

March 29, 2001

Commander Tom Lott  
Germantown Police Department  
1930 South Germantown Rd  
Germantown, TN 38138

Dear Commander Lott:

You recently asked several questions concerning the encryption of radio signals and the effect of the open records law on dispatch center recordings of encrypted radio messages. As we discussed, the Tennessee open records law is very broad. Simply stated, any record that is not specifically closed by law is an open record. There are no laws that make dispatch center recordings of telephone conversations and/or radio transmissions confidential. Also, there are no laws that make the recordings of any *encrypted* radio transmissions confidential. I have included a Tennessee Attorney General opinion on the matter.

We often hear that records pertaining to an ongoing criminal investigation are not "open records." That is not entirely true. The Tennessee Rules of Criminal Procedure, which are adopted by the legislature and codified in the Tennessee Code Annotated, have the effect of law. Rule 16 of the Rules of Criminal Procedure, commonly known as "the Rules of Discovery," defines which records the defense is entitled to and which records the defense is not entitled to. Since the Rules have the effect of law, this rule does make records that the defense is not entitled to confidential while the investigation is ongoing. Of course, as soon as the investigation and subsequent prosecution, if any, are complete, the records would fall under the open records law. Should there be any information on a dispatch center tape or data storage device that would legitimately be confidential under the Rules of Discovery, that part of the tape or record would be confidential until the case was completed.

Encryption will keep eavesdroppers from being able to listen to radio transmissions as they happen, but official recordings of the transmissions are public records. If you have any further questions, or if I can ever be of assistance, please do not hesitate to call.

Sincerely,

Rex Barton  
Police Management Consultant