

ORDINANCE NO. 215-1
AN ORDINANCE PROVIDING FOR THE MAINTENANCE, PRESERVATION
AND PROTECTION OF PUBLIC RECORDS

Whereas, the City of Baneberry, Tennessee has amassed large quantities of records; and

Whereas, proper records management is imperative for effective and efficient government operations and for fulfilling important legal requirements and duties; and

Whereas, *Tennessee Code Annotated*, 10-7-503 – Records Open to Public Inspection states that all municipal records shall be open to the public for inspection during business hours, except as provided for in T.C.A. 10-7-504(f) – Confidential Records; and

Whereas, *Tennessee Code Annotated*, 10-7-701- Public Records – Temporary Records authorizes the disposal of public records in accordance with established record retention schedules; and

Whereas, the City of Baneberry's active records need to be organized, stored and maintained in a manner that ensures efficient accessibility; and

Whereas, the City of Baneberry has finite space for the storage of all City Records; and

Whereas, the City of Baneberry desires to purge records that no longer have value and that are not required to be kept by law;

Now, therefore, be it ordained by the Board of Commissioners of the City of Baneberry, that the policies and procedures set forth herein apply to all records of the City of Baneberry:

SECTION 1. Records Management.

1. Records management responsibility rests with the City Recorder under the supervision of the City Manager as provided by the City Charter, T.C.A. 6-21-404 – Records; Custody and Preservation.
2. The following positions are charged with establishing and maintaining up-to-date, efficient, and effective records systems: City Manager, City Recorder, City Court Clerk, Police Chief, Fire Chief, Parks and Recreation Director, Planning Commissioner, Roads Commissioner, and others as may be authorized by the Board of Commissioners or the City Manager.
3. All City records shall be classified and handled as either: *working papers, temporary records, or permanent records* as detailed in Appendix A - Definitions.

4. To the maximum extent possible, records shall be grouped, maintained and stored by Fiscal Year, excluding those records that are bound in a continuous chronological or sequential order such as Ordinances, Resolutions, Minutes, financials, or records that require alternative or unique filing methods to fulfill their daily or routine use requirements.
5. All City records deemed “confidential” shall be stored in envelopes or file folders so marked; and kept in a locked, file storage except when in use.
 - (a) Any record that is classified or designated as *confidential* must be treated as confidential throughout the maintenance, storage and disposition of the record.
 - (b) Confidential records shall NOT be left unattended and unsecured.
 - (c) Confidential records, if eligible for destruction, shall be destroyed in such a manner that the record cannot be read, interpreted or reconstructed.
 - (d) Information that would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. (e.g., contingency and security plans, security codes, passwords, combinations, records directly relate to the security of government buildings, etc.)
 - (e) T.C.A. § 47-18-2901 requires municipalities to create safeguards to ensure the security of personal information on laptop computers. Failure to comply with this requirement creates a cause of action against the municipality if identity theft results.
 - (r) T.C.A. § 47-18-2107 requires any holder of computerized personal information that is confidential to disclose any breach of the security of the system to any resident of Tennessee whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

If the information holder does not own the personal data, the holder must also notify the owner or licensee of the breach immediately following the discovery. Disclosures must be made without unreasonable delay.

- (g) Appendix B provides a partial listing of records deemed by the State to be “confidential”. If in doubt, records managers shall seek classification assistance from the applicable State office, the Municipal Technical Advisory Service (MTAS), or the City Attorney.

6. All records shall be tagged or marked, prior to filing, storage, or disposal with an applicable retention date or status as defined in the most current edition of Tennessee's Record Retention Schedules, published and provided by the Municipal Technical Advisory Service (MTAS) in accordance with *Tennessee Code Annotated, 10-7-701*.
7. All records that have become inactive shall be boxed, labeled, and moved to the inactive records storage area in City Hall.
 - (a) Determination of how long office records remain in "active" use is based upon usage history; available active storage resources; and the operating procedures of the office, department, commission, etc.
 - (b) Prior to moving records to inactive storage, the authorized records manager shall remove and properly dispose of records that do not require long term or permanent retention in accordance with the Tennessee Retention Schedules.
8. All ratified (i.e., officially accepted, signed and dated) meeting minutes of all City Departments, Commissions and special / ad hoc work groups shall be bound chronologically and retained in separate "collections" and retained in Baneberry's City Hall. These are "permanent records" and should be the original signed document.
9. All ratified (i.e., officially read, accepted, signed and dated) City Ordinances and Resolutions of the Baneberry Board of Commissioners shall be bound chronologically and retained in Baneberry's City Hall offices. These are "permanent records". Ordinances and resolutions shall be bound in separate "collections".
10. All permanent City records, not currently available in a readable digital format, should be scanned, digitally archived and stored in a Board of Commissioner's authorized facility that provides safety and environmental security for such storage. (e.g., off-site fireproof safe; off-site fireproof filing cabinet; safety deposit box, etc.)
11. The City Recorder and/or City Manager shall ensure that all Baneberry employees, authorized volunteers, and City Officials responsible for City Records are indoctrinated on this policy and trained to properly create, use, manage, file, and dispose of City records.

SECTION 2. Records Disposal.

Records disposition authorization:

1. The City Recorder and/or City Manager are charged with authorizing and approving the disposition and destruction of records that no longer have administrative, fiscal, legal, or historical value in accordance with State retention schedules.

- (a) The following City offices/officials are authorized the disposition and/or destruction of records: City Manager, City Recorder, City Court Clerk, Police Chief, Fire Chief, Parks and Recreation Director, Planning Commissioner, Roads Commissioner, and others as may be authorized by the Board of Commissioners or the City Manager.
 - (b) Prior to dispositioning of records, whether destructive or archival, all records managers shall obtain authorization for the proposed dispositioning from the City Manager.
2. The positions described above are authorized to dispose of any *permanent paper* record when the record has been photocopied, photostatted, filmed, microfilmed, preserved by micro-photographic process, or reproduced onto an approved computer or removable computer media, in accordance with TCA 10-7-121.
 3. The disposition of records shall be in accordance with the most current record retention schedule provided by the University of Tennessee's Municipal Technical Advisory Service (MTAS), pursuant to the authority granted in TCA 10-7-702. However, records may be retained for longer periods when it would be advisable or otherwise helpful to do so.

SECTION 3. Public Access.

Procedures regarding access and inspection of public records:

1. Consistent with the Public Records Act of the State of Tennessee, authorized personnel of the City of Baneberry shall provide full access and assistance in a timely and efficient manner to citizens of the State of Tennessee who request access to open public records.
2. Employees of the City of Baneberry shall protect the integrity and organization of public records with respect to the manner in which such records are inspected and copied. All inspections or copying of records shall be performed by, or under the supervision of, employees, authorized staff volunteers, or officials of the City of Baneberry.
3. All copying of public records shall ONLY be accomplished by employees, authorized staff volunteers, or officials of the City of Baneberry.
4. Employees, authorized staff volunteers, and officials with the City of Baneberry shall prevent excessive disruption of their essential functions and duties while seeking to provide responsive access to records at the earliest possible time.
5. Requests for inspection or copying of records shall be made in writing on **Form 2015-1; Request for Public Records** provided by the City of Baneberry, a copy of which is an attachment to this Ordinance. Form 2015-1 shall be completed by the person requesting the record.

6. Baneberry City employees, authorized staff volunteers, or officials of the City of Baneberry may request reasonable identification of any person requesting a record.
7. Hours for making requests for inspection or copying of records shall be the regular office hours of City Hall.
8. Removal of records from City Hall shall **NOT** be permitted.
9. Reproduction of records shall **NOT** be undertaken when, in the judgment of personnel of the City of Baneberry, such reproduction would cause damage to the record.
10. City employees, authorized staff volunteers, and City Officials shall NOT engage in research projects for requestors.

SECTION 4. Fees and Charges.

Costs for inspection and copying of public records:

1. The City may establish reasonable fees to cover the direct cost of the reproduction of records. Such fees shall include the actual cost of reproduction, plus labor costs when applicable.
 - A. Fifteen (15) cents per page shall be charged for each standard 8½ x 11 or 8½ x 14 black and white copy, produced. An amount equivalent to the charge for two (2) separate copies [thirty (30) cents per page] will be charged for duplex copies if City equipment supports this function.
 - B. If a public record is maintained in color, color copies may be produced if the custodian's department has color copying capabilities. If color copies can be produced, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than the fifteen (15) cents per page charge for black and white copies. If the requestor requests a color copy, a charge of fifty (50) cents per page will be assessed for each 8½ x 11 or 8½ x 14 color copy produced.
 - C. If actual costs are higher than those listed above, or if the requested records are produced in a medium other than 8½ x 11 or 8½ x 14 paper, the records custodian may assess higher charges based on actual cost. If higher charges based on actual cost are charged, they will be based on a schedule of charges documenting the City's actual cost and enumerating the calculation and reasoning for the charges.
 - D. New fee schedules based on actual costs may be published by City Resolution, a copy of which shall be maintained with the ratified copy of this Ordinance.

2. The City may establish reasonable fees to cover labor costs for copies in addition to the direct cost for copies. Labor costs shall be assessed as follows:
 - a. There will be no charge for the first hour of labor incurred in producing material for copying.
 - b. After the first hour, the requestor shall be charged the hourly wage of the employee's time reasonably needed to produce the requested records. The hourly wage shall be based upon the base salary of the employee and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by the required hours to be worked per year.
 - c. The records custodian shall utilize the most cost efficient method of producing the requested records.
 - d. There will be no labor charge, if the City representative making the copies is an authorized volunteer or an unpaid City Official.
3. All fees for purposes identified in Section 4, para 1, shall be due at the time such costs are incurred.
4. No fees shall be assessed against employees, authorized staff volunteers, or City Officials who make requests which are reasonably necessary to the performance of their official duties.
5. No reproduction fee shall be assessed when an employee, authorized staff volunteer, or City Official determines that the cost of charging and handling the fee exceeds the cost of providing a copy without charge.
6. If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is necessary to convert or put the records in a readable and reproducible format or it is necessary to access backup files, the records custodian shall charge the requesting party the actual costs incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.
7. Electronic records will ONLY be produced in a "Read Only" format.

SECTION 5. Scope.

- (1) **Applicability.** This ordinance cannot and does not cover all of the details regarding safe, efficient and effective records management. Applicable State and Federal regulations must be applied by all involved in the preparation, filing and management of City records.

- (2) **Severability.** If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

- (3) **Conflicts.** All other Baneberry City ordinances or resolutions or parts of either found to be in conflict herewith are hereby repealed.

Be it further ordained that this ordinance shall take effect fifteen (15) days from and after the date it shall have been passed, properly signed, certified, and has met all other legal requirements, and as otherwise provided by law, the general welfare of the City of Baneberry requiring it.

This ordinance is complete in seven (7) pages of text; eight (8) pages of appendix; and a one (1) page form.

Clint Hurley, Mayor

ATTEST: _____
Janice Hobson, City Manager

Passed first reading: _____

Passed second reading: _____

Public Hearing: _____

Attachments:

- (1) Appendix A – Definitions, pages i - ii
- (2) Appendix B – Confidential Records, pages iii - viii
- (3) Form 2015-1; Request for Public Records, page ix

Appendix A – Definitions

As provided in *Tennessee Code Annotated*, 10-7-301 – Part Definitions.

- (1) **Agency** means any department, division, board, bureau, commission, or other separate unit of government created by law or pursuant to law, including the legislative branch and the judicial branch; provided, however, that for purposes of this part only, "agency" does not include the legislative branch.
- (2) **Confidential Public Record** means any public record which has been designated confidential by statute and includes information or matters or records considered to be privileged and any aspect of which access by the general public has been generally denied.
- (3) **Disposition** means preservation of the original records in whole or in part, preservation by photographic or other reproduction processes, or outright destruction of the records.
- (4) **Essential Records** means any public records essential to the resumption or continuation of operations, to the re-creation of the legal and financial status of government in the state or to the protection and fulfillment of obligations to citizens of the state.
- (5) **Permanent Records** means those records which have permanent administrative, fiscal, historical or legal value.
- (6) **Public Record or Records** means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.
- (7) **Records Creation** means the recording of information on paper, printed forms, punched cards, tape, disk, or any information transmitting media. "Records Creation" includes preparation of forms, reports, state publications, and correspondence.
- (8) **Records Disposition Authorization** means the official document utilized by an agency head to request authority for the disposition of records. The public records commission shall determine and order the proper disposition of state records through the approval of records disposition authorizations.
- (9) **Records Management** means the application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records in order to reduce costs and improve efficiency of recordkeeping.

Records Management includes records retention schedule development, essential records protection, files management and information retrieval systems, microfilm information systems, correspondence and word processing management, records center, forms management, analysis, and design, and reports and publications management.

- (10) **Records of Archival Value** means any public record which may promote or contribute toward the preservation and understanding of historical, cultural, or natural resources of the state of Tennessee.
 - (11) **Records Officer** means an individual designated by an agency head to assume responsibility for implementation of the agency's records management program.
 - (12) **Section** and **Division** means the division of records management of the Department of State.
 - (13) **Temporary Records** means material which can be disposed of in a short period of time as being without value in documenting the functions of an agency. Temporary records will be scheduled for disposal by requesting approval from the public records commission utilizing a records disposition authorization.
 - (14) **Working Papers** means those records created to serve as input for final reporting documents, including electronic data processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication.
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Appendix B - Confidential Records

The following list is NOT exhaustive and it may not be up-to-date. Users must refer to current and relevant Tennessee and Federal Code, law, regulation and policy to determine if a record or a portion of a record is confidential. This list is summarized to topics. Refer to current legislation for details.

The following list reflects the records designated as confidential by T.C.A. § 10-7-504 at the time of publication (current through the 2014 Regular Session and amendments approved at the November 4, 2014 General Election). T.C.A. § 10-7-504 is not exclusive, however, and many other statutes, rules, and the common law dealing with a subject also can make a specific record confidential.

In most cases, the law defines who may and may NOT see “Confidential” Records for each of the following:

Adoption	All related records.
Audit / Tax Records	Business tax statements, reports, audits, and returns. T.C.A. § 67-4-722. Audit working papers of the Comptroller of the Treasury and state, county and local government internal audit staffs conducting audits as authorized by § 4-3-304.
Computer	Programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, political subdivisions, or higher education institutions.
Contracting	Proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda are confidential until their purpose has been fulfilled. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to the same are confidential until their purpose has been fulfilled.

Employment Records

Employment records of state, county, municipal, or other public employees that contain home telephone and personal cell numbers; personal, nongovernment issued, email address; emergency contact information; residential information including the street address, city, state and zip code; bank account information; Social Security numbers; individual health savings account, retirement account, and pension account information; or driver's license information (except where driving or operating a vehicle is part of the employee's job duties). This confidentiality extends to immediate family members, whether or not the immediate family member resides with the employee, or household members.

Note: Under the law, this information in employment records should be redacted whenever possible and NOT used to limit or deny access to otherwise public information.

Handgun Carry Permit

Files of the Handgun Carry Permit and the Driver License Issuance Divisions of the Department of Safety relating to bogus handgun carry permits and bogus driver licenses issued to undercover law enforcement agents.

Historical Research

Records of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Tennessee Board of Regents or the University of Tennessee, when the owner or donor of such records requires that the records are kept confidential.

Those parts of a record identifying an individual as a person who has been or may in the future be directly involved in the process of executing a sentence of death.

Credit card numbers, Social Security numbers, account numbers, security codes and other identifying information in the hands of a utility.

Tax returns, audits, letter rulings, and other taxpayer identifying information. T.C.A. § 67-1-1702.

Investigative Record

Criminal investigative files of the Department of Agriculture and the Department of Environment and Conservation.

Investigative Record

Criminal investigative files of the Motor Vehicle Enforcement Division of the Department of Safety relating to stolen vehicles or parts.

Criminal investigative files and records of the Tennessee Alcoholic Beverage Commission.

Investigative records of the Tennessee Bureau of Investigation and the Office of Inspector General.

Investigative records and reports of the Internal Affairs Division of the Department of Correction or of the Department of Children's Services.

Juveniles

Many records regarding juveniles. T.C.A. §§ 37-1-153, 37-1-154, 37-1-155, 37-1-409, 37-1-612, 37-1-615, 37-2-408.

Law enforcement photographs and recordings of juveniles. T.C.A. § 37-1-155.

Medical Record

Medical records of patients in state, county and municipal hospitals and medical facilities.

Medical records containing the source of body parts for transplantation or any information concerning persons donating body parts.

Official health certificates, collected and maintained by the state veterinarian.

Memoranda, work notes or products, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, county and municipal correctional officers, dispatchers, emergency medical technicians, emergency medical technician-paramedics, and firefighters; both volunteer and professional.

Mental health intervention techniques for municipal correction officers and dispatchers. T.C.A. § 10-7-504(a)(13)(A).

Medical Records

Records of any employee's identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government Employee Assistance Program.

Certain records of an employer's drug testing program. T.C.A. § 50-9-109. (See Op. Tenn. Atty. Gen. 99-126).

Information or records held by a local health department regarding sexually transmitted diseases. T.C.A. § 68-10-113.

Patient medical records of hospitals and local and regional health departments. T.C.A. § 68-11-305.

Nursing home patient records. T.C.A. § 68-11-804.

Records granting consent to abortion for a minor and other records regarding abortion.

Opinions

State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose.

Pending Actions

Certain books, records and other materials in the possession of the Office of the Attorney General relating to any pending or contemplated legal or administrative proceeding.

Personal Information

Personal information contained in motor vehicle records.

Unpublished telephone numbers in the possession of emergency communications districts.

The telephone number, address and any other information which could be used to locate the whereabouts of a domestic violence shelter, family safety center or rape crisis center.

Identifying information, such as unlisted telephone numbers, in the possession of a private or public utility service provider that could be used to locate an individual, when the utility has been provided with a copy of a valid protection document and confidentiality has been requested.

Records in paternity proceedings that might be used to locate a victim or alleged victim of domestic violence.

Personal Information	Credit card numbers of persons doing business with the state or political subdivision thereof and any related personal identification numbers (PIN) or authorization codes.
Planning / Risk	<p>Capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee Venture Capital Network.</p> <p>Riot, escape and emergency transport plans which are incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the Department of Correction.</p> <p>Records of a utility that would identify areas of vulnerability or allow disruption of utility service.</p> <p>Records that identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service provider.</p> <p>Contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident.</p>
Police / Fire	<p>Certain personal information of undercover police officers and their immediate family or household members.</p> <p>Certain personal information relative to law enforcement officers, in addition to that made confidential otherwise, when the information is requested for professional, business or official purpose, and the chief determines there is a reason NOT to disclose the information.</p>
Proprietary Information	Proprietary information provided to the Alcoholic Beverage Commission.
Security	Records, documents and papers in the possession of the military department which involve national or state security.
Students	Records of students in public educational institutions.

Students	Certain student information.
Teachers	Records containing the results of individual teacher evaluations administered pursuant to the policies, guidelines, and criteria adopted by the State Board of Education under § 49-1-302.
Utility	The private records of any utility shall be treated as confidential and shall not be open for inspection by members of the public.
Whistleblower	Whistleblowing reports of violations of the Education Trust in Reporting Act. T.C.A. § 49-50-1408.
Work Product	Memoranda, notes, case files, or work products of victim-offender mediation centers. Work product of the municipal attorney.

**CITY OF BANEERRY
REQUEST FOR PUBLIC RECORDS**

Person Receiving Request _____

Date and Time of Request _____

Person Making Request _____

Telephone _____

Address _____

Description of Record(s) Being Requested

I, the undersigned, have read and understand the attached Ordinance, Section III and IV, providing for the maintenance, preservation and protection of public records, and establishing procedures and fees for accessing and copying open public records.

I agree to abide by all provisions of the ordinance.

(Signature of Person Making Request)

(Date)

Date and Time Request Completed: _____

Fees for copying related to this request: _____