



OPEN RECORDS LEGISLATIVE UPDATE

Office of Open Records Counsel
FALL 2023

Jason E. Mumpower
Comptroller of the Treasury



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MESSAGE FROM THE OFFICE OF OPEN RECORDS COUNSEL



Maria Bush

This legislative update summarizes new laws passed during the second session and the second extraordinary session of the 112th General Assembly affecting public records and open meetings in Tennessee. The Office of Open Records Counsel provides this summary to educate public officials and citizens about recent changes to the open records and open meetings laws in Tennessee.

In addition to providing this update, I would personally like to express my gratitude for having the opportunity to serve as Open Records Counsel. It has been my pleasure to help ensure state and local government entities are following the laws that provide accountability and foster transparency in government. Going forward, I will continue to serve the Office of Open Records Counsel and the Comptroller's Office of General Counsel in a part-time capacity, and I'm delighted that Toni Chadwick will lead the important work of the Office as Tennessee's new Open Records Counsel.

Thank you,

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

Maria Bush

Open Records Counsel



Toni Chadwick

1. Public Comment at Open Meetings

Effective July 1, 2023, Public Chapter 300 provides that a governing body shall, for each public meeting, reserve a period for public comment to provide the public with the opportunity to comment on matters that are germane to the items on the agenda for the meeting. The governing body may put reasonable restrictions on the period for public comment, such as the length of the period, the number of speakers, and the length of time that each speaker will be allowed to provide comment. The governing body may require a person to give notice in advance of their desire to offer comments at a meeting. The governing body shall take all practicable steps to ensure that opposing viewpoints are represented fairly, if any.

A notice for a public meeting shall indicate the manner in which a person may specify their desire to provide public comment at the meeting. This new law does not apply to a meeting of a governing body, or a portion thereof, where the governing body is conducting a disciplinary hearing for a member of the governing body or a person whose profession or activities fall within the jurisdiction of the governing body. It also does not apply to a meeting for which there are no actionable items on the agenda.

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

2. Local Government Legislative Body Agenda

Effective April 25, 2023, Public Chapter 213 requires that at least forty-eight hours prior to a meeting, a local government legislative body make available to the public, at no charge, the agenda for the upcoming meeting in a place accessible to the public. The agenda must reasonably describe the matters to be deliberated or acted upon during the public meeting. A local government legislative body may deliberate or act upon matters not listed on the agenda if the local government legislative body follows its bylaws or properly adopted rules and procedures and complies with all other applicable state laws.

A local government legislative body shall not circumvent the spirit or requirements of the new law by withholding items from an agenda for the purpose of avoiding public disclosure of business to be considered by the legislative body. A local government legislative body that maintains a website may make an agenda available to the public through the website. The new law defines “local government” as an incorporated city or town, metropolitan government, or county.

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

3. Electronic Participation in Local Board of Education Meetings

Effective May 5, 2023, Public Chapter 350 allows a local board of education to conduct a scheduled board meeting by electronic means. A board meeting shall not be conducted with electronic participation unless a quorum of members is physically present at the location of the meeting. A board member may only participate electronically in a scheduled board meeting if the member participating by electronic means can be visually identified by the chair. Additionally, one of the following situations must apply: (1) the member is out of the county due to work; provided, that the member participates electronically for such reason no more than two times per year; (2) the member is sick or in a period of convalescence on the advice of a healthcare professional that the member not appear in person; provided, that the member participates electronically for such reason no more than three times per year; (3) the member is out due to inclement weather or natural disaster if the schools in the local education agency are closed; provided, that the member participates electronically for such reason no more than three times per year; (4) the member has a family emergency that inhibits the member from attending the board meeting in person; provided, that the member participates electronically for such reason no more than two times per year; or (5) the member is out of the county due to military service.

A board member wishing to participate in a scheduled board meeting electronically, who is or will be out of the county because of work, shall give at least five days’ notice prior to the scheduled board meeting of the member’s intention to participate electronically. The local board of education shall develop a policy for conducting electronic meetings pursuant to this new law.

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

4. School Security Records

Effective July 1, 2023, Public Chapter 367 amends the Tennessee Public Records Act by providing that all school security reports, memoranda, plans, notes, threats, and procedures, including drafts that are incorporated in reports created or received by the Department of Safety, must be treated as confidential and shall not be open for inspection by members of the public. This new law shall not be construed to limit access to those records by law enforcement agencies, courts, or other governmental agencies performing official functions.

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

5. Securities Examinations

Effective April 4, 2023, Public Chapter 112 makes confidential all working papers, recorded information, documents, and required records and copies of working papers, recorded information, documents, and required records produced by, obtained by, or disclosed to the commissioner of the Department of Commerce and Insurance or another person in the course of an examination made under Title 48, Chapter 48, of the Tennessee Code Annotated.

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

6. Insurance Examinations, Investigations, and Reporting Requirements

Effective July 1, 2023, Public Chapter 23 provides that for purposes of the information reported and provided to the Commissioner of the Department of Commerce and Insurance (“Commissioner”) pursuant to Tenn. Code Ann. § 56-11-105(l)(2), the group capital calculation and group capital ratio produced within the calculation and group capital information received from an

insurance holding company supervised by the federal reserve board or a United States group-wide supervisor are confidential by law and privileged. Additionally, for purposes of the information reported and provided to the Commissioner pursuant to Tenn. Code Ann. § 56-11-105(l)(3), the liquidity stress test results and supporting disclosures and liquidity stress test information received from an insurance holding company supervised by the federal reserve board and non-United States group-wide supervisors are confidential by law and privileged.

The new law also states that the Commissioner shall enter into written agreements with the National Association of Insurance Commissioners governing the sharing and use of information. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain such confidentiality.

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

7. Access to Certain Information Held by the Department of Environment and Conservation

Effective March 10, 2023, Public Chapter 26 amends Tenn. Code Ann. § 11-1-102 by providing that nothing in Tenn. Code Ann. § 11-1-102(c)(3)(A) limits access to information made confidential pursuant to Tenn. Code Ann. § 11-1-102(c)(3)(A) by a person seeking a report of a motor vehicle accident in accordance with Tenn. Code Ann. § 10-7-504(a)(31)(B).

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

8. Disclosure of Records Held by the Department of Children's Services

Effective April 28, 2023, Public Chapter 292 allows the Department of Children's Services to disclose information about a case to the public if all parties involved in the case, including the child, are deceased and all identifying personal information of the parties is redacted. Under this new law, "identifying personal information" includes, but is not limited to, date of birth, address, and social security number, but does not include a party's name.

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

9. Sealed Adoption or Post-Adoption Records

Effective July 1, 2023, Public Chapter 187 provides that no identifying information from sealed records, sealed adoption records, or post-adoption records may be released if a biological parent of an adopted person has executed a request for redaction of identifying information, and the adopted person was less than six months old at the time the request was executed. Such request for redaction must be made on a form created by the Department of Children's Services ("Department") and may only be rescinded by submission of a sworn, notarized statement requesting such rescission. The rescission is effective upon the Department's acknowledgment of receipt of the rescission.

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

10. Wildlife Resources Agency Records

Effective April 25, 2023, Public Chapter 235 makes confidential all records provided to the Wildlife Resources Agency pursuant to Tenn. Code Ann. § 69-9-227(c)(2) by an outfitter who leases or rents nonmotorized vessels for noncommercial use by the public on the waters of Tennessee, including, but not limited to, information on the number and type of nonmotorized vessels leased each day and daily ridership data. This provision of law does not limit access to this confidential information by law enforcement agencies, courts, or other governmental agencies performing official functions or when an outfitter expressly authorizes the release of the information. Additionally, the records may be released to persons identified within the record, unless the record is subject to a legal privilege against disclosure.

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

11. Victim Advocate Communications

Effective July 1, 2023, Public Chapter 282 provides that an advocate [as defined] shall not disclose, in a judicial, legislative, or administrative proceeding, a communication, including verbal, written, or otherwise stored information, received by the advocate from a victim, records regarding a victim stored by the advocate in the course of business, counseling that a victim received, crisis intervention services that a victim received, or the location of the shelter that accommodated a victim. The new law also allows for a waiver and for the compulsion of disclosure in certain circumstances.

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

12. Ambulance Run Records Disclosure

Effective April 24, 2023, Public Chapter 203 allows the Department of Health to disclose de-identified data that is collected pursuant to Tenn. Code Ann. § 68-140-319(a), including for the purpose of providing opioid overdose response and resources throughout this state.

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

13. Confidentiality of Adult Sexual Assault Response Team Meetings

Effective April 25, 2023, Public Chapter 212 provides that communications occurring at an adult sexual assault response team (“SART”) meeting are confidential and not subject to the Tennessee Public Records Act. Communications at a SART meeting may be disclosed by court order. Additionally, the district attorney general and counsel for a defendant may provide 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 the new law.

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

14. Tennessee Information Protection Act

Effective July 1, 2025, Public Chapter 408 creates the Tennessee Information Protection Act. This law specifies that data protection assessments are confidential and not open to public inspection and copying. The disclosure of a data protection assessment pursuant to a request from the attorney general and reporter does not constitute a waiver of attorney-client privilege or work product protection with respect to the assessment and information contained in the assessment.

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

15. Access to Public Records

Effective April 17, 2023, Public Chapter 157 provides that a requestor under the Tennessee Public Records Act is not entitled to special or more expeditious access to records due to the requestor’s occupation or association with a specific profession.

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

16. Money Transmission Modernization Act

Effective January 1, 2024, Public Chapter 115 enacts the Money Transmission Modernization Act (“Act”). This law makes all information or reports obtained by the Commissioner of Financial Institutions (“Commissioner”) from an applicant, licensee, or authorized delegate confidential. Under the new law, the Commissioner may disclose confidential information to local, state, or federal agencies and the Conference of State Bank Supervisors and the Money Transmission Regulator Association; provided, that

these associations have entered into confidentiality agreements with the Commissioner. Additionally, a licensed money transmitter is entitled to access to a copy of the report of examination on the money transmitter prepared by the Commissioner or the Commissioner's designee. The report of examination in the possession of a licensee remains confidential and is not subject to subpoena. The Commissioner may disclose to the public a list of all licensees or the aggregated financial or transactional data concerning those licensees.

The new law allows for the Commissioner to utilize the Nationwide Multistate Licensing System and Registry for all aspects of licensing in accordance with Title 47, Chapter 7. The new law allows for the disclosure of information or material to all state and federal regulatory officials with money transmission oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

The Commissioner shall submit to the district attorneys general for the respective counties of the state any criminal violation of the Act known by the Commissioner. The Commissioner shall also report the violation to the appropriate division of the Tennessee Bureau of Investigation. The Commissioner may provide the information to the attorney general and reporter, the appropriate federal authorities, or both, as the Commissioner deems proper. Confidential information that is communicated by the Commissioner remains confidential in the hands of the agency to which the information is reported and does not become a matter of public record by virtue of the communication.

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

17. Dentist and Dental Hygienist Compact

Effective May 17, 2023, Public Chapter 446 establishes the Dentist and Dental Hygienist Compact Commission ("Commission"). The new law allows the Commission to convene in a closed, non-public meeting to receive legal advice or to discuss certain topics enumerated in the new law. If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting will be closed and reference each relevant exempting provision, which shall be recorded in the minutes.

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

18. Videos of Forensic Interviews of Minor Children

Effective April 6, 2023, Public Chapter 139 provides that a video recording of a child by a forensic interviewer containing a statement made by the child under eighteen years of age describing an act of sexual or physically violent contact performed with or on the child by a person, or describing an act of sexual or physically violent contact performed by a person with or on another and witnessed by the child, that is offered into evidence is not a public record. The court shall order the video recording to be sealed and preserved following the conclusion of any proceeding.

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

19. Police Advisory and Review Committee

Effective July 1, 2023, Public Chapter 454 creates the Police Advisory and Review Committee ("Committee"). Committee meetings and records must be open to the public in accordance with the Tennessee Open Meetings Act and the Tennessee Public Records Act. The Committee shall provide an opportunity for public comment about an investigation being reviewed by the Committee pursuant to rules established by the Committee.

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

20. Department of Children's Services Information

Effective April 24, 2023, Public Chapter 197 requires that the Department of Children's Services release certain information, upon presentation of an appropriate court order, to a law enforcement agency, grand jury, district attorney general, or court.

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

21. Biannual Report of Temporary Healthcare Staffing Agencies

Effective May 11, 2023, Public Chapter 432 requires a temporary healthcare staffing agency to submit biannual reports to the Health Facilities Commission. The biannual reports are considered proprietary information that is confidential and not subject to public inspection pursuant to the Tennessee Public Records Act. However, the Health Facilities Commission shall annually prepare reports of aggregate data that do not identify any data specific to any temporary healthcare staffing agency.

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

22. Records Held by the Department of Transportation

Effective April 17, 2023, Public Chapter 159 states that a construction manager/general contractor's or progressive design builder's proposed guaranteed maximum price that is submitted to the Department of Transportation ("Department") must remain confidential and is not subject to public disclosure until after award of a contract.

It also provides that the confidentiality provisions in Tenn. Code Ann. § 54-6-107 apply to both solicited and unsolicited proposals received by the Department for such agreements; provided, however, that a proposer submitting an unsolicited proposal must include an executive summary covering the major elements of the proposal and must exclude information from the executive summary that the proposer intends to be kept confidential as proprietary information, as the executive summary is a public record under the Tennessee Public Records Act that may be used to solicit competing proposals.

The new law requires that personal information or highly restricted personal information obtained in connection with a motor vehicle record, and thereafter obtained by the Department or the Department's contractor in connection with the collection of and enforcement of user fees on a user fee facility, is subject to disclosure limitations established in the federal Driver's Privacy Protection Act (18 U.S.C. § 2721) and the Uniform Motor Vehicle Records Disclosure Act, compiled in Title 55, Chapter 25, and must remain confidential as required by such federal and state laws and not be open for public inspection under the Tennessee Public Records Act, nor discoverable in legal proceedings.

Additionally, financial information, transaction history, and information generated by an open road user fee system on a user fee facility related to the collection of a user fee from a person, and which has been obtained by the Department or its contractor for the purposes of collecting and enforcing user fees on a user fee facility, must remain confidential. The Department or its contractor may use the account information only for purposes of collecting and enforcing user fees. This information is not open to public inspection under the Tennessee Public Records Act or another law; provided, however, that the user fee facility account holder may examine the account holder's own account information, and a third party by authority of a proper court order may inspect and examine confidential account information.

The new law requires that proposals received by the Department for franchise agreements, concession agreements, or some combination of those agreements, related to the design, construction, financing, operation, or maintenance of user fee facilities, and documents used by the Department to evaluate and accept or reject such proposals, must remain confidential, not be subject to disclosure to another proposer, and not be open for public inspection pursuant to the Tennessee Public Records Act or another law until after the Department has selected a proposal and awarded a contract. Proprietary information contained in a proposal for such an agreement, whether a solicited or unsolicited proposal, must remain confidential, not be subject to disclosure to another proposer, and not be open for public inspection pursuant to the Tennessee Public Records Act or another law, as provided in § 54-6-107.

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

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