S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

March 19, 2001

Opinion No. 01-040

Expungement of Records

QUESTION

Does expungement of files require actual destruction of the files in question, or merely separate storage?

OPINION

Expungement of records requires the destruction of records, with the exception of those files specifically excluded by Tenn. Code Ann. § 40-32-101.

ANALYSIS

In Tennessee Attorney General Opinion 00-058 (March 31, 2000) (copy attached), this Office opined that expungement of records required actual destruction. That opinion relied on Tenn. Code Ann. § 40-32-102, which states that expunged records shall be removed and destroyed within sixty days of filing of the petition. This Office concluded that the mandate to remove and destroy public records subject to an expungement order means destruction or obliteration. This opinion is further supported by the holding of the Court of Criminal Appeals in *State v. McCary*, 815 S.W.2d 220 (Tenn. Crim. App. 1991). In that case, the court held that the trial court erred in refusing to grant the defendant's petition for expungement and granted the defendant's petition for expungement, specifically "granting the defendant's petition for expungement and destruction of the public records in this case."

No destruction is required under Tenn. Code Ann. § 40-32-101 of arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes, and are not opened for inspection by members of the public. See also *State v. Doe*, 860 S.W.2d 38 (Tenn. 1993).

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

DAVID H. FINDLEY
Assistant Attorney General

Requested by:

Honorable Frank Buck
House Representative - State of Tennessee
Suite 32, Legislative Plaza
Nashville, Tennessee 37243-0140