

Local Government Law Essentials for Judges  
North Carolina Public Records Law  
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December 2, 2011

Ten Key Concepts

1. State law requires public agencies to provide broad access to records made or received in the transaction of public business. [G.S. 132-1]
2. Email and other electronic records are covered by the public records law. [G.S. 132-1]
3. The content of a record, not its form or location, determines whether it is subject to disclosure under the public records law.
4. The law does not apply to records that are personal and do not involve the transaction of public business. [*See, Associated Press v. Canterbury*, 688 S.E.2d 317 (W.Va. 2009); *Griffs v. Pinal County*, 156 P.3d 418 (Ariz. 2007); *Denver Publ'g Co. v. Bd. of County Comm'rs*, 121 P.3d 190 (Colo. 2005); *State v. City of Clearwater*, 863 So.2d 149 (Fla. 2003).]
5. The right of access includes the right to inspect and obtain a copy. [G.S. 132-6(a)] Public agencies may charge only “actual costs” for providing copies of public records, which means only those costs that would not have been incurred but for the request. Actual costs do not include employee time spent responding to the request. [G.S. 132-6.2]
6. The purpose or motive for which a person seeks a public record is irrelevant and cannot be requested as a condition of providing access. [G.S. 132-6(b)]
7. The law does not require public agencies to create records; only to provide access to records that exist. [G.S. 132-6.2(e)]
8. A record is subject to disclosure under the public records law unless a specific exception in the law allows or requires that it not be disclosed. There are two types of exceptions: some deny a right of access, though access is not prohibited (an example is criminal investigation information under G.S. 132-1.4); others prohibit disclosure (examples are trade secret information under G.S. 132-1.2(1), and exceptions in the various personnel privacy statutes).
9. There is no exception for “drafts” of public records. [*News & Observer Publishing Co. v. Poole*, 330 N.C. 465, 412 S.E.2d 7 (1992)]
10. State rules dictate what records must be retained and for how long. Records of “short term value” may be discarded, but if they exist when a request is received, they must be provided unless an exception applies. [NC Records Retention Guidelines: <http://www.records.ncdcr.gov/guidelines.htm>]

### Major Statutory Exceptions

**Most personnel records** [G.S. 153A-98 (counties); 160A-168(cities), 126-23(state agencies)]. The following information is public: (1) Name; (2) Age; (3) Date of original employment or appointment; (4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession; (5) Current position; (6) Title; (7) Current salary; (8) Date and amount of each increase or decrease in salary with that department, agency, institution, commission, or bureau; (9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau; (10) Date and general description of the reasons for each promotion with that department, agency, institution, commission, or bureau; (11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the department, agency, institution, commission, or bureau. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting forth the specific acts or omissions that are the basis of the dismissal.(12) The office or station to which the employee is currently assigned.

**Legal documents:** Letters from lawyers to board, about litigation [G.S. 132-1.1(a)]; and trial preparation materials [G.S. 132-1.9]

**Criminal investigation records:** [G.S. 132-1.4]

**Business trade secrets:** Information that derives commercial value from not being generally known or independently ascertainable [G.S. 132-1.2; G.S. 66-152(2)(3)]

**Records of local taxes that show income or gross receipts:** [G.S. 153A-148.1 and 160A-208.1]

**Minutes of closed sessions:** For as long as necessary to avoid frustrating the purpose of the closed session. [G.S. 143-318.10(e)]

**Social security numbers and other personal identifying information:** Including drivers' license numbers, financial account numbers, state identification or passport numbers, employer taxpayer identification numbers, digital signatures, finger prints, passwords, biometric data. [G.S. 132-1.10]

**Economic development project records:** [G.S. 132-6(b)]

**Medical records:** Including (1) Records containing privileged patient information, and information about lead poisoning in children; and (2) Information or records that identify a person who has AIDS virus infection or who has or may have a communicable disease or condition. [G.S. 130A-12, G.S. 130A-143]

Resources: David M. Lawrence, *Public Records Law for North Carolina Local Governments*, 2d. ed., 2009; Coates' Canons: North Carolina Local Government Law Blog:

<http://sogweb.sog.unc.edu/blogs/localgovt>

## Case Problems

1) A public agency has established a Facebook page on which it posts information and receives comments. A local newspaper has requested a list of the names of each employee who has posted a comment to the agency's Facebook page within the past six months. What is the agency's legal obligation under the public records law with respect to this request?

2) The newspaper has submitted a request for copies of all emails sent or received by the elected members of a local government board within the past year. Board members have government-issued computers and email accounts, but they also use their private computers and email accounts to conduct some board-related communications.

- a) Are communications on private computers and accounts subject to public access?
- b) Are private communications on the public computers and accounts subject to public access?
- c) One of the board members is the chair of a local political party committee. She claims that her communications about these activities are not subject to public access. Is she correct?
- d) Another board member feels that email addresses of private citizens with whom he has corresponded about public business should not be subject to public access. He suggests that the emails be printed out and provided only in hard copy in order to avoid exposure of this information. Does the agency have this option under the public records law?
- e) It will take significant time and effort for the agency's staff to identify records that must be provided under this request. In some cases, it may be necessary redact confidential information. May the agency charge the newspaper for any of this time?

3) A public agency receives a public records request from a citizen who seeks all the emails and phone records of a specific employee. It turns out that the citizen requesting the information is the estranged spouse of the employee whose records are being requested. The citizen is in fact requesting them to build her case against him in their divorce proceeding; she alleges that he's been having an affair with another employee within the agency. The agency would prefer not to get in the middle of this situation. May the agency refuse to provide the records and require the spouse to use the discovery process instead?

While awaiting the attorney's advice on this first question, the employee's supervisor reviews the requested records. It turns out that the spouse is correct, and that the review of the records discloses a large number of non-work-related communications between the two individuals in question. Does the public records law require the agency to provide these records to the citizen? Does the agency have a right to view them? May the agency disclose the records voluntarily, even if not required to do so under the public records law?

4) A local ABC board, recognizing the need to improve its operations, hired a private management consulting firm to study its operations and make recommendations for improvement. The firm has developed a draft set of recommendations, but is aware that several of them may be quite controversial. The firm has submitted the draft to the chair for her review prior to the official release of the report. The local newspaper somehow got wind of the existence of the draft report and has requested a copy. The ABC board chair argues that the document has not officially been received or approved by the board and is not a public record. Is this correct?