-605(a);

(d) A similar extension of an ex parte order of protection granted by a court of competent jurisdiction in another jurisdiction;

(e) A restraining order issued by a court of competent jurisdiction prohibiting violence against the person to whom it is issued;

(f) A court order protecting the confidentiality of certain information issued upon the request of a district attorney general to a victim or witness in a criminal case, whether pending or completed; and

(g) An affidavit from the director of a rape crisis center or domestic violence shelter certifying that an individual is a victim in need of protection; provided, that such affidavit is on a standardized form to be developed and distributed to such centers and shelters by the Tennessee task force against domestic violence.

(B) If the procedure set out in this subdivision (a)(16) is followed, identifying information compiled and maintained by a governmental entity

concerning a person who has obtained a valid protection document may be treated as confidential and may not be open for inspection by the public.

(C) For the provisions of subdivision (a)(16)(B) to be applicable, a copy of the protection document must be presented during regular business hours by the person to whom it was granted to the records custodian of the governmental entity whose records such person seeks to make confidential, and such person must request that all identifying information about such person be maintained as confidential.

(D) The protection document presented must at the time of presentation be in full force and effect. The records custodian may assume that a protection document is in full force and effect if it is on the proper form and if on its face it has not expired.

(E) Upon being presented with a valid protection document, the record custodian may accept receipt of it. If the records custodian does not accept receipt of such document, the records custodian shall explain to the person presenting the document why receipt cannot be accepted and that the identifying information concerning such person will not be maintained as confidential. If the records custodian does accept receipt of the protection document, such records custodian shall maintain it in a separate file containing in alphabetical order all protection documents presented to such custodian pursuant to this subdivision (a)(16). Nothing in this subdivision (a)(16) shall be construed as prohibiting a records custodian from maintaining an electronic file of such protection documents; provided, that the custodian retains the original document presented.

(F) Identifying information concerning a person that is maintained as confidential pursuant to this subdivision (a)(16) shall remain confidential until the person requesting such confidentiality notifies in person the appropriate records custodian of the governmental entity that there is no longer a need for such information to remain confidential. A records custodian receiving such notification shall remove the protection document concerning such person from the file maintained pursuant to subdivision (a)(16)(E), and the identifying information about such person shall be treated in the same manner as identifying information maintained by the governmental entity about other persons. Before removing the protection document and releasing any identifying information, the records custodian of the governmental entity shall require that the person requesting release of the identifying information maintained as confidential produce sufficient identification to satisfy such records custodian that that person is the same person as the person to whom the document was originally granted.

(G) After July 1, 1999, if:

(i) Information is requested from a governmental entity about a person other than the person making the request;

(ii) Such request is for information that is in whole or in part identifying information; and

(iii) The records custodian of the governmental entity to whom the request was made accepts receipt of protection documents and maintains identifying information as confidential;

then such records custodian shall check the separate file containing all protection documents that have been presented to such entity. If the person about whom information is being requested has presented a valid protection document to the records custodian in accordance with the procedure set out in this subdivision (a)(16), and has requested that identifying information about such person be maintained as confidential, the records custodian shall redact or refuse to disclose to the requestor any identifying information about such person.

(H) Nothing in this subdivision (a)(16) shall prevent the district attorney general and counsel for the defendant from providing to each other in a pending criminal case, where the constitutional rights of the defendant require it, information which otherwise may be held confidential under this subdivision (a)(16).

(I) In an order of protection case, any document required for filing, other than the forms promulgated by the supreme court pursuant to § 36-3-604(b), shall be treated as confidential and kept under seal except that the clerk may transmit any such document to the Tennessee bureau of investigation, 911 service or emergency response agency or other law enforcement agency.

(17) The telephone number, address and any other information which could be used to locate the whereabouts of a domestic violence shelter or rape crisis center may be treated as confidential by a governmental entity, and shall be treated as confidential by a utility service provider as defined in subdivision

(a)(15) upon the director of the shelter or crisis center giving written notice to the records custodian of the appropriate entity or utility that such shelter or crisis center desires that such identifying information be maintained as confidential.

(18) Computer programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, or higher education institutions shall not be open to public inspection; provided, that computer programs, software, software manuals, and other types of information produced by state or higher education employees at state expense shall be available for inspection as part of an audit or legislative review process.

(19) The credit card numbers of persons doing business with the state or political subdivision thereof and any related personal identification numbers (PIN) or authorization codes are confidential and shall not be open for inspection by members of the public, whether this information is received by the state or political subdivision thereof through electronic means or paper transactions.

(20) (A) For the purposes of this subdivision (a)(20), the following terms shall have the following meaning:

(i) "Consumer" means any person, partnership, limited partnership, corporation, professional corporation, limited liability company, trust, or any other entity, or any user of a utility service;

(ii) "Municipal" and "municipality" means a county, metropolitan government, incorporated city, town of the state, or utility district as created in title 7, chapter 82;

(iii) "Private records" means a credit card number, social security number, tax identification number, financial institution account number, burglar alarm codes, security codes, and access codes; and

(iv) "Utility" shall include any public electric generation system, electric distribution system, water storage or processing system, water distribution system, gas storage system or facilities related thereto, gas distribution system, wastewater system, telecommunications system, or any services similar to any of the foregoing.

(B) The private records of any utility shall be treated as confidential and shall not be open for inspection by members of the public.

(C) Information made confidential by this subsection (a) shall be redacted wherever possible and nothing in this subsection (a) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information. For purposes of this section only, it shall be presumed that redaction of such information is possible. The entity requesting the records shall pay all reasonable costs associated with redaction of materials.

(D) Nothing in this subsection (a) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(E) Nothing in this subsection (a) shall be construed to limit access to information made confidential under this subsection (a), when the consumer expressly authorizes the release of such information.

(21) (A) The following records shall be treated as confidential and shall not be open for public inspection:

(i) Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service provider;

(ii) All contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident.

(B) Documents concerning the cost of governmental utility property, the cost of protecting governmental utility property, the cost of identifying areas of structural or operational vulnerability of a governmental utility, the cost of developing contingency plans for a governmental entity, and the identity of vendors providing goods or services to a governmental entity in connection with the foregoing shall not be confidential. However, any documents relating to these subjects shall not be made available to the public unless information that is confidential under this subsection (a) or any other provision of this chapter has been redacted or deleted from the documents.

(C) As used in this subdivision (a)(21):

(i) “Governmental entity” means the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee;

(ii) “Governmental utility” means a utility service provider that is also a governmental entity; and

(iii) “Utility service provider” means any entity, whether public or private, that provides electric, gas, water, sewer or telephone service, or any combination of the foregoing, to citizens of the state of Tennessee, whether or not regulated by the Tennessee regulatory authority.

(D) Nothing in this subdivision (a)(21) shall be construed to limit access to these records by other governmental agencies performing official functions or to preclude any governmental agency from allowing public access to these records in the course of performing official functions.

(22) The audit working papers of the comptroller of the treasury and state, county and local government internal audit staffs conducting audits as authorized by § 4-3-304 shall be considered confidential and therefore shall not be open records pursuant to this chapter.

(b) Any record designated “confidential” shall be so treated by agencies in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted or reconstructed. The destruction shall be in accordance with an approved records disposition authorization from the public records commission.

(c) Notwithstanding any provision of the law to the contrary, any confidential public record in existence more than seventy (70) years shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for a person for mental illness or mental retardation. The provisions of this section do not apply to a record concerning an adoption or a record maintained by the office of vital records or by the Tennessee bureau of investigation. For the purpose of providing an orderly schedule of availability for access to such confidential public records for public inspection, all records created and designated as confidential prior to January 1, 1901, shall be open for public inspection on January 1, 1985. All other public records created and designated as confidential after January 1, 1901 and which are seventy (70) years old on January 1, 1985, shall be open for public inspection on January 1, 1986; thereafter all such records shall be open for public inspection pursuant to this part after seventy (70) years from the creation date of such records.

(d) Records of any employee’s identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government employee assistance program shall be confidential; provided, that any such records are maintained separately from personnel and other records regarding such employee that are open for inspection. For purposes of this subsection (d), “employee assistance program” means any program that provides counseling, problem identification, intervention, assessment, or referral for appropriate diagnosis and treatment, and follow-up services to assist employees of such state or local governmental entity who are impaired by personal concerns including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which may adversely affect employee job performance.

(e) Unpublished telephone numbers in the possession of emergency communications districts created pursuant to title 7, chapter 86, shall be treated as confidential and shall not be open for inspection by members of the public until such time as any provision of the service contract between the telephone service provider and the consumer providing otherwise is effectuated; provided, that addresses held with such unpublished telephone numbers, or addresses otherwise collected or compiled, and in the possession of emergency communications districts created pursuant to title 7, chapter 86, shall be made available upon written request to any county election commission for the purpose of compiling a voter mailing list for a respective county.

(f) (1) The following records or information of any state, county, municipal or other public employee or former employee, or of any law enforcement officer commissioned pursuant to § 49-7-118, in the possession of a governmental entity or any person in its capacity as an employer shall be treated as confidential and shall not be open for inspection by members of the public:

(A) Home telephone and personal cell phone numbers;

(B) Bank account and individual health savings account, retirement account and pension account information; provided, that nothing shall limit access to financial records of a governmental employer that show the amounts

and sources of contributions to the accounts or the amount of pension or retirement benefits provided to the employee or former employee by the governmental employer;

(C) Social security number;

(D) (i) Residential information, including the street address, city, state and zip code, for any state employee; and

(ii) Residential street address for any county, municipal or other public employee;

(E) Driver license information except where driving or operating a vehicle is part of the employee’s job description or job duties or incidental to the performance of the employee’s job; and

(F) The information listed in subdivisions (f)(1)(A)-(E) of immediate family members or household members.

(2) Information made confidential by this subsection (f) shall be redacted wherever possible and nothing in this subsection (f) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information.

(3) Nothing in this subsection (f) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(4) Nothing in this subsection (f) shall be construed to close any personnel records of public officers which are currently open under state law.

(5) Nothing in this subsection (f) shall be construed to limit access to information made confidential under this subsection (f), when the employee expressly authorizes the release of such information.

(g) (1) (A) (i) All law enforcement personnel information in the possession of any entity or agency in its capacity as an employer, including officers commissioned pursuant to § 49-7-118, shall be open for inspection as provided in § 10-7-503(a), except personal information shall be redacted where there is a reason not to disclose as determined by the chief law enforcement officer or the chief law enforcement officer’s designee.

(ii) When a request to inspect includes personal information and the request is for a professional, business, or official purpose, the chief law enforcement officer or custodian shall consider the specific circumstances to determine whether there is a reason not to disclose and shall release all information, except information made confidential in § 10-7-504(f), if there is not such a reason. In all other circumstances, the officer shall be notified prior to disclosure of the personal information and shall be given a reasonable opportunity to be heard and oppose the release of the information. Nothing in this subdivision (g)(1) shall be construed to limit the requestor’s right to judicial review set out in § 10-7-505.

(iii) The chief law enforcement officer shall reserve the right to segregate information that could be used to identify or to locate an officer designated as working undercover.

(B) In addition to the requirements of § 10-7-503(c), the request for a professional, business, or official purpose shall include the person’s business address, business telephone number and email address. The request may be made on official or business letterhead and the person making the request shall provide the name and contact number or email address for a supervisor for verification purposes.

(C) If the chief law enforcement official, the chief law enforcement official’s designee, or the custodian of the information decides to withhold personal information, a specific reason shall be given to the requestor in writing within two (2) business days, and the file shall be released with the personal information redacted.

(D) For purposes of this subsection (g), personal information shall include the officer’s residential address, home and personal cellular telephone number; place of employment; name, work address and telephone numbers of the officer’s immediate family; name, location, and telephone number of any educational institution or daycare provider where the officer’s spouse or child is enrolled.

(2) Nothing in this subsection (g) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains some information made confidential by subdivision (g)(1).

(3) Nothing in this subsection (g) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental

agencies performing official functions.

(4) Except as provided in subdivision (g)(1), nothing in this subsection (g) shall be construed to close personnel records of public officers, which are currently open under state law.

(5) Nothing in this subsection (g) shall be construed to limit access to information made confidential by subdivision (g)(1), when the employee expressly authorizes the release of such information.

(h) (1) Notwithstanding any other law to the contrary, those parts of the record identifying an individual as a person who has been or may in the future be directly involved in the process of executing a sentence of death shall be treated as confidential and shall not be open to public inspection. For the purposes of this section “person” includes, but is not limited to, an employee of the state who has training related to direct involvement in the process of executing a sentence of death, a contractor or employee of a contractor, or a volunteer who has direct involvement in the process of executing a sentence of death. Records made confidential by this section include, but are not limited to, records related to remuneration to a person in connection with such person’s participation in or preparation for the execution of a sentence of death. Such payments shall be made in accordance with a memorandum of understanding between the commissioner of correction and the commissioner of finance and administration in a manner that will protect the public identity of the recipients; provided, if a contractor is employed to participate in or prepare for the execution of a sentence of death, the amount of the special payment made to such contractor pursuant to the contract shall be reported by the commissioner of correction to the comptroller of the treasury and such amount shall be a public record.

(2) Information made confidential by this subsection (h) shall be redacted wherever possible and nothing in this subsection (h) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information.

(i) (1) Information that would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. For the purpose of this section, “government property” includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. For the purpose of this section, “governmental entity” means the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee. Such records include:

(A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property;

(B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and

(C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

(2) Information made confidential by this subsection (i) shall be redacted wherever possible and nothing in this subsection (i) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information.

(3) Documents concerning the cost of protecting government property or electronic information, and the identity of vendors providing goods and services used to protect government property or electronic information shall not be confidential.

(j) (1) Notwithstanding any other law to the contrary, identifying information compiled and maintained by the department of correction and the department of probation and parole concerning any person shall be confidential when the person has been notified or requested that notification be provided to the person regarding the status of criminal proceedings or of a convicted felon incarcerated in a department of correction institution, county jail or workhouse or under state supervised probation or parole pursuant to § 40-28-505, § 40-38-103, § 40-38-110, § 40-38-111, § 41-21-240 or § 41-21-242.

(2) For purposes of subdivision (j)(1), “identifying information” means the name, home and work addresses, telephone numbers and social security number of the person being notified or requesting that notification be provided.

(k) The following information regarding victims who apply for compensation under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, shall be treated as confidential and shall not be open for inspection by members of the public:

(1) Residential information, including the street address, city, state and zip code;

(2) Home telephone and personal cell phone numbers;

(3) Social security number; and

(4) The criminal offense from which the victim is receiving compensation.

(l) (1) All applications, certificates, records, reports, legal documents and petitions made or information received pursuant to title 37 that directly or indirectly identifies a child or family receiving services from the department of children’s services or that identifies the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605 shall be confidential and shall not be open for public inspection, except as provided by §§ 37-1-131, 37-1-409, 37-1-612, 37-5-107 and 49-6-3051.

(2) The information made confidential pursuant to subdivision (l)(1) includes information contained in applications, certifications, records, reports, legal documents and petitions in the possession of not only the department of children’s services but any state or local agency, including, but not limited to, law enforcement and the department of education.

(m) (1) Information and records that are directly related to the security of any government building shall be maintained as confidential and shall not be open to public inspection. For purposes of this subsection (m), “government building” means any building that is owned, leased or controlled, in whole or in part, by the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee. Such information and records include, but are not limited to:

(A) Information and records about alarm and security systems used at the government building, including codes, passwords, wiring diagrams, plans and security procedures and protocols related to the security systems;

(B) Security plans, including security-related contingency planning and emergency response plans;

(C) Assessments of security vulnerability;

(D) Information and records that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and

(E) Surveillance recordings, whether recorded to audio or visual format, or both, except segments of the recordings may be made public when they include an act or incident involving public safety or security or possible criminal activity. In addition, if the recordings are relevant to a civil action or criminal prosecution, then the recordings may be released in compliance with a subpoena or an order of a court of record in accordance with the Tennessee rules of civil or criminal procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. Release of any segment or segments of the recordings shall not be construed as waiving the confidentiality of the remaining segments of the audio or visual tape.

(2) Information made confidential by this subsection (m) shall be redacted wherever possible and nothing in this subsection (m) shall be used to limit or deny access to otherwise public information because a file or document contains confidential information.

(n) Notwithstanding any law to the contrary, the following documents submitted to the state in response to a request for proposal or other procurement method shall remain confidential after completion of the evaluation period:

(1) Discount, rebate, pricing or other financial arrangements at the individual drug level between pharmaceutical manufacturers, pharmaceutical wholesalers/distributors, and pharmacy benefits managers, as defined in § 56-7-3102, that a proposer:

(A) Submits to the state in response to a request for proposals or other procurement methods for pharmacy-related benefits or services;

(B) Which the proposer includes in its cost or price proposal, or provides to the state after the notice of intended award of the contract is issued, where the proposer is the apparent contract awardee; and

(C) Explicitly marks as confidential and proprietary; and

(2) Discount, rebate, pricing or other financial arrangements at the individual provider level between health care providers and health insurance

entities, as defined in § 56-7-109, insurers, insurance arrangements and third party administrators that a proposer:

(A) Submits to the state in response to a request for proposals or other procurement method after the notice of intended award of the contract is issued, where the proposer is the apparent contract awardee, in response to a request by the state for additional information; and

(B) Explicitly marks as confidential and proprietary.

(o) Information made confidential by subsection (n) shall be redacted wherever possible; and nothing contained in subsection (n) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information. The confidentiality established by subdivision (n)(2) is applicable only to information submitted to the state after completion of the evaluation period; and provision of the notice of intended award of the contract and such information shall only be used to validate the accuracy of the apparent contract awardee's proposal and shall not be used to alter the scope of the information required by the state's procurement document requesting proposals. Any report produced by the state, or on the state's behalf, utilizing the information made confidential by subdivision (n)(2) shall not be considered confidential hereunder so long as such report is disclosed in an aggregate or summary format without disclosing discount, rebate, pricing or other financial arrangements at the individual provider level.

§ 10-7-505. Procedures for obtaining access to public records; penalty for willful refusal to disclose

(a) Any citizen of Tennessee who shall request the right of personal inspection of any state, county or municipal record as provided in § 10-7-503, and whose request has been in whole or in part denied by the official and/or designee of the official or through any act or regulation of any official or designee of any official, shall be entitled to petition for access to any such record and to obtain judicial review of the actions taken to deny the access.

(b) Such petition shall be filed in the chancery court or circuit court for the county in which the county or municipal records sought are situated, or in any other court of that county having equity jurisdiction. In the case of records in the custody and control of any state department, agency or instrumentality, such petition shall be filed in the chancery court or circuit court of Davidson County; or in the chancery court or circuit court for the county in which the state records are situated if different from Davidson County, or in any other court of that county having equity jurisdiction; or in the chancery court or circuit court in the county of the petitioner's residence, or in any other court of that county having equity jurisdiction. Upon filing of the petition, the court shall, upon request of the petitioning party, issue an order requiring the defendant or respondent party or parties to immediately appear and show cause, if they have any, why the petition should not be granted. A formal written response to the petition shall not be required, and the generally applicable periods of filing such response shall not apply in the interest of expeditious hearings. The court may direct that the records being sought be submitted under seal for review by the court and no other party. The decision of the court on the petition shall constitute a final judgment on the merits.

(c) The burden of proof for justification of nondisclosure of records sought shall be upon the official and/or designee of the official of those records and the justification for the nondisclosure must be shown by a preponderance of the evidence.

(d) The court, in ruling upon the petition of any party proceeding hereunder, shall render written findings of fact and conclusions of law and shall be empowered to exercise full injunctive remedies and relief to secure the purposes and intentions of this section, and this section shall be broadly construed so as to give the fullest possible public access to public records.

(e) Upon a judgment in favor of the petitioner, the court shall order that the records be made available to the petitioner unless:

(1) There is a timely filing of a notice of appeal; and

(2) The court certifies that there exists a substantial legal issue with respect to the disclosure of the documents which ought to be resolved by the appellate courts.

(f) Any public official required to produce records pursuant to this part shall not be found criminally or civilly liable for the release of such records, nor shall a public official required to release records in such public official's custody or under such public official's control be found responsible for any damages caused, directly or indirectly, by the release of such information.

(g) If the court finds that the governmental entity, or agent thereof, refusing to disclose a record, knew that such record was public and willfully refused to disclose it, such court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the non-disclosing governmental entity. In determining whether the action was willful, the court may consider any guidance provided to the records custodian by the office of open records counsel as created in title 8, chapter 4.

§ 10-7-506. Right to copy records; notice of release; additional fees

(a) In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or such custodian's authorized deputy; provided, that the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

(b) Within ten (10) days of the release of public records originating in the office of the county assessor of property, the state agency releasing such records shall notify, in writing, the assessor of property of the county in which such records originated of the records released and the name and address of the person or firm receiving the records. The reporting requirements of this subsection shall not apply when county or city summary assessment information is released.

(c) (1) If a request is made for a copy of a public record that has commercial value, and such request requires the reproduction of all or a portion of a computer generated map or other similar geographic data that was developed with public funds, a state department or agency or a political subdivision of the state having primary responsibility for the data or system may establish and impose reasonable fees for the reproduction of such record, in addition to any fees or charges that may lawfully be imposed pursuant to this section. The additional fees authorized by this subsection may not be assessed against individuals who request copies of records for themselves or when the record requested does not have commercial value. State departments and agencies and political subdivisions of the state may charge a reasonable fee (cost of reproduction only) for information requested by the news media for news gathering purposes (broadcast or publication).

(2) The additional fees authorized by this subsection shall relate to the actual development costs of such maps or geographic data and may include:

(A) Labor costs;

(B) Costs incurred in design, development, testing, implementation and training; and

(C) Costs necessary to ensure that the map or data is accurate, complete and current, including the cost of adding to, updating, modifying and deleting information.

(3) The development cost recovery set forth above shall be limited to not more than ten percent (10%) of the total development costs unless additional development cost recovery between ten percent (10%) and twenty percent (20%) is approved by the following procedures: For state departments and agencies, the information systems council (ISC) shall review a proposed business plan explaining the need for the additional development cost recovery. If the ISC approves additional development cost recovery, such recovery shall be submitted to the general assembly for approval. For political subdivisions of the state, approval for additional development cost recovery as contained in a proposed business plan must be obtained from the governing legislative body. If the governing legislative body approves additional development cost recovery, such recovery shall be submitted to the ISC for approval. The development costs of any system being recovered with fees authorized by this section shall be subject to audit by the comptroller of the treasury, it being the legislative intent that once such additional fees have paid the portion of the development costs authorized above, such fees shall be adjusted to generate only the amount necessary to maintain the data and ensure that it is accurate, complete and current for the life of the particular system. Notwithstanding the limitations above, the recovery of maintenance costs shall not be subject to the limitations and procedures provided above for the recovery of development costs.

(4) As used in this subsection, "record that has commercial value" means a record requested for any purpose other than:

(A) A non-business use by an individual; and

(B) A news gathering use by the news media.

(5) [Deleted by 2000 amendment.]

§ 10-7-507. *Traffic violations and other offenses; availability of records upon request; fee*

Any public official having charge or custody of or control over any public records of convictions of traffic violations or any other state, county or municipal public offenses shall make available to any citizen, upon request, during regular office hours, a copy or copies of any such record requested by such citizen, upon the payment of a reasonable charge or fee therefor. Such official is authorized to fix a charge or fee per copy that would reasonably defray the cost of producing and delivering such copy or copies.

§ 10-7-512. *Electronic mail communications system; monitoring policy*

(a) On or before July 1, 2000, the State or any agency, institution, or political subdivision thereof that operates or maintains an electronic mail communications system shall adopt a written policy on any monitoring of electronic mail communications and the circumstances under which it will be conducted.

(b) The policy shall include a statement that correspondence of the employee in the form of electronic mail may be a public record under the public records law and may be subject to public inspection under this part.

Part 7. Municipal Records

§ 10-7-701. *Public records*

All documents, papers, records, books of account, and minutes of the governing body of any municipal corporation, or of any office or department of any municipal corporation, within the definition of "permanent records," "essential records," and/or "records of archival value," as defined in § 10-7-301, constitute "public records" of the municipal corporation. All documents, papers, or records of any municipal corporation or of any office or department of the municipal corporation that constitute "temporary records" and/or "working papers" within the definition set forth in § 10-7-301(13) and (14) constitute "public records" of the municipality, except that "temporary records" may be scheduled for disposal as authorized in this part.

§ 10-7-702. *Record retention manuals; schedules*

(a) The municipal technical advisory service, a unit of the Institute for Public Service of the University of Tennessee, is authorized to compile and print, in cooperation with the state library and archives, records retention manuals which shall be used as guides by municipal officials in establishing retention schedules for all records created by municipal governments in the state.

(b) Notwithstanding any provision of law to the contrary, the governing body of any municipality may by resolution authorize the disposal of any permanent paper record of the municipality when the record has been photocopied, photostated, filmed, microfilmed, preserved by microphotographic process, or reproduced onto computer or removable computer media, including CD-ROM disks, in accordance with § 10-7-121. Other records of the municipality may be disposed of when the retention period that is prescribed in the retention schedule used by the municipality has expired. For purposes of this subsection (b), disposal includes destruction of the record. A municipality may adopt reasonable rules and policies relative to the making, filing, storing, exhibiting, copying and disposal of municipal records.

Open Meetings

§ 8-44-101. *Policy; construction*

(a) The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

(b) This part shall not be construed to limit any of the rights and privileges contained in article I, § 19 of the Constitution of Tennessee.

§ 8-44-102. *Declaration; definitions*

(a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.

(b) (1) "Governing body" means:

(A) The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration and also means a community action agency which administers community action programs under the provisions

of 42 U.S.C. § 2790 [repealed]. Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times;

(B) The board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public; provided, that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings of the board of directors of such nonprofit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state law or by federal or state regulation shall not be covered under the provisions of this chapter, and no other matter shall be discussed at such meetings;

(C) The board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to the provisions of title 7, chapter 54 or 58. The provisions of this subdivision (b)(1) (C) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more according to the 1980 federal census or any subsequent federal census;

(D) The board of directors of any nonprofit corporation which through contract or otherwise provides a metropolitan form of government having a population in excess of five hundred thousand (500,000) according to the 1990 federal census or any subsequent federal census with heat, steam or incineration of refuse;

(E) (i) The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

(a) Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;

(b) Receives dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and

(c) Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

(ii) The provisions of this subdivision (b)(1)(E) shall not be construed to require the disclosure of a trade secret or proprietary information held or used by an association or nonprofit corporation to which this chapter applies. In the event a trade secret or proprietary information is required to be discussed in an open meeting, the association or nonprofit corporation may conduct an executive session to discuss such trade secret or proprietary information; provided, that a notice of the executive session is included in the agenda for such meeting.

(iii) As used in this subdivision (b)(1)(E):

(a) "Proprietary information" means rating information, plans, or proposals; actuarial information; specifications for specific services provided; and any other similar commercial or financial information used in making or deliberating toward a decision by employees, agents or the board of directors of such association or corporation; and which if known to a person or entity outside the association or corporation would give such person or entity an advantage or an opportunity to gain an advantage over the association or corporation when providing or bidding to provide the same or similar services to local governments; and

(b) "Trade secret" means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. The trier of fact may infer a trade secret to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes;

(2) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program.

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting.

No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.

§ 8-44-103. *Notice*

(a) NOTICE OF REGULAR MEETINGS. Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.

(b) NOTICE OF SPECIAL MEETINGS. Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.

(c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

§ 8-44-104. *Meeting minutes; recording, public inspection, and inclusions; no secret votes*

(a) The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

(b) All votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed. As used in this chapter, “public vote” means a vote in which the “aye” faction vocally expresses its will in unison and in which the “nay” faction, subsequently, vocally expresses its will in unison.

§ 8-44-105. *Nullification of unlawful actions; exception*

Any action taken at a meeting in violation of this part shall be void and of no effect; provided, that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned.

§ 8-44-106. *Enforcement jurisdiction; findings and conclusions; junctions; final judgment*

(a) The circuit courts, chancery courts, and other courts which have equity jurisdiction, have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of this part upon application of any citizen of this state.

(b) In each suit brought under this part, the court shall file written findings of fact and conclusions of law and final judgments, which shall also be recorded in the minutes of the body involved.

(c) The court shall permanently enjoin any person adjudged by it in violation of this part from further violation of this part. Each separate occurrence of such meetings not held in accordance with this part constitutes a separate violation.

(d) The final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period of one (1) year from date of entry, and the court shall order the defendants to report in writing semiannually to the court of their compliance with this part.

§ 8-44-107. *Performing Arts Center Management Corporation board of directors*

The board of directors of the Tennessee Performing Arts Center Management Corporation shall be subject to, and shall in all respects comply with, all of the provisions made applicable to governing bodies by this chapter.

§ 8-44-108. *Definitions*

(a) As used in this section, unless the context otherwise requires:

(1) “Governing body” refers to boards, agencies and commissions of state government, including state debt issuers as defined in this section and municipal governing bodies. For the purpose of this section only, “municipal

governing bodies” means only those municipal governing bodies organized under title 6, chapter 18, and having a city commission of three (3) members, and having a population of more than two thousand five hundred (2,500), according to the 2000 federal census or any subsequent federal census;

(2) “Meeting” has the same definition as defined in § 8-44-102;

(3) “Necessity” means that the matters to be considered by the governing body at that meeting require timely action by the body, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by electronic or other means of communication is necessary; and

(4) “State debt issuers” means the Tennessee state funding board, Tennessee local development authority, Tennessee housing development agency, and Tennessee state school bond authority, and any of their committees.

(b) (1) A governing body may, but is not required to, allow participation by electronic or other means of communication for the benefit of the public and the governing body in connection with any meeting authorized by law; provided, that a physical quorum is present at the location specified in the notice of the meeting as the location of the meeting.

(2) If a physical quorum is not present at the location of a meeting of a governing body, then in order for a quorum of members to participate by electronic or other means of communication, the governing body must make a determination that a necessity exists. Such determination, and a recitation of the facts and circumstances on which it was based, must be included in the minutes of the meeting.

(3) If a physical quorum is not present at the location of a meeting of a governing body other than a state debt issuer, the governing body other than a state debt issuer must file such determination of necessity, including the recitation of the facts and circumstances on which it was based, with the office of secretary of state no later than two (2) working days after the meeting. The secretary of state shall report, no less than annually, to the general assembly as to the filings of the determinations of necessity.

(4) Nothing in this section shall prohibit a governing body from complying with § 8-44-109.

(c) (1) Any meeting held pursuant to the terms of this section shall comply with the requirements of the Open Meetings Law, codified in this part, and shall not circumvent the spirit or requirements of that law.

(2) Notices required by the Open Meetings Law, or any other notice required by law, shall state that the meeting will be conducted permitting participation by electronic or other means of communication.

(3) Each part of a meeting required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting. Any member participating in such fashion shall identify the persons present in the location from which the member is participating.

(4) Any member of a governing body not physically present at a meeting shall be provided, before the meeting, with any documents that will be discussed at the meeting, with substantially the same content as those documents actually presented.

(5) All votes taken during a meeting held pursuant to the terms of this section shall be by roll call vote.

(6) A member participating in a meeting by this means is deemed to be present in person at the meeting for purposes of voting, but not for purposes of determining per diem eligibility. However, a member may be reimbursed expenses of such electronic communication or other means of participation.

§8-44-109. *Electronic Communication*

(a) A governing body may, but is not required to, allow electronic communication between members by means of a forum over the Internet only if the governing body:

(1) Ensures that the forum through which the electronic communications are conducted is available to the public at all times other than that necessary for technical maintenance or unforeseen technical limitations;

(2) Provides adequate public notice of the governing body’s intended use of the electronic communication forum;

(3) Controls who may communicate through the forum;

(4) Controls the archiving of the electronic communications to ensure that the electronic communications are publicly available for at least one (1) year after the date of the communication; provided, that access to the archived electronic communications is user-friendly for the public; and

(5) Provides reasonable access for members of the public to view the forum at the local public library, the building where the governing body meets or other public building.

(b) Electronic communications posted to a forum shall not substitute for decision making by the governing body in a meeting held in accordance with this part. Communications between members of a governing body posted to a forum complying with this section shall be deemed to be in compliance with the open meetings laws compiled in this part.

(c) Prior to a governing body initially utilizing a forum to allow electronic communications by its members that meets the requirements of this section, including the public notice required in subsection (a), the governing body shall file a plan with the office of open records counsel. The plan shall describe how the governing body will ensure compliance with subsection (a). Within thirty (30) days of receipt of the plan, the office of open records counsel shall acknowledge receipt of the plan and shall report whether or not the plan and the proposed actions comply with subsection (a). If the office determines that compliance with subsection (a) has not been met, the office shall provide written comments regarding the plan to the governing body. Until such time as the governing body complies with the written comments provided by the office and the office issues a report of compliance, the governing body shall not be allowed to establish or utilize such forum. This subsection (c) shall not apply to any governing body that had established a forum pursuant to this section prior to May 7, 2009.

(d) No member participating in an electronic communication pursuant to this section is deemed to be eligible for per diem for such participation.

(e) As used in this section, "governing body" means the elected governing body of a county, city, metropolitan form of government or school board.

§8-44-111 Open Meetings – Development of educational program required materials.

(a) The municipal technical advisory service (MTAS) for municipalities and the county technical assistance service (CTAS) for counties, in order to provide

guidance and direction, shall develop a program for educating their respective public officials about the open meetings laws codified in this chapter, and how to remain in compliance with such laws.

(b) The Tennessee school board association shall develop a program for educating elected school board members about the open meetings laws and how to remain in compliance with such laws.

(c) The utility management review board shall develop a program for board members of water, wastewater and gas authorities created by private act or under the general law and of utility districts, in order to educate the board members about the open meetings laws and how to remain in compliance with such laws.

(d) The state emergency communications board created by § 7-86-302 shall develop a program for educating emergency communications district board members about the open meetings laws and how to remain in compliance with such laws.

(e) The office of open records counsel established in title 8, chapter 4, part 6 shall establish educational programs and materials regarding open meetings laws in this state, to be made available to the public and to public officials.

Part 2. Labor Negotiations

§ 8-44-201. Public nature; planning or strategy sessions excluded

(a) Notwithstanding any other provision of Tennessee law to the contrary, labor negotiations between representatives of public employee unions or associations and representatives of a state or local governmental entity shall be open to the public, whether or not the negotiations by the state or local governmental entity are under the direction of the legislative, executive or judicial branch of government.

(b) Nothing contained in this section shall be construed to require that planning or strategy sessions of either the union committee or the governmental entity committee, meeting separately or with the entity it represents, be open to the public.

(c) Nothing contained in this section shall be construed to grant recognition rights of any sort.

(d) Both sides shall decide jointly and announce in advance of any such labor negotiations where such meetings shall be held.

