



TOSHA INSTRUCTION

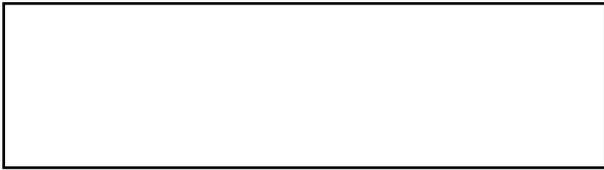
TENNESSEE DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY & HEALTH

DIRECTIVE NUMBER: ADM-TN 03-01-001
(ADM-TN 1-9.1)

EFFECTIVE DATE: August 12, 1996

SUBJECT: Disclosure of Enforcement Inspection/Investigation Report (Case Files) and other Information

- A** **PURPOSE:** This instruction establishes policies and provides guidance for the disclosure of information contained in inspection/investigation reports (case files) prepared by enforcement personnel in the normal course of their duties.
- B. STATUTES & RULES/REGULATIONS REFERENCED/AFFECTED:**
1. T.C.A. §50-3-106. **Employees' rights and duties.**, paragraph (6)
 2. T.C.A. §50-3-304. **Notice by employees of dangerous conditions or violations.**, paragraph ((a).
 3. T.C.A. §50-3-305. **Reports of inspections and investigations.**
 4. T.C.A. §50-3-914. **Trade secrets confidential.**
 5. T.C.A. Title 10, Chapter 7, "**Public Records Act.**"
 6. TDOL Rule 0800-1-4-.12 **COMPLAINTS BY EMPLOYEES.**, paragraphs (1) and (3).
 7. TDOL Rule 0800-1-5-.15 **EMPLOYEE COMPLAINTS.** paragraph (1)
 8. TOSHA Field Operations Manual (FOM)



C. BACKGROUND:

- 1 Recent requests from the media raised the question of the applicability of the federal "Freedom of Information Act" and "Privacy Act" to TOSHA records and, if applicable, were their provisions superseded by Tennessee's "Public Records Act" (see B.5. of this instruction)? A review of the applicable federal and state statutes and regulations by the TDOL General Counsel determined that the federal statutes and regulations relative to disclosure were not applicable. Therefore, only state statutes and regulations govern disclosure of information.
- 2 The manner in which the media request for inspection/investigation information was handled along with the overall controversy about what was and what was not disclosable under what statutes or regulations was believed to justify a change in TOSHA policy and procedures governing disclosure.

D. CLARIFICATION OF CONFIDENTIAL INFORMATION:

- 1 **Trade Secrets.** Without question, trade secrets are confidential pursuant to both T.C.A. §50-3-914 and the "Public Records Act" (see B.4. & 5. of this instruction).
- 2 **Complainants' Identity.** There is some question as to whether or not the identity of a complainant can be held confidential legally. It has been determined that, absent a court case which would set precedence, complainants' identities shall be held confidential if the complainant so requests and if TOSHA has a record of such request. Such documentation will be indicated on Form TNOSHA-7, Item 11, or in other written complaints such as letters. Verbal requests from a complainant to keep his/her identity confidential shall be documented utilizing written media (complaint form, letter, facsimile transmission, etc.) bearing the complainant's signature. A memo to the case file is **not** legally sufficient to sustain confidentiality.

E. ACTION:

- 1 **All** requests for the release of information from files maintained by the Division of Occupational Safety and Health (TOSHA) shall be referred to the TOSHA Records Custodian (Chief of Standards & Procedures) for processing. This includes requests from **any** staff section of the Department of Labor except for the Legal Section in processing contested or appealed cases or where the requestor simply wants to review the file in the presence of a TOSHA employee **and** said TOSHA employee does not relinquish control of the information.



2. **All TOSHA personnel including the Director, Assistant Director, Branch Chiefs, and Area Supervisors shall abide by the foregoing requirement.**
3. **Integrated Management Information System (IMIS) records of complaints shall include the name and address of the complainant unless it is determined to be "confidential" in accordance with paragraph C.2. of this instruction. In such case, the data base shall have the word **CONFIDENTIAL** in place of the name.**

E. EFFECTIVE DATE: This instruction is effective upon receipt and shall remain in effect until canceled or superseded.

