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UNIVERSITY COUNSEL

EAST TENNESSEE STATE UNIVERSITY

Tennessee Public Records Act

T.C.A. § 10-7-501 et seq.

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Tennessee Public Records Act

T.C.A. §10-7-503(a)(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 Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by **state law**.

- ◆ In T.C.A. §10-7-505(d), the General Assembly directs the courts to interpret the provisions of the TPRA “broadly...so as to give the fullest possible public access to public records.”
- ◆ Tennessee Courts have found that even in the face of serious countervailing considerations, unless there is an express exemption within the law, a record and/or information must be released.

Public Record Defined in the TPRA

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

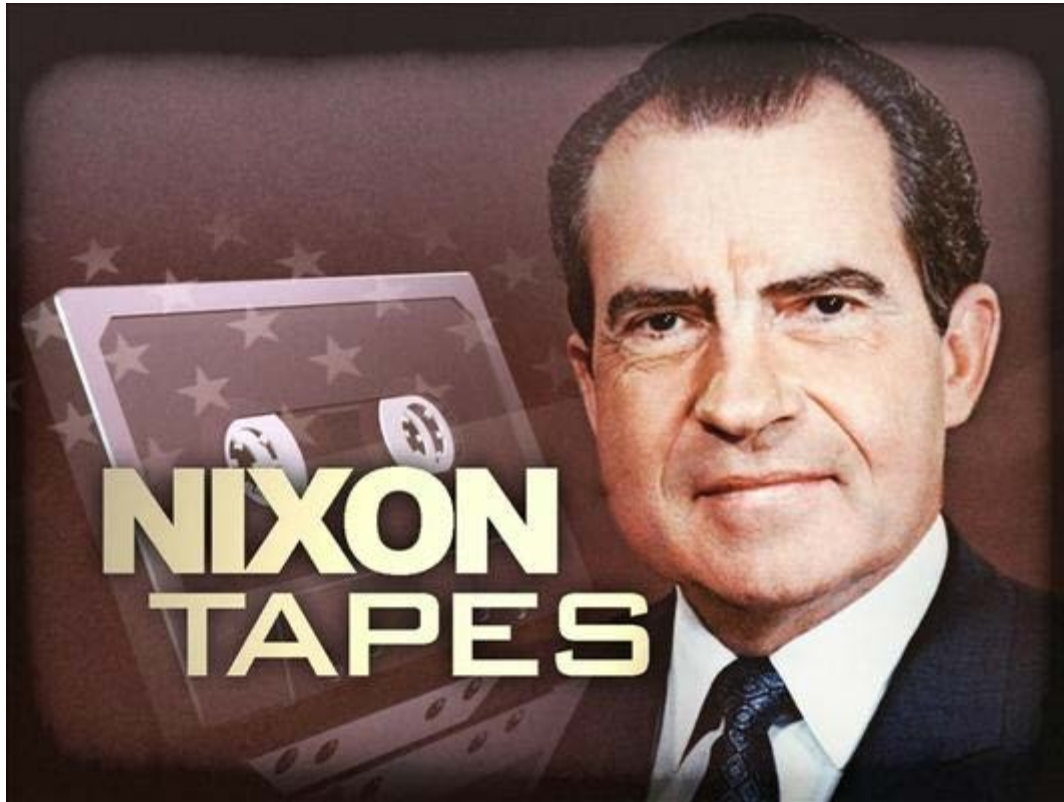
What Records are Accessible under the TPRA?

1. Personnel records/applications, disciplinary reports, and references
2. Contracts*
3. Emails, text messages, and voicemails
4. Financial or performance audits
5. Personnel investigations
6. Meeting agendas/minutes*
7. Canceled checks
8. Records related to RFP/RFQs and other bids
9. Budgets*
10. Customer list

* These records are public whether in a draft form or a finalized version.



Email



Recordings

“Unless otherwise provided by state law”

- ◆ T.C.A. §10-7-504 provides a list of records and/or information that are not open for public inspection; however this list is not exhaustive.

- ◆ App. 350 exceptions to the TPRA are found in the following :
 - Tennessee Code Annotated (Statute)
 - Tennessee Rules of Civil and Criminal Procedure
 - Administrative Law Rules
 - Supreme Court Rules
 - Common Law
 - Federal Law

Exception: FERPA

Open records requests for information protected by FERPA will be denied.

Student Personally Identifiable Information – Student name, parent names, address, social security number, E-number, etc.

- “Targeted Requests” – (includes even de-identified information)
Information requested by a person who the educational agency or institution reasonably believes has direct, personal knowledge of the identity of the student to whom the education record directly relates.
- Does not include “directory information” – information contained in an education record that would not generally be considered harmful or an invasion of privacy if disclosed.

Who Can Access Government Records under the TPRA?

- ◆ T.C.A. §10-7-503(a)(2)(A) grants access to public records to “any citizen of Tennessee.”
- ◆ A records custodian has the right to deny a request inspect and/or copy public records from a non-citizen. The denial is not required, it is discretionary.
- ◆ In Tennessee, citizen does include a convicted felon. *Cole v. Campbell*, 968 S.W. 2d 274 (Tenn. 1998).

When and Where can Public Records be Accessed?

- ◆ A citizen has the right to request both inspection and copies of public records during normal business hours.
 - If the requestor desires to inspect public records, the inspection should take place in the office of the custodian.
 - The requestor should also be able to retrieve the requested records from the record custodian's office. However, the requestor is not required to retrieve the records from the custodian's office. The requestor has the ability to request that the records be mailed and upon payment for postage, the custodian is required to mail the records to the requestor.

Response to a Public Records Request

- ◆ T.C.A. 10-7-503(a)(2)(B) requires a records custodian or the custodian's designee to *promptly* make requested records available for inspection. If the records cannot be made promptly available, within seven (7) business days, the custodian must do one or more of the following:
 - Provide access to the record;
 - Deny in writing access to the record with legal basis for denial; or
 - Indicate in writing additional time necessary to produce the record.

- ◆ A custodian's failure to respond to a request in one of the above-mentioned ways within seven (7) business days, constitutes a denial and is actionable under T.C.A. §10-7-505.

Response to a Public Records Request (cont.)

- ◆ A custodian may not require a written request to view a public record, but can require a request for copies to be in writing.
- ◆ A records custodian may not assess a charge to view a public record.
- ◆ A custodian may require a requestor to produce photo identification with an address in order to inspect or receive copies of records.
- ◆ A request for copies “shall be sufficiently detailed to enable the custodian to identify the specific records” requested.

Are Public Records Accessible during Litigation?

- ◆ While a party to a lawsuit is clearly not entitled to access the records of an opposing private litigant during the course of litigation outside of the discovery process, the same is not true for an opposing litigant who is a governmental entity.
- ◆ In *Konvalinka v. Chattanooga-Hamilton County Hospital Authority*, 249 S.W. 3d 346, 360-361 (Tenn., 2008), the Supreme Court said the following:

Neither the discovery rules nor the public records statutes expressly limit or prevent persons who are in litigation with a government entity or who are considering litigation with a government entity from filing petitions under T.C.A. §10-7-505(a) seeking access to public records relevant to the litigation.

Public Records Requests

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Frequent Open Records Requests Received by ETSU:

- Employment Verification
- Athletic Contracts
- Other Contracts
- Police Reports
- Emails

Others have included:

- Text messages
- ProCard Reports
- Calendars
- Syllabi



TAKEAWAYS

- ✓ Think before you write
- ✓ Think WHETHER to write
- ✓ Record Retention policy (scheduled deletions)
- ✓ Spoliation Letter-maintain ALL records
- ✓ Records Request-Must go to Joe Smith
- ✓ Problem? Call University Counsel

