



*The Episcopal Diocese of Olympia*

*The Episcopal Church in Western Washington*

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# **DIOCESE OF OLYMPIA CONFIDENTIAL RECORDS: POLICIES AND PROCEDURES**

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From the Office of the Bishop

1551 Tenth Avenue East | Seattle, Washington 98102  
206-325-4200 *telephone* | 206-325-4631 *fax* | 800-488-4978 *wa* | [www.ecww.org](http://www.ecww.org)

# TABLE OF CONTENTS

INTRODUCTION.....	3
PERSONNEL RECORDS.....	5
SACRAMENTAL RECORDS .....	8
CAMPS, CONFERENCES & SPECIAL EVENT FILES.....	10
FINANCIAL FILES.....	14

# INTRODUCTION

The following policies and procedures relate to records that are confidential, private or privileged.\* These records are created in the course of conducting business for the Diocese of Olympia. The offices of record for these records include (but are not limited to) the Bishop's Office, the Bishop Suffragan's Office, the Canon to the Ordinary, Faith Formation, Huston Camp & Conference Center, Refugee Resettlement Ministry, Evangelism and Planned Giving/Stewardship and the Treasurer's/Comptroller's Office. These records are created with the presumption of privacy and to foster and support confidential relationships and communications. Therefore, access to these records is limited to specific, authorized users. In general, the Bishop or his delegate has the right to access any record created during the course of corporation business or on behalf of the Diocese. Further, the Chancellor and/or the diocesan insurance carrier may be granted access or have a legal right to access if warranted by the circumstances. The Archivist/Records Manager has access in so far as is necessary to carry out the duties of her/his position. In certain situations, a release form or waiver may be required.

Access can mean many things and is determined by the circumstances. In most cases, access simply means the reporting of data or information contained in the file. In other cases, access indicates the need for copies of documents contained in the file and in still other instances, access indicates permission to review the contents of the file. Signed release forms are used when necessary. The Bishop or his delegate (generally the Chancellor or the head of the Office of Record concerned) determines the need for access and the type of access to be granted.

The fact that the Diocese has a fiduciary\* responsibility to protect confidential records created with a presumption of privacy is substantiated by canon and civil law. Title III, Canon 4 of the Canons for the Government of the Protestant Episcopal Church (2000) requires "proper regard for confidentiality" in relation to medical, psychological and psychiatric reports on postulants; Title III, Canon 15, Section 8(a) of the Canons for the Government of the Protestant Episcopal Church (2003) says that "Statements made during the course of proceedings under this Canon (Of the Dissolution of the Pastoral Relation) are not discoverable nor admissible in any proceedings under Title IV provided that this does not require the exclusion of evidence in any proceeding under the Canons which is otherwise discoverable and admissible." Title IV (Ecclesiastical Discipline) Canon 3 (Of Presentments) Section 13 (2003) states that "...the Church Attorney shall render a confidential Report to the Diocesan Review Committee of the findings of that investigation. The Report of the Church Attorney shall be confidential for all purposes as between the Church Attorney and the Diocesan Review Committee. Provided, however, the Diocesan Review Committee shall share the report of the Church Attorney with the Bishop of the Diocese." Title IV, Canon 3, Section 38 (2003). "Prior to the issuance of a Presentment or the determination not to issue a Presentment, the matter shall be confidential, except as may be determined to be pastorally appropriate by the Presiding Bishop." Title IV, Canon 14, Section 26 (2003). "No privileged communication shall be required to be disclosed.

Further, the secrecy of a confession is morally absolute for the confessor, and must under no circumstances be broken.”

Title IV, Canon 15 (Of Terminology used in this Title), Section 1. "Privileged Communications" shall mean (i) disclosures in confidence made by a person to a Member of the Clergy with the purpose of seeking religious counsel, advice, solace, absolution or ministrations wherein the Member of the Clergy is acting in the capacity of spiritual advisor to the person, and where the person making the disclosures has a reasonable expectation that the communication will be kept in confidence, (ii) communications privileged under the law of the state or applicable federal law, (iii) such other privileged communications as are defined under the Federal Rules of Evidence .

Civil statutes such as Revised Code of Washington (RCW) 18.83.110 indicate that records such as psychological assessments are privileged from disclosure; RCW 70.02 outlines access and disclosure procedures for health care records; RCW 5.60.060 governs the records with attorney/client privilege and RCW 5.60.070 provides confidentiality to products of mediation. In addition to the Washington codes, records created and maintained by diocesan employees may enjoy the work product privilege. Federal Rules of Civil Procedure (FRCP) Rule 26(b)(3) establishes the work product doctrine and defines the records protected by this doctrine as documents and tangible things prepared in anticipation of litigation or for trial. Under (FRCP) Rule 26(b)(3) these documents can be obtained only if the parties seeking access can prove "undue hardship and substantial need." Pappas v Holoway and Hickman v Taylor have been used in broadening the work product doctrine to protect materials prepared in anticipation of litigation or for trial by or for another party even after litigation has terminated. This agrees with canonical principles and with the following internal policies and procedures relating to confidential records.

Confidential records are not to leave the Office of Record. Even though diocesan employees develop or compile these records, the employee does not own the records. The contents or topic of the records are not to be discussed outside established parameters. Disposition of confidential records may not be determined without a retention schedule or without consultation with the Archivist/Records Manager.

If civil litigation or canonical investigation begins, any retention attached to the records is to be suspended; that is, records may not be destroyed. When a record relating to a case is requested by the Chancellor or other appropriate authority, all offices or individuals involved with the creation or maintenance of records relating to the case will be contacted and all pertinent records provided. If records are subpoenaed, the Chancellor and the Archivist/Records Manager will be contacted prior to any action.

These policies and procedures seek to ensure the integrity and content security of the record, whatever its format. Content security refers to the principle of protection against destruction, disclosure, modification or breach of confidentiality of information contained in a record.

Limited access protects the confidentiality and/or privileged elements intrinsic to the record. In addition, these policies and procedures attempt to bridge canon and civil laws in order to protect and limit access to confidential records and to protect the principle of religious freedom.

\*Definitions from the Random House Unabridged Dictionary, 2nd ed., 1987.

**CONFIDENTIAL:** Spoken, written, acted on, etc. in strict privacy or secrecy; secret.

**CONFIDENTIAL COMMUNICATION (LAW):** A confidential statement made to a lawyer, doctor or pastor or to one's husband or wife, privileged against disclosure in court if the privilege is claimed by the client, patient, penitent or spouse. Also called PRIVILEGED COMMUNICATION.

**PRIVATE:** 1. Belonging to some particular person. 2. Pertaining to or affecting a particular person or a small group of persons. 3. Confined to or intended only for the persons immediately concerned; confidential. 4. Personal and not publicly expressed. 7. Removed from or out of public view or knowledge; secret. 8. Not open or accessible to the general public.....

**PRIVILEGED:** ...3. Restricted to a select group or individual. 4. (Law) (of utterances or communications) a. not rendering the person making them liable to prosecution for libel or slander, in view of attendant circumstances. b. not requiring any testimony concerning them to be presented in court.

**FIDUCIARY:** A "person" to whom property or power is entrusted for the benefit of another 2.adj. (Law) of or pertaining to the relation between a fiduciary and his or her principal. 3. of, based on, or in the nature of trust and confidence, as in public affairs a fiduciary obligation of government employees.

## PERSONNEL RECORDS

**APPLICANT FILES:** Records of individuals who have applied for Holy Orders but have not yet been admitted. Note: If an individual is ordained this file is transferred to the Clergy Files in the Bishop's Office. Inactive files are transferred to Archives.

Content of Applicant Files may include applications for postulancy, candidacy, ordination, statements to the Bishop and accompanying correspondence; canonical certificates, physical and psychological examinations; academic transcripts; BACAM reports; background checks; other evaluations, reports, interview results and correspondence; recommendations to the Bishop and the action of the Bishop.

The Bishop's Office is the Office of Record. However, during the discernment process, duplicates may be necessary for members of the Commission on Ministry, BACAM (Bishop's Advisory

Committee on Admission to the Ministry) and/or the Standing Committee. These duplicates will be numbered, collected and destroyed after use.

Access to the Applicant Files is restricted to the Bishop, his delegates (including but not limited to the Secretary for Vocations, the Bishop Suffragan, the Bishop's Administrative Assistant, the Canon to the Ordinary, the Archivist/Records Manager, members of the above mentioned committees) and, with the necessary permission, the individual applicant. PERMANENTLY CLOSED TO PUBLIC ACCESS.

**CLERGY FILES-ACTIVE:** Records of ordained clergy including active clergy canonically resident, retired clergy canonically resident and licensed clergy. These records are generally kept in the Bishop's Office but may be transferred to Archives if the files become too large.

**CLERGY FILES-INACTIVE:** Records of ordained clergy not canonically resident, deceased clergy and clergy who have renounced their vows. These records are kept in Archives.

Content of Clergy Files (Active & In-Active) may include: Clergy information sheet; ordination documents such as certificates, programs, announcements; appointment documents; routine correspondence such as vacation notifications; routine interoffice and action-item memoranda; non-routine correspondence and interoffice memoranda; evaluations, assessments, reviews and psychological reports such as those required for candidacy; background checks-final report; misconduct sign-off documents (Washington State Patrol-Request for Criminal History Information; Diocese of Olympia Policies and Procedures in Cases of Sexual Misconduct; Church Insurance Co., New Warranty for Sexual Misconduct certification of training form); search and deployment- final determination and selection documents ....

When an ordained individual is an employee of the Diocese of Olympia, that person's Clergy File may also include: Employment application; resume; letters of reference; appointment letter; performance evaluations; and salary and benefit letter. Note: payroll/insurance related documents such as W-4s, I-9s and insurance applications may be found in the Personnel Files located in the Treasurer's Office.

The files may not contain duplicates, drafts, hand-written notes or telephone logs. These types of records should be destroyed when their purpose has been fulfilled.

However, with the above exceptions, contents of the files including correspondence and other materials directed to the Bishop's Office relating to or created by an individual clergy person may not be destroyed regardless of content, format or style while the file is active or if there are any on-going or pending judicial or canonical proceedings related to the records.

The Bishop's Office is the Office of Record. However, working papers regarding background checks, search and deployment documents and a copy of the misconduct sign-off documents are

kept in the Canon to the Ordinary's office.

Access to the Clergy Files is restricted to the Bishop, his delegates (including but not limited to the Bishop Suffragan, the Chancellor, the Bishop's Administrative Assistant, the Canon to the Ordinary; the Archivist/Records Manager). Access to payroll/insurance records is restricted to the Bishop, his delegates (including the Comptroller, the Insurance Administrator, the Accountant and Archivist/Records Manager).

An individual clergy person may have access to information in his clergy file upon permission from the Bishop. Once access has been authorized, the Bishop or his delegate will review the file and determine what documents are appropriate and/or legal for the clergy person to view. These documents may include clergy information sheets, routine correspondence and appointment documents. Records such as psychological profiles, assessments and evaluations are protected by civil law, are privileged against compulsory disclosure (RCW 18.83.110) and are permanently closed to public access.

Other restricted records may include non-routine correspondence and inter-office memoranda, as well as correspondence that has not been officially released by the author (third-person correspondence). Such correspondence is closed to public access for a period of 30 years after the death of the author, the recipient and any individuals referred to in the correspondence. 30 years after death, limited access for research purposes may be granted at the Archivist's discretion if no additional restrictions on the correspondence exist.

Clergy files are closed to public access for a period of 30 years after the death of the clergy person.

30 years after death limited access for research purposes may be granted at the Archivist's discretion. However, a reference file containing general, publicly disseminated biographical information on clergy is also maintained in the Archives and this file is immediately available for research.

**LAY EMPLOYEE FILES:** Records of non-clergy individuals who have been or who are currently employed by the Diocese of Olympia.

Content of Lay Employee Files may include: Employment application; resumes; job description; letters of reference; appointment letters; performance evaluations; attendance and leave forms; medical reports; training and employment history; and salary and benefit letters. Note: Payroll/insurance related documents such as W-4s, I-9s and insurance applications, Washington State Patrol forms; and diocesan misconduct sign-off documents may be found in the Personnel Files located in the Treasurer's Office.

The Canon to the Ordinary's Office is the Office of Record with the exception of Huston Camp and Conference Center, St. Andrew's House and Refugee Resettlement employees. The

Treasurer's Office is Office of Record for payroll/insurance documentation as noted above.

Access to the Lay Employee Files is restricted for a period of 30 years after the employee's death to the Bishop, his delegates (including but not limited to the Bishop Suffragan, the Chancellor, the Canon to the Ordinary, the Canon to the Ordinary's Assistant, the Archivist/Records Manager) and, upon request to the Canon to the Ordinary, the individual lay employee. Access to payroll/insurance records is restricted to the Bishop, his delegates (including the Comptroller, the Insurance Administrator, the Accountant, and the Archivist/Records Manager) and, upon request to the Canon to the Ordinary, the individual lay employee.

30 years after the death of the employee, limited access for research purposes may be granted at the Archivist's discretion.

## SACRAMENTAL RECORDS

**See also: Diocese of Olympia Archives - Sacramental Records Access Policy**

**CONFIRMATION RECORDS:** Records of individuals who have been confirmed by the Bishop of Olympia.

Content of the record may include name of confirmed individual, date of confirmation, church where confirmed, church attending, Bishop officiating, clergy attending, where baptized, when baptized, and names of sponsors.

The Bishop's Office is the Office of Record. The confirmation is recorded both electronically and in paper form. However, confirmations are also recorded in the parish registers of individual congregations and these policies and procedures apply to them as well.

Access to Confirmation Records is restricted for a period of 80 years from date of creation to the Bishop, his delegates (including but not limited to the Bishop Suffragan, the Bishop's Administrative Assistant, the Chancellor, the Episcopal clergy involved in the confirmation, and the Archivist/Records Manager), the individual named in the record as having received the sacrament; the parents of the subject if the subject is a minor; and government agencies (such as Social Security) who present a signed release from the individual whose record is requested.

If a person representing a civil authority (law enforcement, court official, lawyer, etc.) requests a record for civil or legal purposes, that person will be referred to the Chancellor who will handle the request.

**PARISH REGISTERS:** The parish registers record all Baptisms, Confirmations (including the canonical equivalents in Canon I.17.1 [d]), Marriages and Burials taking place within a



congregation. See: Canon III.14.3 [a].

Content of the Parish Registers may include names and addresses of individuals receiving the sacraments, date and church where received, sponsors attending, parents' names, clergy attending and communicant status. A brief history of the congregation may also be included.

The Bishop's Office is the Office of Record for Parish Registers belonging to congregations which have been closed. Active congregations are the Offices of Record for their own Parish Registers. These policies and procedures apply to all having responsibility for the maintenance and care of Parish Registers.

Access to Parish Registers is restricted for a period of 80 years from date of creation to the Bishop, his delegates (including but not limited to the Bishop Suffragan, the Bishop's Administrative Assistant, the Chancellor, the Episcopal clergy involved in the canonical procedures and the Archivist/Records Manager), the individual or individuals named in the record as having received the sacrament, the parents of the subject if the subject is a minor and government agencies (such as Social Security) who present a signed release from the individual whose record is requested.

If a person representing a civil authority (law enforcement, court official, lawyer, etc.) requests a record for civil or legal purposes, that person will be referred to the Chancellor who will handle the request.

**RE-MARRIAGE FILES:** (formerly Marital Judgment Files): Records of church members who have applied to the Bishop for a marital judgment and/or consent to be re-married. See: Canon I.19.

Content of working Re-Marriage Files may include the application of a church member to the Bishop for a judgment as to his or her marital status in the eyes of the Church along with associated correspondence and appropriate evidence such as divorce decrees. Once a judgment is rendered, the judgment ONLY is kept in the permanent Re-Marriage File and all other documents destroyed or returned. See: Bishop's Office Record Retention Schedule.

The Bishop's Office is the Office of Record.

Access to the Re-Marriage Files is restricted to the Bishop, his delegates (including but not limited to the Bishop Suffragan, the Chancellor, the Bishop's Administrative Assistant, the Archivist/Records Manager) and, upon request to the Bishop, the individual named in the record as having received the judgment. PERMANENTLY CLOSED TO PUBLIC ACCESS.

**PARISH AND MISSION FILES:** Parish and mission files document the history, growth and development of individual congregations.

Content of parish and mission files may include parish and mission history, documentation of granting mission or parish status, financial reports, record of clergy, property files, building plans and surveys, congregational statistics, contracts and legal documents, conflict and transition files (including diocesan Canon 25 files), ERT (Early Response Team) documentation, parish and mission profiles and surveys, correspondence, minutes, etc.

The Canon to the Ordinary's Office is the Office of Record.

Access to Parish and Mission Files, with the exception of Canon 25 files, is restricted for a period of 50 years from date of creation to the Bishop, his delegates (including but not limited to the Bishop Suffragan, the Chancellor, the Canon to the Ordinary, and the Archivist/Records Manager), the rector or vicar of the parish or mission concerned and with written permission, his delegates.

Access to Canon 25 files is restricted for a period of 50 years after the resolution of the case to the Bishop and his delegates only. 50 years after resolution of the case, limited access for research purposes may be granted at the Archivist's discretion.

## **CAMPS, CONFERENCES & SPECIAL EVENT FILES**

**CHILD PROTECTIVE SERVICES REPORTS:** Reports made to or obtained from Child Protective Services regarding any minor child who has or is participating in any diocesan sponsored program or event.

Content of Child Protective Services Reports may include correspondence and/or other documentation relating to possible misconduct directed towards a minor child who has or is participating in any diocesan sponsored program or event.

Faith Formation or Huston Camp and Conference Center would be the Office of Record depending upon the specific program or event involved.

Access to Child Protective Service Reports is restricted to the Bishop and his delegates (including but not limited to the Chancellor, the Director of Faith Formation, the Administrative Assistant for Faith Formation, the Director of Huston Camp & Conference Center, and the Archivist/Records Manager). Anyone else, including representatives of civil authorities, will be referred to the Chancellor.

**COVENANT CORRESPONDENCE:** Correspondence with a program or event participant whose behavior has been questionable.

Content of Covenant Correspondence may include a description of the behavior in question and an indication of what action shall be taken in response to the problem behavior.

Faith Formation or Huston Camp and Conference Center would be the Office of Record depending upon the specific program or event involved.

Access to Covenant Correspondence is restricted to the Bishop and his delegates (including but not limited to the Chancellor, the Director of Faith Formation, the Administrative Assistant for Faith Formation, the Director of Huston Camp and Conference Center and the Archivist/Records Manager). Anyone else, including representatives of civil authorities, will be referred to the Chancellor.

**HEALTH FORMS AND HEALTH LOGS:** Health records of individuals who have participated in diocesan sponsored programs or events.

Content of Health Forms and Health Logs may include the names, addresses, ages, and parents' names of individuals who have or are participating in diocesan sponsored programs or events, their health conditions and any medications and/or medical treatments they may require or have received as well as signed parental waivers.

Faith Formation or Huston Camp and Conference Center would be the Office of Record depending upon the specific program or event involved.

Access to Health Forms and Health Logs is restricted to the Bishop, his delegates (including but not limited to the Chancellor, the Director of Faith Formation, the Director of Huston Camp and Conference Center, the Archivist/Records Manager), medical personnel directly involved in treatment of the individual named in the record, and, with the necessary permission, parents of a minor child named in the record or if an adult, the individual named in the record. Anyone else, including representatives of civil authorities, will be referred to the Chancellor.

**STUDENT FILES:** Records of individuals who have applied to, attended and/or graduated from the Diocesan School of Ministry and Theology (DSOMAT).

Content of Student Files may include application form, transcripts from high school and/or college, test scores, grade sheets, scholarship requests, DSOMAT transcripts, evaluations of the student and correspondence.

The Diocesan School of Ministry and Theology (DSOMAT) is the Office of Record.

Access to Student Files is restricted for a period of 30 years after the student's death to the

Bishop, his delegates (including but not limited to the Bishop Suffragan, the Chancellor, the Dean of the Diocesan School of Ministry and Theology, the Registrar of the Diocesan School of Ministry and Theology, the Convenor of the DSOMAT Board of Directors, the Secretary for Vocations, the Archivist/Records Manager) and, with the necessary permission, faculty members. Students may have access to their individual files upon request from the Dean or the Registrar. Anyone else, including representatives of civil authorities, will be referred to the Chancellor. 30 years after the death of the student, limited access for research purposes may be granted at the Archivist's discretion.

**BEQUESTS, WILLS, TRUSTS & GIFTS:** Records of bequests, wills, trusts and gifts benefiting the Diocese.

Contents include terms and any related documentation.

The Treasurer's Office is the Office of Record.

Access to Bequests, Wills, Trusts & Gifts is restricted for a period of 30 years after the death of the individual who made the bequest, will, trust or gift to the Bishop, his delegates (including but not restricted to the Bishop Suffragan, the Chancellor, the Director of Evangelism and Planned Giving/Stewardship, the Administrative Assistant for Evangelism and Planned Giving/Stewardship, the Treasurer, the Comptroller, and the Archivist/Records Manager.) The individuals who made the bequest, will, trust or gift may have access to their individual files upon request to the Treasurer. Anyone else, including representatives of civil authorities will be referred to the Chancellor. 30 years after death, limited access for research purposes may be granted at the Archivist's discretion if not otherwise restricted by the terms of the bequest, will, trust or gift.

**DONOR FILES:** Records of individuals who have donated funds to any diocesan program or campaign including, but not limited to, the Capital Campaign, the Episcopal Charities Appeal, Holy Family of Jesus and Planned Giving.

Content of Donor Files may include personal information on donors, amount of donations and pledges. Any restrictions placed on donations by donors (such as the wish to remain anonymous) will be respected.

Access to Donor Files is restricted for a period of 30 years after death of the donor to the Bishop, his delegates (including but not limited to the Bishop Suffragan, the Chancellor, the Director for Evangelism and Planned Giving/Stewardship, the Administrative Assistant for Evangelism and Planned Giving/Stewardship, the Treasurer, the Comptroller and the Archivist/Records Manager). Donors may have access to their individual files upon request to the Director of Evangelism and Planned Giving/Stewardship or the Administrative Assistant for Evangelism and Planned Giving/Stewardship. Anyone else, including representatives of civil authorities, will be referred to the Chancellor. 30 years after death of the donor, limited access for research

purposes may be granted at the Archivist's discretion if not otherwise restricted by the terms of the donation.

## **IMMIGRANT AND REFUGEE FILES**

**IMMIGRANT FILES:** Records of immigrants who have applied to the Refugee Resettlement Ministry for assistance.

Content of Immigrant Files may include general information on immigrants who have approached the Refugee Resettlement Ministry for assistance.

Access to Immigrant Files is restricted to the Bishop, his delegates (including but not limited to the Bishop Suffragan, the Chancellor, the Coordinator of the Refugee Resettlement Ministry and his staff and the Archivist/Records Manager). Representatives of legitimate social service organizations may be allowed access with the permission of the Coordinator of the Refugee Resettlement Ministry and immigrants may have access to their individual files upon request to the Coordinator of the Refugee Resettlement Ministry. Anyone else, including representatives of civil authorities, will be referred to the Chancellor.

**REFUGEE FILES:** Records of refugees processed through the Domestic & Foreign Missionary Society of the Episcopal Church and assisted by the Refugee Resettlement Ministry. There is one file per family.

Content of Refugee Files may include Affidavit of Relationship, Evaluation of Anchor Relative or Friend Sponsor, and the Reception and Placement Program Assurance forms from the U.S. Department of State; copies of disbursement vouchers; Episcopal Migration Ministry 30 Day Cash and Donated Support Record, Core Services Checklist, and Arrival Form; Volunteer Agency- Verification of Refugee Financial Status; Diocese of Olympia-Refugee Case Record; 90-Day Employment Assessment and Resettlement Evaluation; health care and general case notes; sponsorship commitment and health screening forms; copies of Social Security and I-94 cards and promissory notes for travel loan; King County Department of Public Health-Summary Information for Sponsor and correspondence. Closed files contain a notice indicating the file has been officially closed.

Access to Refugee Files is restricted to the Bishop, his delegates (including but not limited to the Bishop Suffragan, the Chancellor, the Coordinator of the Refugee Resettlement Ministry and his staff and the Archivist/Records Manager). Representatives of other legitimate social service organizations may be allowed access with the permission of the Coordinator of the Refugee Resettlement Ministry and refugees may have access to their individual files upon request to the Coordinator of the Refugee Resettlement Ministry. Anyone else, including representatives of civil authorities, will be referred to the Chancellor.

# **FINANCIAL FILES**

**PAYROLL/INSURANCE FILES:** See: PERSONNEL FILES.

**DONATION FILES:** See: DONOR FILES

**THESE POLICIES AND PROCEDURES ARE WRITTEN IN ORDER TO RESPECT THE PRIVACY OF THE INDIVIDUAL IN ACCORDANCE WITH TITLE III, CANON 4 OF THE CANONS FOR THE GOVERNMENT OF THE PROTESTANT EPISCOPAL CHURCH (2000), OTHER RELEVANT CANONS AND CIVIL LAW AS OUTLINED IN THE INTRODUCTORY STATEMENT.**