


Open Meetings and Public Records


Frayda S. Bluestein
School of Government



www.sog.unc.edu

Session Overview

- What are the basic requirements of North Carolina's public records and open meetings laws?
- What are a public agency's obligations under these laws?
- When is a private organization subject to these laws based on its connections to a public agency?



A few preliminary observations...

- Statute-based issue
 - Policy and practical concerns? Tell it to the legislature or gamble on judicial interpretation
- Legislation tends to be ad hoc
 - Tends to respond to specific situations rather than establish broad consistent policy
- Law has not kept pace with technology
 - Metadata, records in the cloud, text messages and email on private devices, electronic meetings; many questions to which there is not yet a clear answer

The Basics: Open Meetings

- Official meetings of public bodies must be noticed and open to the public unless the subject falls within an exception allowing a closed session meeting.



What's a Public Body?

- Public Body
 - 2 or more members
 - Intentionally created or appointed
 - Governmental (not private)
 - Exercising any one of 5 functions
- Functions
 - Legislative
 - policy-making
 - quasi-judicial
 - administrative
 - advisory



Meeting of staff only ≠ public body

But note: a staff-only group that has certain types of final decision-making authority may be subject to the law.

What's an Official Meeting?

- Majority of the members of the public body
- Gather together, in person or electronically
- Purposes:
 - conduct a hearing
 - deliberate
 - vote on public business
 - otherwise transact the public business



Social gatherings exception



Must avoid talking shop!



Electronic Meetings

- Majority of a public body interacting in an electronic conversation that is essentially simultaneous may constitute a meeting.



The Public Agency's Obligation

- Provide notice and opportunity to attend
 - Regular meetings: notice filed, posted, on website
 - Special meetings: 48 hour notice to "sunshine list"; posted on website
 - Emergency meetings: notice to news media who have requested it, in same manner as given to members of the public body
 - Recessed meetings: post on website
- Create and retain minutes of meetings and general accounts of closed sessions.



Limited authority to meet in closed session



Process: Motion in open session, stating general purpose of closed session



Closed Session Purposes*

- Preserve confidentiality of records
- Preserve attorney client privilege
- Discuss economic development
- Discuss bargaining position for property acquisition
- Consider performance, qualifications, appointment, of public employees and public officers (not members of the board itself or other boards)
- Matters involving alleged criminal misconduct

*Partial list: See G.S. 143-318.11 for complete description.



Talking about closed sessions

- No prohibition in the open meetings law
- Can't disclose information that is confidential under some other law



The Basics: Public Records

Any record made or received in the transaction of public business is subject to public access unless an exception applies.



All kinds of records

Open Records Request

Requester: [Name]

Request: [Description]


Response: [Details]



Content of the record



Not location of the record





Determines whether it is a public record






The Public Agency's Obligation

- Provide records
 - to anyone who requests them
 - “as promptly as possible”
 - in the medium requested if possible
 - charge only direct costs



Motive doesn't matter



Exceptions: Two Kinds

An exception may provide that records

- need not be provided, but you may do so
 - Examples: Economic development information
- shall not be provided, and you may not do so
 - Examples: Social security numbers, trade secrets, personnel information




A Framework For Responding

- 1. Does a record exist that corresponds to the request?**
If not, no disclosure is required. If so, continue to question 2.
- 2. Is the record "made or received in the transaction of public business?"**
If not, no disclosure is required. If so, continue to question 3.
- 3. Is there an exception that applies?**
If not, the requested access must be provided. If so, continue to question 4.
- 4. Does the exception apply to the entire record, or only to certain information, and does it prohibit disclosure or does it deny the right of access?**
If a prohibition applies to the entire record, do not disclose; if it applies only to certain information, redact and disclose. If there is no right of access to some or all of the information, but release is not prohibited, determine whether or not to release the entire or a redacted record.

No exception for drafts




Actual, direct costs only
Not personnel time



UNC

Records, not information.



UNC

Public Employee Records

Public Records Act
Most records of public agencies are public

Exception: Personnel Privacy Statutes
Most public employee records are not public

Exception to the exception: Personnel Privacy Statutes
Specific employee information is public

UNC

Records Retention

- [Records retention schedules](#) dictate what must be kept, and for how long and provide legal authority to destroy
- Records of “short term value” need not be retained
 - Personal messages (including electronic mail) not related to official business.
 - Records that do not contain information necessary to conduct official business, meet statutory obligations, carry out administrative functions, or meet organizational objectives.





Questions?