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# Legal Basics for Health and Human Services Directors and Administrators

## Open Meetings and Public Records

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### Open Meetings Questions

1. 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.

True \_\_\_\_\_ False \_\_\_\_\_

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

True \_\_\_\_\_ False \_\_\_\_\_

3. 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 \_\_\_\_\_ No \_\_\_\_\_

4. A public body may conduct its business by email as long as the public has access to copies of the emails upon request.

True \_\_\_\_\_ False \_\_\_\_\_

5. A board or commission may meet in closed session to discuss applicants for appointment to that board or commission.

True \_\_\_\_\_ False \_\_\_\_\_

## Public Records Questions

1. 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 \_\_\_\_\_ False \_\_\_\_\_

2. Applications for appointment to local government advisory boards are public records.

True \_\_\_\_\_ False \_\_\_\_\_

3. The county has received a public records request for all emails sent to or received by the county commissioners regarding a proposal to create a consolidated human services agency. Many of the emails received are from citizens. The request is for electronic copies of the emails. Must the county provide the entire email, including the email address of private citizens who have communicated with their elected officials?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. The county has hired a consultant to develop an analysis of the pros and cons of creating a consolidated human services agency. The consultant has prepared a draft report. Since some of the recommendations may be controversial, the consultant provided a preliminary draft to the county manager for review before submitting it to county commissioners. A member of the public finds out about the report and requests a copy. Does the public have a right to a copy at this point?

True \_\_\_\_\_ False \_\_\_\_\_

## Open Meetings Law Requirements

### Basic Requirement:

Official meetings of public bodies must be conducted in public, with notice as required by law (depending upon the type of meeting). Limited exceptions allow a public body to meet in closed session.

### Key Terms Defined: [G.S. 143-318.10](#)

**Public Bodies :** Any elected or appointed authority, board, commission, committee, council or other body of the State or of one or more local governments:

1. With two or more members, and
2. Exercising or authorized to exercise any of the following powers:
  - Legislative
  - Policy-making
  - Quasi-Judicial
  - Administrative
  - Advisory

A public body *does not include* "a meeting solely among the professional staff of a public body."

### Official Meetings:

1. A meeting, assembly, or gathering together, or the simultaneous communication by conference telephone call or other means;
2. Of a majority of the members of the public body;
3. For the purpose of
  - conducting hearings, or
  - participating in deliberations, or
  - voting on or otherwise transacting public business

An "Official Meeting" *does not include* a social occasion, unless it is called or held to evade the law.

### Public Notice of Official Meetings

#### Regular Meetings

A current copy of the regular meeting schedule must be filed in a central location and it must be posted on the agency's website, if the agency maintains one.

#### Special Meetings

A "Special Meeting" is one held at some time or place different from the schedule of regular meetings.

Written notice (1) posted on the public body's principal bulletin board and (2) mailed or delivered to each person who has requested it, at least 48 hours before the meeting, and posted on the agency's website.

### Emergency Meetings

An "Emergency Meeting" is one called "because of generally unexpected circumstances that require immediate consideration by the public body."  
Notice to local news media only, in same manner as public body itself is notified.

### Adjourned or Recessed Meetings

Post notice of time and place of the recessed meeting on the agency's website at some time before the recessed portion of the meeting occurs.

### **Closed Sessions [G.S. 143-318.11](#)**

#### Procedures

- Meeting notice still required.
- There must be a motion, giving the purpose of the closed session
- Members of the public body are entitled to attend; others may be admitted if their presence is relevant
- Public body must prepare general account of each closed session and, if actions taken, minutes. Summary or minutes may be sealed, if necessary to maintain confidentiality.

#### Some Authorized Purposes

- To consider confidential records
- To consult with an attorney on matters within the attorney-client privilege, including consideration of litigation or a claim
- To consider industrial and business location
- To establish a negotiating position in the acquisition of real property
- To consider performance, etc. of individual employees and officers

### **Miscellaneous**

1. Secret ballots are prohibited; written ballots, however, are permitted, if each person signs his or her ballot.
2. Any person may tape or film an open meeting; the media are entitled to broadcast any open meeting.
3. Note: Different rules apply to legislative committees and commissions.  
[G.S. 143-318.14A](#)

**Remedies:** Injunction against future violations; Invalidation of tainted actions, factors to be considered by the judge listed in the statute. [G.S. 143-318.16A](#); [Possible personal liability for attorneys fees for knowing or intentional violation. G.S. 143-318.16B.](#)

## Public Records

### 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.
3. The law does not apply to records that do not involve the transaction of public business, such as personal (not work-related) communications.
4. The content of a record, not its form or location, determines whether it is subject to disclosure under the public records law.
5. The right of access includes the right to inspect and obtain a copy. [[G.S. 132-6\(a\)](#)]
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.
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.
9. There is no exception for “drafts” of public records. 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.
10. 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. Direct costs do not include employee time spent responding to the request. G.S. 132-6.2  
See also: “Notwithstanding the provisions of this subsection, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall

be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.”

**Exceptions:**

Below is a list of some of the major exceptions to the public records law.

- a. **Records relating to juveniles.** Various provisions in Chapter 7B protect information about juveniles, for example, [G.S. 7B -302](#) (confidentiality of investigations of abuse, neglect and dependency); [G.S. 7B-2901\(b\)](#) (confidentiality of department records of juvenile cases.)
- b. **Social services records.** [G.S. 108A-80](#) and [108A-73](#) (confidentiality of records about persons applying for or receiving public assistance or other social services).
- c. **Most personnel records.** The following information is public: name, age, date of original employment/appointment, terms of contract of employment, current position, current title, current salary (total compensation), date and amount of each increase or decrease in salary, date and nature of each action (promotion, demotion, transfer, suspension, separation) or other change in position classification, office or station to which currently assigned; information about each promotion and dismissal, including a copy of a final notice of dismissal setting forth the specific acts or omissions that are the basis of the dismissal. [G.S. 153A-98](#)
- d. **Criminal investigation records.** [G.S. 132-1.4](#)
- e. **Minutes of closed sessions.** [G.S. 143-318.10\(e\)](#)
- f. **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](#)
- g. **Attorney-client communications,** between the attorney and the board, [G.S. 132-1.1\(a\)](#); trial preparation materials, [G.S. 132-1.9](#).
- h. **Medical records.** [G.S. 130A-12](#), [G.S. 130A-143](#), including
  - i. Records containing privileged patient information, and information about lead poisoning in children; and
  - ii. Information or records that identify a person who has AIDS virus infection or who has or may have a communicable disease or condition.

## School of Government Resources

[Coates' Canons: Local Government Law Blog](#)

School of Government Publications: [www.sog.unc.edu](http://www.sog.unc.edu)

*Public Records Law for North Carolina Local Governments*, David M. Lawrence, School of Government, 2009

*Open Meetings and Local Governments in North Carolina*, David M. Lawrence, School of Government, 2008,