



Open Government

Amy Bason, Deputy Director and General Counsel, North Carolina Association of County Commissioners
Bob Joyce, Charles Edwin Hinsdale Professor of Public Law and Government
Kara Millonzi, Robert W. Bradshaw Distinguished Professor of Public Law and Government, UNC Chapel Hill School of Government

ESSENTIALS OF COUNTY GOVERNMENT



1

Transparency in County Government

What does transparency in government mean for you as a county commissioner?

What does it mean for your board?

EFFICIENCY

OPENNESS

Decision Making

Operations

Open Meetings

Public Records

Conflicts of Interest

Public Engagement

2

Open Meetings




What meetings are subject to open meetings requirements?

Official meetings of public bodies


3

Public Body



- ✓ Two or more members
- ✓ Intentionally created or appointed
- ✓ Governmental (not private)
- ✓ Exercising *any* of these functions:
 - Legislative
 - Policy-making
 - Quasi-judicial
 - Administrative
 - Advisory

Official Meeting



- ✓ A majority of the members of the public body
- ✓ Gather simultaneously in person or electronically
- ✓ To conduct a hearing, deliberate, vote, or otherwise conduct public business.

4

Example Public Bodies

- Board of County Commissioners
- Committees of Commissioners (if 2 or more members)
- Planning Board
- Board of Equalization and Review
- Public Health Board
- Social Services Board
- Local Board of Elections
- Officially appointed/designated citizen advisory boards

Not a Public Body

- Single commissioner
- Gathering of only county staff members performing staff duties (no matter how many)
- Group that is not formally created or appointed by government entity

Not an Official Meeting

- Social or educational gatherings of majority of public body members (if no county business discussed)
- Discussions among less than a majority of public body
- Discussions between and among less than majority of public body and attorney, manager, staff, citizens
- One-way communications from individual board member, attorney, manager, staff to whole board

5

If a Public Body Holds an Official Meeting it Requires:

Public Notice

+

Public Access

General Assembly intended the open meetings law to accomplish three main goals:

1. ensuring that public bodies receive public input on substantive actions;
2. requiring public bodies to act in good faith in providing for public knowledge of and participation in meetings; and
3. providing the public with the opportunity to know about and understand public bodies' deliberations and actions.

Garlock v. Wake Cty. Bd. of Educ., 211 N.C. App. 200, 221 (N.C. Ct. App. 2011)

6

Public Notice	Type of Meeting	Notice Requirements
	Regular (must hold once per month)	Notice filed, posted on website
	Special (may be called to address special topic)	48-hour notice to "sunshine list;" posted on website
	Emergency	Notice to news media who have requested it, in same manner as given to members of the public body
	Recessed	Posted on website

There are four different types of Official Meetings

Notice typically handled by clerk

7



Must provide *reasonable* opportunity for public to access an official meeting

Public has right to attend, but not speak*

Public may record meeting

**But county must provide for a public comment period at least once per month at a regular meeting*


Public Access

8

A person who has been denied access to an official meeting may file a lawsuit.

Court Order May:

1. Declare that a violation occurred.
2. Prohibit the county from future violations.
3. Invalidate actions taken.
4. Impose personal liability (intentional action; not following attorney's advice).



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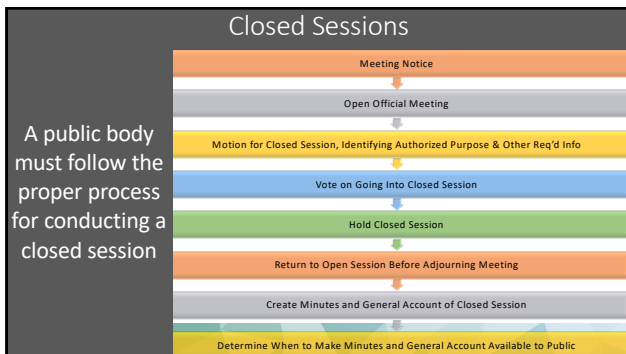
Closed Sessions

A public body generally may not take final action in a closed session, but there are a few exceptions

A public body may conduct a "closed session" portion of an official meeting for certain purposes:

- Consider performance, qualifications, appointment, of **individual** public employees and public officers (not members of the board itself or other boards).
- Preserve attorney client privilege/consider handling of claims (attorney must attend).
- Discuss the location or expansion of industries or other businesses in the county.
- Establish, or instruct staff or agents on, the county's negotiating position for acquisition of real property or employment contracts.
- Plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
- Discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.
- Review law enforcement agency recording, released pursuant to statute.
- Prevent the disclosure of information that is privileged or confidential or not considered a public record.

10



11

Minutes and General Accounts

- Public bodies must create and retain minutes of meetings and general accounts of closed sessions.
- The legal function of minutes is to document actions taken; typically provide a summary
- General Accounts of Closed Sessions: include enough detail so that a person not in attendance would have a reasonable understanding of what transpired. May be withheld from public as long as necessary to avoid frustrating the purpose of the closed session.

12

Electronic Meetings

Majority of a public body interacting in an electronic conversation about public business that is essentially simultaneous constitutes an official meeting.

- ✓ Authority to conduct electronic meetings during State-designated state of emergency?
- ? Authority to conduct electronic meetings outside of a state of emergency?
- ? Authority for board member to participate remotely in official meeting?



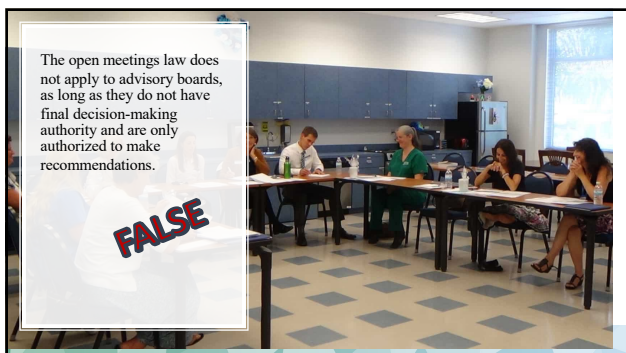
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The board chairs of three counties meet at a coffee shop once a month to discuss county matters and exchange ideas. Do these meetings violate the open meetings law because the public has not been given notice and do not have the ability to attend?

NO, unless the 3 board chairs have been officially appointed to this group for the purpose of Legislative; Policy-making; Quasi-judicial; Administrative; or Advisory functions.

14



The open meetings law does not apply to advisory boards, as long as they do not have final decision-making authority and are only authorized to make recommendations.

FALSE

15

A meeting solely among the staff of a public agency is not subject to the open meetings law.

TRUE



16



An appointed board has created a subcommittee to develop a proposal and report back to the full board. The subcommittee has three members. One member meets another member for coffee, and they discuss their ideas for how the proposal should be presented. Is this a meeting that is subject to the open meetings law?

Yes, a majority of the subcommittee (public body) is meeting to conduct business of subcommittee

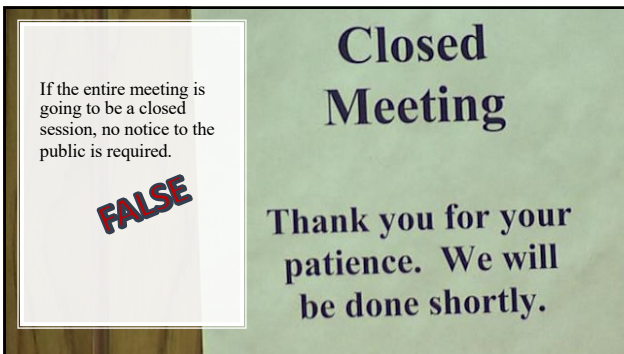
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If the entire meeting is going to be a closed session, no notice to the public is required.

FALSE

Closed Meeting

Thank you for your patience. We will be done shortly.



18



19

A board may vote in closed session:

- 1) when it is a preliminary ("tentative") vote on a matter that requires a vote in open session, and when the final action is subsequently taken in open session, or
- 2) when the action is one that the statutes allow the board to take in closed session.

- Litigation instructions – G.S. 143-318.11(a)(3): authorizes the board to "consider and give instructions to an attorney" concerning anticipated or pending litigation. This could include authorization to agree to the final terms of a settlement agreement on behalf of the unit.
- Real property acquisition instructions – G.S. 143-318.11(a)(5): allows the board to instruct its staff or negotiating agents concerning the position to be taken on behalf of the unit in negotiating the price and other terms of a contract to acquire real property or the amount of compensation and other material terms of an employment contract. This could include authorization to agree to the final price and terms of the contract on behalf of the unit. (Note: this provision does not apply to sale of property by the unit – only to acquisition.)
- Personnel actions – G.S. 143-318.11(a)(6): Possibly, actions other than those that the statute explicitly requires the board to take in open session (i.e., final action making an appointment, discharge, or removal) may be taken in closed session. Examples include placing an employee on administrative leave, or probation, or imposing some other disciplinary action short of discharge or removal.

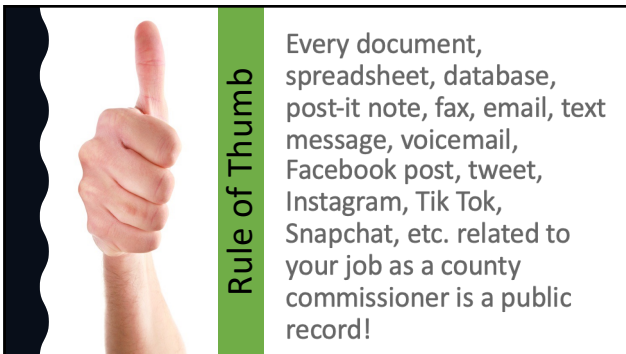
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24

If something is a public record, then what?

Retention Requirements

- Must save/preserve a public record according to record retention schedules
- Record retention schedules are based on substantive content of the public record

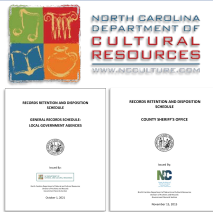
Public Access Requirements

- Public has a right to inspect record and a right to a copy of the record, unless there is a specific statutory exception/exemption



25

Retention



- No public records may be deleted / destroyed, except as allowed by the county's record retention schedule
- Record retention schedule must be adopted consistent with NC Department of Cultural Resources guidelines
- Every individual who makes or receives public records must ensure that records are retained according to retention schedule

The record retention policy prescribes retention period for various record types, ranging from:



26

The Right to Access....

- Includes every person or entity
- Is a right to inspect AND a right to a copy in the medium requested
- Is an absolute right, regardless of purpose of request or how records will be used
- May not be conditioned upon requester providing name, contact info, reason for request, etc.

Access to inspect or a copy must happen "as promptly as possible"

Every official and employee of the county is the custodian of the public records they make or receive


The county clerk is the official custodian of county records

A county must establish a process for receiving and responding to public records requests, including identifying responsive records, reviewing for confidential records/ information, and providing access to or copies of the records.

27

<p>There are several statutory exceptions that exempt certain public records from public access or do not require the county to provide public access.</p>	Common Statutory Exceptions		
	Confidential Records	Non-Public Records	Confidential Records for Limited Time Period
	<p>Release is prohibited except as authorized by statute</p> <ul style="list-style-type: none"> Certain personnel information Trade secrets Income or receipts info on tax records Social Security Numbers Certain Personal Identifying Information Certain Medical Information 	<p>Release is permitted but not required</p> <ul style="list-style-type: none"> Certain law enforcement records Attorney/client records (client may release) Economic development information (except trade secrets) Public enterprise (utility) billing information (except Social Security Numbers and similar information) 	<p>Release is prohibited, but only for a limited period of time</p> <ul style="list-style-type: none"> Certain bidding information Closed session minutes / general account


28

	Personnel Records are Confidential	
	EXCEPT	
	<ul style="list-style-type: none"> Name Age Date of date of original employment/appointment Terms of contract, Current title, Current salary (total compensation), Salary history, Date and amount of most recent increase or decrease in salary, 	<ul style="list-style-type: none"> Date and type of each personnel action (promotion, demotion, transfer, suspension, separation), or other change in position classification, Office to which currently assigned, General description of reasons for promotion, Copy of final notice of dismissal for disciplinary reasons setting forth the bases for the dismissal

29

Assessing Costs	
<p>Generally, the county must bear the costs of complying with public records retention and access laws as a cost of doing business.</p>	MAY NOT assess costs of providing access only
	MAY assess DIRECT costs of providing copies
	MAY NOT assess costs to cover legal review for confidential records/information
	Special charge authorized if request for copies involves "extensive use of information technology resources or extensive clerical or supervisory assistance...."

30



Emails relating to the transaction of public business that are made or received on *privately owned computers or using private email accounts* are subject to public access under the public records law.

TRUE

31



Text messages are not considered to be public records because they generally have only short-term value.

FALSE

32



Citizen: u and wife want to meet us for dinner at 6 2moro?

Mayor: same place as last Fri? scallops were delish

Citizen: yeah. btw-V potholes on Jones St. not fixed yet? ruining my car shocks. mayoer promised theyd be fixed 6 mnths ago. As usual LOPSOD

Mayor: BMV publ. works crew painfully slow. will direct to fix asap

Citizen: Thx. it's doog to know peeps in high paces :-)

Mayor: had 2 pull rank. crew will get there early next week at latest.. ITMT take Smith st.

Citizen: YTM. where/when is next council mtg?

Mayor: in 3 weeks. moved 2 library mtg. room. 7pm. CU 2moro

This is a citizen complaint and must be retained for 1 year after complaint addressed

This is a public record with no lasting value and may be deleted immediately

33

A local reporter wants to know how many times the commissioners have met in closed session over the past year. Is this a valid public records request?


If you have a record that details this information, you must provide it to the reporter. But you DO NOT have to create a new record to respond to the request.



34

Individual board members do not have a right to inspect confidential records in an employee's personnel file.

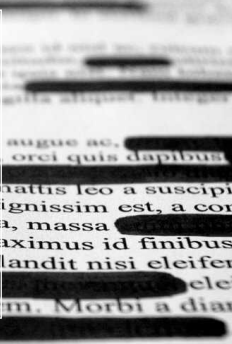
True. An individual board member has no greater rights to access public records than a member of the public. The board, acting as a majority, may have access to confidential personnel records for employees that report directly to the board.



35

The home phone numbers of applicants to and members of town advisory boards may be redacted from any public records on which they appear if there is a request for access to those records.

False. There are no statutory exemptions to protect this information from public access.



36

State law requires all public records to be maintained for a minimum period of 3 years.

FALSE

Sample Retention Schedule

Document	Description	Retention Period	Retention Medium	Remarks
Annual Budget for 2009	Original Copy	Ten years	Electronic and paper	
Receipts and Invoices	Original copies	Ten years	Paper	Destroy after BIR audit
Bank statements	Original copies	Five years	Paper	Destroy after audit
Job evaluation reports	Annual staff evaluations	Five years	Paper	
Attendance records	Original copies	Two years	Paper	
Correspondence	Received sent by management	Five years	Electronic and paper	Subject to regular review/appraisal
Permits to Operate	Original copies	Keep permanently	Paper and digital copy	Store in vault

37

Records Management

Where are the records?

How do you capture and save it?

Who needs to know?

Who's in charge?

What's your favorite teenager doing?

Everyone needs to be involved in public records management—identifying where and how records are made and/or received; properly saving the records; knowing what records are protected; and producing records subject to public access upon request

38

2.5 cents all inclusive!

A public agency has no authority to charge a fee based on the employee's hourly rate for the time it takes for the custodian to review and redact records before they are released.

TRUE

39

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