A RESOURCE GUIDE PERTAINING TO
OPEN MEETINGS AND OPEN RECORDS

Tennessee School Boards Association
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OPEN MEETINGS AND OPEN RECORDS

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CHAPTER 1

QUESTIONS & ANSWERS ON OPEN MEETINGS
**How Long Have We Had a “Sunshine Law”?**

“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.”

With those words in 1974, the Tennessee General Assembly ushered in a new era of open government in Tennessee that is still being refined today. The “Open Meetings Act”, more commonly referred to as the “Sunshine Law”, has been the subject of heated debate ever since its passage. On the one hand, local government officials complain that they need to conduct some business in private and give a variety of legitimate reasons. On the other the press insists that ALL meetings must be public regardless of the circumstances.

**What Is An Open Meeting?**

The law provides a relatively simple and straightforward definition of an open meeting. “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.” On its face the meaning seems clear but the law has been subject to many challenges over the years and the reference to the Constitution yielded some interesting results in a case styled *Mayhew v. Wilder* all of which will be discussed in greater detail later in this book.

**What is a Governing Body?**

The bulk of the definition section of the law outlines what is considered a governing body under the law. The first section is the one which covers school board and other local governmental bodies. It states that “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means a community action agency which administers community action programs under the provisions of 42 U.S.C. § 2790 [repealed].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.”

**Who Else Is Covered Under the Law?**

Several other public entities are included in the definition. 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. This part of the law includes an exception for meetings of the board of directors of such nonprofit corporations 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.

Other non-profits are also included such as 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. There is one statutory exception as the law does 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.  

Additionally, utility type nonprofits which provide heat, steam or incineration of refuse through contract or otherwise provide a metropolitan form of government having a population in excess of five hundred thousand (500,000) according to the 1990 federal census.

The Tennessee School Boards Association board of directors is covered under the section of the code that applies to associations or nonprofit corporations authorized by the laws of Tennessee provide that those organizations; (a) were established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool; (b) receive 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) were authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

The board of directors of the Tennessee Performing Arts Center Management Corporation is also subject to, and must comply with, all of the provisions made applicable to governing bodies by the law.

Obviously from the law a wide variety of entities are covered under the open meetings laws besides just county and city commissions and school boards. If you have a question about a specific organization, refer that question to your local attorney.

**Are We Required To Give Notice?**

The law requires that we give adequate public notice of all meetings. The code states that for 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. A governmental body is also required to give adequate public notice of special meetings not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law. These notice requirements are in addition to, and not in substitution of, any other notice required by law.
Are Meeting Minutes Required?

The law states that 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.10

There are a number of opinions, legal and otherwise, as to how detailed minutes should be. Here in Tennessee I think we have every point on the spectrum represented in this debate from the most basic of minutes that may be just a few pages to minutes that can run for 20 or 30 pages. Obviously a happy medium exists at some point and what is desirable in one school system may be too much or too little in another. The law requires the specific items listed above to be included in your minutes and beyond that it is pretty much a local decision as to how sparse or detailed your minutes will be.

What About Voting?

We get questions all the time from boards of educations wanting to know if they can vote by secret ballot on the choice of a new director or some other controversial matter. The law states very clearly that 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.11 This language precludes the use of secret voting for any reason.

The code also gives specific direction as to what is meant by a public ballot. 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. Clearly the legislature means for the public to have some way of witnessing how a public body votes and knowing how each member of that body stands on an issue.

What Happens if a Board Violates The Law When It Takes Action?

An entity may not take an action that is in violation of the open meetings law or that action shall be void and of no effect. If the action involves a commitment that is otherwise legal affecting the public debt of the entity concerned, then the Open Meeting Act may not be used to nullify that action.12

How Is This Law Enforced?

As with so many other laws, to enforce the Sunshine Law we must turn to the courts. The law states that 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.13 If a suit is
brought, 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.\textsuperscript{14} Additionally, should the court find that there was a violation boards and board members may be placed under a permanent injunction to not violate this law. Each separate occurrence of such meetings not held in accordance with this part constitutes a separate violation.\textsuperscript{15} Once there is a final disposition of the case, 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.\textsuperscript{16} As of the writing of this text we are aware of only one system placed under these sanctions in Tennessee, the Metro-Davidson County School System.

\textbf{May A Board Meet or Individual Board Members Vote Electronically?}

As of July 1, 2012, a board of education may conduct an electronic meeting so long as a quorum of members are physically present at the site of the meeting. A board member wishing to participate in a meeting electronically must give notice, as required by law, and must be out of the county for work, family emergency or military service. A board member may not participate electronically more than twice in one year unless that member is out of the county due to military service.\textsuperscript{17} If boards, agencies and commissions of state government, including state debt issuers as defined in this section and municipal governing bodies as well as 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, then under certain conditions that board may meet electronically.

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. However, 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. The code defines necessity as 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.

If a board meets electronically, there are several requirements it must meet to stay within
and shall not circumvent the spirit or requirements of that law.

This means that 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.

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.

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.

One particular requirement is in the manner of voting. All votes taken during an
“electronic” meeting must be roll call vote. Members who participate electronically are
present for the purposes of voting but not for the purposes of per diem eligibility.
However, a member may be reimbursed expenses of such electronic communication or
other means of participation. 18

What About Negotiations?

The Professional Educators Collaborative Conferencing Act (PECCA), was signed into
law June 1, 2011, repealing and replacing the Education Professional Negotiations Act
(EPNA). Boards of Education and local teacher unions who were bound by a negotiated
contract, continued under that contract until the contract expired. Many of those
contracts contained re-opener clauses and those continue to be affected by the Open
Meetings law.

The law allows for the board of education and the negotiating committee to meet in
closed session for negotiation planning or strategy sessions. The members of the board
must take special care to discuss only matters related to negotiation strategy and discuss
no other business that will come before the board of education. All actual negotiations
sessions between the school system and the union, however must be open to the public. 19

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. Both sides shall
decide jointly and announce in advance of any such labor negotiations where such
meetings shall be held.\textsuperscript{20}

\textbf{Have There Been Significant Modifications to the Law?}

On July 1, 2007, the General Assembly amended Tenn. Code Ann § 49-6-3401(c)(6) to
permit disciplinary hearings requested by a student before the board of education to be
closed to the public unless the student or student’s parent or guardian request in writing
that the hearing be conducted as an open meeting. If a closed meeting is conducted, the
board may not conduct any business nor discuss any subject or take a vote on any matter
other than the appeal.

In 2008 Public Chapter 1179 made significant and substantive changes to both the Open
Meetings and Open Records laws. For instance, the legislature created the office of open
records counsel as well as an advisory committee which is to provide guidance and
advice for the office of open records counsel.\textsuperscript{21} This committee consists of ten (10)
members one of which is to be a representative from the Tennessee School Boards
Association.\textsuperscript{22} This committee may review and provide written comments on any
proposed legislation regarding the open meetings or open records laws.\textsuperscript{23}

Since July 1, 2012, the law was modified to require charter schools to comply with the
requirements of the Open Meetings Act.\textsuperscript{24}
CHAPTER 2
QUESTIONS & ANSWERS ON OPEN RECORDS
**Has the Law Recently Changed?**

A significant clarification occurred in 2011 when the General Assembly passed Public Chapter 353. This law distinguished the definition of a public record by specifically excluding “the device or equipment, including, but not limited to, a cell phone, computer or other electronic or mechanical device or equipment that may have been used to create or store a public record or state record.” This change prevents a citizen the opportunity to search through equipment on a “fishing” expedition.25

**What is a Public Record?**

The definition of a public or state record is quite extensive and includes 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.26 However, just because a document was created on a school district computer does not mean that document is necessarily a public record. A document is only a public record if it was made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.27 Additionally in 2012, the General Assembly passed legislation to classify teacher evaluation records as confidential…not open to the public.28

**Must Records Be Available 24/7?**

No, the only requirement is that all state, county and municipal records 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.29

**How Quickly Must We Comply With a Record’s Request?**

The statute states that the record must be made available “promptly” but does not specifically define that term. The law does provide that if it is not practicable for the record to be promptly available for inspection the records custodian has seven (7) business days to do one of the following:

- Make the information available;
- Deny the request in writing or by completing a records request response form developed by the office of open records counsel and including in the response the basis for the denial; or
- Furnish the requestor a completed records request response form, also developed by the office of open records counsel, stating the time reasonably necessary to produce the requested records.30
May We Recover All or Part of the Cost Involved in Producing Records?

The new changes in the law provide that the office of records counsel will develop a schedule of reasonable charges. Until that time, a records custodian may require a requestor to pay actual costs incurred in producing the material but may not charge for the first five (5) hours incurred in producing the requested material. Items that may be factored into the “actual costs” include but are not limited to making of extracts, copies, photographs or photostats; and the hourly wage of employee(s) reasonably necessary to produce the requested information. The office of open records counsel develops and maintains a schedule of reasonable charges, which is available on their website.

What Happens If We Don’t Respond Properly?

If the governmental entity fails to respond in the manner described by law that constitutes a denial and the person making the request can then bring an action in circuit or chancery court.

Do We Have to Sort Through Files to Compile Information?

The law doesn’t require the entity to sort through files to compile information but the person requesting such information must be allowed to inspect the non-exempt records.

What If a Record Does Not Exist?

A record that doesn’t exist does not have to be created. However, if a record does exist but private information has to be redacted, that does not constitute creating a new record and the record must be redacted and produced if requested.

May We Require the Request to Be Written?

Yes and no! The law states that a records custodian may not require a written request or assess a charge to view a public record unless required by law, but may require a request for copies of public records to be written or made on a form developed by the office of records counsel. Custodians may also require a citizen to present a photo identification issued by a governmental entity which includes the person’s address. If the person does not possess such identification, the records custodian may require other forms of identification which he finds acceptable.
What If the Request Is Vague or Broad?

Any request shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied.37

Are There Exceptions?

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 is one such area.38

Is It Possible to Inspect a Police Officer’s Personnel Record?

With some exceptions, all law enforcement personnel records shall be open for inspection. However, whenever the personnel records of a law enforcement officer are inspected, the custodian is required 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. Included in that notice must be; that such inspection has taken place, the name, address and telephone number of the person making such inspection, for whom the inspection was made, and the date of such inspection. 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.39

Are Non-Profits Subject to the Open Records Law?

All records of any association or nonprofit corporation described in the “governing body” definition of the Open Meetings law, shall be open for inspection but the law provides a significant exception. The organization shall not be subject to the requirements of the law, so long as it complies with additional provisions of the law.40

How Does a Non-Profit Achieve Exempt Status?

First, the board of directors of the organization must annually audit 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 an independent auditor. The audits must cover the period extending back to the date of the last preceding audit and it must be paid out of the funds of the organization;

Each audit must be conducted in accordance with the standards established by the comptroller of the treasury for local governments and 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.41

**When Must the Audits be Completed and Who Gets Copies?**

The audits must be completed as soon as practicable after the end of the fiscal year of the organization and one copy of each audit shall be furnished to the organization and one filed with the comptroller of the treasury. The copy of the comptroller of the treasury shall be available for public inspection.42

Additionally, copies of each audit shall also be made available to the press and along with any other information required by the comptroller it shall contain: 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; 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; 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 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.43

**Are There Other Exceptions for Non-Profits?**

Yes, in two particular instances these guidelines do not apply. If an association or nonprofit corporation employs no more than two (2) full-time staff members, then the guidelines don’t apply. Also if an association, organization or corporation that was exempt from federal income taxation under the provisions of § 501(c)(3) of the Internal Revenue Code 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 it is exempt as well.44
Are Governmental Records Exempt From This Law?

Obviously for safety’s sake, not all information contained in public records should be made available for public inspection. For instance, one “common sense” exception states that 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.45

Are School Systems Specifically Mentioned?

The general assembly changed the law to specifically add addresses consultants and superintendent searches. It states simply that 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. The law was thorough in its application to because it defines person as a natural person, corporation, firm, company, association or any other business entity. 46

What Are the Exceptions for Personal Privacy?

Every bit of information contained in a public record is not necessarily available for inspection. For example 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 also be treated as confidential and shall not be open for inspection by members of the public.47

Are Ongoing Criminal Investigation Files Open?

The law clearly states provides for some exceptions for certain types of investigative files. For instance 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.

These records may be accessed with a subpoena or an order of a court of record; and TBI investigations are open to elected members of the general assembly that inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. In the executive branch, records are only available to the governor or to those directly involved in the investigation in the specified agencies.48

The records of the departments of agriculture and environment and conservation are closed until such time as the investigation is closed or all criminal court prosecution and appeals are exhausted. However, identifying information about a confidential informant or undercover law enforcement agent remains confidential.49

The TBI 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.50

**Are There Rules for The Military?**

Naturally anything that involves national security or the security of the state of shall be treated as confidential and shall not be open for inspection by members of the public.51

**How Must Student Records Be Handled?**

The records of students in public educational institutions shall be treated as confidential. The law clearly states that unless an employee of a school system is authorized to view this confidential information, she is may not view it. This includes information that relates to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing.

There is an exception for agencies authorized by the educational institution to conduct specific research or otherwise authorized by the board. Either the student or the parent or guardian of a minor student attending any institution of elementary or secondary education, may consent to these records released.

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 otherwise, they too are denied access.

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.

**May Any Student Information Be Released?**

Under the federal Family Educational Rights and Privacy Act (FERPA), K-12 student information designated annually by the school district may be released (directory information), though parents may still opt-out. In addition, unless prohibited by FERPA, post-secondary institutions shall disclose to an alleged victim of any crime of violence or a non-forcible 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.

The final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence, or a non-forcible 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.

Information included in the final results would include the name of the student, the violation committed, and any sanction imposed by the institution on that student. It also may include the name of any other student, such as a victim or witness, only with the written consent of that other student and only applies to disciplinary hearings in which the final results were reached on or after October 7, 1998.  

**What About Student Sex Offender Information?**

Unless otherwise prohibited by FERPA, an educational institution shall disclose information provided to the institution under concerning registered sex offenders who are required to register.

**What May a College Student’s Parents Be Told?**

Again, 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 the student is under the age of twenty-one (21), the institution determines that the student has committed a disciplinary violation with respect to such use or possession; and the final determination that the student committed such a disciplinary violation was reached on or after October 7, 1998.
Are State Officials Exempt?

The office of the attorney general enjoys some protection in books, records and other materials which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved.

Those include books, records or other materials which are confidential or privileged by state law; are relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law; the work product of the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control; 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 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.\textsuperscript{55}

However, just because materials are in the possession of other departments and are subject to the open records laws and must be made available to the public still doesn’t mean that the same materials which are also in the possession of the office of the attorney general must be available for inspection or copying in the office of the attorney general and reporter.

The attorney general’s office must, however, make such materials available to the general assembly if either house or standing committee adopts a resolution directing it. The information may be disclosed to the public only in the discharge of the duties of the office of the attorney general and reporter.\textsuperscript{56}

Do Other State Agencies Have Options to Close Records?

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 has been finalized. This doesn’t prevent party to a condemnation action from making discovery relative to values pursuant to the Rules of Civil Procedure.\textsuperscript{57} TSBA has lobbied the General Assembly to write such an exception into the law for local school systems and other governmental entities, but have yet to be successful.

Other state documents may go through a closed period before becoming re-classified as open records. For instance, proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda, are open but only after the completion of evaluation by the state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including related evaluations and memoranda are also available for public inspection under the same circumstances.\textsuperscript{58}
**What About DOC and DCS Records?**

Both the department of correction (DOC) and the department of children’s services (DCS) enjoy special protection under the law. All investigative records and reports of the internal affairs division of the department of correction or of the department of children's services are confidential and not open to inspection by members of the public.

However, the records are open to an employee of the department of correction or of the department of children's services 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 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 the records prior to the hearing.  

**What Other State Information is Restricted?**

- Official health certificates collected and maintained by the state veterinarian.
- The capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University.
- 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.
- Personal information contained in motor vehicle records.
- 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, emergency medical technicians, emergency medical technician-paramedics, and firefighters, both volunteer and professional.
- 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.
- There are additional situations regarding orders of protection, domestic violence shelters, personal private information, utility records, government contingency plans, and other records which must be kept closed and information may not be released and Tennessee code should be carefully consulted as to specifics.

If any record has been designated as confidential it also affects their maintenance, storage and disposition. If destroyed, the destruction must be in a manner in which the records cannot be read and be in accordance with approved authorization from the public records commission.
Records older than seventy (70) years may be open unless the disclosure is specifically prohibited by federal law or it is a record of services for a person for mental illness or mental retardation.\textsuperscript{68} Records of any employee’s identity, diagnosis, treatment or referral for treatment maintained by state or local government employee assistance programs are confidential.\textsuperscript{69} Unpublished telephone numbers in the possession of emergency communications districts are also confidential.\textsuperscript{70}

State, county, municipal or other public employees enjoy some protection under the law. The following bits of personal information must be treated as confidential:\textsuperscript{71}

- Telephone numbers and addresses (employee and immediate family)
- Bank account information
- Social security number
- Driver license information except where driving or operating a vehicle is part of the employee’s job or incidental to the employee’s job
- The same information of immediate family members or household members
- Emergency contact information

However the government agency may use the presence of this information in documents as an excuse to deny access. The information, whenever possible, must be redacted.\textsuperscript{72}

Personnel information of a police officer who is working undercover may be segregated and treated a confidential but that may be challenged in chancery court.\textsuperscript{73} Additionally records which identify a person who has been or may be involved directly in the process of executing a sentence of death are treated a confidential,\textsuperscript{74} as well as security information that would allow a person to obtain unauthorized access to confidential information or government property.\textsuperscript{75}

\textbf{How Do Citizen’s Enforce Rights Guaranteed by the Open Records Law?}

If a governmental entity denies access, a citizen is entitled to petition the circuit or chancery court and to obtain judicial review of the actions taken to deny access. 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 constitutes a final judgment on the merits.\textsuperscript{76}

The official who denies access bears the burden of proof in such an action and the justification for nondisclosure must be shown by a preponderance of the evidence.\textsuperscript{77} The court is required to render written findings of fact and conclusions of law and may exercise full injunctive remedies and relief, and must broadly construe the law so as to give the fullest possible access to public records.\textsuperscript{78}
Is a Public Official Liable if She Releases Information That Causes Damage?

That public official is not to be held criminally or civilly liable. However, if a public official knows that a record is public and willfully refuses to disclose it, the court may assess all reasonable costs involved in obtaining the record including attorneys’ fees against the governmental entity. The court may consider guidance from the office of open records counsel.

What About Commercial Requests?

The law discusses public records which have commercial value particularly from the standpoint of specific charges to the individual or corporation requesting those records.

What About Employee E-Mail?

Governmental entities that operate or maintain an e-mail communications system have been required, since July 1, 2000, to adopt a policy including a statement that employee correspondence may be subject to public inspection.

Are Minutes of a Governmental Entity Public Records BEFORE They Are Approved?

Generally, working papers and other temporary documents of a governmental entity are considered public records, particularly when these documents lead to a final or permanent record. The key difference is that temporary records may be scheduled for disposal as authorized.

When May Public Records Be Destroyed?

Both the municipal technical advisory service (MTAS) and the county technical advisory service (CTAS) are authorized to compile and print records retention manuals to be used as guides by officials in establishing retention schedules for all records created by governments in the state. The law does allow for disposal of permanent records if they have been preserved in another manner such as microfilm or preserved on computer media. Additional information may be found at www.ctas.tennessee.edu or www.mtas.tennessee.edu.
CHAPTER 3
JUDICIAL INTERPRETATION OF THE OPEN MEETINGS LAW
What About Attorney-Client Privilege?

Since the passage of the Open Meetings Law there have been a number of court challenges that have refined the meaning and interpretation of the law. Probably the most significant involved a dispute between a local teacher association and board of education.

This action arose from unsuccessful collective bargaining negotiations between the Smith County Education Association and the Smith County Board of Education. After months of negotiations, the SCEA sued the Board, its individual members, and Joe K. Anderson, the Superintendent of Smith County Schools, alleging the Defendants had committed acts made unlawful by the Education Professional Negotiations Act, and had violated the Tennessee Open Meetings Act. Following a jury trial, the Chancellor took the case from the jury and dismissed the complaint, deciding that both sides were negotiating in good faith, that the Defendants had not engaged in any unlawful acts, and that the Defendants had not violated the Open Meetings Act. The Court of Appeals held the Chancellor acted properly in taking the case from the jury; however, the Court found the Board had not negotiated in good faith and had violated the Open Meetings Act.

The initial cause of action was filed because of an allegation of bad faith bargaining in regard to the payment of insurance premiums. After the filing of the complaint, the board met privately, without notice, with its attorney and chief negotiator. The SCEA then filed a supplemental complaint alleging, inter alia, violations of the Open Meetings Act. At trial the Chancellor found that the Board had not violated the act. The Court of Appeals, however, reversed that holding finding that there was no express exception to the Act permitting a public body to meet privately with its attorney. Tennessee’s Supreme Court noted that this is a minority position among the courts in other jurisdictions that have considered the issue…that in fact, the majority of courts have fashioned an exception to their states’ open meeting laws to permit private attorney-client consultation on pending legal matters even where the statute itself makes no such express exception.

In analyzing Tennessee law, the Court noted that no attorney may disclose any communication made to him by a client. However, the Legislature’s intent in creating the law is clearly in conflict but the act was mindful of constitutional exceptions that may exist and provided for those in the act.

Why Does Attorney-Client Privilege Matter?

It matters because the Court held that the licensing and regulation of attorneys practicing law in courts of Tennessee is squarely within the inherent authority of the judicial branch of government. Furthermore, the Supreme Court has original and exclusive jurisdiction to promulgate its own Rules. One of those rules states that a layer should preserve the confidences and secrets of a client. That means that both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or
sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

**Attorney or Client: Who Is Responsible for Compliance?**

The Court placed that responsibility squarely on the shoulders of the attorney and stated that attorneys are aware of the potential misuse of this exception in order to circumvent the scope of the Open Meetings Act. A public body could meet with its attorney for the ostensible purpose of discussing pending litigation and instead conduct public business in violation of the Act. Although the Act imposes only limited sanctions on a public body for such violations, any attorney who participates, or allows himself to be used in a manner that would facilitate such a violation, would be in direct violation of the Code of Professional Responsibility and subject to appropriate disciplinary measures.

Ultimately the Court held that discussions between a public body and its attorney concerning pending litigation are not subject to the Open Meetings Act. They emphasized that this is a narrow exception and applies only to those situations in which the public body is a named party in the lawsuit.

**Has the Attorney-Client Privilege Broadened?**

Yes, it has. In a 1991 case from Warren County, the board met with its attorney in regard to a teacher dismissal hearing prior to the dismissal hearing. The teacher alleged that the dismissal should be voided because the board violated the Open Meetings Act. The Warren County Board asserted in response that there was no violation of the Open Meetings Act. They contend that the attorney-client exception recognized in Smith County applies in this situation because, although there had been no charges preferred against the teacher as of August 16, 1983, there was a pending controversy that was likely to result in litigation between the school district and the teacher.

The Court agreed with the defendants' assertion that the board had a right to meet with its attorney to discuss the pending controversy pertaining to the teacher. There was a catch, however, and that was to the extent that the board made decisions or deliberated toward a decision, this was a "meeting" to which the Open Meetings Act applied. Given testimony that the Conditions were discussed in the meeting and the fact that these Conditions are not mentioned anywhere else in the minutes, the Court assumed that the board acted to approve the Conditions in this private meeting. Because this action was taken in violation
of the Open Meetings Act, the board's attempted settlement of this controversy by approval of the Conditions for Continued Employment is void and of no effect.

**Bottom Line: What Does the Attorney-Client Privilege Mean?**

A public body can meet with its attorney to discuss pending litigation in which the public body is a named party or to discuss issues which might result in litigation may not deliberate nor make decisions during that closed session. This exception to the Open Meetings Law is very narrow but offers public bodies the opportunity to meet with and receive privileged advice and recommendations from legal counsel to the same extent enjoyed by any other client and attorney in the state of Tennessee. However unlike the citizen who may privately contemplate and discuss that advice, the public body must then adjourn its private session with its attorney and reconvene in public to deliberate and ultimately make decisions.
CHAPTER 4
OTHER SIGNIFICANT COURT HOLDINGS
**Does the Law Apply to the General Assembly?**

In the year 2000, law school student and former WTVF (Nashville) news producer Mark Mayhew challenged the Legislature’s practice of holding budget meetings in private. It was Mayhew’s contention that these meetings clearly violated the Open Meetings Act and the Legislature was bound by law to hold meetings that were open to public scrutiny. In rejecting Mayhew’s claim the Court of Appeals held that there is no indication that the legislature intended to bind itself to the provisions of the Sunshine Law, or that they subsequently acted as if they were bound by it; even if the legislature intended to bind itself when it passed the Sunshine Law, the act would not bind a subsequently enacted general assembly pursuant to the provision in Tenn. Const. Art. II, § 12.

**How Do the Courts View Private Non-Profit Corporations?**

The Courts have generally held that Court of Appeals of Tennessee, at Knoxville, believes that the Tennessee Supreme Court in Memphis Publishing Co., intended the functional equivalency analysis to be applied to any nonprofit corporation or association seeking to keep its records closed under the Tennessee Public Records Act, T.C.A. § 10-7-503.

An appellate court must make a functional equivalency determination where, even though a nonprofit corporation has complied with the audit exception in the Tennessee Public Records Act, T.C.A. § 10-7-503, its records are accessible to the public if it is the functional equivalent of a governmental agency. Its records will not be open to the public merely because it does business with or performs services on behalf of a municipal government.

**Have the Courts Broadened the Definition of Governing Body?**

A governing body is not limited solely to the group of officials elected by their respective communities. Generally, a committee or commission created by such an elected body is also considered a governing body for the purposes of the Open Meetings Act. The Tennessee Court of Appeals has addressed this issue when it held that the board of directors of a preferred provider organization created is a public body because it is a subsidiary of the district, is comparable to a division or department of the state or county and is subject to the requirements of the Tennessee Open Meetings Act.

However, if a committee has been created by an administrative officer and not the elected body, that committee is not subject to the act. The Court held neither the faculty of the College of Law of the University of Tennessee nor committees composed of faculty members and students created to assist the dean in decision-making satisfy the definition of “governing body” since they make recommendations to the dean, who is an
administrative officer as opposed to a “public body,” and hence their meetings are not subject to the provisions of this chapter.  

**What if Less Than the Full Membership of a Public Body Meets?**

If more than one member of an elected body are together outside a meeting, they are generally viewed with suspicion by members of the community and are often accused of having violating the law by participating in secret unannounced meetings. Elected officials are not required by the Act to shun all social contact with each other but should be mindful of public perception when meeting socially.

The Courts tend to focus on the purpose of the meeting and what transpired. In one such case the Court held that although members of the board of education met at the school superintendent's home prior to their regular meeting, the evidence was clear that while the superintendent may have spoken with four members of the seven-member board about public business, the superintendent did not speak individually or in a group to all members about the same topics, and such a gathering constituted the kind of informal assemblage contemplated by subsection (c).

However, not long after the result was quite different when the Court held that a gathering of four of seven school board members, and the school district's superintendent at resort park, constituted a “meeting” under this section, where the five men present at the gathering discussed issues concerning the school district, including the issue of clustering, and deliberated toward making a decision concerning clustering, regardless of whether any board member made a decision at the gathering.

**What Is Adequate Public Notice?**

One of the more difficult issues is determining what constitutes adequate public notice under the Act and holdings in some court decisions only adds to add to the confusion. For instance, this act is not unconstitutionally vague and ambiguous due to the phrase “adequate public notice” in this section, which is construed as adequate public notice under the circumstances. The circumstances of each case must be taken into account to determine the adequacy of notice.

However, some decisions seem to conflict. Although announcement of school board meeting was given at previously held regular meeting of board, such notice was inadequate where it failed to indicate the meeting was to be held for the purpose of discussing an issue of pervasive importance to public.

Conversely, notice to the media that announced the time, date, and location of the meeting eight days prior to the meeting provided the public with a reasonable opportunity to be present at the meeting and was adequate even if the notice did not state the agenda of the meeting.
If a solid policy regarding notice is in place and that policy consistently followed, then public bodies should not run afoul of notice laws.

**What Must Be Recorded in Minutes?**

Governmental bodies are required to keep minutes and the Act allows a broad discretion in what is included in those minutes above and beyond several mandatory requirements. Failure to do so can result in sanctions. Strict compliance with T.C.A. § 8-44-104 was necessary with respect to the matters required to be recorded and included in the minutes of the board. Grace Fellowship Church of Loudon County v. Lenoir City Beer Bd., — S.W.3d —, 2002 Tenn. App. LEXIS 49 (Tenn. Ct. App. Jan. 23, 2002).

Where local board of parks and recreation violated the Open Meetings Act by failing to fully record the minutes of its meeting, remedial action by subsequently amending its minutes did not foreclose the need to impose sanctions against the board under T.C.A. § 8-44-106. Zseltvay v. Metropolitan Gov't, 986 S.W.2d 581, 1998 Tenn. App. LEXIS 522 (Tenn. Ct. App. 1998).

**What Sanctions May Be Imposed for Violations of the Law?**

If a public body violates the act, the statutory remedy is to have that body’s action nullified. In a landowner's suit against city over annexation ordinance and an alleged violation of the Tennessee Open Meetings Act, T.C.A. § 8-44-101 et seq., repeal of the annexation ordinance would have been the statutory remedy had the Act been violated; as the ordinance had been repealed, this issue was moot. Cathey v. City of Dickson, — S.W.3d —, 2002 Tenn. App. LEXIS 342 (Tenn. Ct. App. May 10, 2002).

The Courts have held that actions taken in private meetings are void. Where school board acted to approve settlement conditions in a private meeting, action was taken in violation of the Open Meetings Act, and the board's attempted settlement of a controversy involving one of its teachers by approval of conditions for continued employment was void and of no effect. Van Hooser v. Warren County Bd. of Educ., 807 S.W.2d 230, 1991 Tenn. LEXIS 24 (Tenn. 1991).

Boards generally cannot cure an illegal action taken in a private meeting by ratifying the action in a subsequent public meeting particularly if the ratification is nothing more than a rubber stamp of an illegal action. Action of the board of trustees in ratifying the actions of the board of directors of a preferred provider organization in limiting the physician networks was merely a perfunctory rubber stamp of previous actions taken in violation of the Open Meetings Act and failed to cure the previous violations of the Act because there was no discussion of the matter and the board of trustees failed to give new and substantial reconsideration to the issue. Souder v. Health Partners, Inc., 997 S.W.2d 140, 1998 Tenn. App. LEXIS 714 (Tenn. Ct. App. 1998).
However, under certain circumstances the Court has held that subsequent ratification, when done consistent with the act, was acceptable. The legislative intent of the Public Meetings Act was not 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. 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 432, 1990 Tenn. App. LEXIS 327 (Tenn. Ct. App. 1990).

**How Are the Laws Enforced?**

Enforcement of the Act is accomplished by bringing a suit in either Circuit or Chancery court and based on the statement from the Court of Appeals which follows…”closely following the letter of the law is of the utmost importance to the courts. Strict compliance with the Open Meetings Act is a necessity if the act is to be effective.” Zseltvay v. Metropolitan Gov't, 986 S.W.2d 581, 1998 Tenn. App. LEXIS 522 (Tenn. Ct. App. 1998).

**How Do the Courts Interpret Electronic Participation?**

The Courts have not ruled on electronic participation but in 1999, the Attorney General was asked whether a member of the Williamson County School Board is permitted to vote by speaker phone at a scheduled meeting when all requirements of the Open Meetings Act have been met.

In the opinion, the attorney general opined there is no provision within these statutes that authorizes a county school board member to participate in board meetings by telephone or other electronic means. Moreover, while the state legislature sometimes grants powers to specific counties through the passage of private acts, we have not found a private act that would authorize members of the Williamson County Board of Education to participate in board meetings by telephone or other electronic means. 1999 Tenn. AG LEXIS 156 (Tenn. AG 1999). In other words, electronic participation in meetings is only allowed when the law specifically provides for it.
REFERENCE MATERIALS
§ 8-4-601. Creation of office; role
(a) There is created the office of open records counsel to answer questions and provide information to public officials and the public regarding public records. The role of the office shall also include collecting data on open meetings law inquiries and problems and providing educational outreach on the open records laws, compiled in title 10, chapter 7, and the open meetings laws, compiled in chapter 44 of this title.
(b) The office of open records counsel shall answer questions and issue informal advisory opinions as expeditiously as possible to any person, including local government officials, members of the public and the media. State officials shall continue to consult with the office of the attorney general and reporter for such opinions. Any opinion issued by the office of open records counsel shall be posted on the office’s web site.
(c) The office of open records counsel is authorized to informally mediate and assist with the resolution of issues concerning the open records laws, compiled in title 10, chapter 7.

§ 8-4-602. Advisory committee; membership
(a) There is created an advisory committee on open government to provide guidance and advice for the office of open records counsel.
(b)(1) The advisory committee shall consist of fourteen (14) members to be appointed for a term of four (4) years; provided, that the five (5) members listed in subdivisions (b)(1)(A)-(E) shall be appointed for an initial term of four (4) years and the five (5) members listed in subdivisions (b)(1)(F)-(J) shall be appointed for an initial term of two (2) years. The members listed in subdivisions (b)(1)(K), (L), (M) and (N) shall be appointed for an initial term of four (4) years. The advisory committee shall be made up of one (1) member from each of the following groups who will be appointed by the comptroller of the treasury from a list of three (3) nominees submitted from each group:
   (A) One (1) member from the Tennessee Coalition for Open Government;
   (B) One (1) member from the Tennessee Press Association;
   (C) One (1) member from the Tennessee Municipal League;
   (D) One (1) member from either the Tennessee County Services Association or the County Officials Association of Tennessee;
   (E) One (1) member from the Tennessee School Boards Association;
   (F) One (1) member from Common Cause;
   (G) One (1) member from the League of Women Voters;
   (H) One (1) member from public hospitals submitted by the Tennessee Hospital Association;
   (I) One (1) member from the Tennessee Association of Broadcasters;
   (J) One (1) member representing the board of regents or the University of Tennessee;
   (K) One (1) member from the Tennessee Association of Chiefs of Police;
   (L) One (1) member from the Tennessee Sheriffs’ Association;
   (M) One (1) member from the Society of Professional Journalists; and
   (N) One (1) member from the American Association of Retired People.
(2) The advisory committee shall also consist of the chair of the state and local
government committee of the senate and the state government committee of the house of representatives and the attorney general and reporter or the attorney general and reporter’s designee.

c) The nonlegislative members shall not receive compensation for serving on the committee but shall be reimbursed for attendance at meetings in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

§ 8-4-603. Advisory committee; powers; report
(a) The advisory committee, with the guidance and assistance of the office of open records counsel, may review and provide written comments on any proposed legislation regarding the open meetings laws, compiled in chapter 44 of this title, and the open records laws, compiled in title 10, chapter 7.
(b) The office of open records counsel and the advisory committee shall provide a report to the general assembly and to the governor by March 1 of each year.

§ 8-4-604. Duties of office
(a) The office of open records counsel shall establish:
(1)(A) A schedule of reasonable charges that a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to title 10, chapter 7, part 5. In establishing the schedule, the office of open records counsel shall consider:
   (i) Such factors as the size, by population, of the county or municipality, the complexity of the request, the number of man hours involved in retrieving the documents, redacting confidential information from the documents and any other costs involved in preparing the documents for duplication, the costs of duplication, the costs of mailing the documents if the requestor is not returning to retrieve the requested documents, and any other costs that the office of open records counsel deems appropriate to include in the charge; and
   (a) That state policies and guidelines shall reflect the policy that providing information to the public is an essential function of a representative government and an integral part of the routine duties and responsibilities of public officers and employees;
   (b) That excessive fees and other rules shall not be used to hinder access to nonexempt public information;
   (c) That, in accordance with § 10-7-503(a)(7)(A), no charge shall be assessed to view a public record unless otherwise required by law;
   (d) That the requestor be given the option of receiving information in any format in which it is maintained by the agency, including electronic format consistent with title 10, chapter 7, part 1; and
   (e) That when large-volume requests are involved, information shall be provided in the most efficient and cost-effective manner, including but not limited to permitting the requestor to provide copying equipment or an electronic scanner;
   (B) The schedule established pursuant to subdivision (a)(1)(A) shall be revised at least annually;
   (2) A separate policy related to reasonable charges that a records custodian may charge
for frequent and multiple requests for public records;
(3) A safe harbor policy for a records custodian who adheres to the policies and
guidelines established by the office of open records counsel; and
(4) A model best practices and public records policy for use by a records custodian in compliance with
§ 10-7-503.
(b) The office of open records counsel shall make the policies and guidelines available on the Internet.
(c) The policies and guidelines shall not be deemed to be rules under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.
(d) Before establishing any version of a policy or guideline authorized or required by this section, the office of open records counsel shall provide a proposed draft to the advisory committee on open government for comment. The advisory committee on open government may meet and provide written comments on the draft to the office of open records counsel.

Website Link Office of Open Records
https://www.comptroller.tn.gov/openrecords/

Website Link Office of Open Records…Forms:
https://www.comptroller.tn.gov/openrecords/forms.asp
§ 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 the Constitution of Tennessee, Article I, § 19.

§ 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. 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 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 title 7, chapter 54 or 58. 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;
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) 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.

§ 8-44-106. 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.

§ 8-44-111. Development of program for education about open meetings laws

(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 chapter 4, part 6 of this title shall
establish educational programs and materials regarding open meetings laws in this state,
to be made available to the public and to public officials.

§ 8-44-201. Public nature; planning or strategy sessions excluded
(a) Notwithstanding any other 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.
OPEN RECORDS LAWS

§ 10-7-503. Inspection by citizens; confidentiality; availability; law enforcement personnel records
(a)(1) As used in this part and title 8, chapter 4, part 6:
(A) “Public record or records” or “state record or records”:
   (i) 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 entity; and
   (ii) Does not include the device or equipment, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment, that may have been used to create or store a public record or state record;
(B) “Public records request coordinator” means any individual within a governmental entity whose role it is to ensure that public records requests are routed to the appropriate records custodian and that requests are fulfilled in accordance with § 10-7-503(a)(2)(B); and
(C) “Records custodian” means any office, official, or employee of any governmental entity lawfully responsible for the direct custody and care of a public record.
(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.
(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 to sort through files to compile information or to create or recreate a record that does not exist. Any request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying.
(5) Information made confidential by state law shall be redacted whenever possible, and the redacted record shall be made available for inspection and copying. The redaction of
confidential information shall not constitute the creation of a new record. Costs associated with redacting records, including the cost of copies and staff time to provide redacted copies, shall be borne as provided by law.

(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 (A modification of his portion of the law was signed by the governor on April 27, 2017, which requires governmental entities to accept records requests electronically. To see the full text of the bill, follow the link in the endnotes).


(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.


(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.

(2) 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.

(3) This subsection (d) shall not apply to any association, organization or corporation that was exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code, codified in 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.

(g) No later than July 1, 2017, every governmental entity subject to this section shall establish a written public records policy properly adopted by the appropriate governing authority. The public records policy shall not impose requirements on those requesting records that are more burdensome than state law and shall include:

(1) The process for making requests to inspect public records or receive copies of public records and a copy of any required request form;

(2) The process for responding to requests, including redaction practices;

(3) A statement of any fees charged for copies of public records and the procedures for billing and payment; and

(4) The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.

§ 10-7-504. Confidentiality of certain records (Selected sections)...

(a) (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), codified in 20 U.S.C. §1232g, 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 former § 40-39-106, concerning registered sex offenders who are required to register under former § 40-39-103.

(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, a controlled substance or a controlled substance analogue, regardless of whether that information is contained in the student’s education records, if:
   (i) The student is under twenty-one (21) years of age;
   (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…
...(a)(23) All records containing the results of individual teacher evaluations administered pursuant to the policies, guidelines, and criteria adopted by the state board of education under §49-1-302 shall be treated as confidential and shall not be open to the public. Nothing in this subdivision (a)(23) shall be construed to prevent the LEA, public charter school, state board of education, or department of education from accessing and utilizing such records as required to fulfill their lawful functions.

(a)(25) A voluntary association that establishes and enforces bylaws or rules for interscholastic sports competition for secondary schools in this state shall have access to records or information from public, charter, non-public, other schools, school officials and parents or guardians of school children as is required to fulfill its duties and functions. Records or information relating to academic performance, financial status of a student or the student’s parent or guardian, medical or psychological treatment or testing, and personal family information in the possession of such association shall be confidential…

(c) Notwithstanding any 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 intellectual and developmental disabilities. This section does 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 of age 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…

...(f)(1) The following records or information of any state, county, municipal or other public employee or former employee, or applicant to such position, 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;

(F) The information listed in subdivisions (f)(1)(A)–(E) of immediate family members, whether or not the immediate family member resides with the employee, or household members;

(G) Emergency contact information, except for that information open to public inspection in accordance with subdivision (f)(1)(D)(ii); and

(H) Personal, nongovernment issued, email address.

(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.

(6) Notwithstanding any provision to the contrary, the bank account information for any state, county, municipal, or other public employee, former employee or applicant to such position, or any law enforcement officer commissioned pursuant to § 49-7-118, that is received, compiled or maintained by the department of treasury, shall be confidential and not open for inspection by members of the public, regardless of whether the employee is employed by the department of treasury. The bank account information that shall be kept confidential shall include, but not be limited to bank account numbers, transit routing numbers and the name of the financial institutions.

(7) Notwithstanding any provision to the contrary, the following information that is received, compiled or maintained by the department of treasury relating to the department’s investment division employees who are so designated in writing by the state treasurer shall be kept confidential and not open for inspection by members of the public: holdings reports, confirmations, transaction reports and account statements relative to securities, investments or other assets disclosed by the employee to the employer, or authorized by the employee to be released to the employer directly or otherwise…
§ 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 nondisclosing governmental entity.
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 (b) 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 (c) 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 (c) 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 (c), “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.

§ 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.

§ 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 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,
or any appropriate electronic medium, 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.
§ 1232g. Family educational and privacy rights
(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions
(I)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.
(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.
(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:
(i) financial records of the parents of the student or any information contained therein;
(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;
(iii) if the student has signed a waiver of the student’s right of access under this subsection in accordance with subparagraph (D), confidential recommendations--
(I) respecting admission to any educational agency or institution,
(II) respecting an application for employment, and
(III) respecting the receipt of an honor or honorary recognition.
(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.
(2) No funds shall be made available under any applicable program to any educational
agency or institution unless the parents of students who are or have been in attendance at
a school of such agency or at such institution are provided an opportunity for a hearing by
such agency or institution, in accordance with regulations of the Secretary, to challenge
the content of such student’s education records, in order to insure that the records are not
inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to
provide an opportunity for the correction or deletion of any such inaccurate, misleading
or otherwise inappropriate data contained therein and to insert into such records a written
explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term “educational agency or institution” means
any public or private agency or institution which is the recipient of funds under any
applicable program.

(4)(A) For the purposes of this section, the term “education records” means, except as
may be provided otherwise in subparagraph (B), those records, files, documents, and
other materials which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for
such agency or institution.

(B) The term “education records” does not include--

(i) records of instructional, supervisory, and administrative personnel and educational
personnel ancillary thereto which are in the sole possession of the maker thereof and
which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or
institution that were created by that law enforcement unit for the purpose of law
enforcement;

(iii) in the case of persons who are employed by an educational agency or institution
but who are not in attendance at such agency or institution, records made and
maintained in the normal course of business which relate exclusively to such person in
that person’s capacity as an employee and are not available for use for any other
purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an
institution of postsecondary education, which are made or maintained by a physician,
psychiatrist, psychologist, or other recognized professional or paraprofessional acting
in his professional or paraprofessional capacity, or assisting in that capacity, and which
are made, maintained, or used only in connection with the provision of treatment to the
student, and are not available to anyone other than persons providing such treatment,
extcept that such records can be personally reviewed by a physician or other appropriate
professional of the student’s choice.

(5)(A) For the purposes of this section the term “directory information” relating to a
student includes the following: the student’s name, address, telephone listing, date and
place of birth, major field of study, participation in officially recognized activities and
sports, weight and height of members of athletic teams, dates of attendance, degrees and
awards received, and the most recent previous educational agency or institution attended
by the student.

(B) Any educational agency or institution making public directory information shall give
public notice of the categories of information which it has designated as such information
with respect to each student attending the institution or agency and shall allow a
reasonable period of time after such notice has been given for a parent to inform the
institution or agency that any or all of the information designated should not be released
without the parent’s prior consent.
(6) For the purposes of this section, the term “student” includes any person with respect
to whom an educational agency or institution maintains education records or personally
identifiable information, but does not include a person who has not been in attendance at
such agency or institution.

(b) Release of education records; parental consent requirement; exceptions;
compliance with judicial orders and subpoenas; audit and evaluation of federally-
supported education programs; recordkeeping
(1) No funds shall be made available under any applicable program to any educational
agency or institution which has a policy or practice of permitting the release of education
records (or personally identifiable information contained therein other than directory
information, as defined in paragraph (5) of subsection (a)) of students without the written
consent of their parents to any individual, agency, or organization, other than to the
following--

(A) other school officials, including teachers within the educational institution or local
educational agency, who have been determined by such agency or institution to have
legitimate educational interests, including the educational interests of the child for
whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to
enroll, upon condition that the student’s parents be notified of the transfer, receive a
copy of the record if desired, and have an opportunity for a hearing to challenge the
content of the record;

(C) (i) authorized representatives of (I) the Comptroller General of the United States,
(II) the Secretary, or (III) State educational authorities, under the conditions set forth in
paragraph (3), or (ii) authorized representatives of the Attorney General for law
enforcement purposes under the same conditions as apply to the Secretary under
paragraph (3);

(D) in connection with a student’s application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically
allowed to be reported or disclosed pursuant to State statute adopted--

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the
juvenile justice system and such system’s ability to effectively serve the student
whose records are released, or

(ii) after November 19, 1974, if--

(I) the allowed reporting or disclosure concerns the juvenile justice system and
such system’s ability to effectively serve, prior to adjudication, the student whose
records are released; and

(II) the officials and authorities to whom such information is disclosed certify in
writing to the educational agency or institution that the information will not be
disclosed to any other party except as provided under State law without the prior
written consent of the parent of the student.

(F) organizations conducting studies for, or on behalf of, educational agencies or
institutions for the purpose of developing, validating, or administering predictive tests,
administering student aid programs, and improving instruction, if such studies are
conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;
(H) parents of a dependent student of such parents, as defined in section 152 of Title 26;
(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons;
(J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and
(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena;
(K) the Secretary of Agriculture, or authorized representative from the Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of State and local educational and other agencies and institutions receiving funding or providing benefits of 1 or more programs authorized under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that--
(i) any data collected under this subparagraph shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary; and
(ii) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements; and
(L) an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in section 5304 of Title 25), who has the right to access a student’s case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student’s education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student’s education records.
Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless--

(A) there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency, except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student’s education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access
to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6)(A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of Title 18), 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.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing 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 section 16 of Title 18), 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.

(C) For the purpose of this paragraph, 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; and
(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(7)(A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071 of Title 42 concerning registered sex offenders who are required to register under such section.

(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

c) Surveys or data-gathering activities; regulations
Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-
gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students’ rather than parents’ permission or consent
For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section
No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance
The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions
The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Disciplinary records; disclosure
Nothing in this section shall prohibit an educational agency or institution from--

(1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(i) Drug and alcohol violation disclosures

(1) In general
Nothing in this Act or the Higher Education Act of 1965 shall be construed to prohibit an institution of higher education from disclosing, 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--
(A) the student is under the age of 21; and
(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(2) **State law regarding disclosure**
Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a).

(j) **Investigation and prosecution of terrorism**

(1) **In general**
Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to--

(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of Title 18, or an act of domestic or international terrorism as defined in section 2331 of that title; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) **Application and approval**

(A) **In general**
An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) **Protection of educational agency or institution**
An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

(4) **Record-keeping**
Subsection (b)(4) does not apply to education records subject to a court order under this subsection.
Endnotes

8 Tenn. Code Ann. § 8-44-107
9 Tenn. Code Ann. § 8-44-103
10 Tenn. Code Ann. § 8-44-104(a).
11 Tenn. Code Ann. § 8-44-104(b).
14 Tenn. Code Ann. § 8-44-106(b).
15 Tenn. Code Ann. § 8-44-106(c).
19 Tenn. Code Ann. § 8-44-201(b).
20 Tenn. Code Ann. § 8-44-201(a).
23 Tenn. Code Ann. § 8-4-603.
31 Tenn. Code Ann. § 8-4-604(a).
33 http://www.comptroller.tn.gov/repository/OpenRecords/FormsSchedulePoliciesGuidelines/20170119Sche
   duleofReasonableCharges.pdf
35 Tenn. Code Ann. § 10-7-503(a)(5).
38 Tenn. Code Ann. § 10-7-503(b).
39 Tenn. Code Ann. § 10-7-503(c)(1).
40 Tenn. Code Ann. § 10-7-503(d)(1).
45 Tenn. Code Ann. § 10-7-503(e).
46 Tenn. Code Ann. § 10-7-503(f).
47 Tenn. Code Ann. § 10-7-504(a)(1).
51 Tenn. Code Ann. § 10-7-504(a)(3)