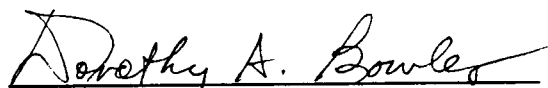
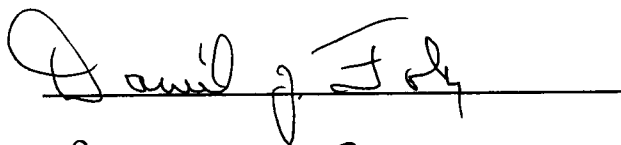


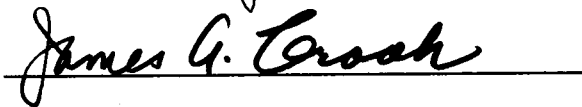
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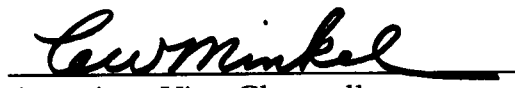

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ACCESS TO PUBLIC RECORDS IN ELECTRONIC FORM
IN TENNESSEE

A Thesis

Presented for the

Master of Science Degree

The University of Tennessee, Knoxville

Robert Earl Thornton
August 1994

ACKNOWLEDGMENTS

I would like to thank my thesis committee chairman, Dr. Dorothy Bowles, for being a wonderful teacher and a source of information and encouragement throughout my graduate program. I will be forever grateful for her commitment to this project. I would also like to thank the other committee members, Dr. James A. Crook and Professor Dan Foley. I thank Dr. Crook for the part he played in getting me to this university and for the advice and assistance he has provided the past two years. I thank Professor Foley for his comments and suggestions and for enduring the frequent and sometimes long interruptions. I would like to thank my wife, Phyllis, for her patience and support throughout graduate school, especially the last couple of months, when this thesis occupied so much of my time and thoughts.

ABSTRACT

This research showed how state and local governments in Tennessee are providing public access to computerized records, and it showed how daily newspapers are using electronic records. While the study does not attempt to rank Tennessee with other states, the research produced evidence that some states, especially Florida, are years ahead in providing access to records stored in computers. The use of computers in Tennessee compares favorably with Florida. The disparity is seen when the use of computers to store, manipulate and retrieve data is compared to the availability to the public of that data in computer form. Nearly 90 percent of record custodians responding to a survey said that at least some of their records were computerized; less than a third said they could provide those records to the public in electronic form.

Further study showed that Tennessee's Public Records Law does not adequately address the issues regarding computerized public records.

This research also included a survey of daily newspapers in the state. That survey indicated that newspapers have not yet pursued the use of government databases in any systematic ways and are behind journalists in Florida and many other states.

If Tennessee citizens are to have adequate information about government in the computer age, some changes must be made. These include an updated public records law, leadership in the legislature that advocates access and funding at the state and local level that would ensure all appropriate government agencies can computerize in a way that makes records easily accessible. News media also have an important responsibility. They must take advantage of the technology to improve the way they report and also work for legislation to improve access for the public.

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CHAPTER 1

INTRODUCTION

Current Situation

Government information collected on computer databases presents both an opportunity and an impediment to a democratic society. Computers, of course, make for a more efficient way to process, store and retrieve information. Computerized storage should make more information available to the public because retrieval and analysis of large databases can yield information and insight into how government is functioning in ways that would be impossible with paper records.

Here are just a few examples:

- In the mid-1980s, the Providence, Rhode Island *Journal -Bulletin* received a tip about an impropriety regarding the Rhode Island Housing and Mortgage Finance Corporation. The agency records were on computer, and the newspaper sued to get a copy of those records. From the records the newspaper learned that the agency's executive director maintained a secret pool of mortgage money. When most people were getting mortgages at 12 to 13 percent, the executive director was giving them out at 8.5 percent to politically well-connected people.¹

- The *Atlanta Journal-Constitution* won a Pulitzer in 1988 for a story it uncovered when using computerized records. The stories reported how mortgage lending practices discriminated against blacks. Part of the newspaper's investigation involved the analysis of computer tapes from the Home Mortgage Disclosure Act as well as Census Bureau tapes. The newspaper revealed how banks and savings and loans made few home loans in black neighborhoods, even

¹Elliot Jaspín, "The New Investigative Journalism: Exploring Public Records by Computer," *Demystifying Media Technology*, (Mountain View, Calif.: Mayfield Publishing Co.) 142-149.

upper-income black neighborhoods. Whites in middle-class areas got five times as many home loans as blacks from banks and savings and loans.²

- A number of papers have used the Toxic Release Inventory, a database maintained by the Environmental Protection Agency. The database lists annual emissions of more than 300 toxic chemicals into the environment.³

Anyone who has used computers knows that it is not always easy to obtain such records. Record custodians may not know how to make the information available in electronic form. The computer program used to create the record may not work on another user's computer; the software may be copyrighted. Some public records laws do not address records in electronic form. So, rather than making public records easier to use, computers can make them more difficult to find and use.

One example of the access problem was a 1990 case in New York. Brownstone Publishers Inc., an information services company, asked the New York City Department of Buildings (DOB) for its computerized data available on a subscription basis. The DOB said it would make the data available only in hard copy. The information sought would take more than a million sheets of paper, and cost more than \$10,000. Keying the hard copy information into Brownstone's computer would cost several hundred thousand dollars. Brownstone went to court and an appeals court ordered the information released on computer tape. The cost of the tape was only \$46.⁴

²Andrew Scott, ed., *IRE 101 Computer-Assisted Stories From the IRE Morgue*, (Columbia, Missouri: Investigative Reporters and Editors, Inc. 1993) 16.

³Ronald Campbell, "Projects on a Shoestring: Sure-Fire Stories from Public Databases," (Program presented at "Computing: The News Frontier," an IRE conference on computer-assisted reporting, Raleigh, N.C. Oct. 21-24, 1993).

⁴Sandra Davidson Scott, "Statutory Language Needed: Access to Computerized Government Records Must Be Made Easier," *Editor & Publisher*, Nov. 2, 1991: 8pc.

Another example can be found in the effort of the *San Jose* (California) *Mercury News* to obtain database records. Reporter Christopher Schmitt said that when the newspaper asked officials of six state agencies for a directory of their computer files, only two could provide the lists, three said they could not, and one ignored the request.

The Department of Motor Vehicles, Schmitt said, regularly sells its data to firms which in turn market it commercially. But the *Mercury News* was turned down when it sought to find out whether the DMV charges the general public the same price for data as it does the commercial firms. The DMV claimed its contracts with the companies are not public records.⁵

A computer program in Nevada was supposed to randomly select recipients of the limited number of hunting permits the state issued. Hunters complained that permits were not distributed fairly. But when citizens asked for a copy of the software, the Nevada attorney general said that government-written software is not a public record.⁶

These are but three examples of the kinds of problems created by the new technology.

The good news is that government agencies at different levels and in many places are taking the initiative, or at least responding to public pressure, to get information to the public via computer. Many state legislatures are setting up computers with dial-up access to information on bills, laws, constitutions, vote tallies and other government information.⁷

⁵M.L. Stein, "Newspapers Battle to Obtain Database Records: California Press Gets Bureaucratic Run-around From Public Agencies," *Editor & Publisher* Mar. 7, 1992: 25,41.

⁶*Access to Electronic Records: A Guide to Reporting on State & Local Government in the Computer Age*, (Washington, DC.: Reporters Committee for Freedom of the Press, 1991) 3.

⁷Neill A. Borowski, "Government News at Your Fingertips: N.J. and Pa. Legislative Facts May Be Offered for Free to Computer Users." (Philadelphia: Philadelphia Inquirer, May 23, 1994) A3.

In 1985, only 11 state legislatures offered on-line access to the public. By 1990, 21 states provided such access. By the end of 1992, the number had increased to 33.⁸

A few states, like Florida, have taken a proactive stance in ensuring that records in electronic form are available at the state and local level. Elsewhere, individual counties and municipalities have taken unusual steps to give citizens access to information.

A notable example is Wake County, North Carolina. Wake has provided some computer access since the 1970's, but in recent years has offered dial-in access to the county's mainframe. Anyone with a computer and modem can dial into the county's public databases, the county's electronic mail and bulletin-board system.⁹

The city of Santa Monica, California, provides free access to its "Public Electronic Network," which includes an electronic mail service, information files and searchable databases.¹⁰

Historical Basis for Access

While there is no constitutional guarantee of access to government information, the very foundation of American democracy depends on that access. Thomas Jefferson, one of the nation's most respected leaders and philosophers, writing about this fledgling country, said, "No experiment can be more interesting than we are now trying, and which we trust will end in establishing the fact that man may be governed by reason and truth. Our first object should,

⁸National Conference of State Legislatures, *Online Access to Legislative Data Bases Survey Report*, (Denver, Colo., December 1992) 2

⁹Sherry Horton, " 'The Widest Possible Access': Wake County's Approach to Computerized Records, Open Government, and Privacy," *Popular Government*, Winter 1993: 13

¹⁰"Highlights of Computer Access," *Nation's Cities Weekly*, June 15, 1992. 6

therefore, be to leave to him all the avenues of truth."¹¹ Jefferson echoed other philosophers who argued that humans are creatures of reason. Individuals must have the freedom to question, to challenge and debate.

The phrase "right to know" grew from this early philosophy. Lucas A. Powe, Jr., summarized the arguments which are founded in the philosophy of John Milton and John Stuart Mill. Powe said the justification for a right to know is found in three arguments: the marketplace of ideas, the need for information if people are to participate in self-government and the need to keep a check on what government is doing, or what is commonly called the watchdog function.¹²

Supreme Court Justice Oliver Wendell Holmes is credited with the metaphor, the marketplace of ideas. His phrase holds that when competing ideas are allowed to be expressed that the truth will emerge.¹³

Alexander Meiklejohn argued that freedom of expression was necessary for self-government. He believed that citizens in a democracy should be informed and that to be informed they had to have all information relevant to an issue.¹⁴

Powe suggests that the checking, or watchdog, theory is based not on truth nor rationality, but on distrust.

The checking theory, set out by Vincent Blasi in "The Checking Value in First Amendment Theory," in the 1977 *American Bar Foundation Research Journal*, "... assumes a darker side of human nature and holds that those who wield

¹¹Benjamin S. Catchings, *Master Thoughts of Thomas Jefferson*, (New York: The Nation Press, 1907) 47-48.

¹²Lucas A. Powe, Jr., *The Fourth Estate and the Constitution: Freedom of the Press in America*, (Berkeley and Los Angeles, California: University of California Press, 1991) 235-259.

¹³*Abrams v. United States*, 250 U.S. 616, 40 S.Ct. 17 (1919).

¹⁴Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (New York: Oxford University Press, 1948)

governmental power will be prone to overreaching, and thus that it is essential to provide information for a resisting citizenry."¹⁵

Jefferson believed that if the experiment in democracy were to be successful the people must be active participants. He saw two avenues toward truth: education and free expression. If citizens were creatures of reason and if they were educated and allowed to express themselves freely, then the truth would emerge.

The Bill of Rights, which Jefferson and other anti-federalists insisted be added to the proposed Constitution, of course, includes the First Amendment, which has given Americans the greatest freedom of expression in the history of the world. Yet it follows that without information, free expression is empty. If some avenues to truth are blocked, citizens cannot make the most informed decisions.

Access to government records was an issue long before government began to store records in computers. The Supreme Court has held that the First Amendment right to speak and publish does not include a right to gather information,¹⁶ but the Court has recognized constitutional protection for a limited right to gather news in the context of the public's right to know.¹⁷ However, considerable access is provided by statute at the federal and state levels. The Federal Freedom of Information Act provides access to most records of executive and administrative government agencies.¹⁸ But the process of requesting and receiving information, whether paper or computerized records, can be intimidating. One task is to understand which records may be exempt

¹⁵Powe, 238.

¹⁶*Zemel v. Rusk*, 381 U.S. 1 (1964), *Pell v. Procunier*, 417 U.S., 817, 94 S. Ct. (1974).

¹⁷*Branzburg v. Hayes*, 408 U.S. 655 (1972), *Richmond Newspapers v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814 (1980).

¹⁸5 United States Code Annotated § 552, amended by Pub. Law 93-502, 88 Stat. 1561-1564.

from disclosure. The FOIA lists nine exemptions that agencies may use to deny access. They are: classified documents, internal personnel rules, information exempt under other laws, confidential business information, information concerning internal government communications and the deliberative process, information whose release would invade personal privacy, certain law enforcement information, information from financial institutions, and certain geological information.¹⁹

State public records laws provide varying degrees of access to public records. Those laws in 27 states now define public records to include those in computers,²⁰ but the laws do not always require record custodians to release records in electronic form. Furthermore, some record custodians do not understand the technical details of providing access to or copies of electronic information and deny access even when the law allows it.

The Reporters Committee for Freedom of the Press, in its guide to electronic records for reporters, said, "Many states give a person the right to examine, copy and buy copies of public records. To avoid the expense of buying copies, many small news organizations send reporters to agency offices to read documents. But electronic records cannot be read like traditional paper records."²¹

The Law in Tennessee

The Tennessee public records law provides that all "state, county and municipal records, as well as all records maintained by the Tennessee performing arts center management corporation, shall at all times, during business hours, be

¹⁹*Id.* at (b)(1-9).

²⁰Sandra Davidson Scott, "Suggestions for a Model Statute for Access to Computerized Government Records," Vol. 2, *William and Mary Bill of Rights Journal*, Spring 1993. 47-48.

²¹*Access to Electronic Records: A Guide to Reporting on State & Local Government in the Computer Age*, (Washington, DC.: Reporters Committee for Freedom of the Press, 1991) 3.

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 statutes.”²² Tennessee law defines public records as “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.”²³

The language of this act appears to favor openness. However, the statutes are riddled with exceptions. The public records chapter lists 10 categories of exemptions. But scattered throughout the statutes are at least 80 other exemptions specifically created by the Legislature.²⁴ The 10 categories of exemptions include: 1. Medical records of patients treated at the expense of the state, counties and municipalities; 2. Investigative records of the Tennessee bureau of investigation, criminal investigative files of the motor vehicle enforcement division and files related to bogus driver’s licenses issued to undercover officers; 3. The records in possession of the military department which involve the security of the United States or of the state of Tennessee; 4. The records of students in public educational institutions; 5. Records of the attorney general relating to pending legal proceedings; 6. State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose; 7. Bids and other proposals for goods or services, before evaluation by the state; 8. Investigative records and reports of the internal affairs

²²Tennessee Code Annotated 10-7-503(a)

²³T.C.A 10-7-301 (6).

²⁴Dorothy A. Bowles, *Media Law In Tennessee*, (New Forums Press, Inc.:Stillwater, Oklahoma, 1991) 28.

division of the departments of correction or youth development; 9. Health certificates, collected and maintained by the state veterinarian; and 10. Capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network.²⁵

Most of these exceptions were created before the legislature ever addressed records in electronic form, suggesting that the biggest problem in Tennessee may not be electronic access, but access in any shape or form.

The law gives record custodians the responsibility to adopt and enforce reasonable rules governing the making of copies.

"This language leaves to individual custodians' discretion what constitutes 'reasonable rules,' and such discretion presents two problems," said Sandra Davidson Scott, assistant professor at the at the University of Missouri - Columbia School of Journalism and an adjunct assistant professor at the School of Law.²⁶ The first problem is that not all custodians can be relied upon to know what are 'reasonable' rules. Second, leaving the matter to the discretion of individuals could create widely differing rules among various agencies.²⁷

The Tennessee General Assembly has mandated that for public records in electronic form, the joint legislative services committee has exclusive authority to determine the form in which the information will be reproduced.²⁸ If the information is also available in printed form, record custodians are not required to provide it in electronic form. Therein lies a big weakness in the law. Of course, some agencies provide electronic access, either on-line or through copies

²⁵T.C.A. 10-7-504.

²⁶Scott, S. at 65.

²⁷*Id.* at 65.

²⁸Bowles, 56.

of information on tape or diskette, but most do not. That means anyone who wants to analyze large databases might be faced with keying all the data.

There have been no court challenges to the electronic access provisions of Tennessee's Public Records Law, but opinions by the state attorney general have not been encouraging. In one opinion, the attorney general said that information contained in a computer but not yet printed is subject to the open records act because a printed copy can be made.²⁹ Another attorney general's opinion advises that if information in a public record is also stored in a computer, the public records act does not require operation of the computer for purposes of public inspection.³⁰

The legislature keeps a tight rein on access to its own computers. The law states that "the joint legislative services committee shall consider each application for direct access to the legislative computer system in which confidential information is stored or processed, or that is connected to another computer in which confidential information is stored or processed, and solely shall determine whether or not to permit direct access by the applicant."³¹

²⁹O.A.G. 80-125A(1980).

³⁰O.A.G. 80-288 (1980).

³¹T.C.A. 3-10-108(a)

CHAPTER 2

LITERATURE REVIEW

Discussion about access to electronically stored records has exploded in the 1990s. The most visible discussion has been about federal information. There has been considerable discussion in trade journals and on Internet discussion groups, but published academic research on this subject has just begun to emerge.

Summary of Federal Issues

Toby McIntosh, White House reporter for the Bureau of National Affairs, has identified some of the policy questions facing the federal government regarding use of electronic information. Those questions include:

1. What information should the federal government distribute electronically?
2. When should the government itself distribute electronic information, and when should it rely on the private sector?
3. Should the government restrict itself to releasing only raw data and avoid enhancing the data for greater accessibility?
4. Should the government make more of its computerized information available through computer-to-computer telephone links?
5. How much should the government charge for electronic information, and what provision should be made for those unable to pay for electronic information?³²

Debates over these issues "often pit the information industry, including publishers and database vendors, against the 'access community' of libraries,

³²Toby J. McIntosh, *Federal Information in the Electronic Age: Policy Issues for the 1990s* (Washington, D.C.: The Bureau of National Affairs, Inc. 1990) 1-2.

public interest groups, and other major users of government information, " McIntosh said.³³

The information industry believes it is best suited to be the primary vendor of public information, while the access community believes that the change to computerized records should not change the government's responsibility for providing information to the public at low cost.³⁴

The same policy issues face state and local governments.

One of the key issues debated at state and local level is whether government can profit from providing access. The National League of Cities and others have promoted the sale of information resources, while public access advocates and the information industry have opposed the government selling information.³⁵

"Both sides increasingly have recognized the importance and value of records about land use, taxes, driving histories, geography, and many other kinds of non-federal data," McIntosh said.³⁶

A State and Local Government Perspective

States are just beginning to realize the commercial value of computerized databases, according to Anna Pulido Ferrera, in an article for Nation's Cities Weekly, a publication of the National League of Cities. Now that an incredible amount of public information can be conveniently stored and packaged, some regions receive significant revenues through the sale of this data to private

³³*Id* at 2.

³⁴*Id* at 2.

³⁵*Id.* at 79.

³⁶*Id* at 79.

industry – such as title information, and driver's license and permit mailing lists.³⁷

Writing in the same issue, Costis Toregas said that computers "are not arcane storage devices any longer, but sleek and powerful tools that all of us – elected and appointed officials, staff, citizens and businesses – can use to improve the quality of life in our communities."³⁸ Local government policy makers should step up to the responsibility to direct this new technology toward goals that serve the communities. "What must be preserved at all costs is the right of the people to see and use their government's information ... Information is an asset, a key to power, knowledge and revenue."³⁹

The National League of Cities Transportation and Communications committee selected information access as a primary area of research in 1992. The committee was concerned because of pending legislation that might restrict computerized records as a source of revenue.⁴⁰

Another potential source of revenue for local governments is the sale of software developed by government agencies. Agencies of the federal government are prohibited from copyrighting its works, but there is no such requirement for states.

The Florida Legislature amended its public records law in 1990 to allow state and local agencies to copyright data processing software developed by the agency, and to sell the software.⁴¹ That law is now being reconsidered.

³⁷ Anna Pulido Ferrera, "New Technology requires innovative approaches for cities' information access improvements," *Nation's Cities Weekly*, June 15, 1992. 9.

³⁸ Costis Toregas, "New Technology Raises Access Policy Issues," *Nation's Cities Weekly*, June 15, 1992. 9.

³⁹ *Id.* at 9.

⁴⁰ *Id.* at 10.

⁴¹ Florida. The Florida Legislature Joint Committee on Information Technology Resources, *Agency-Created Data Processing Software as a Public Record: A legal Analysis of § 119.083, F.S., Florida's Software Copyright Provision*, February, 1993: 1

A 1993 Florida study concluded that the sale of software had generated very little revenue and the practice had the potential of blocking access. The Florida Legislature's Joint Committee on Information Technology and Resources, which conducted the study, recommended that Florida law be changed to prohibit the copyright and sale of software developed by government agencies.⁴²

Among other things, the committee reasoned that copyrights of software might inhibit public access because of the cost involved. "For example, access to the software that controls and manipulates a government data base may be as important as access to the data base itself."⁴³

A bill introduced to repeal the statute which allows government agencies to copyright did not pass, said Barbara Peterson, staff attorney for the joint committee. However, the issue has been included in more comprehensive legislation regarding access to public records. Proposed legislation would also prohibit agencies from using proprietary software, if that software prevented data from being translated into some standard format such as ASCII, Peterson said.⁴⁴

Marketing public records has become a major source, if not the only source, of revenue for many companies. Some companies specialize in collecting and selling real estate information, or legal information, or economic information. The Information Industry Association represents many of these businesses.⁴⁵

The association outlined its policy principles for access to government information in a 1993 report. Those principles include a diversity of information

⁴²*Id.* at 85-86.

⁴³*Id.* at 9,10.

⁴⁴Barbara Peterson, telephone interview, July 11, 1993.

⁴⁵*Serving Citizens in the Information Age: Access Principles for State and Local Government Information*, The Information Industry Association, July 1993.

sources. The IIA said that laws and policies should encourage sources of information such as libraries and the private sector. Other principles advocated by the IIA are that citizens have a right of access to government information, that access should not be affected because records might be stored in a computer, that equal and timely access should be assured, that monopoly control of public information should be prohibited, that access should not be restricted based on intended use, and that fees for access should be reasonable.⁴⁶

Impediments to Access

The U.S. Office of Technology Assessment has identified seven factors as major impediments to the development of efficient systems of public access to computerized government records on the state and local level. These factors are:

1. State laws that do not place a priority on access.
2. Vulnerability of systems to security breaches from either loss of electronic data as a result of technological problems or unauthorized access to the data.
3. Threats to the confidentiality of some information kept on computer.
4. Cost of hardware and software needed to provide access.
5. Ability of software to provide requested information.
6. Lack of citizen awareness and interest.
7. Varied technology, making it difficult to standardize computer systems and access programs.⁴⁷

⁴⁶*Id.* at 5-17.

⁴⁷Matthew D. Bunker, Sigman L. Splichal, Bill Chamberlin, and Linda M. Perry, "Access to Government-Held Information in the Computer Age: Applying Legal Doctrine to Emerging Technology," *Florida State University Law Review*, Winter 1993: 543-598.

Better Laws Needed

A significant study that addressees access to computerized public records at the state and local level was done by Professor Scott. She notes that the courts are not always sympathetic to reporters seeking access to computerized records and suggests that the best strategy is to lobby legislators for better access laws.⁴⁸

She has studied the public records laws of the 50 states and found most of them fail to address the new technology adequately.

She argued that a good law for access to computerized information should include, at a minimum, a dozen elements. Those elements are:

1. A definition of public record broad enough to include computerized records.
2. A presumption that information is open.
3. Redaction (allowing restricted information to be excised from a record and the remaining information to be released instead of restricting the whole record.)
4. Access for all citizens regardless of the purpose for which information is sought.
5. Cost containment.
6. Requester's choice of form of information.
7. Access to and retrieval of all information on computer tapes.
8. Time limits for production of records by custodians.
9. Guidance and technical help for custodians of records.
10. Mandatory instruction to custodians on proper maintenance and storage of records.
11. Mandatory instructions on destruction of records.

⁴⁸Scott, S. 37.

12. Sanctions on custodians for failure to follow statutes on access to information.⁴⁹

Florida is a Leader on Access Issues

An article in the Winter 1993 issue of the *Florida State Law Review* also addressed the issue.⁵⁰ The authors examined the constitutional and statutory bases for access to government information and explored how they relate to computerized records.

"One of the chief obstacles to accessing government information in the computer age has been the low priority placed on public access in the design of government computer systems," the authors said.

The authors argued that computers offer the greatest opportunity since the printing press to make vast quantities of information available to the average person, but they also cautioned that the same mechanism that could provide such information is sometimes used to limit access.⁵¹

As government and society wrestle with the issue of access to computerized records, Bunker, *et al.*, offer 13 recommendations, some of which echo the suggestions Scott makes.

1. Federal, state and local government must promote public access needs when agencies install or upgrade computer systems.
2. All information in government-owned and operated computers is a public record, absent specific statutory exemptions.
3. Any government agency that uses computerized records should make nonexempt information available to the public through user-friendly computer terminals.

⁴⁹*Id.* at 44-46.

⁵⁰ Bunker, *et al.*, at 563-564. cites U.S. Office of Technology Assessment, *Innovative Use of Information Technology Facilitating Public Access to Agency Decision making: An Assessment of the Experience in State and Local Governments* 14-34 (1985).

⁵¹*Id.* at 594.

4. Government agencies using computerized records should make available to the public a catalog of nonexempt public information stored in computers.
5. Content-based exemptions for withholding computer records should be the same as for paper files.
6. Information in computers not specifically exempted by statute should not be withheld on the grounds that is mixed with exempt information.
7. Computerized information created or used by a government official as part of his or her official duties must be available to the public unless specifically exempted by statute.
8. Information in government computers cannot be withheld on the ground that the information is not available in paper form or because no official has used or seen the information.
9. Computer software made and used by government is a public record.⁵²
10. Agencies must release computerized information in the form requested when they are capable of doing so.
11. The public may be charged only the actual cost of reproducing government-held computerized information unless extensive employee and computer time is required.
12. Costs of government documents should not be a barrier to access, even when government records are provided by private information providers.
13. Governments should ensure that all records are maintained in a form that can be accessed through available technology.⁵³

The state of Florida has been a leader in opening records for public access. The Florida Legislature's Joint Committee on Information Technology Resources has conducted several research projects in this area. A study in 1985 included a

⁵²The federal Copyright Act prohibits the federal government from holding a copyright on its works (17 U.S.C.S. s.105 (1976)), but states can determine their own requirements and some state and local governments do hold copyrights to software.

⁵³*Id.* at 596-598.

survey of more than 500 state, county and municipal public record custodians in Florida.⁵⁴ Two hundred and six responded to the questionnaire.⁵⁵ Seventy-five percent reported that their agency stored public records on computer. Seventy percent reported that their agency had internal policies regarding access to computerized public records. When asked how the agencies allow inspection of computer-stored public records, 80 percent indicated computer printout. More than 60 percent said they allow inspection through an on-site terminal. The survey showed that a computer printout was the most common way of providing copies of computerized records, although 45 percent indicated that computer tape copies were available.⁵⁶

In 1989, the same legislative committee produced another report, this time to examine the impact of technology on government record keeping, and to make recommendations on information policy.⁵⁷

"State and local governments in Florida are increasingly adopting technology as a way to improve their efficiency in record keeping. As more public records are automated, the laws governing them, which were written primarily at a time when most records were paper documents, require review," the committee wrote.

Using the findings of the survey conducted for its 1985 report, an extensive literature review and three public hearings, the committee issued a set of recommendations to guide the state of Florida in dealing with computer technology.

⁵⁴Florida, The Florida Legislature Joint Committee on Information Technology Resources, *Remote Access to Public Records in Florida*, 1985: 26

⁵⁵*Id.* at 28.

⁵⁶*Id.* at 32-33.

⁵⁷The Florida Legislature Joint Committee on Information Technology Resources. *Problems and Issues in the Information Age*, April 1989, 1.

The committee recommended that "public record custodians provide access procedures that keep pace with technology by: providing access to records through automated as well as non-automated means; providing public access terminals on-site once the majority of their records are automated; and allowing the public to use the database management software available so the public may retrieve the desired information more easily ..."58

Because Florida's law allows for inconsistencies in fees charged for copying records, the committee recommended that record custodians establish pricing procedures that accurately reflect the costs the custodians incur.⁵⁹

Several recommendations were made concerning security. Among them was that the state increase funding for security of state systems.

Requesters of Computerized Information

Requesters, or users, of government records often have different concerns than the record custodians. Some companies have been successful at obtaining government databases and repackaging the information for resale to clients. At the local level, real estate companies are interested in obtaining property assessment records and title information.

News organizations have a growing interest in obtaining computerized records. A survey of 192 daily newspaper editors conducted in 1992, indicated that more than half the newspaper readers in the United States get papers that are doing some computer-assisted records analysis.⁶⁰ The average circulation of the surveyed papers was 150,459. The median circulation was 79,000.

⁵⁸*Id.* at 10.

⁵⁹*Id.* at 11.

⁶⁰Cecilia Friend, "Computerized Records and Newspapers: Computer-Assisted Record Analysis Becoming a Staple of Papers," *Editor and Publisher*, December 26, 1992. 9

Three-fourths of the editors said that the ability to analyze records by computer will be "very important" in the coming decade; a third said that their papers had done 11 or more computer analyses in the past year. More than 80 percent said they analyzed local and state government records.⁶¹

A study in Florida concluded that "newspapers as a group are just awakening to the problems and potentials that computerized information poses for newsgathering."⁶²

Splichal conducted the study to determine how daily newspapers in Florida were using computerized government records. He mailed questionnaires to senior editors at Florida's 42 daily newspapers and 24 responded.⁶³

All responding editors said their newspapers had used computerized records during the previous six months. Three-quarters of the editors said access to government records had been hampered because records were stored in computers.⁶⁴

A variety of reasons for access problems were noted. The reasons were:

1. Agencies were unable to provide the information as requested.
2. Agency personnel were unwilling to take time to extract information from their computers.
3. Agency personnel were unfamiliar with how to handle computer-record requests.
4. Information was still being processed.

⁶¹*Id.* at 9.

⁶²Sigman Splichal, "How Florida Newspapers are Dealing with Access to Computerized Government Information," *Newspaper Research Journal*, Vol.13&14, No. 4&1 (Fall 1992/ Winter 1993), 82.

⁶³*Id.*, at 76.

⁶⁴*Id.*, at 77.

5. Agency personnel expressed privacy concerns about computerized records.⁶⁵

Newspapers in the Florida study were most likely to use computerized records in lists and compilations, such as marriages and real estate transfers. The larger papers were more likely to use computerized records for stories.⁶⁶

Although the Florida newspapers said agency personnel had been helpful in providing access to computerized records, 75 percent of the editors expressed concern that computers would make it easier for government officials to hide information from the public and the press.⁶⁷

Government agencies in Florida have been somewhat willing to develop computer programs to help newspapers access information. Thirty-eight percent of editors said agencies had developed such programs. However, 60 percent of newspapers in the largest circulation category – more than 75,000 circulation – said computer programs had been developed.⁶⁸

The high cost of obtaining computerized records was a concern for more than a third of the editors. Thirty-eight percent said cost had deterred them from gaining access.

All editors agreed that the public and media should have access under state public records laws to all non-exempt information in government computers. While most newspapers said computerization was hampering access, in only one instance did an editor report taking legal action to obtain computerized records.⁶⁹

⁶⁵*Id.*, at 78.

⁶⁶*Id.*, at 78.

⁶⁷*Id.*, at 81.

⁶⁸*Id.* at 79, 80.

⁶⁹*Id.* at 81.

"Newspaper approaches to computerized records do not appear to be systematic, but rather reactive to the changing situations in which they seek public records," Splichal concluded. "Reporters, as they often do, are adjusting to a new situation by trial and error."⁷⁰

Splichal suggested two approaches to meet the challenge of computerized records. The first is to promote a greater awareness among the news media with a concerted, systematic approach to solving the problems. The second approach is to better inform record custodians and policy makers about public access needs.⁷¹

⁷⁰*Id.* at 82.

⁷¹*Id.* at 82.

CHAPTER 3

RESEARCH QUESTIONS AND METHOD

Questions

The purpose of this thesis is to answer the questions, "What is the practice in Tennessee regarding access to public records in electronic form and to what extent are daily newspapers in the state seeking such access?"

To answer these questions, answers to other questions must be found.

1. To what extent are government records computerized in Tennessee?
2. Which municipal, county or state agencies provide access in electronic form ?
3. Is there any standardization of hardware? Software? Has agency-written software been copyrighted? Are government agencies signing contracts with private vendors whose software is copyright?
4. Should records be available in electronic form? Are hard copies still sufficient?
5. What about cost of providing electronic access? Are fees assessed only for the cost involved in making an electronic copy? Are additional charges added to offset the cost of hardware or software?
6. What media efforts have been made to gain access to records in electronic form and what has been the experience?

Definitions

Two key terms used in this study should be defined: public record and access in electronic form. As the term is defined by Tennessee statute, *public records* are "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.⁷²

Access in electronic form means availability of a record or information to the public by computer disk, tape, or public terminal or modem access.

Method

Selected state, county and municipal agencies in Tennessee were surveyed by mail. A separate survey of the 28 daily newspapers in the state was also conducted.

Twelve municipalities, all of which have 25,000 or more population were chosen. They are Chattanooga, Clarksville, Cleveland, Columbia, Jackson, Johnson City, Kingsport, Knoxville, Memphis, Murfreesboro, Nashville and Oak Ridge. The agencies or departments surveyed were the building inspection or codes enforcement department, municipal court, police department and finance office.

Also selected were seven agencies or departments in the 24 counties in which a daily newspaper is located. The agencies or departments included the county executive or finance director's office, county clerk's office, circuit court, election commission, property assessor's office, register of deeds office and sheriff's department. The questionnaire was also mailed to information systems directors in Knox and Shelby counties.

The 13 state agencies chosen were the Department of Correction, Department of Environment and Conservation, Department of Revenue, Department of Commerce and Insurance, General Services, Economic and

⁷²T.C.A 10-7-301(6).

Community Development, Department of Health, Department of Safety, Department of Agriculture, Department of Education, Department of Labor, Department of Transportation and Department of Finance. The questionnaire was sent to the information officer for each agency. A follow up letter and questionnaire were mailed to those who did not responded.

Daily newspaper editors were sent questionnaires to determine what their experience has been in using public records in electronic form. At most newspapers the questionnaire was addressed to the top editor. At papers where there was an editor known to be interested in the topic, the questionnaire was mailed to him or her. Because of a slow response rate, editors were sent a fax reminder, via computer modem. The fax was followed by a letter and copy of the questionnaire to editors who still had not responded.

CHAPTER 4

RESULTS

Gap Between Computerization and Accessibility

This survey of selected government agencies in Tennessee found that public access to electronic records is limited. Questionnaires were mailed to 229 state, county and municipal agencies or departments. One hundred twenty-six, or 55 percent, were completed and returned (See Table 1). Seven of the returned questionnaires were not counted in the responses that follow because information regarding agency and location was missing, leaving 119 responses which were counted.

Most respondents, 82 out of 119, said at least half of their records were computerized (See Table 2, Appendix A). Another 24 respondents had at least some records on computers, which brings the percentage of respondents with computerized records to 89 percent. Only two had no plans to computerize. In the 1985 Florida study, cited in Chapter 2, 75 percent of the respondents stated that their agency stored public records on computers.⁷³ (Only a rough comparison can be made because there are some differences in the way the questions were asked and the samples for the study were drawn differently. Also, it has been nine years since the Florida study was conducted. Yet there is some value in comparing the practices of the two states.)

A wide gap exists between the computerization of records in Tennessee and accessibility. In comparison to the 89 percent who had records on computers, only 27 percent, or 32 of the 119, allowed inspection of records either through a computer terminal on site or through remote access.

⁷³Florida, 1985 at 30.

Table 1: More than half of record custodians who were mailed questionnaires returned them. This table shows the responses by agency.

Type of Public Record Custodian	Number	% Response
<u>State</u>	7	54%
<u>County</u>		
County Executive/ Budget Director	16	66%
County Clerk	12	50%
Circuit Court Clerk	10	42%
Election Registrar	15	63%
Property Assessor	10	42%
Register of Deeds	11	46%
Sheriff	11	46%
Other	4	*
<u>Municipal</u>		
Budget/Finance Director	2	17%
Building Inspector/ Codes Enforcement	4	33%
City Court Clerk	4	33%
Police Chief	9	75%
Other	4	*

* Includes information systems managers, who exist in few cities and counties.

The county clerks in Davidson and Hamilton counties were the only two who indicated remote access capability.

Only 29 respondents, 24 percent, indicated records were available in some electronic form – a public access terminal, a computer tape or diskette, or dial-up access (See Table 2). All respondents said they were willing to provide copies of records in other forms – photo copies, computer printouts or microfilm.

Voter Registration Records May be Easiest to Obtain

Based on the survey, voter registration records are the most easily obtained in electronic form. Election registrars in 15 of the 24 survey counties responded to the questionnaire and 12 of them said that voter registration lists were available on computer tape or disks (See Table 2). To obtain a voter list on diskette, the requester is required to sign a form certifying that the list will be used for political purposes only.⁷⁴

A more useful computer record for journalists would be campaign fund raising and expense reports. This information is not available electronically. County election commissions obtain the information through paper forms and then report to the Tennessee Registry of Election Finance, which enters totals into a computer about once year, for candidates for state offices only.⁷⁵

In addition to the 12 election commissions, only 17 other respondents from among the total of 119, said that records could be provided in electronic form. Those 17 include three data processing or information systems respondents who may represent several agencies or departments. The three are Knox County data processing, Maury County data processing, and the Shelby County Government Information Technology Department. Four state agencies provide some records

⁷⁴Form SS-3065 required by T.C.A. 2-2-138.

⁷⁵Peggy Catalano, executive director Tennessee Registry of Election Finance, telephone interview, July 7, 1994.

in computerized form: the Department of Environment and Conservation, Department of Finance, Department of Labor and the Department of Agriculture. Others offering records in electronic form are the county executives' offices in Carter and Hamilton counties; county clerks in Davidson, Hamilton and Shelby counties; property assessors in Davidson, Hamblen and Maury counties, circuit court clerk in Sullivan and the city recorder in Jackson (See Table 2).

Ninety-one out of 95 property assessors' offices in Tennessee are connected to a mainframe computer in the state property assessor's office in Nashville.⁷⁶ The four largest counties in the state – Davidson, Hamilton, Knox and Shelby – maintain their own systems. A magnetic tape of assessment records for each county can be purchased from the state Division of Property Assessment. The cost is based on the number of parcels. In Blount County, for example, there are about 50,000 parcels and the tape would cost \$238.⁷⁷ There may be some additional cost to the requester in getting the information in a format that can be read by the requester's computer. Private vendors provide such services.

Charges for copies of public records vary widely in Tennessee. Election commissions charge \$35 as a set-up fee for diskettes, plus a \$1.50 to \$2 for the diskette. Printouts of registered voters may cost as little as three-quarters of a cent per name, although .02 per name is more common. Some agencies charge for computer time. The Hamilton County Data Processing Department, for example, charges \$250 per hour, with a half-hour minimum. The Shelby County Information Technology Department charges \$625 per hour for mainframe time, \$136 per hour for mini-computer time and \$21 per hour for micro-computer time.

⁷⁶Tim Sands, Titles and Appraisals Specialist, State of Tennessee Division of Property Assessment, telephone interview 22 June 1994.

⁷⁷*Id.*

The Shelby County Clerk's office charges \$750 for special requested tapes or diskettes that require additional programming.

Although access to records in electronic form is of some concern to record custodians, only 22, or 18 percent of respondents, said they had a written policy, other than the Tennessee Public Records Law (Chapter 7, Tennessee Code Annotated). Eighty respondents said they had no written internal policy and 17 others did not answer the question. Respondents were asked to attach or explain their policies. Only two attached a policy, the Metro Nashville and Kingsport police departments. Written explanations for the most part were not enlightening (See Table 2). In regard to written policies, Tennessee stands in sharp contrast to Florida where almost a decade ago 70 percent of the Florida respondent record custodians said they had policies regarding access in electronic form.⁷⁸

This survey also asked if any requests had been made for copies of large portions of computerized databases. Forty-three, or 36 percent, said yes, 58 said no and 18 did not answer the question. Of the 43 who said yes, nine were election registrars, eight were county clerks and seven were property assessors. Property assessment records may be requested more frequently than indicated here. As pointed out earlier, most county property assessment records are available through the state, and people who request those records go directly to that source. The remainder of the respondents who said they received requests were spread out among the various types of agencies that responded to the survey.

The next question asked about the frequency of requests. Nine said requests were made four or more times per month, 10 said one to three times per

⁷⁸Florida, 1985 at 32.

month and 24 said less than once a month. In the Florida study, 83 out of the 206 respondents, said they received request for computerized databases, but half of those received the requests less than once a month.⁷⁹

Record custodians were asked how they fill such requests. In the Tennessee study, 23, or 53 percent of those who said they received requests, said the information was provided on computer tape or diskette, 14 said computer printouts were supplied, four said they were unable to meet the request and five gave other reasons. In the 1985 Florida study, 62 percent of those who receive requests for copies of computerized records said they provide copies on tape or diskette.⁸⁰

Most Frequent Requesters

The most frequent requesters of computerized records are private individuals, said respondents to this study. Of all respondents who answered the question, 24 listed private individuals as the most frequent requesters, followed by private companies (20) such as insurance companies, real estate agencies, etc., other government agencies (7) and the media (4). (See Table 2)

Government agencies in Tennessee use software from a variety of sources. Many indicated they used software from more than once source, but the majority (37) indicated that software written for the agency by an outside vendor, was one source. Nineteen said they used commercially available programs and 18 said they used software written by the agency. Eleven said they used software developed by another government agency.

Fifty-seven respondents said that the software used by their agency was copyrighted. That is usually true of commercially available programs. However, 27 of the 57 said they used software written by an outside agency. Follow up

⁷⁹*Id.* at 36.

⁸⁰*Id.* at 38.

questions were not asked to determine whether software written by an outside agency, would also be available to and usable by the public.

Only 12 respondents said that the software used by the agency was not copyrighted. Thirty-seven said they did not know.

The survey asked whether the agency had made any agreements with the private sector to market the electronic records. Only three said yes. They were property assessors in Hamblen, Davidson and Maury counties.

Nancy Gregg, chief deputy assessor, Hamblen County, said, "Analysis Systems⁸¹ obtains the tape of all our records and sells its service to local real estate and appraisal officers. Information includes property ownership, sales data, improvement status and description, etc. It is a valuable tool to the users and to us as indirect supplier of the information."

Record Custodians' Views

One open-ended question was included on the survey form. Participants were asked, "What is your general assessment of the feasibility of providing electronic access to computer-stored public records?" Electronic access was intended to include tapes and diskettes, which would not create the security concerns some of the respondents expressed, but most respondents apparently interpreted the question to mean on-line access.

Nevertheless, a sampling of the answers may give some insight into their concerns, and, taken as a whole, may indicate an obstacle in gaining greater access to records.

"In security sensitive areas, such as law enforcement, if there is electronic access to computer-store public records, there will be problems preventing access into confidential records. There should also be accommodations made to ensure

⁸¹636 Middle Creek Road, Sevierville, TN 37862

that the computer being accessed for public records has the capacity/ability to continue to perform its primary function," said Michael Ruble of the Knox County Sheriff's Department.

"Forget it!" said Spence DuPree, Madison County Election Registrar.

"We do not want to provide electronic access to our computer stored public records," Cheryl Ingram, deputy registrar, McMinn County Election Commission.

"The potential for abuse is too great to open the information up to retrieval by electronic means" said Roy Crawford, Blount County clerk.

"Not feasible: lack of equipment; lack of space; lack of protection for confidential information," said Linda Moore, bookkeeper in the Bradley County Clerk's Office.

"Providing this type access is completely feasible but, legally and ethically, probably not desirable," Larry Stephenson, director of systems for the Davidson County Clerk's Office.

"Any profit made from the sale of such records should go to the agency compiling such records," said the Madison County property assessor.

"Electronic read access is fine in cases where an accompanying explanation isn't needed," said Paul Bruce, Hamblen county executive.

"Although most records are public information, they should be responsibly disseminated."

The feasibility of electronic access is "not good at this time. We use a lot of special purpose software, with plans for replacements in the near future," said the Davidson County property assessor.

All the news about electronic access is not bad. Some record custodians are comfortable with computers and see the opportunity for better citizen access.

"Electronic access to computer-stored public records may be the solution to public access; not a bad idea," said Dale Isabell, director of accounts and budgets in Anderson County. He acknowledged that problems would have to be worked out. He cited four problem areas: costs, protection of record integrity, protecting internal controls and protecting non-public records.

Tom 'TJ' Jones, Dyer County circuit court clerk said, "I plan to provide a search-only monitor for the public. We may provide the Tennessee Highway Patrol a monitor at their station."

Feasibility of electronic access is satisfactory, said Michael McDonald, Davidson County registrar-at-large. "We plan to computerize our voter registration database next year (1995). Hopefully this innovation will help improve electronic access for public."

In Henry County, Faye Scott, a bookkeeper in the county executive's office, sees a practical side to more computers. "Given the ever-increasing usage of computers, I feel that it is an area that we should actively develop," said Ms. Scott. "Currently we are running short of storage facilities, and this could help to alleviate a portion of that problem."

A summary of responses from record custodians to selected questions is included in Table 2 in Appendix A.

Newspaper Survey

Thirteen of the 28 daily newspapers responded to the survey, a response rate of 46 percent.

The editors said it is important for their newspapers to learn to obtain and use records in electronic form. Ten of the editors said it was "very important." Three checked "somewhat important."

With a few possible exceptions, daily newspapers have not been aggressive in seeking and using computerized records. The editors could check as many answers as were appropriate. Seven said that their papers had used records obtained in electronic form. Six of the seven said such records were used in the public records listings and six said they used computerized election returns. Only five indicated that computerized records were analyzed to provide information for a story.

The editors were asked if certain local records were computerized. For county records, the questionnaire listed real estate transfers, tax liens, vital statistics (birth, death, marriage, etc.), law enforcement records, court records and budget/finance records. In all categories, except vital statistics, more editors said records were computerized than not. For city records, the questionnaire listed city budget, other city financial records, police records, municipal court records and building permits. According to the editors far more municipal records are computerized than not.

The editors were asked about their experiences in attempting to get electronic access to state or local public records. Four said that record custodians had been helpful. Three said record custodians had resisted giving electronic access. One said that the police chief had not been helpful, but that others had. Four did not choose any of the six choices offered, but wrote comments, which

indicated difficulty in getting access to computerized records. Only one editor said that his newspaper had not tried.

The editors were asked how records that exist in electronic form are provided to the newspaper. Twelve checked hard copy printouts, four checked public terminal, four checked computer disks and three checked computer tape. (The editors could check all answers that applied.)

Eleven editors said that someone at the newspaper at the expertise to obtain and use records in electronic form, either a reporter, editor or systems employee. Only two said there was no one with the expertise.

The editors said that the biggest obstacles in obtaining public records in electronic form were the high cost charged by agencies for making records available (5), weakness in the public record law (4) and resistance from record custodians (3).

"We are regularly encountering attempts to charge us exorbitant fees for access to public records held in computers," said Michael Kerr, assistant managing editor of *The Commercial Appeal* in Memphis. "The Tennessee Department of Human Services wanted to charge the newspaper \$600 for a Medicaid records request. They also said it could not be provided in electronic form, only in printouts. There is no standardization in the way state or local governments are approaching this issue.

"Provisions need to be made to enable reporters to examine public records that reside in computers so that state employees' time is not an issue. Governments allow public access to hard-copy records without involving government employee's time; a computer is just another type of file cabinet where records are kept," Kerr said.

The Commercial Appeal and *The Tennessean*, in Nashville, reported efforts to obtain drivers' license records and were told that it would cost \$5 per record, or about \$2.5 million for the entire database. That charge is required by statute and is viewed by the legislature as a revenue source.⁸² By contrast, drivers' license records in Florida are available on-line at no cost other than a fee for a computer service to connect to the database.

"Tennessee needs a stronger open records law that specifically addresses electronic records," said Jack Lail, metro editor of the *Knoxville News-Sentinel*. The state needs a strategic plan to make records available to the citizens in machine readable form, he said. And fees need to reflect incremental costs, not used as a revenue source.

⁸²T.C.A. 55-50-204(c)

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

This research did not include a survey of computerized public records accessibility in the 50 states, so it is impossible to rank Tennessee with the others. However, it is clear that Tennessee is behind the leaders, like Florida. It is also clear that the state is behind in seizing the opportunity made possible by computer technology to provide citizens new avenues to government information. As noted in Chapter 1, at least 33 state legislatures offer some degree of on-line access to the public. Across the country, some agency at the federal, state or local level announces a new on-line service to information almost every week. But no evidence can be found that government agencies in Tennessee are providing such access. Furthermore, despite a law that now defines public records to include those in electronic form, the Tennessee statutes do not always require that records be released in computer form.

There are indications that the problem is not just the technology, but the proprietary attitude among some record custodians that their records are not open to the public. There is no doubt that computer technology has compounded access problems, because many custodians fear they cannot protect the integrity of records if they provide computer access.

If Tennessee citizens are to have the same access to information as citizens in some other states, a concerted effort must be made to catch up with the leaders. A few recommendations are offered:

1. An updated public records law is needed.

If political leaders do not move swiftly, Tennessee will slide even further behind. Legislative leaders would be wise to take the initiative to appoint a joint

committee, similar to the one in Florida. It should be funded and staffed and guided by the philosophy that government information belongs to the people.

The committee's first task would be to recommend a revision to the public records law that adequately addresses the issues related to the new technology. It will not be enough just to make another amendment to the current law. Comprehensive changes are needed. Exceptions should be few and limited to those that reflect a genuine need to protect privacy or to promote public interests that, in the short term at least, outweigh the public's right to know.

Fortunately, the committee would not have to start from scratch. Scott, who was cited in Chapter 2 for suggesting 12 elements for a good law, has written a model statute that should serve as a guide. And the Florida Legislature's Joint Committee on Information Technology Resources has done some important work that addresses many of the issues raised by computer technology.

In light of findings in this research, a few of Scott's suggestions should be emphasized:

- *Access to information to all citizens regardless of the purpose for which the information is sought.* In Tennessee, anyone requesting voter registration lists must sign a statement that the records will be used for "political purposes only." The statement is vague and open to broad interpretation, but it raises some questions. What if a news organization wants a copy? Is that a political purpose? If that information aids the media to inform the public about the political process, is it not important to make that information available? Why should candidates and political parties have exclusive use of the information? A revised public records law should delete the requirement that the requester sign a statement of purpose.

- Another element of the law that should be emphasized is *redaction*, which is a process that allows confidential portions of a record to be withheld while giving access to the remainder of the data. Many record custodians who responded to the Tennessee survey, noted that private information was mixed with public information. Computer technology makes it possible to separate the two and there is no reason that access to the public part should be blocked because some information is private.

- *Cost containment* should also be emphasized. If information is too expensive to obtain, then that information is not accessible. If records are already created and stored at taxpayer expense, then requesters should be charged the minimum cost copying those records. Most important, providing access should not be seen as a revenue source. Records already belong to the public.

2. Funding for computers is needed.

Another step toward better access is for state and local governments to provide funding for agencies that have not computerized; funding for on-site, user-friendly terminals should be included in the budgeting process at state, county and municipal levels. Hardware and software for dial-up access are also recommended. It is easy, of course, for anyone to suggest government funding for any service. But this suggestion is not made lightly. Scott suggested that the computer is the most important information technology since Gutenberg's printing press. That is no exaggeration. The printing press made it easier to put information in the hands of the masses, but pales in comparison to the information that can be provided by computers.

3. A public awareness campaign is needed.

A joint committee, as suggested above, would be one element. A specific campaign for record custodians is essential. Perhaps the University of

Tennessee's Institute for Public Service would be an appropriate agency. Because it already provides advice to local governments through the County Technical Advisory Service and the Municipal Technical Advisory Service, it could sponsor a campaign to educate and advise record custodians.

For a general public awareness campaign, many groups should be involved. These include, but are not limited to, the news media, library associations, researchers and other groups interested in access.

4. News organizations must take advantage of the new technology to improve the way they report.

Traditionally, Americans have relied on the news media to be watchdogs on government. Based on this survey, few newspapers in Tennessee have been aggressive in seeking or using computerized public records. As individual organizations, they must become more aggressive. Newspapers, from the smallest weekly to the largest daily, and radio and television should insist on gaining access to computerized records and use them to explain to the public what the government is doing right and wrong. Organizations of journalists also have a role. The Tennessee Press Association should make it a mission to see that a public records law is passed that addresses the issues associated with access to records in the computer age. The Tennessee Association of Broadcasters, the Tennessee Associated Press Managing Editors, various chapters of the Society for Professional Journalists, also should use their collective influence for better legislation and to educate their members on how to use the new technology.

Topics for Future Research

Because relatively little research has been conducted regarding access to public records in electronic form, it is an area ripe for further study. One topic worthy of study is the use of software by government agencies in Tennessee. The current study touched on this subject, but a detailed study conducted in Florida

could serve as a model for a research in Tennessee. It would be valuable to inventory software being used and determine if is proprietary and what the cost would be if the software is required to read records in electronic form.

Another topic for future research is the privatization of government information.. A new industry has grown up around government information. The industry includes companies that gain access to government databases, then repackage the information, usually in a user-friendly form, and sell the information to the public and sometimes back to the government. Questions that should be answered are: Does privatization limit easy access to government information, or does it provide a rich diversity of sources? Should government give a private vendor a monopoly contract? Should the government be in the business of selling information as a revenue source?

Finally, privacy is a topic for further research. The current study made no attempt to deal with the privacy issues, but a concern emerged from the comments made by some record custodians. And it is a topic that is often mentioned when people discuss computerized records.

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APPENDICES

APPENDIX A

Table 2: State and local government agencies in Tennessee indicate extent of public records in computer form.

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
COUNTIES					
<u>Anderson</u>					
Accounts/Budget	Yes	No	No	No	Private Individual Candidate
Election Registrar	Yes	N/A	No	No	Private Individuals/Companies
Property Assessor	Yes	No	Yes	No	Private Companies
Register of Deeds	No	No	Yes	No	Private individuals/Companies
Sheriff	No	N/A	N/A	N/A	
<u>Bedford</u>					
County Executive	No	N/A	N/A	N/A	N/A
Property Assessor	Yes	No	No	No	N/A
<u>Blount</u>					
Circuit Court	No	No	No	No	Private Individuals
County Clerk	Yes	No	No	No	Private Companies
Budget Director	Yes	Yes	No	No	Private Individuals
Election Registrar	Yes	No	No	Yes	

Notes: "N/A" is noted when respondent indicated no records were computerized and ended the questionnaire at that point.
 "No Answer" is noted when the respondent had at least some computerized records but did not answer a particular question.

Table 2 (continued)

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
<u>Bradley</u>					
County Clerk	Yes	No	No	No	No Requests Made
Accounts/Budgets	Yes	No	No	No	No Requests Made
Election Registrar	Yes	Yes	No	Yes	Private Individuals
Sheriff	No	No	No	No	Other Gov't Agencies
<u>Carter</u>					
County Executive	Yes	No	No	Yes	No Requests Made
Election Registrar	No	N/A	N/A	N/A	N/A
Property Assessor	Yes	Yes	No	No	Private Companies
Register of Deeds	No	N/A	N/A	N/A	N/A
Sheriff	No	Yes	No	No	No Requests Made
<u>Davidson</u>					
County Clerk	Yes	Yes	No	Yes	Private Companies
Election Registrar	Yes	Yes	Yes	Yes	Public Officials & Candidates
Property Assessor	Yes	No	Yes	Yes	Private Individuals
Register of Deeds	Yes	No	Yes	No	No Requests Made

Table 2 (continued)

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
<u>Dyer</u>					
Circuit Court	Yes	No	Yes	No	No Requests Made
County Clerk	No	No	No	No	Private Companies
County Executive	No	N/A	N/A	N/A	N/A
Election Registrar	Yes	Yes	No	Yes	Private Individuals
Register of Deeds	Yes	No	Yes	No	No Requests Made
<u>Greene</u>					
Budget Director	Yes	No	No	No	No Requests Made
Property Assessor	Yes	No	No	No	Not Answered
Register of Deeds	No	N/A	N/A	N/A	N/A
<u>Hamblen</u>					
Circuit Court	Yes	No	No	No	Private Individuals
County Clerk	No	No	Not Answered	No	No Requests Made
County Executive	Yes	No	No	No	Other Gov't Agencies
Property Assessor	Yes	No	No	Yes	Private Companies
Sheriff	No	No	No	No	Private Individuals
<u>Hamilton</u>					
Data Processing	Yes	No	No	Yes	Private Companies
County Clerk	Yes	Yes	Yes	Yes	Private Individuals

Table 2 (continued)

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
<u>Hamilton cont'd</u>					
Election Registrar	Yes	Yes	Yes	Yes	Private Individuals
Register of Deeds	Yes	No	Yes	No	Private Companies
<u>Henry</u>					
County Clerk	No	No	Not Answered	No	Private Companies
County Executive	Yes	No	No	No	No Requests Made
Register of Deeds	No	N/A	N/A	N/A	N/A
<u>Knox</u>					
Data Processing	Yes	No	No	Yes	Private Individuals
Election Registrar	Yes	Don't know	No	Yes	Other Gov't Agencies/ Media
Sheriff	No	No	No	No	Media
<u>McMinn</u>					
Director of Finance	No	No	No	No	Private Individuals
Circuit Court	No	No	No	No	Private Companies
Election Registrar	Yes	Yes	Yes	Yes	Candidates/ Political Parties
Sheriff	No	N/A	N/A	N/A	N/A

Table 2 (continued)

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
<u>Madison</u>					
Accounting Director	Yes	No	No	No	No Requests Made
Circuit Court	No	No	No	No	Private Individuals
County Clerk	No	No	No	No	No Requests Made
Election Registrar	Yes	Yes	No	Yes	Private Individuals
Property Assessor	Yes	Yes	No	No	No Requests Made
Register of Deeds	No	N/A	N/A	N/A	N/A
Sheriff	Yes	No	No	No	No Requests Made
<u>Maury</u>					
Information Systems	Yes	No	No	Yes	Other Gov't Agencies
Property Assessor	Yes	No	Yes	Yes	Private Companies
Register of Deeds	No	N/A	N/A	N/A	N/A
Sheriff	Yes	No	No	No	Other Gov't Agencies
<u>Montgomery</u>					
Circuit Court	No	N/A	No	No	No Requests Made
Election Registrar	No	N/A	N/A	N/A	N/A
Property Assessor	Yes	No	Yes	No	Private Companies

Table 2 (continued)

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
<u>Obion</u> Circuit Court	Yes	Not Answered	No	No	No Requests Made
County Executive	Yes	No	Yes	No	No Requests Made
Election Registrar	No	Not Answered	No	Yes	Not Answered
Register of Deeds	No	N/A	N/A	N/A	N/A
Sheriff	No	No	No	No	Not Answered
<u>Putnam</u> County Clerk	Yes	No	No	No	Not Answered
<u>Rutherford</u> County Clerk	Yes	No	No	No	Private Individuals
<u>Sevier</u> County Executive	Yes	No	No	No	No Requests Made
<u>Shelby</u> Information Technology Dept ⁺	Yes	No	Yes	Yes	Gov't Agencies
Information Systems	Yes	No	No	No	No Requests Made

⁺ This department represents 13 elected officials with separate agencies as well as judges and the legislative branch.

Table 2 (continued)

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
<u>Shelby County cont'd</u>					
County Clerk	Yes	No	Yes	Yes	Private Companies
Election Registrar	Yes	Yes	Yes	Yes	Candidates/ elected officials/ political parties
Sheriff	Yes	No	No	No	No Requests Made
<u>Sullivan</u>					
Circuit Court	Yes	No	Yes	Yes	No Requests Made
Election Registrar	Yes	Not Answered	Yes	Yes	Private Individuals
Property Assessor	Yes	No	No	No	No Requests Made
Sheriff	Yes	No	No	No	Other Gov't Agencies
<u>Washington</u>					
Circuit Court	Yes	No	Yes	No	Private Companies
County Clerk	Yes	Yes	Yes	No	Private Companies
Election Registrar	Yes	No	No	Yes	No Requests Made
Register of Deeds	No	No	Yes	No	No Requests Made
Sheriff					
<u>Wilson</u>					
Finance Director	Yes	Yes	No	No	No Requests Made
Circuit Court	Yes	No	Yes	No	No Requests Made

Table 2 (continued)

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
<u>Wilson County cont'd</u>					
<u>Sheriff</u>	Yes	No	No	No	No Requests Made
MUNICIPALITIES					
<u>Chattanooga</u>					
Finance Commission	No	Yes	Yes	No	Media
Police Department	Yes	No	No	No	No Requests Made
<u>Clarksville</u>					
Building and Codes	Yes	No	No	No	No Requests Made
Police Department	Yes	No	No	No	No Requests Made Private Individuals/Other Gov't Agencies
<u>Cleveland</u>					
Police Department	Yes	No	No	No	No Requests Made
<u>Columbia</u>					
City Court Clerk	Yes	No	No	No	No Requests Made
<u>Jackson</u>					
Building Codes	Yes	No	No	No	Other Gov't Agencies
City Recorder	Yes	No	Yes	Yes	Private Companies
City Court Clerk	Yes	No	No	No	No Requests Made

Table 2 (continued)

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
<u>Jackson cont'd</u> Police Department	Yes	No	Not Answered	No	Private individuals & companies & Other Gov't Agencies
<u>Johnson City</u> Records Manager	Yes	No	No	No	No Requests Made
<u>Kingsport</u> Information Services	Yes	Yes	Yes	No	Private Companies
Police Department	Yes	Yes	No	No	No Requests Made
<u>Knoxville</u> Police Department	Yes	No	No	No	No Requests Made
<u>Memphis</u> City Court Clerk	Yes	No	No	No	No Requests Made
Information Systems	No	No	No	No	No Requests Made

Table 2 (continued)

Agency or Department	At least 50% Records Computerized	Has Written Policy About Access	Public Terminal Available	Tapes or Disks Available To Public	Most Frequent Requester
<u>Murfreesboro</u> Building and Codes City Court Clerk Police Department	Yes Yes No	No No No	No Yes No	No No No	Private Companies No Requests Made No Requests Made
<u>Nashville</u> Codes Administration Police	Yes Yes	No Yes	Yes No	Not Answered No	No Requests Made Private Individuals
<u>Oak Ridge</u> Police Department	Yes	No	No	No	No Requests Made
STATE Agriculture Dept. Education Dept. Environment & Conservation Finance Dept.	Yes No No Yes	No No No No	No No No No	Yes No Yes Yes	Private Individuals Don't Know No Requests Made Media/Private Companies Private Companies Private Companies Media
Health Dept. Labor Dept. Transportation	No Yes No	Yes Yes No	No Yes Yes	No Yes No	

APPENDIX B

Survey of Computerized Records of Government Agencies

[Please circle the letter beside the appropriate response. You are welcome to write comments or explanations beside questions or at the end of this questionnaire.]

1. What portion of your agency's / department's records are computerized? (Please estimate)

- a. None
- b. Some, but less than 25%
- c. Between 25-50%
- d. Between 50-75%
- e. More than 75%

2. If you answered "None," do you have plans to computerize your records?

- a. Yes
- b. No

3. If you answered "Yes" to question #2, will you computerize:

- a. Current budget year?
- b. Next budget year?
- c. Not sure?

(If none of your records are computerized, you may stop here. Your response is still important for this survey and you are urged to return this form promptly.)

4. What type of computer system do you use? (Circle all that apply)

- a. Agency's own mainframe
- b. Share mainframe with other agencies
- c. Micro- or personal computer
- d. Other: (List or explain)

5. Do you have a contract with a private vendor to provide computer services?

- a. Yes
- b. No

6. If yes, does the vendor provide:

- a. 100 percent of your computer needs?
- b. Part of your computer needs?

7. If part of your computer needs, which services does the vendor provide? (Circle all that apply)

- a. Payroll
- b. Finance
- c. Archival
- d. Other: (List or explain)

8. Does your agency have any written internal policy(ies) regarding how public access is provided to computer-stored public records?

- a. Yes
- b. No

- If yes, please describe below or attach copy.

9. How does your agency currently provide access for the public to inspect/examine computer-stored public records? (Circle all that apply)

- a. Via computer terminal (on site)
- b. Remote access
- c. Photocopy
- d. Microfilm/microfiche
- e. Computer printout
- f. Other: (List or explain)

10. In what form(s) do you provide the public with copies of computer-stored public records? (Circle all that apply)

- a. Photocopy
- b. Computer tape or diskette
- c. Microfilm/microfiche
- d. Computer printout
- e. Other:(Describe)

11. Do you charge for providing copies of computer-stored public records?

- a. Yes
- b. No (If no, go to Question 13)

12. How much do you charge for providing copies of computer-stored information? (Please circle appropriate letters(s) and also indicate charges.)

- a. Charge per unit of records
(e.g. per page, sheet of microfiche) _____
- b. Charge per record
(e.g. 10¢ per name) _____
- c. Charge by computer time
(e.g. \$100 per hour) _____
- d. Subscription fee _____
- e. Other: (List or describe) _____

13. Are you having any specific problems meeting requests for computer access to public records?

- a. Yes
- b. No

If yes, please describe.

14. Have any requests ever been made to your office for copies of large portions of computerized databases containing public records?

- a. Yes
 - b. No
- (If your answer is no, skip to Question 19)

15. How often are these requests made?

- a. Four or more times a month
- b. 1-3 times a month
- c. Less than once a month

16. How do you fulfill such requests? (Circle all that apply)

- a. Provide the requested information on computer tape or diskette
- b. Provide printout of database
- c. Unable to meet request
- d. Other: (Describe)

17. From which of the following categories have you received requests for computerized records? (Circle all that apply)

- a. Private individuals
- b. Other government agencies
- c. Media
- d. Private companies (e.g. Insurance companies, real estate agencies)
- e. Other: (List or describe)

18. Among those that have requested computerized records, which group has been the most frequent requester.

- a. Private individuals
- b. Other government agencies
- c. Media
- d. Private companies (e.g. Insurance companies, real estate agencies)
- e. Other: (List)

19. What type of software program(s) are used to maintain and process your records?
(Circle all that apply)

- a. Commercially available programs
- b. Software written by agency
- c. Software written for the agency by an outside vendor
- d. Software developed by another government agency
- e. Other: (list or describe)

20. Is the software copyrighted?

- a. Yes
- b. No
- c. Don't know

21. What type(s) of electronic access exists between your agency computer and private-access users? (e.g. Insurance companies, real estate agencies, credit bureaus, media, etc.)

- a. Dial-up
- b. Dedicated line
- c. Both (a) & (b)
- d. None

22. Has your agency entered into any agreements or contracts with the private sector for them to market the electronic access to your agency's records?

- a. Yes
- b. No

- If "yes," please list vendor and describe records.

23. What is your general assessment of the feasibility of providing electronic access to computer-stored public records? (Use as much space as necessary to answer this question. You may attach additional sheets or write on the back of this page.)

Name of person completing this survey

Department or Agency

Title or position of person completing survey

APPENDIX C

How Newspapers Use Public Records in Electronic Form

[Please check or circle the appropriate answer on the following questions.]

1. Are the public records listed below computerized in your county? *(Please check the appropriate box.)*

Record	Yes	No	Partial	Don't Know
Real estate transfers				
Tax liens				
Vital statistics (Birth, death, marriage, etc.)				
Law enforcement records				
Court records				
Local government budget/finance records				

Please list other computerized public records that you are aware of in your county: (Use the back of this page if you need more room)

2. Are the records below computerized in your city?

Record	Yes	No	Partial	Don't Know
City budget				
Other city financial records				
Police records				
Municipal court records				
Building permits				

Please list other computerized public records that you are aware of in your county

3. What has been your experience in attempting to get electronic access to state or local public records?

- a. Have not tried
- b. Records custodians have been helpful
- c. Records custodians do not have the expertise to provide access.
- d. Records custodians have resisted giving electronic access
- e. The newspaper had to go to court to force electronic access to records.
- f. Other :(Please specify)

• If the newspaper has been to court, please cite court case and describe effort, including current status of the case: (If you need more room, use the back of this page or attach additional pages.)

4. What state or local government records have you obtained in electronic form in the past 18 months? (Circle all that apply)

- a. Real estate transfers
- b. Tax liens
- c. Vital statistics (Birth, death, marriage and divorce, etc)
- d. Law enforcement records
- e. Court records
- f. State or local government budget records
- g. Drivers license records
- h. Motor vehicle registration
- i. Other: (List or describe)

5. Has your newspaper used records obtained in electronic form?

- a. Yes
- b. No (If No, skip to question 7)

6. If yes how do you use the records?

- a. Listings in a public records section of the newspaper.
- b. Election returns
- c. Analysis of records to search for a story
- d. Other: (List or describe)

7. Where public records you sought existed in electronic form, how were the records provided to you? [Circle all that apply]

- a. Copies of requested records on tape
- b. Copies of requested records on disks
- c. Public terminal
- d. Remote dial-up
- e. Hard copy printouts
- f. Other: (List or describe)

8. Do you have anyone at your newspaper who has the technical expertise to obtain and use records in electronic form?

- a. Yes
- b. No

9. If yes, is this person(s) [Circle all that apply]

- a. An editor
- b. A reporter
- c. Systems employee
- d. Other: (List)

10. In your opinion, how important is it for your newspaper to learn to obtain and use records in electronic form?

- a. Very important
- b. Somewhat important
- c. Not important
- d. Unsure

11. What is the biggest obstacle at your newspaper in obtaining public records in electronic form?

- a. Lack of expertise by staff
- b. Lack of support by management (Owners/publisher)
- c. Weaknesses in public record law
- d. Resistance from records custodians
- e. High cost charged by agency for making record available
- f. Other: (Describe)

12. You are encouraged to address any concerns regarding access to public records not addressed by the questions above. Also, it would be helpful if you will attach examples of ways that you have used records in electronic form (e.g. Public records lists, stories produced through computer-assisted reporting.)

Name of newspaper

Name and title of person answering survey

VITA

Robert Earl Thornton was born in Boise, Idaho. He attended public schools in Alabama, first in Pickens County and later in Walker County. He graduated from Walker County High School in Jasper in 1963. He attended Walker College, also in Jasper, and received an Associate Degree. He earned a Bachelor of Arts degree, with a major in speech, from Auburn University at Auburn, Alabama. Following military service, he served as a public information director at Walker College and later at Dyersburg State Community College in Tennessee. He became editor of the *State Gazette* in Dyersburg in 1978. He served in that position for 10 years and then moved to Wilmington, North Carolina, where he was city editor of the *Morning Star* for three years. He entered graduate school at the University of Tennessee in the fall of 1992 and received the Master of Science degree in Communication in August 1994.