

# You Want What?! Extensive Public Records Requests

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## Five Things to Know

1. Records custodians have the duty to provide existing public records.
2. Public records are those made or received in the transaction of public business.
3. The deadline for response depends on the type of request.
4. There may be additional charging options for voluminous public records requests.
5. You can't dictate the format of a public records request.



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## 1. The duty of records custodians

- Who is the custodian of public records?
  - G.S. 132-2
  - The public official in charge of an office having public records shall be the custodian thereof.
  - <https://canons.sog.unc.edu/2014/12/custodians-of-public-records/>
- What is this person legally required to do?
  - Provide for public access to existing public records
  - There is no requirement to create or compile a record merely to respond to a public records request. G.S. 132-6.2(e).
  - If no corresponding record exists, no further response is required.

## 2. Public=Transacting Public Business

- Is the record “made or received in the transaction of public business?”
- G.S. 132-1(a)
  - All documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, ..., made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

## NOTE!



- The *content* not the location of a record determines whether it was “made or received in the transaction of public business.”
- No distinction between personal devices and government-issued or professional devices



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## There are many exceptions.

- Section 132 excludes several types of documents from the definition of a public record.
- Some examples:
  - **Law enforcement agency recordings** (see 132-1.4A)
  - **Sensitive public security information**, such as blueprints of government buildings or security plans (see 132-1.7)
  - **Social security numbers** and other identifying information (see 132-1.10)
- Other laws may create exceptions as well
  - G.S. 153A-98
  - G.S. 130A-12
  - G.S. 130A-143



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## These exceptions function differently.

- Difference between confidential and not public record
- Does it apply to the whole record or just parts?
  - Some exceptions identify specific information that would fall within the exception, but that must nonetheless be made public.
    - Both the personnel file (**see G.S. 160A-168(b)**) and criminal investigation information (**see G.S. 132-1.4(c)**) exceptions contain these types of provisions.
- Does it prohibit copies, inspection, or both?
  - Some exceptions prohibit only inspection, not release of copies.
    - See G.S.132-6(d)(1) (economic development projects)
    - Other exceptions, like those involving **information in the personnel file** and **trade secrets** prohibit disclosure of any kind.

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## 3. When you respond depends on the type of request.

### Request for inspection?

- Make documents available at reasonable times, under reasonable supervision
- Statute does not provide for any inspection fees

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## Request for copies?

- As promptly as possible
- Can charge for actual cost of making copies
- Actual cost is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made.

## 4. You may be able to charge special fees for massive requests.

- Actual cost of making the copies
- Special service charges (G.S. 132-6.2)
  - If request requires extensive use of IT or clerical or supervisory resources by agency personnel
  - Special service charge must be **reasonable and based on actual cost incurred** for such extensive use of IT or labor
  - No cases interpreting this provision
  - Disputes re special service charges are mediated by the State Chief Information Officer
    - May be useful to reach out to that office to determine how they calculate special service charges

## Responding to Massive Requests

### Develop an internal procedure.

- Determine who will coordinate the response and who will be involved.
- Policy can be useful to remind employees of the possibility of public records requests and to make them cognizant of which records may be public and subject to access.
- It can also remind employees and officials of the fact that some records made on their personal devices and accounts may be subject to public access.
- [Dealing with Massive Public Records Requests](#)



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## Responding to Massive Requests

### Clarify the requests.

- What exactly are they trying to find?
- Can they narrow their request at all?
- Are they aware of the fees and do they agree to pay?

### Identify which records need to be produced

- Out of this set, which need to be redacted?
- Which require a court order before release?



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## Responding to Massive Requests

Check in with requester throughout the process.

- Give them an idea of the timeline and when they can expect the records.
- See if they would accept records in batches as they're available rather than all at once.

## 5. You can't dictate the format of a public records request.

- Anonymous requests?
- Requests not in writing?
- Requests by non-residents or non-citizens?
- Requests for purposes of harassment?