

Open Meetings and Public Records

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Open Meetings law applies to...

“Official meetings” of “public bodies”



143-318.10

What is a public body?

- 2 or more members
- Elected, appointed, or otherwise intentionally created
- Governmental (not private)
- Authorized to exercise any one of 5 public functions

Functions

- Legislative
- Policy-making
- Quasi-judicial
- Administrative
- Advisory

Is this a public body?

- ? Five private citizens meet once a week to discuss different resolutions the board of county commissioners is considering.
- ? Three members of the county board of social services serve as a special sub-committee which meets monthly to discuss potential improvements to DSS service delivery.
- ? The county manager appoints a committee of five employees to organize employee appreciation day events.

What is an official meeting?

- A majority of the members of a public body...
- ...gathering simultaneously in person or electronically...
- ...to conduct a hearing, deliberate, vote or otherwise transact public business.

Social gatherings are OK!

There must be no discussion of public business among a majority of the public body.



Image source: <http://tinyurl.com/l7vma7q>

Is This an Illegal Meeting?

Three members of the county board of social services meet for coffee and discuss some concerns about the DSS director's job performance.



Is This an Illegal Meeting?

An entire county board of social services gathers for training on their legal powers and duties under North Carolina law.



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Is This an Illegal Meeting?

The chair of the social services board calls each other member of the board individually to discuss a matter that will come before the board at the next meeting. She urges them to support her proposed approach.



Is This an Illegal Meeting?

A majority of council members engage in an email discussion, responding directly to each other in a nearly real time electronic conversation.



More on the right of access

- Attend the meeting
- May record or video tape
- No right to speak except at monthly public comment period



Does a county board of social services have to include a public comment period in their meetings?

Access: Meeting Location

- Must be of reasonable size and must be accessible, but there is no legal obligation to accommodate everyone if there is a larger than expected crowd.
- Problems:
 - Restaurants
 - Private homes
 - Gates communities
 - Site Visits
- Note limitation on county governing board meetings outside of the county

Closed Sessions

- Limited authority to meet in closed session
- **Process:** Motion in open session, stating general purpose of closed session



Permitted Closed Session Purposes

Look to G.S. § 143-318.11(a).

Preserve confidentiality
of records

Prevent premature
disclosure of
scholarship, prize,
honorary degree, or
similar award

Preserve attorney-client
privilege

Discuss economic
development

Discuss bargaining
position for property
acquisition

Consider performance,
qualifications,
appointment of public
employees and public
officers

Matters involving
investigations of alleged
criminal misconduct

Discuss local board of
education emergency
response and safety

Public safety as it
pertains to terrorism

To view a recording
released pursuant to
132-1.4A (body cam
footage from law
enforcement)

Closed Sessions

Permitted purpose:

To consider
performance,
qualifications, or
appointment of
public employees
and public officers

Cannot include
discussion of members of
the board or other public
bodies

Must be a **specific**
employee or official, not
employees in general

Final appointment or
termination decision
must be made in **open**
session

Multiple Choice

A social services board may have a closed session to:

- a. Dismiss director
- b. Approve recommendation for director's salary
- c. Discuss personnel policies
- d. Appoint 5th board member
- e. Remove 5th board member
- f. All of the above
- g. None of the above



Closed Session Myths

Myth

Reality

It's illegal to talk publicly about what happens in closed session.



Statute doesn't prohibit it, but some topics are confidential under other laws.

The DSS director must be included in a closed session.



The board *may* include the director in a closed session, but is not required to do so.

A closed session can be held without notice to the public.



A closed session must be part of an official meeting, which requires notice to the public.

Keeping Minutes

- Must keep “full and accurate minutes”
- Minutes should generally be taken by the director (as board secretary) or the director’s designee
- Must accurately reflect the substance of all official acts taken and the vote by which action was taken
- Best practice is to have the board officially approve minutes of their meetings
- Minutes are public records
 - Special exception for general accounts of closed sessions



Law requires **notice** and **opportunity** to attend.

Type of Meeting	Definition
Regular	Official meetings that happen according to a set schedule
Special	Meetings that occur at any other time, date, or location than what is listed on the regular meeting schedule
Emergency	Meetings that are required to address an unexpected circumstance that needs immediate attention
Recessed	Meetings that are continued to another date, time, and/or place

Special Meetings

- Board chair may call special meeting on 48 hours' written notice (G.S. 108A-7)
- Notice of a special meeting must also be posted on a bulletin board at DSS or at the door of the board's usual meeting room (plus on website)

Type of Meeting

Definition

Regular

File schedule with the clerk and post on website

Special

Send notice to sunshine list, post on website, and post on principal bulletin board at least 48 hours before the meeting

Emergency

Send notice to sunshine list, post on website, and call, email, or otherwise notify members

Recessed

Make motion to recess in open session stating the time, date, and location of recessed meeting and post on website

Violations of the Law: What Happens?

Scenarios:

- Board takes action in a closed session to terminate DSS director.
- Email records indicate that a majority of the board decided an issue impacting DSS via a Zoom meeting with no notice or access to the public.

Are they automatically void?

What are the sanctions for violations?

Court Order

1. Declaring that a violation occurred
2. Prohibiting future violations
3. Invalidating actions taken
4. Personal liability (intentional action; not following attorney's advice)



Public Records

A photograph of a desk with a laptop, a calendar, and a folder. The text 'Public Records' is overlaid in the center. The scene includes a silver laptop on the right, a calendar with a grid of dates, and a brown folder with several papers inside. The background is a light-colored wooden surface.

Part I: How to Respond to Public Records Requests

- 1) Does a record exist that corresponds to the request?
 - If yes, continue.
 - If no, respond that there are no responsive records to provide.
- 2) Is the record public?
 - If no, no need to provide.
 - If yes, continue.
- 3) Are there any exceptions?
 - If no, provide the record.
 - If yes, continue.
- 4) How do the exceptions apply?
 - Do they prohibit any disclosure at all or just inspection or copies?
 - Do they apply to the whole record?

1) Does a responsive record exist?

The public is entitled to *existing* public records.

- There is no requirement to compile or create a record that does not exist merely to respond to a public records request. *132-6.2(e)*.
- If no corresponding record exists, no further response is required.
- If there is a corresponding record, continue to Question No. 2.

2) Is the record public?

- 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.
 - Includes local governing boards
- If yes, continue to Question No. 3. If no, no further response is required.

NOTE!



- The *content* not the location of a record determines whether it was “made or received in the transaction of public business.”
- If the DSS Director emails her daughter to wish her a happy birthday from her government account, is that email public?
- If the DSS attorney texts a social worker about the status of a child welfare case from his private cell phone, is that text a public record?

3) Are there any 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)
 - When in doubt, check Section 132 out!
- If there is no exception, provide the record.
- If there is an exception, continue to Question No. 4.

3) Does an exception apply?

Any information that is confidential under federal or state law is excepted from the right of access

- **G.S. 108A-80:** Is the information requested “concerning persons applying for or receiving public assistance or social services?”
 - What might not be covered?
- **G.S. 153A-98** - All information contained in a county employee’s personnel file, other than information made public by the statute, is confidential.
 - **G.S. 153A-98(b)** – lists categories of information about an employee that **are** a matter of public record.
 - **G.S. 153A-98(c)** – lists instances where confidential personnel information shall be made available for inspection.
 - Something does not have to be in an actual “personnel file” to be personnel file information.

4) What does the exception do?

- 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.

How do I respond?

Request for inspection?

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

How do I respond?

Request for copies?

- Provide in medium requested if have the equipment necessary to do so
- As promptly as possible
- Can charge for actual cost of making copies

Hypothetical #1

- A citizen has requested electronic copies of all applications for social work positions for the last ten years.
 - *Assuming these records exist, are they public records?*
 - *Do any exceptions apply?*

Hypothetical #2

- A reporter has asked for the home phone numbers and addresses of all DSS employees.
 - *Must this information be released?*
- A reporter has asked for the home phone numbers and addresses of all members of the board of social services.
 - *Must this information be released?*
 - *Threshold question: Is there a record?*

Hypothetical #3

- An advocacy organization sends a public records request asking for a list of all of the community organizations and agencies that DSS uses to provide services to adults under guardianship and adults in need of protective services.
 - *Must this record be released, if it exists?*

Hypothetical #4

- A concerned citizen sends a public records request asking for a list of all of the wards currently under guardianship with DSS.
 - *Must this record be released, if it exists?*

Hypothetical #5

- A concerned citizen sends a public records request asking for the vaccination records of all health department employees.
 - *Must this record be released, if it exists?*

FAQs

Does a public records request have to be in writing or in a specific format?

Does the requester have to identify him or herself?

What about local policies requiring specific forms or procedures?

Does the media have a different right to access records than the general public?

Does every email exchanged by county employees have to be provided in response to a public records request, regardless of its contents?

Part II: Retaining Records

- Retention
 - § 132-7. Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used.
- Disposal
 - Department of Cultural and Natural Resources provides schedule of when certain records can be destroyed.

Retention Schedules

County Social Services Agencies Schedule:

<https://archives.ncdcr.gov/county-social-service-agencies-schedule/open>

Board must formally adopt at a regular meeting and record adoption in the minutes.

Can adopt the schedule via resolution, consent agenda, or by other action.

Completed signature pages should be sent to the Records Analysis Unit, Government Records Section, 4615 Mail Service Center, Raleigh, NC 27699-4615 or faxed to 919-715-3627.

Department of Cultural and Natural Resources

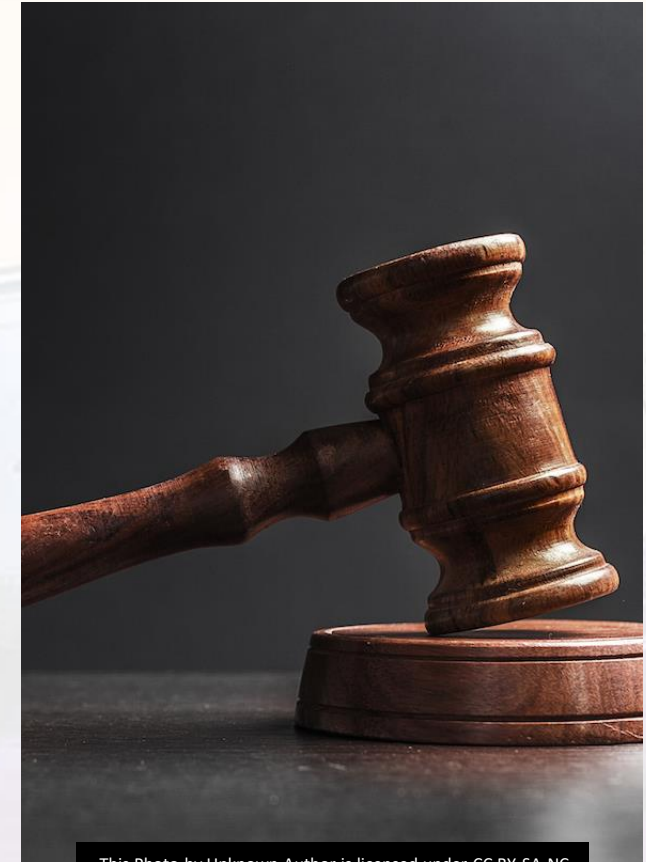
- Great resource for questions!
- **North Carolina Department of Natural and Cultural Resources**, 109 E. Jones Street, Mail Service Center 4601, Raleigh, NC 27601
- Ph: (919) 814-6800
- Blog: <https://ncrecords.wordpress.com/>



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Remedies for denial of access to public records

- Person denied access to records can bring suit in General Court of Justice requesting a court order releasing the records.
- If a court finds that a record was improperly withheld, can award attorneys' fees to be charged against the public agency withholding the records.
- Fees can only be assessed against an individual if the individual knowingly or intentionally withheld a record in violation of public records law.



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