


Local Government Transparency Requirements


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What We're Doing




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What We're Doing

- The basics of North Carolina's public records law
- The basics of North Carolina's open meetings law





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Public Records

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Public Records Philosophy

The public records of the agencies of government in North Carolina "are the property of the people."

GS 132-1

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The Basics: Public Records

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



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What is a Public Record?

Types and forms of records defined: Documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, *regardless of physical form or characteristics.*



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Does a Record Exist?

Access is to records, not to information.

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Does a Record Exist?

Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist.

GS 132-6.2(e)

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Does a Record Exist?

If a public agency, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium.

GS 132-6.2(e)



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Does a Record Exist?

A possible clickety-click exception



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Does a Record Exist?

A possible clickety-click exception

Must you search databases?

- Probably, if requested information can be queried.
- [Query That? Public Records Requirements Regarding Database Queries](#)



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Who Gets to See Public Records?

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Who Gets to See Public Records?

Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law.

GS 132-6(a)

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Why Do You Want to See It Anyway?

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Why Do You Want to See It Anyway?

No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

GS 132-6(b)



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Was it Made or Received in Public Business?



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Was it Made or Received in Public Business?

The content of the record answers that question.



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Rule to Remember

It's the **CONTENT** of the record, not its location, that determines whether it is a public record.



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2 Key Concepts

Records created on **personal devices or accounts** are public records **if the content involves public business**.



Records created on government devices or accounts are **not public records if the content does not involve public business**. The government may have access to these records for internal purposes depending on computer use policies in effect.

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But There's Confidential Stuff in There

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But There's Confidential Stuff in There

No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information.

GS 132-6(c)



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But There's Confidential Stuff in There

If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation.

GS 132-6(c)



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There are Exceptions



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There are Exceptions

An exception may say one of two things about a record



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There are Exceptions

An exception may say one of two things about a record

- It is "not a public record": agency **is not required to provide access**, has discretion to do so
 - Examples: Criminal investigation records, utility billing information, economic development information



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There are Exceptions

An exception may provide that a record

- It is "not a public record": agency **is not required to provide access**, has discretion to do so
 - Examples: Criminal investigation records, utility billing information, economic development information
- It is "confidential": agency is **prohibited from providing** except as specifically authorized by law
 - Examples: Social security numbers, client information, juvenile information, certain health information



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The Biggest Exception



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The Biggest Exception

Personnel records are *confidential*



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The Biggest Exception

Personnel records are *confidential*

Who gets access to that confidential personnel stuff?



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The Biggest Exception

- Supervisors
 - Council-Manager cities: Manager
 - Mayor-council cities: Council
 - Schools: Individual board members
- Employees and former employees
 - *Not applicants*
- Others in public agencies if the custodian determines it is necessary
- Others by court order

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Exception to the Biggest Exception

Some personnel *information* is public

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Exception to the Biggest Exception

Name
Age
Date of hire
Terms of contract
Salary history
Date and type of certain personnel actions

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Exception to the Biggest Exception

Information, not records



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Exception to the Biggest Exception

Information, not records

With one exception:

Copy of notice of final dismissal for disciplinary reasons, setting forth basis for dismissal.



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There is No Exception for Drafts



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What Can We Charge?

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What Can We Charge?

✓ Actual, direct costs only

✗ Not personnel time



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Special Service Fee

- Extensive use of information technology resources
- Extensive clerical or supervisory assistance
- Greater use of information technology resources
- NOTE: No clear authority to charge for substantive review of records.




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Records Retention

- State issued records retention schedules dictate what must be kept, and for how long
- These schedules provide the legal authority to destroy records




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Open Meetings



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What meetings are subject to open meetings requirements?

"Official meetings" of "public bodies"



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What's a Public Body?

Public Body <ul style="list-style-type: none"> • 2 or more members • Intentionally created or appointed • Governmental (not private) • Exercising any one of 5 functions 	Functions <ul style="list-style-type: none"> • Legislative • Policy-making • Quasi-judicial • Administrative • Advisory
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Does **not** apply to meetings **solely** among staff.

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Is This a Public Body?

- ? The mayors of all the cities in Wake County meet for lunch once a month.
- ? The mayor, the manager, and the clerk comprise the agenda committee and meet monthly to prepare the meeting agenda.
- ? The manager appoints a committee of employees to organize employee appreciation day events.

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What's an Official Meeting?

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



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A purely social occasion is not an official meeting.



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Electronic Meetings

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



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What is the Right of Access?

Law requires notice and opportunity to attend

Type of Meeting	Notice Requirements
Regular	Notice filed, posted, on website
Special	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	Post on website

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Right of Access

- No Open Meetings Law requirement to publish notice in the newspaper
- Right to attend does not include right to be heard. Public comment period required monthly under separate law.
- Public and press can record, video, photograph meetings

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Minutes and General Accounts


- Public bodies must create and retain minutes of meetings and general accounts of closed sessions.
- Minutes legal function is to document actions taken; typically provide a summary
- General Accounts: 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.

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When Are Closed Sessions Allowed?

Limited authority to meet in closed session

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



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Closed Session Purposes*


- Preserve confidentiality of records
- Preserve attorney client privilege
- Discuss location or expansion of business or industry; economic incentives
- 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.

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Closed Session Myths



Myth: Council cannot vote or take action in closed session.

Truth: Some closed session provisions specifically allow it.

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

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

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