



2018 OPEN RECORDS LEGISLATIVE UPDATE

OFFICE OF OPEN RECORDS COUNSEL

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Justin P. Wilson
Comptroller of the Treasury

Lee Pope
Open Records Counsel

Provided below is a summary of new laws that were passed during the second session of the 110th General Assembly that affect Tennessee's public records and open meetings. This summary is provided by the Comptroller's Office of Open Records Counsel as part of the office's ongoing effort to educate public officials and citizens of the open records and open meetings laws in Tennessee.

1. Identifying Information in Victim Notification System

Effective July 1, 2018, Public Chapter 598 sets forth a new electronic victim notification system whereby victims of violent crimes and their relatives can be notified of an offender's release from custody prior to trial. As part of this legislation, Tenn. Code Ann. § 40-38-103(b) makes the name, home and work address, telephone number, email address, and social security number submitted by the person requesting notification confidential.

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

2. Municipal Service Member Participation by Electronic Means

Effective March 23, 2018, Public Chapter 604 authorizes municipal legislative bodies to pass an ordinance, by a two-thirds vote, that will allow a member of the municipal legislative body who is a service member who is deployed for thirteen months or less while serving as a member of the legislative body to attend sessions of the legislative body electronically during deployment. A member participating by such electronic communication may vote and may receive pay for their attendance. However, only one service member at a time may attend and vote by such electronic means.

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

3. Confidentiality of Records Maintained by Human Trafficking Service Providers

Effective July 1, 2018, Public Chapter 613 amends Tenn. Code Ann. §§ 36-3-623 and 10-7-504 so that records maintained by human trafficking service providers are treated as confidential in the same manner as records of domestic violence shelters and rape crisis centers.

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

4. Executive Level Employee Travel Expenditures

Effective July 1, 2018, Public Chapter 616 amends Tenn. Code Ann. § 4-3-1010 so that all out-of-state travel expenditures made by executive level employees must be posted on the state website. Prior to this amendment, only expenditures for which reimbursements were made had to be posted online.

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

5. Confidentiality of TDEC Records Concerning Radioactive Materials and Historical Artifacts

Effective April 2, 2018, Public Chapter 630 makes records of the Tennessee Department of Environment and Conservation concerning radioactive materials confidential only to the extent that those records are confidential under federal law, regulation, or guidance or nuclear regulatory commission regulatory issue summary. Tenn. Code Ann. § 11-1-102(c)(1). Public Chapter 630 also allows the Tennessee Department of Environment and Conservation to withhold information concerning the location of a historical site or artifact if necessary to prevent damage to the site, artifact or private property.

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

6. Identifiable Health Information Held by the Tennessee Department of Health

Effective April 2, 2018, Public Chapter 633 amends Tenn. Code Ann. § 10-7-504(a)(1) to clarify that individually identifiable health information collected, created, or prepared by the Tennessee Department of Health is confidential and not open to public inspection. “Individually identifiable health information” is defined to include information related to the physical or mental health of an individual that explicitly, or by implication, identifies the individual who is the subject of the information, including by name, address, birth date, death date, admission or discharge date, telephone number, facsimile number, electronic mail address, social security number, medical record number, health plan beneficiary number, account number, certificate or license number, biometric identifier, or any other identifying number, characteristic, or code. Tenn. Code Ann. § 10-7-504(a)(1)(B). The department of health may still disclose such information as otherwise authorized or required by law.

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

7. Commercial and Financial Records of Launch Tennessee

Effective July 1, 2018, Public Chapter 662 increases, from three to seven years, the period that commercial and financial records provided by an applicant to the Tennessee Technology Development Corporation (Launch Tennessee) are confidential. Tenn. Code Ann. § 4-14-308.

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

8. Disclosure of County Correctional Officer Residential Information

Effective July 1, 2018, Public Chapter 676 makes it a criminal offense for a public employer to disclose improperly the residential information of a county correctional officer without the officer’s consent or a court order. Tenn. Code Ann. § 10-7-504(f)(8).

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

9. State Agency Public Records Rules

Effective April 12, 2018, Public Chapter 712 requires that all state agencies must, by January 1, 2019, promulgate rules governing the process for receiving and responding to public record requests in accordance with the Uniform Administrative Procedures Act. Tenn. Code Ann. § 10-7-503(g).

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

10. Confidential Railway Safety Reports

Effective April 18, 2018, Public Chapter 743 designates the Tennessee Department of Transportation as the state agency responsible for implementing a state safety oversight program for rail fixed guideway public transportation systems in Tennessee. As part of this legislation, any data collected and reports concerning investigations conducted pursuant to the state safety oversight program are confidential and not open to public inspection. Additionally, any portion of a rail fixed guideway public transportation system safety plan that concerns security for the system is confidential. Tenn. Code Ann. § 13-10-204.

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

11. Search Committee for Higher Education Chief Executive Officers

Effective April 19, 2018, Public Chapter 770 amends Tenn. Code Ann. § 49-7-154 to require now that a search committee for candidates for the position of chief executive officer of a public institution of higher education must hold a public meeting subject to the requirements of the Tennessee Open Meetings Act to establish the search process, timeline, and statement of qualifications for the position. The amendment reiterates that the application materials of the three finalists recommended by the search committee to the governing board of the public institution of higher education are open public record, except for records or information otherwise made confidential by state or federal law.

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

12. Wind Energy Facility Permits

Effective April 24, 2018, Public Chapter 825 makes permit applications and other documents submitted to a local legislative body to evaluate a wind energy facility permit application open public record. However, any proprietary information contained in such records shall remain confidential. Tenn. Code Ann. § 65-17-108.

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

13. Reimbursement Methodology of Nursing Facilities

Effective July 1, 2018, Public Chapter 836 amends Tenn. Code Ann. § 71-5-1004(d) to provide that documents submitted by a nursing facility relative to the quality-based component of the TennCare reimbursement methodology for nursing facilities are confidential.

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

14. Coal Surface Mining and Reclamation

On April 25, 2018, Public Chapter 839 created the Primacy and Reclamation Act of Tennessee, which sets forth various provisions regulating coal surface mining and makes certain information provided to the Tennessee Department of Environment and Conservation in connection with surface coal mining operations open to public inspection. Tenn. Code Ann. §§ 59-8-106(k) & 59-8-112(a)(5) & (b)(2). However, the Act also makes trade secrets and privileged commercial or financial information submitted to the department confidential. Tenn. Code Ann. § 59-8-105(d).

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

15. Corporate Governance Disclosure Act

Effective January 1, 2019, Public Chapter 873 requires insurers to provide the commissioner of the Tennessee Department of Commerce and Insurance with corporate governance annual disclosure (CGAD) reports setting forth the insurer's corporate governance structure, policies and practices to enable the commissioner to maintain an understanding of the insurer's corporate governance framework. Any documents, materials, or other information, including the CGAD, provided to the Tennessee Department of Commerce and Insurance pursuant to the new law are confidential and not subject to disclosure under the Tennessee Public Records Act. Tenn. Code Ann. § 56-2-907.

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

16. Advisory Committee on Open Government

Effective May 3, 2018, Public Chapter 897 amends Tenn. Code Ann. § 8-4-603 to revise the reviewing and reporting duties of the Advisory Committee on Open Government (ACOG). The new law makes all meetings of ACOG subject to the requirements of the Tennessee Open Meetings Act, creates two co-chairs for the committee appointed from its membership, and requires, if requested by the General Assembly, that ACOG provide written comments on proposed changes to Tennessee's public records and open meetings laws.

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

17. Certificate of Public Advantage Records

Effective May 1, 2018, Public Chapter 916 makes confidential certain records received by the Tennessee Department of Health or the Tennessee Office of the Attorney General and Reporter from recipients or applicants of a certificate of public advantage for a hospital cooperative agreement issued under the Hospital Cooperation Act of 1993. Tenn. Code Ann. § 68-11-1310(a). Such records include operating and capital budgets, existing and future business plans, physician and vendor contracts, complaints and employee personnel files. Tenn. Code Ann. § 68-11-1310(a)(1)-(8).

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

18. Municipal Food-Based Incubation Service Provider Records

Effective May 15, 2018, Public Chapter 939 makes proprietary information, trade secrets and marketing information submitted to a municipal food-based incubation service provider confidential. Tenn. Code Ann. § 10-7-504(a)(30).

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

19. Interscholastic Athletic Associations

Effective July 1, 2018, Public Chapter 948 provides that public schools, including public charter schools, cannot use public funds to become members of, or maintain membership in, an association that regulates interscholastic athletics unless the governing board of the association complies with the requirements of the Tennessee Open Meetings Act. Tenn. Code Ann. § 49-2-131.

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

20. Event Tourism Act

Effective January 1, 2019, Public Chapter 959 makes all applications, documents, communications and reports related to the Event Tourism Act open to public inspection, except for tax information or tax administration information made confidential pursuant to Chapter 1, Part 17 of Title 67.

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

21. Law Enforcement Drone Video

Effective July 1, 2018, Public Chapter 970 enacts the Freedom from Unwanted Surveillance Act to address the use of drone video surveillance by law enforcement. The new law provides that any evidence, information or other data collected or obtained through the use of a law enforcement drone must be deleted within three business days of collection unless such information is relevant to the lawful reason the drone was being used and relevant to an ongoing investigation or criminal prosecution. Tenn. Code Ann. § 39-13-609(e)(2)(A).

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

22. Comptroller Study of Abnormal Opioid Prescribing Patterns

Effective July 1, 2018, Public Chapter 978 provides that the Comptroller of the Treasury shall complete a study of the incidence of significantly statistically abnormal prescribing patterns by prescribers licensed under Title 63 and the disciplinary response of the licensing boards to those prescribers by June 30, 2020. Tenn. Code Ann. § 68-1-128(i)(1). As part of this study, the Tennessee Department of Health, controlled substance database, and a licensing board of any prescriber of opioids must provide to the Comptroller of the Treasury any relevant information. Any information disclosed to the Comptroller of the Treasury as part of this process that personally identifies a patient, or a healthcare practitioner, is confidential and not subject to disclosure under the Tennessee Public Records Act. Tenn. Code Ann. § 68-1-128(i)(2).

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

23. Store Value Card Information

Effective July 1, 2018, Public Chapter 993 amends the Organized Retail Crime Prevention Act so that merchants must provide law enforcement with certain information about the sale and purchase of store value cards. Tenn. Code Ann. § 39-14-113. The information provided to law enforcement by merchants under the new law is confidential and not subject to disclosure under the Tennessee Public Records Act. Tenn. Code Ann. § 39-14-113(g).

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

24. Crime Victim Address Confidentiality Program

Effective March 1, 2019, Public Chapter 1004 requires the Tennessee Secretary of State to create a victim address confidentiality program for victims of domestic abuse, stalking, human trafficking, and sexual offenses. Tenn. Code Ann. § 40-38-601 et seq. Under the new law, crime victims may apply with the Secretary of State to obtain a substitute address that may be used for official government purposes. Any of the information supplied by the crime victim as part of the application process must remain confidential and is not open to public inspection unless the program participant voluntarily discloses such information. Tenn. Code Ann. § 40-38-602(f).

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

25. Department of Health MHPAEA Compliance Report

Effective January 1, 2019, Public Chapter 1012 implements and enforces provisions of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and requires the Tennessee Department of Health to issue a report, no later than January 31, 2020, regarding compliance with the MHPAEA. Tenn. Code Ann. § 56-7-2360(e). The report issued by the department must be made publicly available, but the name and identity of any health insurance carriers contained in the report must remain confidential and are not subject to public inspection. Tenn. Code Ann. § 56-7-2360(f).

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

26. Reporting Involuntary Commitments to Law Enforcement

Effective July 1, 2018, Public Chapter 1015 requires inpatient treatment facilities to report certain information about involuntary commitments to law enforcement agencies so the information may be reported to the FBI NICS Index and to the Tennessee Department of Safety. Tenn. Code Ann. § 68-11-210(f)(2)(A). Any of the information reported to law enforcement that is made confidential under other state laws must remain confidential and is not subject to public inspection. Tenn. Code Ann. § 68-11-210(f)(2)(C).

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

27. Expungement of Juvenile Prostitution

Effective July 1, 2018, Public Chapter 1018 provides that a court may expunge a charge of prostitution against a minor if a court finds the charge was the result of the minor being a victim of human trafficking. Tenn. Code Ann. § 37-1-153(f)(12). Any records related to such expungement are confidential and not subject to disclosure under the Tennessee Public Records Act. Tenn. Code Ann. § 37-1-153(a).

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

28. Confidentiality of Reporters of Elder Abuse

Effective January 1, 2019, Public Chapter 1050 enacts the Elderly and Vulnerable Adult Protection Act of 2018. The Act requires anyone that suspects elder abuse or exploitation to report such abuse to adult protective services and law enforcement. Tenn. Code Ann. §§ 39-15-509(a) & 71-6-103(b). The identity of any person who reports elder abuse or exploitation remains confidential and is not subject to disclosure under the Tennessee Public Records Act. Tenn. Code Ann. § 71-6-118(a).

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

29. Inspection of TBI Records by the General Assembly

Effective May 21, 2018, Public Chapter 1060 expands access to the investigative files of the Tennessee Bureau of Investigation 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, or if such inspection is directed by a majority vote of the entire membership of an ad hoc committee appointed specifically to study unsolved civil rights crimes that occurred between 1938 and 1975 and that committee is composed only of elected members of the general assembly. Tenn. Code Ann. § 10-7-504(a)(2). Any record inspected pursuant to this new exception shall maintain its confidentiality throughout the inspection. *Id.*

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

CONTACT INFORMATION

Lee Pope
Open Records Counsel

Rachel Buckley
Assistant General Counsel



Office of Open Records Counsel
Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37243

Office: 615.401.7891
Toll-free phone: 1.866.831.3750
Fax: 615.741.1551
E-mail: Open.Records@cot.tn.gov

For additional information about the Office and other related resources visit:

www.comptroller.tn.gov