

# Basic Records Management for Counties

Presented by: UT County Technical Assistance Service

# Managing County Records

---

- # Records and information are a resource that must be properly managed
- # The records of the county are public property
- # Generally public access to the records of your office must be allowed
- # Confidentiality of certain specific records also must be guarded

# Goals of a Good Records Management Program

---

- # Important and permanent value records are preserved;
- # Less essential records are destroyed when no longer needed or required to be kept in order to free up space and resources;
- # Records are properly catalogued and indexed so officials and the public can access them; and
- # Proper conditions are maintained to enable long term preservation of vital records.

# Records Management Guidance

---

# CTAS published a manual entitled *Records Management for County Governments* that provides instruction on how to set up and operate a records commission and how to establish a records management program for county offices. Though no longer printed, it is still available through e-li.

# Records Manual Content (Continued)

---

- # How to set up and operate a county public records commission.
- # How to provide public access to records
- # How to identify and protect confidential records and information
- # How to dispose of records
- # How to prepare for disasters
- # How to properly store permanent records
- # How to use alternative storage formats (microfilm and electronic records)

# Records Retention Schedules

---

- # For every county office, there is a schedule describing all the major types of records maintained in that office and recommending a time period that record must be kept. These schedules are available in e-li.

# Additional Sources of Assistance

---

- # The Office of Open Records Counsel
- # The Tennessee State Library and Archives
- # Local Historical and Genealogical Societies
- # Private firms and contractors

# Official Duties

---

- # Even though county officials may change at an election, the offices themselves must maintain a level of continuity.
- # For most offices, a requirement is included in the duties of the office to keep and preserve specific types of records.
- # Certain county offices, such as the register of deeds, the clerks of the various courts of the county and the county clerk, have a primary function of record keeping.

# Condition of Official Bond

---

- # Among other things, your official bond insures that you will fulfill a duty to faithfully and safely keep all records required in your official capacity, and at the end of your term, turn over to your successor all records and property that have come into your hands.
- # Failure to comply can result in recovery against the insurance company or surety who may then proceed against the official.

# The County Public Records Commission

# The County Public Records Commission (PRC)

---

- # Required by state law, the fundamental purpose of this appointed board is to provide for the orderly disposition of public records created by agencies of county government. T.C.A. 10-7-401.
- # In 1959, the legislature first provided for an optional county public records commission.
- # Since 1994, the county public records commission is mandatory commission.

# PRC – Membership

■ Three members appointed by the County Mayor (subject to conformation): a county commissioner; a judge of a court of record (or designee); and a genealogist.

■ Three *ex officio* members: the county clerk (or designee); the register of deeds (or designee); and the county historian.

■ Plus the county archivist if one is appointed.

■ If the county has an IT department, the clb may appoint that director or designee as well.

# PRC – Members

---

- # The *ex officio* members remain on the commission for as long as they hold their office.
- # The appointed members of the commission serve until they vacate the position, at which time the county mayor appoints a replacement.
- # All members have the same rights and privileges, including voting rights.
- # If needed, there is a sample resolution in the appendix for creating a commission.

# PRC – Organization and Compensation

---

- # The commission elects a chairperson and secretary and is required to keep minutes.
- # Members are not paid a salary except that any member of the commission who does not already receive a fixed annual salary from the state or the county may receive a per diem of \$25.
- # Members may also be reimbursed for actual necessary expenses.
- # State law requires that the county public records commission meet at least twice each year. Active commissions will meet more.

# PRC – Funding

---

- # The county legislative body may appropriate such funds as may be required for carrying out the purposes of the PRC.
- # This includes, but is not limited to, funding for purchasing or leasing equipment, equipping an office, hiring administrative assistants, and the employment of expert advice and assistance.

# Records Management Fee

---

- # T.C.A. 10-7-408(b).
- # Allows the county legislative body in any county with a records commission to create a fee up to \$5 records management fee per document filed.
- # This fee does not apply to records filed with the register of deeds.
- # A similar fee is authorized for clerks of court for documents filed for the purpose of initiating a legal proceeding.

# PRC – Jurisdiction

---

# Those records under the jurisdiction of the PRC include:

- All documents, papers, records, books, and books of account in all county offices.
- Pleadings, documents and other papers filed with the clerks of all courts and the minute books of the courts.
- Minutes and records of the legislative body.

# PRC – Function

---

- # The most important role of the PRC is to provide oversight and make determinations regarding the ultimate disposition of the records of county offices.
- # County governments are not highly centralized. Individual elected officials have a great deal of independence.
- # This makes the role of the PRC vital to protect important public records.

# PRC – Essential Oversight

---

- # Insure that no county records that need to be preserved are destroyed prematurely.
- # Insure original records which have been reproduced into other media have been properly duplicated before destruction.
- # Must balance responsibility to protect records against need to efficiently manage them.
- # PRCs should encourage and co-operate with local officials in culling the obsolete and unnecessary records from their offices.

# Providing Public Access to Public Records

Presented by: UT County Technical Assistance Service

# Why Public Access?

- #Founding Fathers
- #Ka-Boom
- #Red Scare
- #1950s paranoia
- #State Open Records Acts
- #FOIA in 1966



# FOIA

## (Freedom of Information Act)

---

- # Applies to agencies of the federal government.
- # Under FOIA, citizens can request federal agencies to perform searches of their records to locate and disclose information.
- # This law doesn't apply to you.
- # You are covered by the Tennessee Public Records Law.

# Tennessee Public Records Law T.C.A. 10-7-503

---

⚡ 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.

# Legislative Intent

---

- # Legislature stated that public records laws should be “broadly construed so as to give the fullest possible public access to public records”
- # Tennessee Courts and the Tennessee Attorney General have consistently interpreted the laws liberally in accordance with this directive.
- # Records are presumed open unless made confidential by state or federal law, rule or regulation.

# What is a Public Record?

---

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.

# Definition of County Public Record

---

# TCA 10-7-403

# Public records within the county shall be construed to mean all documents, papers, records, books and books of account in all county offices...and

# The pleadings, documents and other papers filed with the clerks of all courts ... and the minute books and records of these courts, and

# The minutes and records of the county legislative body.

# Examples of Public Records

---

- # Employee evaluations
- # Contracts with vendors
- # Official correspondence
- # Emails
- # Financial or performance audits
- # Annual reports
- # Fee collection reports
- # Meeting agendas/minutes
- # Budgets
- # Office policies

# Confidential Records

---

- # TCA 10-7-503 “...unless otherwise provided by law...”
- # State law
- # Federal law
- # Rules and regulations
- # Court decisions

# TCA 10-7-504 – Long List

---

- # Medical records of patients in county hospitals or medical facilities
- # Records of students in public schools
- # Much of the information in motor vehicle records
- # Credit card numbers of persons doing business with the county and any related PIN numbers or authorization codes
- # Tax returns, tax information, and tax administration information
- # Investigative files pertaining to pending or contemplated criminal action

# County Employee Info

---

- # County employee home and cell phone numbers, social security numbers, bank account information, residential street address, and driver license number of employee or family or household member (except where driving is part of the job) are made confidential by state law.
- # Wherever possible, when this information appears in otherwise public records, the information should be redacted and not used to limit or deny access to otherwise public information.
- # These provisions do not limit access to the records by other governmental entities.
- # The employee can authorize the release of the info.

# Redaction

---

# Record custodian is responsible for redacting any information within the record that is confidential prior to making the record available.

# Redaction process:

- (1) Make copy of original;
- (2) Redact copy;
- (3) Make copy of redacted copy; and
- (4) Provide requestor a copy of redacted copy.

# Maintenance of Confidentiality

---

- # A confidential record must be treated as confidential throughout the maintenance, storage and disposition of the record.
- # This includes destroying the record in such a manner that the record cannot be read, interpreted or reconstructed.

# Office of Open Records Counsel

---

- # OORC provides assistance to county officials and citizens with specific open records requests.
- # [www.comptroller.tn.gov/openrecords/](http://www.comptroller.tn.gov/openrecords/)
- # Phone: (615) 401-7891 or 1-866-831-3750
- # Fax: (615) 741-1551
- # Email: [open.records@cot.tn.gov](mailto:open.records@cot.tn.gov)
- # OORC provides advisory opinions, training, forms and best practice guidelines for record custodians.

# Records Request Process

---

- # A citizen has the right to request both inspection and copies of public records during normal business hours.
- # If practical, must promptly make available for inspection.
- # If not, must within seven business days:
  - Make the record available to the requestor;
  - Deny the request in writing, stating the basis for the denial; or
  - Furnish the requestor an OORC form stating the time necessary to produce the record.

# Denial of Access

---

- # If denied access to a public record, a citizen of TN is entitled to petition a court to review the action and to grant access to the record.
- # Burden of proof rests on the county official.
- # The court may assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the county official if the court deems the denial "willful."
- # Willful means in bad faith.
- # The law requires the court to consider guidance given to the official by the OORC when determining whether the official acted in bad faith.

# Charging for Copies

---

- # No charge to **view** records, even if substantial time taken by the custodian to redact the record.
- # May charge actual cost for providing requested **copies**.
- # Must provide estimate of cost.
- # Some statutes provide for a specific fee that may be collected for copies provided by certain officials or for copies of certain documents.
- # OORC has developed a schedule of reasonable charges for copies of public records.

# OORC Schedule of Charges

---

- # Located on OORC's website.
- # 15 cents per page for black and white copies.
- # 50 cents per page for color copies.
- # May charge hourly wage of employee(s) necessary to produce the record **after the first hour**.
- # Safe harbor if follow the schedule.
- # If don't follow the schedule, must document that the higher charge represents your actual cost of producing the copy unless there exists another basis in law for such charge.

# Limits on Record Requests

---

- # Confidential Records.
- # Only required to respond to a request from a TN citizen.
- # Not required to create a document that does not exist.
- # Not required to sort through public documents to compile information.
- # Not required to produce a document for which you are not the custodian.

# Records Management Techniques



# Records Management Programs

---

- # Whether or not you realize it, you already have a records management program.
- # The problem is, it may be doing more harm than good.

# Common Problems

---

- # Records filed in a haphazard manner.
- # Not sure what you have or where it's filed.
- # Takes too long to find a record.
- # Office space packed with boxes.
- # Records stored in unsuitable locations.
- # Throw away records too soon.
- # Don't destroy records often enough.

# Steps to An Effective Records Management Program

---

- # Evaluate
- # Develop Records Disposition Authorizations
- # Develop Written Policies and Procedures
- # Maintenance

# Step One: Evaluation

---

- # Perform an inventory of your stored records
  - Identify the various record series in your office
  - Describe all record locations and storage conditions
  - Provide dates and ages of the records
  - Measure space and equipment occupied by records
  - Provide a basis for developing retention schedules

# Benefits of the Inventory

---

- # Tells you exactly what records you have and where to locate them.
- # Helps identify records that are eligible for disposal.
- # Helps identify records that are in danger due to neglect, environmental conditions, insects and other pests, etc.

# Evaluate your Filing System

---

- # Does your system provide precise and timely retrieval?
- # All file cabinets are not alike
- # Movable-shelving, color-coded open-shelving systems and even bar-coding have become common in many offices that handle a large volume of records.
- # It costs money to replace storage systems, but the change may pay for itself by saving space, increasing efficiency and postponing the need for expansion.

# Step Two: Develop RDAs

---

# Records Disposition Authorization

# A formal statement of when a record can be destroyed and what authority serves as the basis for its destruction.

# A comprehensive RDA becomes a plan for the entire life of a record series from creation to final disposition.

# Step Three: Developing Records Management Policies

---

- # Adopt the Records Retention Schedules
- # Incorporate any Records Disposition Authorizations developed by your office,
- # Include policies for dealing with
  - inactive records;
  - public access to records;
  - making copies;
  - responding to emergencies that threaten records;
  - maintaining confidential records;
  - using alternative storage media; and
  - working with the PRC, TSLA, and county archives.

# Tracking Procedures

---

- # If your office has had or may have a problem with files being lost, stolen, or misplaced, develop a policy and procedures for tracking files as well.
- # Low-Tech: Require anyone removing a file from its storage space to fill out a “sign-out” sheet indicating who they are, what record they are taking, and the date of its removal.
- # High-Tech: Bar-coding.

# Step Four: Maintenance

---

- # The best records management program will quickly fall into obsolescence if the office does not make efforts to stay on top of things.
- # Records, particularly government records, grow at an astronomical rate.
- # If you do not take steps to regularly move inactive records to other storage and destroy temporary records when they become eligible for destruction, they will soon begin to fill up your filing equipment, then your office, and bring clutter and disorganization to all operations.

# Methods of Maintenance

---

- # Consider implementing a “records clean-up day” for annually re-assessing the records of the office to identify what can be moved or destroyed.
- # Select a time that is not in the middle of your busy season (perhaps around the holidays) and designate a day for everyone to identify records that can be destroyed and collect them.

# Records Management Officer

---

- # Make someone responsible.
- # Oversee records management efforts.
- # Contact person for communication about your records with entities outside your office (PRC, TSLA, etc.).
- # Contact person for handling public records requests.

# Disposal of Records



# Why Destroy Records?

---

- # Even the best planned and operated records program will fail miserably if it never gets rid of records.
- # Keeping and storing every record your office produces is not a viable option.
- # Disposal is not as simple as tossing them in a dumpster.
- # There are checks and balances that must be satisfied before a record can be destroyed.

# Three Basic Types of Records

---

## # Three types of documents in your office:

- Permanent records
- Temporary records
- Working papers

## # Permanent Records

- Records that are required by law or by their importance to be kept permanently.
- 100s of years, not just decades.
- You don't destroy them typically, but might destroy paper originals if reproduced into another permanent format.

# Temporary Records

---

- # Temporary records are officially defined as material which can be disposed of in a short period of time as being without value in documenting the functions of an agency.
- # Don't do "retroactive" destruction.

# Working Papers

---

- # Working papers are not public records.
- # Working papers are defined as those records created to serve as input for final reporting documents, including electronic data processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication.
- # TCA 10-7-301(14)
- # Why are they not public records?

# Disposal of Working Papers

---

- # The good news about working papers is that they are easy to get rid of.
- # Any public record defined as a working paper may be destroyed in accordance with the rules and regulations adopted by the public records commission without retaining the originals of such record and without further review by other agencies.
- # These rules and regulations should be liberal, allowing county officials to eliminate these records as easily as possible before they become burdensome.
- # These are informal records by nature and probably will not be found in the retention schedules in your manual.

# Disposal of Temporary Records

---

- # Once a temporary record has been retained for the period described in the schedule, then, like a working paper, it may be destroyed in accordance with the rules and regulations of the county public records commission.
- # The rules of the records commission should require the official wishing to destroy temporary records to notify the commission of the kind of record to be destroyed and cite an authority for its destruction.
- # The PRC would then approve destruction.

# Continuing Authorization

---

- # TSLA has agreed that PRCs can provide “continuing authorization” to destroy records so long as the official is complying with the schedules in this manual.
- # When possible, it is recommended that officials request continuing authorization from the commission.
- # Once granted, officials would only need to notify the commission when records are being destroyed in compliance with the schedule, identifying the type, age and quantity of the records, and would not have to wait for further authorization or approval to proceed.

# Continuing Authorization

---

# To use continuing authorization to dispose of these records, follow these steps:

- The PRC adopts the retention schedules in the manual.
- The official develops an RDA.
- The PRC reviews the RDA to make sure it describes records which appropriately fall under the chosen retention period and then approves the RDA.
- Once approved, the official can destroy all records under the RDA that have been kept for the length of time designated in the retention schedule. As more records age, the official can automatically destroy the records and send a brief notice to the records commission informing it of this action.

# Destruction of Permanent Records

---

- # If you can safely and successfully convert paper records into another permanent media that is easier to store, the original paper version of the records can be destroyed although this is not recommended as a general practice.
- # No original permanent public record may be destroyed under the law unless a majority of the PRC agrees.
- # The PRC should take this review seriously and make certain that the original records were completely and accurately reproduced into a durable medium by the official or his or her contractor before giving approval to destroy the paper.

# Notice Requirements

---

- # No *permanent value* record may be destroyed until notice is given to the TSLA of the intent to do so.
- # Notice is to be given at least 90 days prior.
- # Upon receiving notice, TSLA is directed to examine the records approved for destruction and take into its possession any records believed by the State Archivist to be of historical value for permanent preservation.
- # They rarely are able to do so.
- # Destruction of permanent paper records should be the exception, not the rule.

# Additional Notice Provisions

---

- # Prior to the destruction of any records reproduced onto electronic storage media, the PRC is also required to advertise in a newspaper of general circulation in the county, and, in those counties with a population in excess of 200,000, in a weekly newspaper.
- # The notice should describe the records by title and year, indicate that the records have been electronically stored, reproduced and protected, and indicate that the county office or department has requested permission to destroy the original record.

# Methods of Destruction

---

- # For many working papers and some temporary records of an office, tossing them in the trash, or better yet, recycling them, is appropriate.
- # If there is a possibility that confidential information is included in the records, they should be disposed of in a manner that obliterates this information such as shredding or burning.

# Financial Records and Audits

---

- # One important group of such records are those financial records that are needed for an audit.
- # Most financial records of county offices are temporary records that must always be kept at least as long as is required for audit purposes.
- # Regardless of whether or not an official thinks a financial or accounting record has served its useful purpose, it cannot be destroyed if the Office of the Comptroller deems it necessary for audit purposes.

# Limitations on Destruction

---

- # Records pertaining to mortgages and deeds of trust on personal property and chattel mortgages can only be destroyed after the term of the mortgage has expired and all conditions have been met and the register approves the destruction of the record.
- # No record of a county office or a court of record can be destroyed if the county official or judge who has custody of the record objects to its destruction.

# Alternatives to Destruction

---

- # Once the PRC determines that a record is no longer needed, it may provide for transferring the record to another institution instead of destruction.
- # Local or regional public library, a local, regional or state college library, or the county archives.
- # Majority vote of the PRC.
- # The PRC may, after giving one month's notice to the institution holding the record, transfer the records to another institution.

# Transferring Records

---

- It is recommended that the county enter into a contractual agreement with the entity accepting records specifying that it is only keeping them on behalf of the county and that ownership of the records is not being transferred.
- Instead of transferring records, the TSLA recommends that a county should establish its own archives or enter into an interlocal agreement with other local governments for the creation of a regional archives.

# Disaster Preparedness

---

- # Occurrence of disasters cannot be eliminated, but through preparation, their impact can be lessened.
- # Develop a disaster contingency plan to speed recovery.
- # Institute a vital records protection program.

# Contingency Plans

---

- # Put someone in charge and establish response teams.
- # Anticipate possible disasters and provide instructions for first responders
- # Inventory supplies and equipment for salvage efforts.
- # Identify alternative office space and facilities.
- # Include contact info for emergency management agencies and consultants.
- # Have a plan for acquiring replacement equipment quickly.

# Vital Records Protection

---

- # Some records will not survive a disaster.
- # If you have not produced duplicates of vital records prior to the disaster, you sure can't do it after the fact.

# Four Classes of Records

---

- # Nonessential records – don't have to replace
- # Useful records – easily replaced
- # Important records – hard to replace
- # Vital records – cannot be replaced
- # Begin with vital records and then include important records in your protection program as resources and time allows.

# Recovery of Stolen Records

---

- # Replevin actions
- # Initiated by filing a complaint in circuit or chancery court or by warrant in general sessions.
- # Recovers property by means of a writ of possession to return it to the possession of the rightful owner.

# Alternative Formats for Records



# Alternatives to Paper

---

- # Paper is not the only medium in which records can be stored.
- # Many county offices are choosing to store records in either photographic (microfilm, microfiche, etc.) or electronic media for a variety of purposes and reasons.
- # Each medium offers different advantages and disadvantages. Counties should thoroughly research either system before investing revenue and entrusting its vital records to a different storage media.

# Alternative Formats for Temporary Records

---

- # Generally, if you are only keeping a record 5 years or less, it is not cost-efficient to microfilm paper records or convert to other media for short term storage.
- # Certain “temporary” records have a lengthy retention period.
- # If the active use period is short, but retention is long, it may be worthwhile to convert these records.

# Alternative Format Originals

---

- # The law authorizes local government officials to keep any records in electronic format rather than bound books or paper records.
- # Stringent guidelines must be met.
- # Strongly cautioned not to create permanent records solely in an electronic format.

# Dual Systems

---

- # Many officials are, through scanning or imaging, creating electronic duplicates of the record which are primarily used by the office during the active life of the record.
- # The paper version serves as a security copy and for long term storage.
- # Paper could be stored off-site.

# Microfilming

---

# Trusted process over 150 years old

# Advantages:

- Control
- Convenience
- Space Savings (98% reduction in storage space over paper records)
- Protection
- Rapid recovery from records loss
- Archival quality (suitable for long term retention)

# Microfilming

---

## # Disadvantages:

- Expensive
- Labor Intensive
- Requires expertise
- If not properly produced and stored, it will not last.
- Difficult to detect flaws or deterioration
- Operator error

# Laws on Microfilming

---

- # The PRC may authorize the destruction of original records that have been reproduced through a micro-photographic process.
- # The records must be reproduced in duplicate.
- # The reproduction must result in permanent records that meet standards of the National Institute for Standards Testing.
- # One copy shall be stored for safekeeping in a place selected by the PRC and concurred in by the county legislative body.

# Electronic Records

---

- # County governments can now use computers to create electronic original records as well as electronic reproductions of paper originals.
- # Legal standards for maintaining records in an electronic format.

# Electronic Records Standards

---

- # Available for public inspection (unless a confidential record).
- # Record must be retained for entire retention period.
- # All daily data must be copied to storage media daily and back-ups that are more than one week old must be stored off-site.
- # Official must be able to provide a paper copy upon request to the public.

# Electronic Conversion

---

- # Since 1999, the law allows a PRC to authorize the destruction of original paper records that have been converted to electronic format.
- # Transfer must be in accordance with regulations of the Secretary of State.
- # Copy of these guidelines is in the appendix.
- # Must publish notice prior to destruction as discussed earlier.

# Electronic Records: Advantages and Disadvantages

---

## # Advantages:

- Incredible reduction of storage space
- Speed of access and retrievability
- Searchable
- Flexible

# Electronic Records: Advantages and Disadvantages

---

## # Disadvantages:

- Fragility (physical damage, environmental risks, hackers, viruses, etc.)
- Not human readable
- Data migration
- Not suitable for long term storage
- TSLA does not consider any existing format for electronic records to be of permanent archival quality.

# Summary

---

## # Do's and Don'ts

- Don't destroy county records without proper authorization to do so (i.e. permission from the Public Records Commission).
- Do make sure you have proper back-ups and duplicates of any records kept in electronic format.
- Do plan for ways to preserve records that must be “permanently” retained. This requires resources and effort.