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Municipal Technical Advisory Service

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December 14, 2009

MANAGEMENT OF PERSONNEL RECORDS

Don Darden, Municipal Management Consultant

It is common practice in some Tennessee cities for personnel records to be maintained in separate locations and by untrained personnel. Records often are maintained in each department of city government where employees may be free to look at all of the files, including Social Security numbers, driver's license numbers, library cards, personally identifying information of police officers, health-related matters, and other such information that is protected by federal and/or state laws. Employees often review records of other employees and remove from the files information about reprimands, suspensions, demotions, and the like.

MTAS recommends that every city in Tennessee maintain its personnel records in a central location and that such records be under the custodianship of a trained employee, or employees, depending on the size of the city. The custodian should know what records are public and what records are private under state and federal laws. The custodian should know that personnel records are owned by the city and not the employee. It should never be permissible for an employee, or anyone else, to take a personnel file out of the records office, or to remove any document from the personnel records. MTAS also recommends that the custodian of the records maintain a duplicate file, for public and employee access, that does not include private, protected information.

Legislation in Tennessee requires that the chief of police make the decision to release, or not release, information in a police officer's personnel file. If the personnel records are not disclosed, the chief must explain in writing the reason for refusing to release the information and then release the redacted file. If the personnel records are to be disclosed, the chief must first notify the officer whose files have been requested and give that officer an opportunity to oppose the release. The recorder or other records custodian should notify the chief that a request for an officer's personnel records has been made and then ask the chief to make the determination as to what should or should not be released.

Section 1172 (a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191) makes the city responsible for maintaining and transmitting health information in accordance with reasonable and appropriate administrative, technical, and physical safeguards —

- To ensure the integrity and confidentiality of the information;
- To protect against any reasonably anticipated:
 - Threats or hazards to the security or integrity of the information;
 - Unauthorized uses or disclosure of the information; and
 - Otherwise to ensure compliance with this part (Section 1172 (a)) by the officers and employees of the city.

December 14, 2009
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The act provides that a person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA faces a fine of \$50,000 and up to one year of imprisonment. Penalties may increase up to \$100,000 and up to five years imprisonment, depending on the circumstances.

Maintaining personnel records in a central location under the custodianship of a trained records keeper is the best insurance for the city and its employees to comply with HIPAA and to significantly reduce or avoid liability.

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