

Background

TCA §40-32-101 requires that in the event an employee is terminated in conjunction with a criminal investigation and arrest and where the charge was subsequently dismissed (including pretrial diversion), where no true bill was returned by the grand jury, or where a person was arrested but not ultimately charged, then any public records associated with the investigation or arrest must be removed and erased. Presently, the failure to expunge the record and the release of such information, other than to law enforcement agencies, is a criminal offense.

Problem

The expungement requirement of employee records could encompass anything within the local government's records and the employee's personnel files, including letters, departmental communications, and records of disciplinary actions which formed the basis of a termination. By erasing the employee's personnel files, it also eliminates the local government's documentation and defense of the employee's termination, which could expose the city or county to civil action from the terminated employee.

Remedy

Amend TCA 40-32-101 so that an employer can retain any information that formed the basis of disciplinary action that was independent of the outcome of a criminal trial. The file should be sealed and not open for public inspection, but the information would still be available to the employer in the event of subsequent lawsuit or should the employee seek re-employment in the future.

Benefits

This documentation is necessary to the local government's defense of an employee's termination and to maintain accurate historical records of the employee's personnel file.

