



Can Local Governments Approve Nondisclosure Agreements?

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Introduction

A large, well-capitalized tech company is considering whether to locate a facility in the area, and it has a list of requests for the municipality and the county, ranging from utilities requirements to zoning changes. Company representatives reach out to local officials to initiate negotiations, but before holding earnest discussions, the company has a strict requirement: Everyone on the local government side must sign a nondisclosure agreement (NDA). Can the local officials approve or sign the NDA?

Before addressing this question, it is helpful to begin with a more basic one: What is an NDA? An NDA is an agreement used to protect sensitive information—trade secrets, intellectual property, or confidential business information—from disclosure to other parties such as employees, prospective business partners, or government entities. Sometimes a company asks the governing board to approve an NDA that covers all the unit’s public officials, and other times the company asks individual elected and appointed officials to sign NDAs.

This Bulletin explores NDAs and tackles the primary question—whether the local officials can approve or sign the NDA—in six parts:

1. **Why NDAs?** Why do companies require local governments to sign NDAs when closed sessions and public records protections already provide a degree of confidentiality under the law?
2. **Public Records, Confidential Information, and NDAs.** How is confidential information treated under North Carolina law? How does state law limit NDAs?
3. **Initial Procedural Steps and Closed Sessions.** What steps should local governments take when they receive a request for officials to sign NDAs? What are the procedural requirements?
4. **Can an Entire NDA Be Withheld from the Public?** Taking into account the treatment of NDAs under public records law described in [Part 2](#) and the closed-session authority described in [Part 3](#), can an entire NDA be deemed confidential under North Carolina law?
5. **Questions Public Officials Should Ask.** What questions should local officials consider before signing an NDA? Which questions should be brought to the municipal or county attorney?
6. **Contract Clauses for NDAs.** What clauses should a local government consider adding to a company-proposed NDA to protect the government and maintain its obligations under state law? Sample clauses are provided in [Appendix A](#) to this Bulletin.

I. Why NDAs?

There are several reasons why companies ask governments and their officials to sign NDAs. The scenario arises frequently in the context of data centers, where the driving motivation for the NDA is to protect several elements of a company’s siting criteria and operations. The company’s identification of a particular community, with the right combination of geological conditions and access to local utilities, is commercially valuable information that companies seek to protect.

They do not want their competitors to swoop in and take sites and consume utility capacity ahead of them. In addition, some companies assert that the amount of electricity, water, and wastewater that their data centers consume is a trade secret.¹

Moreover, NDAs put local officials on notice that confidentiality is important to the company. In this way, the NDA serves as a form of ad hoc training on public records and confidential information, designed to set a baseline expectation for public officials regarding confidentiality and to avoid the inadvertent release of information.

Some companies also think North Carolina's closed-session and public records laws do not adequately protect corporate information. A closed session certainly prevents public access to a meeting, and public records law may allow local governments to withhold sensitive documents related to the company, but those laws do not prevent a public official from walking out of a meeting and sharing all of the information learned behind closed doors. Businesses understandably want to prevent that sort of release of information, and NDAs are viewed as a mechanism for doing so.

Some companies hold the position that NDAs are required to protect their trade secrets under North Carolina law. Indeed, for information to qualify as a trade secret under [North Carolina's Trade Secrets Protection Act](#), it must be "the subject of efforts that are reasonable under the circumstances to maintain its secrecy."² One way to show reasonable efforts is to require NDAs.

The company may be genuinely concerned about the behavior of elected officials opposed to the deal, who could potentially sabotage negotiations—or an entire project—by revealing information prior to an announcement. In North Carolina, such a disclosure can have significant consequences; a location announcement prior to an award of state incentives can disqualify the company from receiving those incentives.³

The general purpose of an NDA in business-location discussions is to allow a company to share information more freely during early-stage discussions, while it conducts due diligence and site evaluation, with some assurance that sensitive details will not be disclosed prematurely.

Local government officials do not propose NDAs on their own initiative. They agree to enter NDAs only at the request of a company and because the company insists that the NDA is an essential precondition to continuing business-location discussions.

1. This assertion, that utility usage is itself a trade secret, is being litigated in another state. An appeal from the Circuit Court for the City of Roanoke is pending in the Virginia Court of Appeals and could decide whether water usage by a data center is protected as proprietary information under Virginia state law. See [McEvoy v. Gendreau](#), CAV Rec. No. 2157-25-3 (Va. Ct. App. filed Dec. 12, 2025) (ACMS-CAV), <https://eapps.courts.state.va.us/cav-public> (search in the Find field for "215725").

2. [Chapter 66, Section 152\(3\)\(b\) of the North Carolina General Statutes](#) [hereinafter G.S.].

3. N.C. DEP'T OF COM., [GUIDELINES FOR OPERATION AND IMPLEMENTATION OF ONE NORTH CAROLINA FUND GRANT PROGRAM](#) § 3.3 (Jan. 2016), <https://www.commerce.nc.gov/guidelines-one-north-carolina-fund-onenc/open>.

II. How North Carolina Law Treats Confidential Corporate Information Held in Public Records

Local governments sometimes receive sensitive or valuable corporate information through business-siting negotiations or procurement processes. A wide range of local government staff—from economic development directors to planning staff to building inspectors—could conceivably participate in communications that involve confidential corporate information. How is that information treated under North Carolina law?

Withholding Public Records from Public Inspection

North Carolina’s public records law applies to all records made or received by government agencies in connection with the transaction of public business.⁴ Any record that falls within the scope of the statute must be made available for public inspection unless an exception applies.⁵ Public records⁶ made or received as part of communications with businesses may be withheld from public inspection under two exceptions to the general disclosure rule.

First, records related to business-location matters can be withheld under [Chapter 132, Section 6\(d\) of the North Carolina General Statutes](#) [hereinafter G.S.], which *temporarily* allows withholding of “public records relating to the proposed expansion or location of specific business or industrial projects” so long as their inspection, examination, or copying would frustrate the purpose for which such public records were created. This protection is temporary because it expires once the state, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in the state, or once the business has made a final decision not to do so. At that juncture, the agency is statutorily obligated to disclose as soon as practicable—and within twenty-five business days—public records requested for the announced project that are not otherwise confidential under the law.

Second, public records containing “trade secrets” can be protected from release under the state’s public records laws so long as they qualify under [G.S. 132-1.2\(1\)](#). To qualify as a protected trade secret and remain confidential, the information in a public record

- must be a trade secret under state law, which must derive value from “not being generally known or readily ascertainable” and, as discussed above in [Part 1](#), requires a company to make reasonable efforts to “maintain its secrecy”;⁷
- must be the property of a private person;
- must be disclosed to the public agency in connection with a bid, contract, application, proposal, industrial-development project, or in compliance with law; and
- must be marked as “confidential” or “trade secret” at the time of disclosure to the public agency.

4. See generally [G.S. 132](#).

5. Exceptions include records containing confidential information described in [G.S. 132-1.2](#) and records that may be withheld pursuant to exceptions described in [G.S. 132-6](#). The complete text of these exceptions is provided, along with other relevant statutes, in [Appendix B](#) to this Bulletin.

6. [G.S. 132-1](#) defines “public records” as “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.”

7. [G.S. 66-152](#).

These two exceptions to the general records-disclosure rule, however, don't cover all the ways that confidential information can potentially be shared. State transparency laws generally govern records, not conversations. A corporation may wish to protect *any* transmission of its confidential information, whether in written or verbal form. NDAs seek to close this gap.

NDAs Are Public Records and the Law Limits How Local Governments Can Use NDAs

The General Assembly recently clarified how North Carolina's public records laws apply to NDAs. Specifically, [Session Law 2023-138](#) added subsection (d) to [G.S. 132-1](#) to prohibit a political subdivision of the state from entering into an NDA that would restrict access to public records that must be disclosed under state law. Stated differently, if public records law does not exempt a record from disclosure, a local government cannot make an agreement to keep that record confidential.⁸ This statute embodies a fundamental contracting principle: One cannot contract for an illegal purpose.

Furthermore, the addition of subsection (d) to [G.S. 132-1](#) makes clear that an NDA itself "shall be a public record" unless the "existence" of the NDA is also "deemed confidential" under state law. This is a critical point. It is not enough for the information exchanges covered by the NDA to be sensitive. In order to withhold an entire NDA from public inspection, a local government must point to a specific legal basis for treating the "existence" of the NDA as confidential. Whether an entire NDA may be withheld from public inspection is discussed below in [Part 4](#).

III. Initial Steps upon Request for an NDA

When a local government is contacted by a company that seeks confidential communications for economic development purposes, the local government must take the following steps: (1) identify the authority to enter into the NDA, (2) put the company on notice about North Carolina's public records law, and (3) prepare to discuss the NDA in closed session.

Authority to Enter into NDAs

Before a local government takes *any* action, it must assess the authority for such action. In this case, the preliminary question is whether local governments have authority to enter into NDAs. The new language in [G.S. 132-1\(d\)](#) seems to imply that authority exists for entering into an NDA, but that statute merely regulates the treatment of NDAs; it does not purport to authorize entering into them. Moreover, although cities and counties have general statutory authority to enter into contracts,⁹ they still must identify a specific statutory basis and constitutional public purpose to support the government's obligations under a contract. Where might that authority reside for NDAs? It depends on the underlying purpose for entering into the NDA.

8. [S.L. 2023-138, § 5.\(b\)](#).

9. [G.S. 153A-11](#); [160A-11](#).

In the economic development context, an argument can be made that entering into an NDA to enable business-location discussions, with or without incentives, is an implied power of [G.S. 158-7.1\(a\)](#).¹⁰ Moreover, the *Maready v. City of Winston-Salem* case provides the constitutional public purpose for entering into business-location incentive agreements (and presumably an NDA as a precursor to such incentive agreements), so long as the agreements are necessary to secure substantial jobs and tax base by a “diversifying” company that “might otherwise be lost to other states.”¹¹

NDA's are sometimes sought by companies during procurement processes. North Carolina public records law provides a statutory basis to protect trade secrets disclosed in documents associated with any of the following: a public bid, application, proposal, industrial-development project, or public contract.¹² While these contexts are varied, there is typically an easily identifiable public purpose for a public procurement, public contract, or industrial-development project.

In any instance, though, the public purpose must be carefully considered and justified. A private party's request to keep otherwise public information private does not provide sufficient authority on its own to enter into an NDA and, in fact, this is specifically prohibited by [G.S. 132-1\(d\)](#).

Required Notice to Companies About Confidentiality

Pursuant to [G.S. 132-1.11](#), whenever a local government “first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project,” it must disclose to the company that “any information obtained by the [government] is subject to laws regarding disclosure of public records.” In addition, it must “fully and accurately describe [to the company] the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed.” Examples of such disclosures are found in [Appendix C](#) to this bulletin.

Preparing for Closed Session

Finally, the local government must prepare for a closed session at which the company can make its case for confidentiality and entering into an NDA. This step typically arises only in the context of business-location discussions and requires further explanation of open meetings law.

To start, [G.S. 143-318.11\(a\)\(4\)](#) authorizes governing boards to meet in closed session to discuss business-location matters. Specifically, closed sessions are authorized to “discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations.” This language covers most location negotiations

10. The public purpose of marketing a locality's advantages to new industry, under the predecessor statute to [G.S. 158-7.1](#), was affirmed by the N.C. Supreme Court in *Dennis v. City of Raleigh*, 253 N.C. 400, 405 (1960) (approving the appropriation of \$500 for “advertising the advantages of the City of Raleigh in an effort to secure the location of new industry within the City,” so long as the expenditures were appropriately controlled by the City of Raleigh).

11. *Maready v. City of Winston-Salem*, 342 N.C. 708, 724, 727 (1996). See also C. Tyler Mulligan, *Economic Development Incentives and North Carolina Local Governments: A Framework for Analysis*, 91 N.C. L. REV. 2021 (2013), <https://scholarship.law.unc.edu/nclr/vol91/iss6/5>.

12. [G.S. 132-1.2\(1\)](#).

and is not limited to economic-development incentives.¹³ Thus, a local government may hold a closed session to discuss confidentiality and NDAs with a business seeking to locate or expand in the community, even when no incentives are involved. At the closed session, the company may present an NDA for consideration. The NDA must be included in the minutes of the closed session.¹⁴

A common question that follows is whether an NDA must be approved in open session. The answer depends on who is a party to the NDA. NDAs signed by *individuals* do not need to be approved in open session because no governing board decision is involved. However, when an NDA is signed on behalf of the *unit*, the answer is less clear. The closed-session authorization under [G.S. 143-318.11\(a\)\(4\)](#) allows governing boards to *discuss* business location and expansion, but any action approving an “economic development contract or commitment” or “economic development expenditures” must occur in open session, and documents approved in open session are necessarily available to the public. No statute or case law clarifies whether an NDA is an “economic development contract or commitment.” A conservative approach would treat an NDA as an “economic development contract or commitment” that must be approved in open session. Companies are accustomed to this approach, and they often shield their identities by using project code names or by setting up shell subsidiary corporations to enter into NDAs and to conduct local negotiations.

IV. Can an Entire NDA Be Withheld from Public Inspection?

With this background understanding of public records law and open meetings law, it is now possible to analyze whether an entire NDA can be withheld from public inspection. Maintaining the confidentiality of an entire NDA runs counter to the general principle of disclosure.¹⁵ Indeed, in at least one other context where a governing board is empowered to approve an agreement in closed session, the agreement must eventually be reported in open session.¹⁶ Nonetheless, the

13. The subsection (a)(4) closed-session authority was originally established by the General Assembly in 1979 and made no mention of economic development incentives, since all such incentives were unconstitutional at that time. The purpose of the provision, according to the Legislative Study Commission that recommended the original statutory language, was to protect “contacts with public groups” by a business that is considering locating or expanding. [REPORT OF THE LEGISLATIVE STUDY COMMISSION FOR STATE POLICIES ON THE MEETINGS OF GOVERNMENTAL BODIES](#) 4 (Jan. 10, 1979), <https://webservices.ncleg.gov/ViewDocSiteFile/11225>. The clause regarding incentives was not added until nearly two decades later in Session Law 1997-290, after *Maready* authorized business-location incentives to secure jobs and tax base that “might otherwise be lost to other states.” *Maready*, 342 N.C. at 727. See also Tyler Mulligan & Kristina Wilson, [Closed Session Deep Dive: The Business Location Exception](#), COATES’ CANONS: N.C. LOC. GOV’T L. BLOG (Jan. 21, 2025), <https://canons.sog.unc.edu/blog/2025/01/21/closed-session-deep-dive-the-business-location-exception/>.

14. [G.S. 132-1\(d\)](#).

15. In 2007, House Bill 1663 would have declared that “[c]onfidentiality agreements involving economic development proposals that restrict the ability of elected officials acting in their official capacity to communicate with the public are contrary to public policy and do not apply to any elected official, or to any person who was an elected official at the time of making the agreement.” The measure was not adopted.

16. Under [G.S. 143-318.11\(a\)\(3\)](#), covering attorney-client privilege, a public body can approve a settlement agreement in closed session, but its terms must later be reported to the public body in open session.

possibility of an entire NDA being deemed confidential seems to be implicitly acknowledged in [G.S. 132-1\(d\)](#).¹⁷ How might an NDA be withheld from inspection? There are two possible paths: one temporary and one indefinite. Each has significant weaknesses, as further explored below.

Temporary Withholding

The temporary path relies on [G.S. 132-6\(d\)](#), which, as discussed above in [Part 2](#), allows a local government to temporarily withhold any records related to a specific business-location matter if the release would frustrate the purpose of creating the record. Assuming that an NDA is connected to “the location of [a] specific business or industrial project[,],” the argument for withholding the entire NDA suffers from two weaknesses. First, an entire NDA can be temporarily withheld only if it would “frustrate the purpose” of creating the NDA.¹⁸ However, how could release of an NDA frustrate the purpose of creating the NDA, especially if the company name is masked by a shell company, or replaced with a code name, or redacted? Second, this path is available only so long as the NDA is not an “economic development” agreement. This second point merits further exploration.

As already explained in [Part 3](#), [G.S. 132-6\(d\)](#) requires any “economic development contract or commitment” to be approved in open session.¹⁹ It is difficult to argue, on one hand, that the source of authority for entering an NDA is derived from a local government’s economic-development powers in [G.S. 158-7.1](#),²⁰ and that an NDA is entitled to the temporary-withholding exception because it is connected to a specific business-location matter while simultaneously arguing, on the other hand, that the NDA is not an “economic development contract or commitment” that must be approved in open session. The inherent contradiction of these arguments is apparent, but no court has yet made a determination about these potentially incompatible positions.

Regardless, even if a local government resolves this contradiction and approves an NDA in closed session, the NDA must be included in the minutes of the closed session.²¹ This creates a public record related to a business-location decision, and such records must be released within twenty-five days after a decision has been announced, *unless* the NDA is otherwise confidential under North Carolina law.²² The next subsection explores whether the NDA could remain confidential indefinitely.

Indefinite Withholding

The path for protecting an entire NDA as “confidential” under [G.S. 132-1.2\(1\)](#) is by asserting that it is a “trade secret” under [G.S. 66-152\(3\)](#). However, this path suffers from a serious flaw. When an agreement is made between a private entity and a public entity (or public officials acting in their official capacity), the agreement itself is not solely “the property of a private ‘person’” within the meaning of [G.S. 132-1.2\(2\)](#), and therefore it fails to meet all of the trade-secret requirements

17. “The contract by which a political subdivision of this State agrees not to disclose information deemed confidential under State law shall be a public record, *unless the existence of the contract is also deemed confidential under State law.*” [G.S. 132-1\(d\)](#) (emphasis added).

18. *Id.*

19. *Supra* [Part 3](#) (quoting [G.S. 143-318.11\(a\)\(4\)](#)).

20. See discussion *supra* [Part 3](#), Authority to Enter into NDAs.

21. [G.S. 132-1\(d\)](#).

22. *Id.* § 6(d). See also *supra* [Part 2](#).

discussed in [Part 2](#), above.²³ Furthermore, as a practical matter, an NDA is a standard form document that is widely used by companies in myriad circumstances, so it would be difficult to argue that a form NDA is a trade secret that derives value in “not being generally known or readily ascertainable.”²⁴ If the concern is keeping the company’s identity confidential, then the company can address that issue by forming a subsidiary corporation to handle negotiations with local officials or by using a code name in the NDA.

Although no case law settles the matter, both paths face significant hurdles and cast doubt on a local government’s ability to withhold an entire NDA. If a local government is asked by a company to withhold an entire NDA from public inspection, it is recommended for the local government to seek an indemnification from the company for all litigation costs related to defending that position. An example of an indemnification provision is provided in [Appendix A](#).

V. Questions Public Officials Should Ask Before Signing an NDA

The following questions should be asked by any official who is considering signing or otherwise approving an NDA.

Do the terms of the proposed NDA conflict with North Carolina law?

The answer to this question depends on the specific language in the NDA, and a thorough review is necessary to ensure that the proposed NDA does not extend confidentiality beyond what is allowed by North Carolina law. As an example of the potentially expansive breadth of an NDA, consider this [“Mutual Non-Disclosure Agreement”](#) signed by Saint Louis County, Minnesota, and a company acting as an agent for a third-party client. It is brief and generic, referring to a contemplated business transaction. Under the terms of the NDA, “Confidential Information” is defined broadly, including oral communications, trade secrets, financial information, technical information, business information, the terms of any agreement entered into between the parties, and any related discussions, negotiations, and proposals. The NDA requires recipients of confidential information within Saint Louis County to protect the information even when it should have been “reasonably” understood as confidential, “whether or not the specific designation ‘confidential’ or any similar designation is used” to mark or indicate such.²⁵

This form of NDA is similar to those that have been proposed to North Carolina local governments, but under North Carolina law, this NDA could pose several problems. First, it covers more than what is treated as a “confidential” record under North Carolina state law, which is limited to the enumerated list in [G.S. 132-1.2](#). Trade secrets are protected in that statute,

23. See *Wilmington Star-News, Inc. v. New Hanover Reg’l Med. Ctr., Inc.*, 125 N.C. App. 174, 182 (1997) (concluding that price lists negotiated by a private company with a public hospital are not solely the property of a “private person” within the meaning of G.S. 132-1.2(2) and therefore are not entitled to the statutory exemption from disclosure in the Public Records Act).

24. [G.S. 66-152\(a\)](#).

25. [Mutual NDA Between Mortensen Development, Inc. and Saint Louis County](#) (Oct. 21, 2024), <https://drive.google.com/file/d/1N1qh8f9fgvQjLqF9dlI88WuD6eVImB11a/view>.

but only if marked as confidential and subject to reasonable efforts to maintain their secrecy.²⁶ Remember that under [G.S. 132-1\(d\)](#), a North Carolina local government cannot agree in an NDA to withhold public records that are subject to disclosure by state law. Additionally, while the example NDA from Saint Louis County includes a carveout for compliance with Minnesota’s open records laws, local governments and the individuals within governments who are signing NDAs should be wary of relying upon a carveout to resolve potentially problematic provisions.

Who will receive confidential information about the proposed project, proposal, application, bid, or contract?

A local government should identify categories of individuals internal to the government who may need access to confidential information for governmental purposes, such as elected officials, attorneys, procurement personnel, finance staff, or engineers. Ideally, an NDA would apply only to those particular officials. There may also be individuals external to the local government who will need access to the information, such as consultants, lenders, auditors, or regulatory agencies. Local governments should seek to avoid unnecessarily broad NDAs that could interfere with governmental operations, legal compliance, or internal decision-making.

Which officials can sign an NDA individually?

Typically, when a company requests NDAs to be signed, the request is directed toward individuals based on their local government role. The purpose of the NDA is to place the individual on notice that the company will hold them personally liable for monetary damages resulting from the improper disclosure of the company’s confidential information. In fact, state law states, “The owner of a trade secret shall have remedy by civil action for misappropriation of his trade secret.”²⁷ Likewise, [G.S. 66-154\(b\)](#) provides for injunction and monetary damages “measured by the economic loss or the unjust enrichment caused by misappropriation of a trade secret, whichever is greater.” Liability of governments and officials for misappropriation is beyond the scope of this publication, but governments have asserted sovereign and legislative immunity in misappropriation cases in North Carolina trial courts.²⁸ Personal liability is a daunting prospect for most individuals that sets up an inherent conflict between their personal financial interests and their obligation to disclose records in accordance with state law.

26. In *North Carolina Electric Membership Corp. v. North Carolina Department of Community & Economic Development*, the court interpreted this requirement in a forgiving way. 108 N.C. App. 711 (1993). Other courts have held that a failure to designate materials as confidential is evidence that the materials are not trade secrets. *Wance v. Oppenheim*, 2023 IL App (1st) 220273, ¶ 34, 226 N.E.3d 732, 742–43 (Ill. App. Ct. 2023); *Cubic Transp. Sys., Inc. v. Miami-Dade County*, 899 So. 2d 453, 454 (Fla. Dist. Ct. App. 2005).

27. [G.S. 66-153](#).

28. *See, e.g., Eidogen-Sertanty, Inc. v. Univ. of N.C.*, No. 18 CVS 546, 2018 WL 6579514, at *4 (N.C. Super. Dec. 11, 2018) (holding that the Trade Secrets Protection Act “does not clearly or unmistakably waive sovereign immunity for claims of trade-secret misappropriation” but noting that plaintiffs may have other remedies such as breach-of-contract and taking claims); *Univ. of N.C. at Chapel Hill v. Vesta Therapeutics, Inc.*, No. 21 CVS 970, 2022 WL 4376488, at *1–3 (N.C. Super. Sept. 21, 2022) (rejecting constitutional-taking claim and noting that the trade-secret owners stipulated that their misappropriation-of-trade-secrets claim was barred by sovereign immunity).

Local governments could suggest an alternative to staff signing NDAs individually: Staff could be made subject to a local policy or directive that prohibits disclosure of a company's business-location information unless the disclosure occurs through a specific procedure that includes legal review. Violation of the policy could result in disciplinary action or firing. This approach won't necessarily work for elected officials, because they cannot be fired for revealing confidential information. Elected officials can be censured by their fellow governing board members for an improper disclosure, but the threat of censure is primarily symbolic and is unlikely to convince companies that elected officials will protect the company's information in the absence of an NDA.

Which officials can sign an NDA on behalf of the unit?

Sometimes a company will request for leadership to approve an NDA on behalf of the entire unit. Who can sign such an NDA depends, in part, on delegations of authority for contract execution. In some jurisdictions outside of North Carolina, local government leadership has directed staff not to sign NDAs without board approval.²⁹ In other places, local governments have provided a policy on the procedure for entering into NDAs³⁰ and have drafted templates for use in economic development projects³¹ to guide staff. In the absence of such policies or delegation to staff for execution, the governing board must approve or authorize any NDA that purports to bind the unit.

It is unclear what additional protection a company receives from a unit-signed NDA, especially if individual NDAs are requested. If the purpose is to secure the government's commitment to exercise its right (but not its obligation) to withhold business-location records, the same result can probably be achieved through a local policy. In the end, state law requires that all records not otherwise made confidential under the law be available for inspection eventually—and a unit cannot contract away that legal requirement.

What happens when a public records request is received? Who will communicate about it?

Regardless of the language in the NDA, a local government should identify who will respond to requests for information about the existence or content of an NDA. In some units, this responsibility may fall to the public information officer. To avoid confusion or inadvertent disclosures, units without a public information officer should establish procedures for handling such requests for information or records and should inform employees and officials about how to handle such requests.

29. See [Superior Mayor Prohibits City Staff from Signing NDAs](https://www.wdio.com/front-page/top-stories/superior-mayor-prohibits-city-staff-from-signing-ndas/), WDIO.COM (Nov. 6, 2025), <https://www.wdio.com/front-page/top-stories/superior-mayor-prohibits-city-staff-from-signing-ndas/>.

30. See CITY ATT'Y'S OFF., CITY OF SAN ANTONIO, AD 1.35, [NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENTS](https://www.sanantonio.gov/Portals/0/Files/EmployeeInformation/ADs/AD1-35.pdf) (Aug. 27, 2025), <https://www.sanantonio.gov/Portals/0/Files/EmployeeInformation/ADs/AD1-35.pdf>.

31. See Jan Leshner, Pima Cnty. Att'y's Off., [Memorandum to the Pima Cnty. Bd. of Supervisors](https://content.civicplus.com/api/assets/4b19bce7-3583-4966-a52a-56dc89b01b51) (Aug. 28, 2025), <https://content.civicplus.com/api/assets/4b19bce7-3583-4966-a52a-56dc89b01b51>.

VI. NDA Provisions for the Protection of the Local Government

Local government attorneys will want to consider adding provisions to a company-proposed NDA in order to protect the unit and its officials. Some key provisions and their purposes are discussed below. Accompanying sample contract clauses can be found in [Appendix A](#).

Subject to North Carolina Public Records Law

Every NDA signed by a government official should contain a provision expressly making the NDA subject to North Carolina's public records law.

Indemnification of the Local Government for Costs to Litigate Public Records Lawsuits

Protecting a company's trade secrets from release in litigation under public records law can be expensive, and that cost is properly borne by the company whose interests are being defended. Accordingly, local governments should seek indemnification from the company for the unit's legal expenses incurred to defend the withholding of public records related to the NDA.

Notice to the Company of a Records Request

It is common for a notice provision to accompany an indemnification clause. In such a provision, the local government agrees to notify a company when a public records request covers the company's properly designated confidential information, thus alerting the company of its obligation to intervene.³² A failure by the company to respond in a timely fashion is taken as approval to release the record.

Right to Consult

Local governments may want external expertise to navigate the technical requirements and demands of a company that is requiring an NDA. The government should therefore preserve its ability to retain and consult with third parties about sensitive business-location matters, provided the consultants likewise agree to be subject to the NDA.³³ The NDA can address outside consultants in two primary ways. First, a consultant may be added as a party to the NDA, allowing direct access to confidential information. Second, the NDA can allow disclosure to consultants as authorized recipients of confidential information. In that case, the agreement should clearly define the scope of permissible disclosure and any required confidentiality obligations. Under this approach, though, companies may seek to hold the local government responsible for any breach by the consultant, an approach that local governments should evaluate carefully.

32. The action of notifying the company about a public records request could be considered an acknowledgment by the local government that the requested documents contain trade secrets. In *North Carolina Electric Membership Corp. v. North Carolina Department of Community & Economic Development*, the court observed that the public agency had requested a response from the owner about a public records request, and the court took that request as evidence the agency "acknowledged that the documents may contain trade secrets or other confidential information that could prove damaging." 108 N.C. App. 711, 720–21 (1993).

33. A practice of limiting trade-secret access to "employees and consultants" is consistent with reasonable efforts to maintain secrecy. *Barr-Mullin, Inc. v. Browning*, 108 N.C. App. 590 (1993) ("Although information that is generally known cannot be a trade secret, absolute secrecy is not required." (quoting *Q-Co Indus., Inc. v. Hoffman*, 625 F. Supp. 608, 617 (S.D.N.Y. 1985) (citation omitted))).

Choice of Law

The NDA should contain a provision clarifying that North Carolina law and courts govern enforcement in accordance with [G.S. 22B-3](#).

Termination Date

An NDA should not continue in perpetuity. A reasonable termination date should be included in each NDA, and the provision may reference triggers related to the progress of the project.

Conclusion

Ultimately, entering into an NDA is a policy decision that requires a local government to balance competing interests. Some jurisdictions outside North Carolina have decided to reject NDAs. For example, Port Washington, Wisconsin, did not sign an NDA for a \$15 billion data center.³⁴ At the same time, technology companies may be shifting their approach to working with local governments. On March 18, 2026, Microsoft announced that it will no longer use NDAs when working with local governments—although the company will still seek protection of confidential trade secrets or competitive sensitive information.³⁵

In North Carolina, local governments have authority to enter into NDAs, particularly in connection with economic-development and procurement activities, but that authority is constrained by constitutional principles and state transparency laws. Public records statutes, including [G.S. 132-1\(d\)](#), make clear that a local government cannot contract away its legal obligation to disclose records that are not otherwise confidential under state law. As a result, NDAs should be approached cautiously and drafted narrowly to align with existing protections for trade secrets and confidential business information. Local government officials and employees should work closely with legal counsel to evaluate proposed agreements, determine appropriate procedures for approval and disclosure, and identify who may properly receive confidential information. Well-drafted NDAs can serve practical purposes by facilitating candid discussions with companies, clarifying expectations regarding confidentiality, and protecting sensitive information during early-stage negotiations. Ultimately, the goal for local governments is to balance economic-development interests and business-confidentiality concerns with the public's statutory right to transparency and accountability.

34. Tom Kertscher, [More than NDAs: Wisconsin Communities Face Scrutiny over Data Center](#), WIS. PUB. RADIO (Mar. 17, 2026), <https://www.wpr.org/news/ndas-wisconsin-scrutiny-data-center-secrecy>.

35. [Putting Companies First: Our Decision to End NDAs with Local Governments](#), MICROSOFT LOC. (Mar. 18, 2026), <https://local.microsoft.com/blog/putting-communities-first-our-decision-to-end-ndas-with-local-governments/>.

Appendix A. Sample Contract Clauses for NDAs

North Carolina Public Records

Notwithstanding anything contained herein to the contrary, the parties recognize and acknowledge that the [Unit] is a subdivision of the State of North Carolina and is, therefore, subject to the North Carolina Public Records Act (the “Act”) at N.C. Gen. Stat. 132-1 *et seq.* The parties further acknowledge that any information that is a public record under North Carolina law may be released and disclosed by the [Unit] pursuant to the Act, and that any such release or disclosure shall not in any way constitute a breach of this Agreement, nor shall the [Unit] be liable to the Company for such release or disclosure.

Indemnification

If any information provided by the Company contains a trade secret as defined by Section 66-152 *et seq.* of the N.C. General Statutes, such information should be specifically and clearly identified by marking each page to be covered “Trade Secret - Confidential and Proprietary Information.” By submitting documents marked this way, the Company agrees to indemnify and hold harmless the [Unit] and each of its officers, employees, and agents from any and all costs, damages, and expenses incurred in connection with the [Unit]’s refusing to disclose any material which has been designated by the Company as a trade secret as described above.

Notice to Company of Request for Disclosure

In the event the [Unit] receives a request for disclosure of Confidential Information which the Company has specifically marked “Confidential” or “Trade Secret,” the [Unit] shall give the Company written notice of such request (the “Notice of Request for Disclosure”). In the event the Company has a reasonable basis for contending that the disclosure of such Confidential Information is not required by the North Carolina Public Records Act, the Company shall within ten days after receipt of the Notice of Request for Disclosure notify the [Unit] in writing of its objection to disclosure and the basis therefor. The Company shall indemnify, defend, and hold harmless the [Unit] from and against all losses, damages, liabilities, costs, obligations, and expenses (including reasonable attorneys’ fees) incurred by the [Unit] in connection with any refusal by the [Unit] to disclose Confidential Information after receiving an objection to disclosure from the Company. If the [Unit] receives no written objection from the Company within ten days after the Company’s receipt of a Notice of Request for Disclosure, the [Unit] shall disclose the Confidential Information and the Company acknowledges and agrees that the [Unit] and each of its officers, employees, and agents shall not be liable to the Company or any other party for such disclosure.

Right to Consult

Confidential Information may be disclosed to the [Unit]’s attorneys, auditors, consultants, advisors, and other outside experts assisting the [Unit] with the proposed project, provided such persons have a need to know the information and are informed of its confidential nature. The [Unit] shall require such outside experts or advisors to maintain the confidentiality of the Confidential Information to the same extent required under this Agreement, whether by professional obligation, contractual obligation, or both. Disclosure to outside experts or advisors pursuant to this section shall not constitute a breach of this Agreement.

Governing Law and Jurisdiction

North Carolina law shall govern the interpretation and enforcement of this Agreement, and all other matters relating to this Agreement (all without regard to North Carolina conflict-of-law principles). Any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in XYZ County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any of the above courts.

Termination Date

This NDA shall be effective as of the date first above-written (the “Effective Date”) and shall be effective for one (1) year following the Effective Date unless otherwise extended by the mutual, written agreement of the parties. Either party, however, may terminate this Agreement upon ten (10) days’ written notice. The [Unit]’s obligations of confidentiality and restrictions on use of the Confidential Information shall survive the termination or expiration of this Agreement for a period of one (1) year from the date of any such termination or expiration.

Appendix B. Relevant General Statutes (G.S.)

- [132-1](#) [“Public records” defined](#)
- [132-1.2](#) [Confidential information](#)
- [132-1.11](#) [Economic development incentives](#)
- [132-6](#) [Inspection, examination and copies of public records](#)
- [143-318.9](#) [Public policy](#)
- [143-318.10](#) [All official meetings of public bodies open to the public](#)
- [143-318.11](#) [Closed sessions](#)
- [66-152](#) [Definitions](#)
- [66-153](#) [Action for misappropriation](#)
- [158-7.1](#) [Local development](#)

Chapter 132.
Public Records.

§ 132-1. "Public records" defined.

(a) "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. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

(c) Article 17 of Chapter 120 of the General Statutes shall govern all records and information of the legislative branch which shall be exempt from this Chapter, including documents as defined by G.S. 120-129.

(d) No political subdivision of this State may enter into a nondisclosure agreement in order to restrict access to public records subject to disclosure under this Chapter. The contract by which a political subdivision of this State agrees not to disclose information deemed confidential under State law shall be a public record, unless the existence of the contract is also deemed confidential under State law. If a nondisclosure agreement is associated with one or more closed session meetings under Article 33C of Chapter 143 of the General Statutes, the nondisclosure agreement shall be included in the minutes of each closed session meeting. (1935, c. 265, s. 1; 1975, c. 787, s. 1; 1995, c. 388, s. 1; 2023-134, s. 27.7(f); 2023-138, s. 5(b).)

§ 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

- (1) Meets all of the following conditions:
 - a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
 - b. Is the property of a private "person" as defined in G.S. 66-152(2).
 - c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
 - d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.
- (2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.
- (3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.
- (4) Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.
- (5) Reveals the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes that has been submitted for project approval to a local government under Article 11 of Chapter 160D of the General Statutes. Notwithstanding this exemption, a municipality or county that receives a request for a document submitted for project approval that contains the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes and that is otherwise a public record by G.S. 132-1 shall allow a copy of the document without the seal of the licensed design professional to be examined and copied, consistent with any rules adopted by the licensing board under Chapter 83A or Chapter 89C of the General Statutes regarding an unsealed document.
- (6) Reveals documents related to the federal government's process to determine closure or realignment of military installations until a final decision has been made by the federal government in that process.
- (7) Reveals name, address, qualifications, and other identifying information of any person or entity that manufactures, compounds, prepares, prescribes, dispenses, supplies, or administers the drugs or supplies obtained for any purpose authorized by Article 19 of Chapter 15 of the General Statutes.
- (8) Reveals the name, address, or other identifying information of any individual winning more than fifty million dollars (\$50,000,000) in a lottery game who requests to remain anonymous for 90 days, as provided in G.S. 18C-132(j1).
- (9) Reveals proprietary design work or work product included in a proposal that is submitted to the Department of Transportation for consideration, or any Department intra-agency communications related to the review of a proposal, during a competitive bid process. For the purposes of this subdivision, the competitive bid process is completed upon contract award. Proprietary design work, work product, or intra-agency communications that are otherwise

public records pursuant to G.S. 132-1 are no longer confidential and subject to disclosure upon contract award.

- (10) Reveals information gathered to develop the report required by Section 11.11(d)(1) of S.L. 2022-74.
- (11) Reveals records related to a student-athlete's name, image, and likeness contract, as defined by G.S. 78C-86(6b). (1989, c. 269; 1991, c. 745, s. 3; 1999-434, s. 7; 2001-455, s. 2; 2001-513, s. 30(b); 2003-226, s. 5; 2004-127, s. 17(b); 2009-346, s. 1; 2014-79, s. 8; 2015-198, s. 6; 2019-142, s. 6; 2019-156, s. 3; 2022-62, s. 25; 2023-11, s. 10.1; 2025-46, s. 8(a).)

§ 132-1.11. Economic development incentives.

(a) Assumptions and Methodologies. – Subject to the provisions of this Chapter regarding confidential information and the withholding of public records relating to the proposed expansion or location of specific business or industrial projects when the release of those records would frustrate the purpose for which they were created, whenever a public agency or its subdivision performs a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business or industrial project, the agency or its subdivision must describe in detail the assumptions and methodologies used in completing the analysis or assessment. This description is a public record and is subject to all provisions of this Chapter and other law regarding public records.

(b) Disclosure of Public Records Requirements. – Whenever an agency or its subdivision first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project, the agency or subdivision must disclose that any information obtained by the agency or subdivision is subject to laws regarding disclosure of public records. In addition, the agency or subdivision must fully and accurately describe the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed. (2005-429, s. 1.2.)

§ 132-6. Inspection, examination and copies of public records.

(a) 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. As used herein, "custodian" does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

(a1) A public agency or custodian may satisfy the requirements in subsection (a) of this section by making public records available online in a format that allows a person to view the public record and print or save the public record to obtain a copy. If the public agency or custodian maintains public records online in a format that allows a person to view and print or save the public records to obtain a copy, the public agency or custodian is not required to provide copies to these public records in any other way.

(b) 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.

(c) 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. 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.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or the business has made a final decision not to do so, of which the State or local government agency involved with the project knows or should know, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project.

Records relating to the proposed expansion or location of specific business or industrial projects that are in the custody of the Department of Commerce or an entity with which the Department contracts pursuant to G.S. 143B-431.01 shall be treated as follows:

- (1) Unless controlled by another subdivision of this subsection, the records may be withheld if their inspection, examination, or copying would frustrate the purpose for which the records were created.
- (2) If no discretionary incentives pursuant to Chapter 143B of the General Statutes are requested for a project and if the specific business decides to expand or locate the project in the State, then the records relating to the project shall not be disclosed.

- (3) If the specific business has requested discretionary incentives for a project pursuant to Chapter 143B of the General Statutes and if either the business decides not to expand or locate the project in the State or the project does not receive the discretionary incentives, then the only records relating to the project that may be disclosed are the requests for discretionary incentives pursuant to Chapter 143B of the General Statutes and any information submitted to the Department by the contracted entity.
- (4) If the specific business receives a discretionary incentive for a project pursuant to Chapter 143B of the General Statutes and the State or the specific business announces a commitment to expand or locate the project in this State, all records requested for the announced project, not otherwise made confidential by law, shall be disclosed as soon as practicable and within 25 days from the date of announcement.

(d1) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the potential location, evaluation, and acquisition of a qualifying site may be withheld so long as their inspection, examination, or copying would frustrate the purpose for which such public records were created, including increasing costs of acquisition. Once (i) the land comprising a qualifying site has been acquired or on which options have been secured or (ii) the qualifying site is evaluated but ultimately deemed unsuitable for further development, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the qualifying site that are not otherwise made confidential by law. For purposes of this subsection, a qualifying site is a megasite or selectsite for which State funding for identification, evaluation, and acquisition is approved by the Economic Investment Committee from the North Carolina Megasite Fund or North Carolina Selectsite Fund.

(e) The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act.

(f) Notwithstanding the provisions of subsections (a) and (a1) of this section, the inspection or copying of any public record which, because of its age or condition could be damaged during inspection or copying, may be made subject to reasonable restrictions intended to preserve the particular record. (1935, c. 265, s. 6; 1987, c. 835, s. 1; 1995, c. 388, s. 2; 2005-429, s. 1.1; 2014-18, s. 1.1(c); 2014-115, s. 56.1; 2017-10, s. 2.9(b); 2023-134, s. 11.11(c).)

Article 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly. (1979, c. 655, s. 1.)

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, 143-318.14A, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting. Remote meetings conducted in accordance with G.S. 166A-19.24 shall comply with this subsection even if all members of the public body are participating remotely.

(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the following:

- (1) The governing board of a "public hospital" as defined in G.S. 159-39.
- (2) The governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.
- (3) An administering organization as defined in G.S. 115C-407.50(1).

(c) "Public body" does not include (i) a meeting solely among the professional staff of a public body, or (ii) the medical staff of a public hospital or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8.

(d) "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session. (1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 4; 1991, c. 694, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 570, s. 1; 1995, c. 509, s. 135.2(p); 1997-290, s. 1; 1997-456, s. 27; 2011-326, s. 8; 2020-3, s. 4.31(b); 2023-133, ss. 17(b), 20(a).)

§ 143-318.11. Closed sessions.

(a) Permitted Purposes. – It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations, or to discuss matters relating to military installation closure or realignment. Any action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.
- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

- (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
 - (8) To formulate plans by a local board of education relating to emergency response to incidents of school violence or to formulate and adopt the school safety components of school improvement plans by a local board of education or a school improvement team.
 - (9) To 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.
 - (10) To view a recording released pursuant to G.S. 132-1.4A.
- (b) Repealed by Session Laws 1991, c. 694, s. 4.
 - (c) Calling a Closed Session. – A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.
 - (d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 2. (1979, c. 655, s. 1; 1981, c. 831; 1985 (Reg. Sess., 1986), c. 932, s. 5; 1991, c. 694, ss. 3, 4; 1993 (Reg. Sess., 1994), c. 570, s. 2; 1995, c. 509, s. 84; 1997-222, s. 2; 1997-290, s. 2; 2001-500, s. 2; 2003-180, s. 2; 2013-360, s. 8.41(b); 2014-79, s. 9(a); 2016-88, s. 3.)

Article 24.

Trade Secrets Protection Act.

§ 66-152. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) "Misappropriation" means acquisition, disclosure, or use of a trade secret of another without express or implied authority or consent, unless such trade secret was arrived at by independent development, reverse engineering, or was obtained from another person with a right to disclose the trade secret.
- (2) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity.
- (3) "Trade secret" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:
 - a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
 - b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons. (1981, c. 890, s. 1.)

§ 66-153. Action for misappropriation.

The owner of a trade secret shall have remedy by civil action for misappropriation of his trade secret. (1981, c. 890, s. 1.)

§ 158-7.1. Local development.

(a) **Economic Development.** – Each county and city in this State is authorized to make appropriations for economic development purposes. These appropriations must be determined by the governing body of the city or county to increase the population, taxable property, agricultural industries, employment, industrial output, or business prospects of the city or county. These appropriations may be funded by the levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. The specific activities listed in subsection (b) of this section are not intended to limit the grant of authority provided by this section.

(b) **Specific Activities.** – A county or city may undertake any of the following specific economic development activities under this section:

- (1) A county or city may acquire and develop land for an industrial park, to be used for manufacturing, assembly, fabrication, processing, warehousing, research and development, office use, or similar industrial or commercial purposes. A county may acquire land anywhere in the county, including inside of cities, for an industrial park, while a city may acquire land anywhere in the county or counties in which it is located. A county or city may develop the land by installing utilities, drainage facilities, street and transportation facilities, street lighting, and similar facilities; may demolish or rehabilitate existing structures; and may prepare the site for industrial or commercial uses. A county or city may convey property located in an industrial park pursuant to subsection (d) of this section.
- (2) A county or city may acquire, assemble, and hold for resale property that is suitable for industrial or commercial use. A county may acquire such property anywhere in the county, including inside of cities, while a city may acquire such property inside the city or, if the property will be used by a business that will provide jobs to city residents, anywhere in the county or counties in which it is located. A county or city may convey property acquired or assembled under this subdivision pursuant to subsection (d) of this section.
- (3) A county or city may acquire options for the acquisition of property that is suitable for industrial or commercial use. The county or city may assign such an option, following such procedures, for such consideration, and subject to such terms and conditions as the county or city deems desirable.
- (4) A county or city may acquire, construct, convey, or lease a building suitable for industrial or commercial use.
- (5) A county or city may construct, extend or own utility facilities or may provide for or assist in the extension of utility services to be furnished to an industrial facility, whether the utility is publicly or privately owned.
- (6) A county or city may extend or may provide for or assist in the extension of water and sewer lines to industrial properties or facilities, whether the industrial property or facility is publicly or privately owned.
- (7) A county or city may engage in site preparation for industrial properties or facilities, whether the industrial property or facility is publicly or privately owned.
- (8) A county or city may make grants or loans for the rehabilitation of commercial or noncommercial historic structures, whether the structure is publicly or privately owned.

(c) **Public Hearing.** – Any appropriation or expenditure for economic development purposes pursuant to this section must be approved by the county or city governing body after a public hearing, which may be part of the public hearing on the annual budget pursuant to G.S. 158-7.1

G.S. 159-12 if the appropriation or expenditure is included in the annual budget. If the appropriation or expenditure is not included in the annual budget, the county or city shall hold at least one public hearing, publishing notice of the public hearing at least 10 days before the public hearing is held. If the appropriation or expenditure is for the acquisition of an interest in real property, the notice shall describe the interest to be acquired, the proposed acquisition cost of such interest, the governing body's intention to approve the acquisition, the source of funding for the acquisition and such other information needed to reasonably describe the acquisition. If the appropriation or expenditure is for the improvement of privately owned property by site preparation or by the extension of water and sewer lines to the property, the notice shall describe the improvements to be made, the proposed cost of making the improvements, the source of funding for the improvements, the public benefit to be derived from making the improvements, and any other information needed to reasonably describe the improvements and their purpose.

(d) **Interests in Real Property.** – A county or city may lease or convey interests in real property held or acquired pursuant to subsection (b) of this section in accordance with the procedures of this subsection. A county or city may convey or lease interests in property by private negotiation and may subject the property to such covenants, conditions, and restrictions as the county or city deems to be in the public interest or necessary to carry out the purposes of this section. Any such conveyance or lease must be approved by the county or city governing body, after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held; the notice shall describe the interest to be conveyed or leased, the value of the interest, the proposed consideration for the conveyance or lease, and the governing body's intention to approve the conveyance or lease. Before such an interest may be conveyed, the county or city governing body shall determine the probable average hourly wage to be paid to workers by the business to be located at the property to be conveyed and the fair market value of the interest, subject to whatever covenants, conditions, and restrictions the county or city proposes to subject it to. The consideration for the conveyance may not be less than the value so determined.

(d1) Repealed by Session Laws 1993, c. 497, s. 22.

(d2) **Calculation of Consideration.** – In arriving at the amount of consideration that it receives, the Board may take into account prospective tax revenues from improvements to be constructed on the property, prospective sales tax revenues to be generated in the area, as well as any other prospective tax revenues or income coming to the county or city over the next 10 years as a result of the conveyance or lease provided the following conditions are met:

- (1) The governing board of the county or city shall determine that the conveyance of the property will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. A city that spans more than one county is considered to be located in the county where the greatest population of the city resides. For the purpose of this subdivision, the median average wage in a county is the median average wage for all insured industries in the county as computed by the Department of Commerce, Division of Employment Security, for the most recent period for which data is available.
- (2) The governing board of the county or city shall contractually bind the purchaser of the property to construct, within a specified period of time not to exceed five years, improvements on the property that will generate the tax revenue taken into account in arriving at the consideration. Upon failure to construct the improvements specified in the contract, the purchaser shall reconvey the property back to the county or city.

(e) Local Government Budget and Fiscal Control Act. – All appropriations and expenditures pursuant to this section shall be subject to the provisions of the Local Government Budget and Fiscal Control Acts of the North Carolina General Statutes, respectively, for cities and counties and shall be listed in the annual financial report the county or city submits to the Local Government Commission. The budget format for each such governing body shall make such disclosures in such detail as the Local Government Commission may by rule and regulation direct.

(f) Limitation. – At the end of each fiscal year, the total of the following for each county and city may not exceed one-half of one percent (0.5%) of the outstanding assessed property tax valuation for the county or city as of January 1 preceding the beginning of the fiscal year:

- (1) The investment in property acquired at any time under subdivisions (b)(1) through (b)(4) of this section and owned at the end of the fiscal year.
- (2) The amount expended during the fiscal year under subdivisions (b)(5) and (b)(7) of this section.
- (3) The amount of tax revenue that was taken into account under subsection (d2) of this section and was expected to be received during the fiscal year.

The Local Government Commission shall review the annual financial reports filed by counties and cities to determine if any county or city has exceeded the limit set by this subsection. If the Commission finds that a county or city has exceeded this limit, it shall notify the county or city. A county or city that receives a notice from the Commission under this subsection must submit to the Commission for its review and approval any appropriation or expenditure the county or city proposes to make under this section during the next three fiscal years. The Commission shall not approve an appropriation or expenditure that would cause a county or city to exceed the limit set by this subsection.

(g) Repealed by Session Laws 1989, c. 374, s. 1.

(h) Economic Development Agreement. – Each economic development agreement entered into between a private enterprise and a city or county shall clearly state their respective responsibilities under the agreement. Each agreement shall contain provisions regarding remedies for a breach of those responsibilities on the part of the private enterprise. These provisions shall include a provision requiring the recapture of sums appropriated or expended by the city or county upon the occurrence of events specified in the agreement. Events that would require the city or county to recapture funds would include the creation of fewer jobs than specified in the agreement, a lower capital investment than specified in the agreement, and failing to maintain operations at a specified level for a period of time specified in the agreement. (1973, c. 803, s. 37; 1985, c. 639, s. 1; 1985 (Reg. Sess., 1986), c. 846, s. 1; c. 848, s. 1; c. 858, s. 1; c. 911, s. 1; c. 921, s. 1; 1987, c. 577, s. 1.1; 1989, c. 374, s. 1; 1991, c. 598, s. 6; c. 659, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 793, s. 1; c. 799, s. 1; c. 938, s. 1; 1993, c. 31, s. 1; c. 42, s. 1; c. 246, ss. 1(a), 1(b); c. 275, s. 2; c. 358, s. 13; c. 497, ss. 22, 24; c. 536, ss. 1, 4; 2007-515, ss. 1, 7; 2011-401, s. 3.24; 2015-277, s. 1; 2019-112, s. 1.)

Appendix C. Examples of Required Disclosure Regarding Confidentiality

The following examples of required disclosure are reprinted from DAVID M. LAWRENCE, PUBLIC RECORDS LAW FOR NORTH CAROLINA LOCAL GOVERNMENTS 266–71 (UNC School of Government, 2d ed. 2009).

State Disclosure Letter

Re: Important Information Describing the State of North Carolina’s Public Records Laws and the Exclusive Methods to Be Used by Companies That Seek to Protect Trade Secrets and Qualifying Confidential Information.

Dear _____:

Thank you for your interest in North Carolina. As we begin to work together and share information about your project, I wanted to make you aware of some relevant information regarding public records and the protection of confidential information for economic development projects.

As a state agency, the Department of Commerce (the “Department”) is subject to the North Carolina General Statutes relating to public records and confidential information. These statutes provide certain very specific protections for confidential materials. In particular, in the context of economic development projects, the Department is permitted to withhold public records relating to proposed expansion or location of businesses and projects in North Carolina so long as the release of these materials would “frustrate the purpose for which they were created.” A copy of G.S. 132-6(d), which establishes this protection, is attached for your information and review, along with other sections of the General Statutes relating to public records, confidential information and economic development projects.

In light of these statutory provisions, the Department’s policy is not to release public records relating to specific proposed economic development projects until such time as a final decision concerning the location has been made and the decision is announced (at which time the statutes require disclosure). At that point, if any part of the information that has been provided to the Department qualifies as tax information and/or a trade secret and has been properly identified as such at the time of delivery, that information may be retained as confidential by the Department under other statutory provisions. These are G.S. 132-1.2 (The Public Records Law) and G.S. 66-152 (The Trade Secrets Protection Act), copies of which are attached. Taxpayer information is protected from disclosure, except in limited specified circumstances; by G.S. 105-259 (the general confidentiality provisions governing taxpayer information). *“Trade secrets” are exempt from otherwise required disclosure if certain conditions are met. A “trade secret” is business or technical information that derives commercial value from not being generally known or readily ascertainable, and which is the subject of reasonable efforts to maintain its secrecy.*

In order to protect the confidentiality of trade secrets, tax information and other confidential business information, you and your client must:

- **Make all designations of confidential materials at the time documents are first submitted to the Department** (and on every occasion thereafter when those materials are resubmitted). This applies to written communications, in whatever form, including e-mails.

- **Clearly, prominently, and specifically designate in writing what information is “CONFIDENTIAL—TRADE SECRET”.** Indiscriminate designations of information as “confidential,” such as form language automatically inserted into e-mails or into the margins of documents will not be regarded as sufficient designations, i.e., the designations must embrace only specific confidential words, numbers, descriptions, etc., and not whole sentences or groups of sentences. A method of accomplishing this may be to provide both a “clean” version, and a version with qualifying confidential material redacted, at the time of submission.

Let me reiterate that all information regarding the project will be treated as confidential while the project is considering its site location. It will be produced in response to a public records request only after the project has publicly announced a final decision with respect to site selection (whether to proceed or not proceed). Thus, the only information the company or its representatives should designate in writing as “CONFIDENTIAL—TRADE SECRET” is (1) true individual taxpayer tax information or (2) information that (a) meets the test of a trade secret and (b) will continue to meet that test following the project’s announcement. The procedures described in this letter are the only procedures by which materials that qualify as trade secrets may be withheld from public disclosure.

Our experience with other companies and projects indicates that very little information shared during the site selection and recruitment process is likely to justify confidential treatment following an announcement.

Under the Public Records Law, the Department is required to produce public records as soon as they become available, and no later than 25 business days following the date of request. If a public records request is received, the Department will examine the records that have been submitted to it. If the company or its representatives have specifically designated certain information as “CONFIDENTIAL—TRADE SECRET” we will respect that designation, provided that the Department determines that (1) the claim of confidentiality is credible and (2) it is not overly broad or indiscriminate.

In the unlikely event a challenge is brought by a member of the public contesting the designation of certain information as confidential, the company should be prepared to defend its designation at its own expense, given that the information necessary to establish trade secrecy is uniquely in its possession. In our experience, legal challenges to appropriate confidential designations are very rare.

On a final note, if your company seeks information on any of the state’s targeted, performance-based incentive programs, please be aware that *only* state officials in charge of incentive programs can propose incentives under those programs and preliminary representations about state incentives when made by local developers or third parties cannot be relied upon and will not be honored by the State. Also, if your company chooses to seek incentives, please be aware that certain employment and financial information regarding the company will be required to be submitted.

Union County Disclosure Form

NOTICE OF COUNTY'S DUTY TO DISCLOSE PUBLIC RECORDS

I. General Duty to Disclose "Public Records"

Pursuant to N.C.G.S. § 132-1, Union County must allow inspection of "public records" and provide copies of the same, if requested, unless otherwise specifically provided by law. The term "public records" is broadly defined to include, among other things, all documents, papers, letters, maps, photographs, and all other documentary material, regardless of physical form or characteristics, made or received in connection with the transaction of public business. Consequently, if requested, Union County must allow public inspection and/or provide copies of all information relating to economic development within the County, including information provided to the County by participating businesses, unless disclosure is otherwise protected by law.

II. Protection of Information About "Proposed" Economic Development Projects

The County may lawfully deny access to public records relating to the proposed expansion or location of specific businesses or industrial projects so long as the inspection, examination, or copying of those records would frustrate the purpose for which they were created, in accordance with N.C.G.S. § 132-6(d). Public records may not be withheld under this subsection once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so, and the business has communicated that commitment or decision to the State or local government agency involved with the project. Once these events take place, the County must disclose, as soon as practicable, but in any event no later than 25 business days, all requested information about the announced project that is not otherwise "confidential."

In addition, N.C.G.S. § 143-318.10(e), authorizes the County to withhold the minutes or account of a closed session from public inspection so long as such inspection would frustrate the purpose of that session. One of the purposes for which the Board of County Commissioners may hold a closed session is to discuss matters relating to the location or expansion of industries or other businesses in the area, including agreement on a tentative list of economic development incentives that it may offer in negotiations. See, § 143-318.11(a)(4). The act of approving the execution of an economic development contract or commitment or authorizing payment of economic development expenditures must, however, be made in open session. Following such approval or authorization, when disclosure of the minutes or account would no longer frustrate the purpose of the closed meeting, this protection no longer applies. Thus, the minutes may be released except to the extent that any information contained there remains subject to some other exception from North Carolina's Public Records Law.

III. Continued Protection of Information That Is Confidential or Otherwise Protected by Law

Possible grounds for continuing to deny public access to economic development information, even after the above protections no longer apply, include by way of illustration but not limitation, the following:

Trade Secrets

N.C.G.S. § 132-1.2 authorizes the County to deny public access to information that meets the following four conditions:

1. It constitutes a “trade secret” as defined in N.C.G.S. § 66-152(3) (see below);
2. It is the property of a private “person,” defined in N.C.G.S. § 66-152(2) to include, among others, a corporation or any other legal or commercial entity;
3. It is disclosed or furnished to the public agency in connection with the owner’s performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State; and
4. It is designated or indicated as “confidential” or as a “trade secret” at the time of its initial disclosure to the public agency. [Emphasis added.]

“Trade secret,” as defined in N.C.G.S. § 66-152(3), means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

1. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Personal Identifying Information

Numbers or other information that can be used to access a person’s financial resources, including the following, enjoy continued protection under N.C.G.S. § 132-1.10:

- Social security numbers
- Drivers license numbers
- State identification card numbers
- Passport numbers
- Checking account numbers
- Savings account numbers
- Credit card numbers
- Debit card numbers
- Personal Identification Number (PIN)
- Digital signatures
- Biometric data
- Fingerprints
- Passwords

Tax Information

N.C.G.S. § 132-1.1(b) protects from public disclosure state and local “tax information,” defined as information from any source concerning the liability of a taxpayer for a tax including, among other things: information contained on a tax return, a tax report, or an application for a license for which a tax is imposed; information obtained through an audit of a taxpayer or by correspondence with a taxpayer; and information on whether a taxpayer has filed a tax return or a tax report. Similarly, N.C.G.S. § 160A-208.1 protects local tax records that contain information about a taxpayer’s income or receipts.

Other Types of Information

State and Federal protections covering other types of information may also apply.

IV. Measures to Prevent Disclosure of Exempt Information

The County has a duty not to disclose legally protected information. Therefore, before responding to any public records request, the County will check to determine if any legal protections apply. With respect to trade secrets or other confidential business information, the County will notify a business of any request for information that the business has identified as “confidential” or as a “trade secret,” so that the business may defend any claims or disputes arising from efforts of others to cause such information to be disclosed. Note, however, that the responsibility for identifying information that a business provides to the County as “confidential” or a “trade secret” rests with the business. If the County determines that information marked by a business as “confidential” or as a “trade secret” does not qualify for protection under N.C.G.S. § 132-1.2, or if the County is unable to make such determination, the County will notify the business of the request and of the date that the requested records will be released unless the business obtains a court order enjoining that disclosure. If the business fails to obtain the court order enjoining disclosure, the County will release the requested information on the date specified.