

Public Records Basics

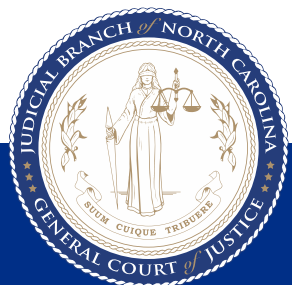
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Magistrates Webinar, October 2023



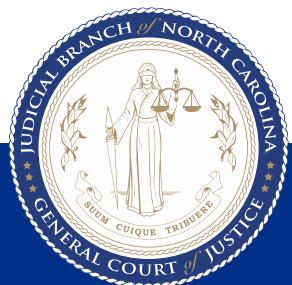
Goals

- Importance of Public Records Law
- Magistrate's Role
- Public Records Basics
- Common Questions
- Common Public Records Requests
- Tips & Resources



Public Records: Why is Public Records Law Important?

- Public records are the property of the people. G.S. 132-1(b).
- Goal of Public Records:
 - To provide transparency and accountability
 - Provides the public insight on how resources are managed
- Practical uses:
 - Keeping a historical record of events and government functions
 - Can prove citizenship
 - Can be used by citizens to research potential property interests
 - Provide community data on criminal activity



History Of Public Records Law

- Common Law Recognition: early 1800's
- Freedom of Information Act (FOIA) – Federal, 1966
 - Strengthened in the 70's
 - Revised again in 1986 and 1996
- North Carolina Public Records Act
 - Right to inspect recognized in 1935
 - G.S. 132-1 has been amended twice since this time.
 - Amended: 39 times
 - Biggest NC Reform Years:
 - 1995 (accounting for electronic records)
 - 2005
 - 2015



The Magistrate's Records Role: G.S. 7A -175

§ 7A-175:

“Records to be kept. A magistrate shall keep such dockets, accounts, and other records, under the general supervision of the clerk of superior court, as may be prescribed by the Administrative Office of the Courts.”



Who is the custodian?

- G.S. 132-2:

“The public official in charge of an office having public records shall be the custodian thereof.”



Public Records Law Basics: Definition

"Public record" or "public records" shall mean all 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, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. . ."

G.S. 132-1(a).



Public Records Law Basics: Definition

Two part test:

- 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
 - Audio, recordings, tape, digital format
- Made or received pursuant to law or ordinance in connection with the transaction of public business (by any agency of North Carolina government or its subdivisions)
 - Personal communications are not “made or received pursuant to law or ordinance in connection with transaction of personal business.”
 - Examples: email from a relative, Black Friday holiday sale ads, vacation schedule
 - What if part is personal communications and part is work-related?



Public Records Law Basics: What Does the Definition of “Public Record” Include?

- Voicemail?
- Email from personal email account?
- Text message on your personal phone?
- Facebook message from your personal account to a coworker about work?
- Message on Microsoft Teams?
- Drafts?

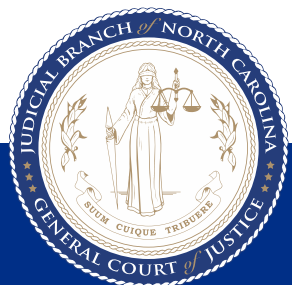
The answer to each of these is YES!



Public Records Law Basics: What is Public Record?

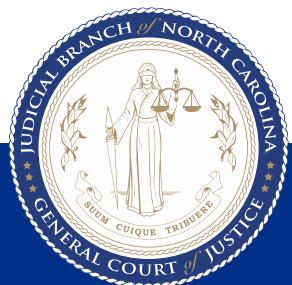
NOT a

- Not Public Record
 - Certain records are excluded from the definition of public records
- Public Record, but excluded
 - Prohibition of disclosure of the record in full.
 - Examples: juvenile records, involuntary commitment records, adoption case files, etc.
 - Require a court order for release
 - Resource: [Microsoft Word - Protected Documents List 2 .docx \(nccourts.gov\)](#)
 - Prohibition on disclosure of certain information contained in records
 - Personally Identifiable information (PII): confidential and not a public record (G.S. 132-1.10)



Public Records Law Basics: Note on Personnel Files

- Generally not open to public inspection or examination (G.S. 126-22)
- However, some information is public (G.S. 126-23(a)):
 - Name
 - Age
 - Date of original employment
 - Contract terms (if written or if there are notes about an oral contract)
 - Current position
 - Title
 - Current salary (includes pay, benefits, incentives, bonuses, deferred compensation, and all other forms of compensation)
 - Date and amount of salary increases or decreases
 - Date and type of promotion, demotion, transfer, suspension, separation, changes of positions
 - General description of reasons for promotion
 - Date and type of dismissal, suspension, or demotion for disciplinary actions taken
 - Office to which the employee is currently assigned



Public Records Law Basics: When Can you destroy public records?

G.S. 132-3. Destruction of records regulated.

- “No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5 ... without **the consent of the Department of Natural and Cultural Resources.**”
- DNCR has approved [retention schedules](#) and [functional schedules](#).
- Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).



When has DNCR consented to destruction?

- You cannot destroy a public record unless:
 - the record is a **reference copy**,
 - the record is a **transitory record** with no applicable retention schedule,
 - destruction of the record is approved under a **retention schedule**, OR
 - you have **express written authorization** from DNCR.



Public Records Law Basics: When Can you destroy public records?

- Transitory Records:
 - Records with little or no documentary or evidential value and need not be set aside for future use.
 - Examples: Forms used solely for data entry purposes after completion of the data entry and quality control procedures (unless necessary to validate the information), call logs, sticky notes, voicemails, calendar invitations once the official action has been completed and documented, etc.
 - May be destroyed when their value ends.
- Reference Copies: Additional copies beyond the original and copy required for retention are “reference copies” and may be destroyed after their usefulness ends.
- Note: Even if a record may have been destroyed, if it is not destroyed and is still in the possession of the custodian, it is a public record that is subject to disclosure.



Functional Schedule - Agency Management

RC No.	Record Types	Description	Disposition Instructions	Citation
133.P	Correspondence (cont.) SEE ALSO: Institutional Correspondence (EDUCATION), Executive Office (GOVERNANCE), General Legal Correspondence (LEGAL)	internal and external communications (including e-mail) to and from agency employees whose correspondence has been identified for long-term retention for the purposes of institutional memory and planning; includes correspondence on behalf of an organizational unit	PERMANENT (appraisal required) ∞	
133.5	<i>NOTE: Excludes adjudicatory communications related to court proceedings in the Judicial Branch.</i>	internal and external communications (including e-mail) to and from all other agency employees	RETAIN UNTIL: Received/Sent PLUS: 5 years THEN: Destroy*	<u>Retention</u> EO No. 12 (2013)
133.1		unsolicited correspondence received by the agency that requires no response and is not subject to Executive Order No. 12 (2013)	RETAIN UNTIL: Received PLUS: 1 year THEN: Destroy	
133.<		outgoing agency mail returned for any reason, including incorrect address, forwarding order expired, etc.	RETAIN UNTIL: Returned PLUS: 30 days THEN: Destroy	
134.S	Information Sharing Materials SEE ALSO: PUBLIC RELATIONS	internal records such as memoranda, newsletters, and bulletins that circulate information within the agency	RETAIN UNTIL: Superseded/Obsolete THEN: Destroy	



Public Records Law Basics: When Do You Have To Provide a Public Record?

- **You are the custodian of the record**
 - First question: Am I the custodian of this record?
- **At reasonable times, under reasonable supervision**
 - Reasonable Time: A party makes a request to view emails and submits the request at 6:00pm. Is the magistrate required to gather those emails responsive to the request and submit them at that time?
 - No.
 - Reasonable Supervision: This party found a way to make it during their lunch hour to review the emails. Can you require someone to sit with them or for them to review the file within the sight of personnel?
 - Yes.
- **As promptly as possible, upon payment of any fees as may be provided by law.**
 - Do you have to drop everything you are doing and make a copy of a file when someone requests?
 - No.

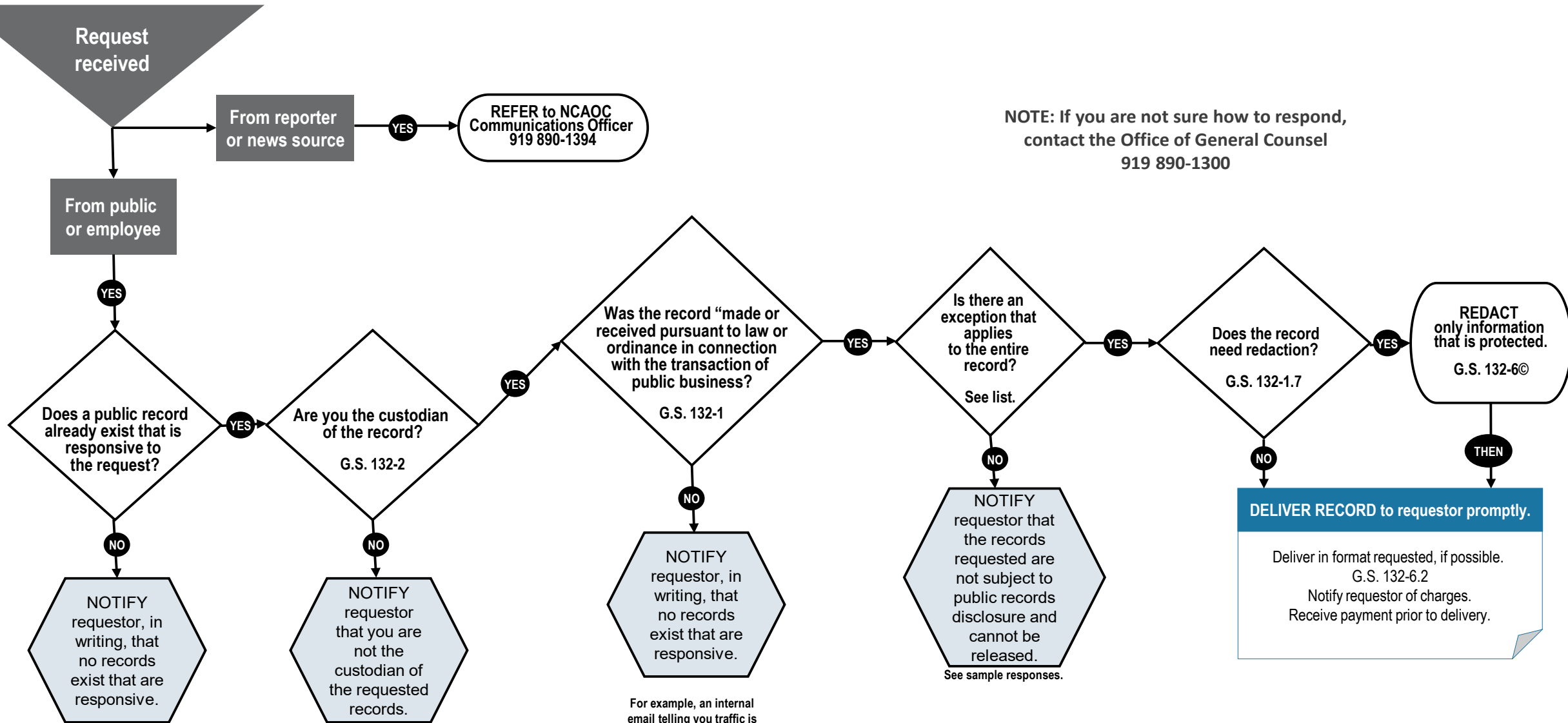


Common Questions

- Do I have to work afterhours to fulfill a public records request?
 - No. See G.S. 132-6.2(d).
- Can I ask the requestor why they want the records?
 - No. See G.S. 132-6(b).
- Overbroad Requests: Can I ask the requestor to narrow their request?
 - Yes, but they are not required to do so.
- Records
 - Color mugshot? If a part of the court file, yes. (*If the mugshot is not a part of the court file, it is a criminal investigatory record under G.S. 132-1.4.*)
 - Unreturned Warrants For Arrest? Not public record until it is *returned*. G.S. 132-1.4(k).
 - Exhibits? Depends.
 - Medical records pursuant to Rule 45(c)(2)? No.
 - Exhibits filed in the complaint? Yes. *Vermani v. Presbyterian Health Services Corp.*, 350 NC 449 (1999).
 - Exhibits admitted into evidence? Yes.
 - Only exception: if sealed.
 - Transcripts/Audio Recording? Public Record unless it is a closed hearing or sealed.
- Media Requests: What if the media requests a public record? Notify AOC's Communication Officer.



HOW TO RESPOND TO A PUBLIC RECORD REQUEST



NOTE: If you are not sure how to respond, contact the Office of General Counsel 919 890-1300

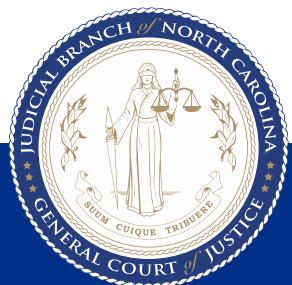
The law does not obligate the creation or explanation of records.
 Location of the record is irrelevant.
 Agency records on your home computer should be produced.
 Handwritten notes are public records.

If possible, direct the requestor to the proper custodian.

For example, an internal email telling you traffic is bad is not a public record.

Public Records requests: Note on Fees

- Fee to inspect? No.
- Copy Fees: Actual Cost. *See* G.S. 132-6.2(b).
 - \$2.00 for the first page of each document, and \$0.25 for each subsequent page of the document. G.S. 7A-308(a)(12).
- Redaction? Free. G.S. 132-6(c).
- Work Fees? Special Services Charges under G.S. 132-6.2(b).
 - If the request requires extensive clerical or supervisory assistance by personnel, the agency may charge a special service charge based on the actual cost incurred for extensive use of services.



Assistance with Public Records Requests

- How the OGC can help:
 - Field questions regarding responses
 - Assist with drafting language for a response
 - Search, review, and respond on your behalf for large email requests
 - Large Email Request Example:
 - “I request all emails and texts from Magistrate A from January 1, 2018, to the date of this request.”
- Common Responses:
 - If you do not have the record, the answer will either be:
 - “I am not the custodian of the record you are requesting” OR
 - “This record does not exist.”



Assistance with Public Records Requests

Steps for requesting OGC Assistance:

1. **Forward request to public records portal email and ask for assistance (publicrecords@nccourts.org).**
2. OGC will touch base with your office as needed on the scope of the request.
3. OGC will negotiate with requestor and narrow scope of request, if needed.
4. OGC will develop search terms and put in a Special Data Request with AOC's Technology Services Division (TSD).
5. TSD will search and pull emails based on search terms (takes 1 – 2 months).
6. OGC will review for responsiveness and confidentiality.
7. **OGC will provide responsive, non-confidential records to custodian for review and approval.**
8. OGC will provide records to the requestor once the custodial review is completed.



Public Records Tips

- Remember: Text messages are public records, too!
- Think before you send an email and encourage your staff to do the same.
 - Keep all correspondence professional.
 - Don't mix personal and business.
 - Example: Instead of emailing, "I am not available for the meeting that day because I am dropping off my seven-year-old to Camp Green Lake for the third year in a row and then taking my ten-year-old to the movies before I see the doctor for ____, " simply say, "I am unavailable for the meeting that day."
 - Example 2: Instead of emailing, "The doctor said I have mono and I have been running a fever all week. I think I will finally take leave today and go home this afternoon," say: "I am going to need to take leave this afternoon."
- Not sure? Call Devon.



Helpful Links

- [G.S. 132 Statute](#)
- [Retention Schedule](#)
- [NCAOC Public Records Policies & Procedures](#)
- [NCAOC Legal Memos Page](#)
- [UNC SOG Public Records Blogs](#)
- [State Archives of NC Public Records Page](#)





Thank You

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