

# **TENNESSEE PUBLIC RECORDS ACT**

## **BASICS FOR A NEW TRUSTEE**



# GENERAL RULE

“All state . . . **records** shall at all times, during business hours, . . . be **open for personal inspection, by any citizen of Tennessee**, and those in charge of such records shall not refuse such right of inspection to any citizen, **unless otherwise required by state law.**”

Tennessee Code Annotated § 10-7-503(a)(2)(A)

# DEFINITION OF “PUBLIC RECORD”

- “All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, **regardless of physical form or characteristics, made or received . . . in connection with the transaction of official [University] business.**”

Tennessee Code Annotated § 10-7-503(a)(1)

- This very broad definition is broadly construed by Tennessee courts.

# **ELECTRONIC RECORDS**

- Text messages, e-mails, voicemails, and social media posts, sent or received, containing information related to University business are public records.
- Even if the communications were sent or received on a personal device or personal account.

# CONFIDENTIALITY EXCEPTIONS

- Exceptions to a citizen's right to inspect or copy public records include:
  - Records made confidential by state law; and
  - Records the University is required to keep confidential by federal statute or regulation as a condition of receiving federal funds or for participation in a federal funded program

# CONFIDENTIALITY EXCEPTIONS

## EXAMPLES

- Student records
- Ongoing criminal investigations
- Medical information
- Certain personal information about employees (e.g., personal phone numbers, residential address, SSN, bank account)
- Attorney-client privilege, attorney work product privilege
- Job performance evaluations
- Information about candidates for President or Chancellor until up to 3 candidates are selected for recommendation to the Board, at which point information about the selected candidate(s) is no longer confidential.

# CAUTION

When responding to a communication related to University business, using “Reply All” to include Trustees could be used to establish a violation of the Open Meetings Act, which requires that University business be conducted in public meetings unless a non-public meeting on the subject is authorized by statute or judicial exception.

# WHEN IN DOUBT

- When in doubt, don't hesitate to seek legal advice from
  - Matthew Scoggins, General Counsel for the University, 865-974-2356; or
  - Catherine Mizell, Secretary, Chief of Staff, and Special Counsel to the Board, 863-974-3085