


Public Records



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AGENDA

- Working in the digital age
- What is a public record?
- What does it mean to be a public record?
 - Retention
 - Public Access
- Common “finance” exceptions to public access requirement

AVOIDING TROUBLE



Signs of the social networking times.

The Truth Always Comes Out



Ryan Lochte and 3 other Olympic swimmers reportedly robbed at gunpoint in Rio



Surveillance video shows U.S. swimmers after claimed robbery in Rio



Report: Gas station video indicates Lochte, U.S. swimmers lied about robbery story



**RYAN LOCHTE
My Story Was Mostly True
TAPE EDITED AT
CRITICAL POINT**

So, Think Twice, Type Once





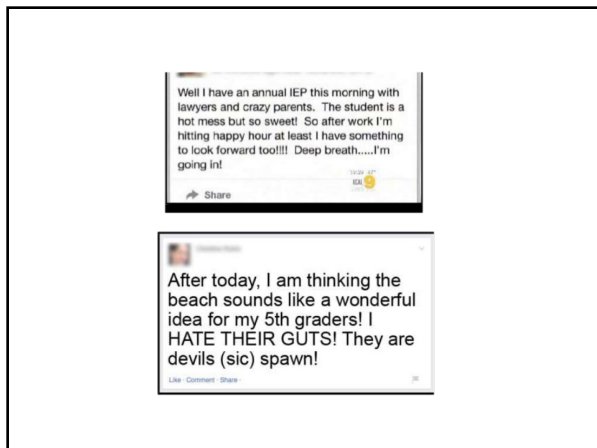
Jim Kenney [@JimKenney](#) [Follow](#)
Cindy Crosby is just a talented little puke face!
You just want to backhand him all the time.

RETWEETS 129 LIKES 95





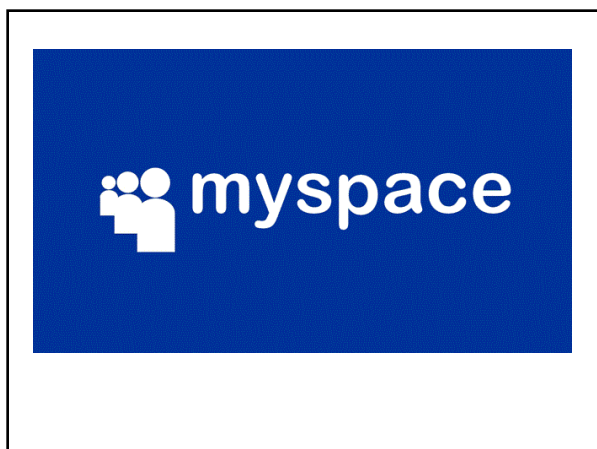


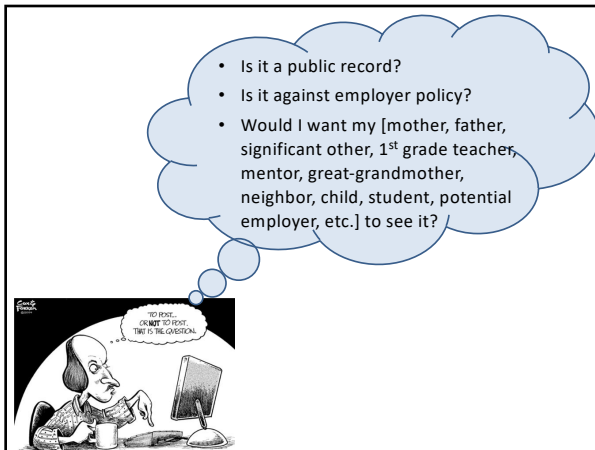




But what about Free Speech?

- **Speech as an employee – Not protected:** "When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes . . ."
- **Speech on matters that are NOT of public concern – Not Protected:** "If a school employee does not speak on a matter of public concern . . . The employee has no First Amendment cause of action . . ."
- **Speech as a citizen on matters of public concern – Sometimes Protected:** If the employee "speaks as a citizen on a matter of public concern" then there is the possibility of a First Amendment claim. Balancing test.





School Social Media Policies

- Reasonable expectation of privacy?
- Expectations of employer for use, on and off the job?
- Protecting public image?
- Enforcing anti-harassment and anti-discrimination?
- Address free speech rights?
- Procedures for retaining and producing records according to public records laws?

Public Records are...

Records that are made or received in connection with public business.

Rule of Thumb

Every document, spreadsheet, database, post-it note, fax, email, text message, facebook post, tweet, instagram, etc. related to your job is a public record!



Location is Irrelevant



If something is a public record, then what?



Retention Requirements

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

Public Access Requirements

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

Is this a public record?

- E-mail from a staff member to finance officer about vacation request, sent from staff member's government e-mail account during work hours.



Is this a public record?

- E-mail from manager to significant other about grocery list, sent from manager's government e-mail account during work hours.



Is this a public record?

- E-mail from elected official to budget officer requesting a specific project be included in proposed budget, sent from elected official's personal G-mail account.



Is this a public record?

- Text message from purchasing manager to purchasing staff member to change staff meeting room, sent from purchasing manager's personal i-phone after work.



Is this a public record?

- Draft of proposed budget, prepared (and saved) in Microsoft Word on budget officer's home computer.



Is this a public record?

- E-mail from billing clerk to maintenance supervisor exchanging flirtatious messages, sent from billing clerk's government e-mail account during work hours.



Is this a public record?

- Bids received by local government for large construction project (in the formal bidding range).



If something is a public record, then what?



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RECORDS RETENTION AND DISPOSITION SCHEDULE

GENERAL RECORDS SCHEDULE FOR LOCAL GOVERNMENT AGENCIES



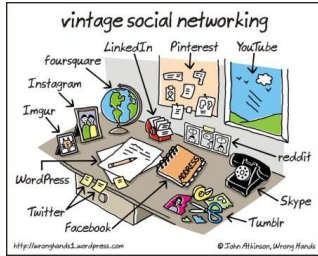
Issued By:



North Carolina Department of Natural and Cultural Resources
Division of Archives and Records
Government Records Section

March 1, 2019

E-PUBLIC RECORDS



Citizen: ~~My wife want to meet us for dinner at~~

Mayor: ~~Summer was last Fri? shalops were delish~~

Citizen: ~~Yeah, btw - Y potatoes on Jones St. not fixed yet? ruining my eye shocks. mayor promised they'd be fixed 6 months ago. As usual LOPSOD~~

Mayor: ~~IMT publ. works crew painfully slow. will correct to fix asap~~

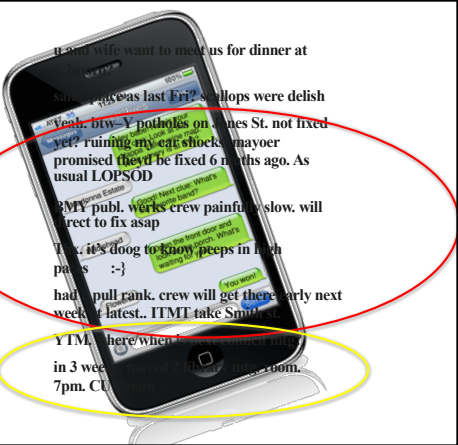
Citizen: ~~That's it's doog to know peeps in high places :-}~~

Mayor: ~~had a pull rank. crew will get there early next week at latest.. IMT take Smith~~

Citizen: ~~Y TM, where when~~

Mayor: ~~in 3 weeks~~

7pm. CU



“Reference Value” or “Routine Correspondence and Memoranda”

Catawba County, North Carolina
Check out the new Catawba County Parks Spring eNewsletter!



The “likes” would either be considered public records of “Short-Term Value or “Routine Correspondence and Memoranda” per the County/Municipal Agency retention schedules. The record can be destroyed when administrative value or reference value ends.

Monday at 1:24pm · Like · Comment · Share

4 people like this.

Write a comment...

County/Municipal Management Schedule: pages x and 3

Citizen Complaints & Service Requests



Catawba County, North Carolina
Public Health brings flu immunization to 2500 students after cases increase in schools.

In early February, after flu cases in school spiked in late January, Public Health worked with all three local school systems to offer flu vaccines free of charge to children enrolled in pre-kindergarten through twelfth grade.

<http://www.catawbacountync.gov/events/schoolflu.pdf>
www.catawbacountync.gov

Monday at 9:04am · Like · Comment · Share



April Williams Seems like it would have been nice to have offered the shots before the spike in flu. By the time they were given, my child already had the flu and missed 3 days of school.

Monday at 9:38am · Like

Write a comment...

Data Management



Where's the data?



How do you capture and save it?



Who needs to know?



Who's in charge?



What's your favorite teenager doing?

Broad Right of Public Access



True or False

- Only a North Carolina citizen may make a request for access to a public record.

FALSE

True or False

- A local government may require a person requesting access to a public record to make the request in writing.

FALSE

True or False

- A local government may inquire as to why a person is requesting access to a public record.

FALSE

True or False

- A local government may deny access to a public record if it believes the person requesting access will use the information for an improper purpose.

FALSE

True or False

- A local government must compile information to create a record at the request of a citizen.

FALSE

True or False

- A local government must provide access to its computer system to any person that requests to view electronic information.

FALSE

True or False

- If a person requests an electronic copy of a public record, the unit can instead print out the record and provide a hard copy.

FALSE

True or False

- A local government may delete a public record that it does not have to retain according to the retention schedule after a request for a copy of the record is made.

FALSE

Common Statutory Exceptions


Confidential Records	Non-Public Records	Confidential Records for Limited Time Period
Release is prohibited except as authorized by statute	Release is permitted but not required	Release is prohibited, but only for a limited period of time
<ul style="list-style-type: none"> • Certain personnel information • Trade secrets • Income or receipts info on tax records • Social Security Numbers • Certain Personal Identifying Information • Certain Medical Information 	<ul style="list-style-type: none"> • Law enforcement records • Attorney/client records (client may release) • Economic development information (except trade secrets) • Public enterprise (utility) billing information (except personal identifying information and Social Security Numbers) 	<ul style="list-style-type: none"> • Certain bidding information

Personnel Records are Confidential

EXCEPT

<ul style="list-style-type: none"> • Name • Age • Date of date of original employment/appointment • Terms of contract, • Current title, • Current salary (total compensation), • Salary history, • Date and amount of most recent increase or decrease in salary, 	<ul style="list-style-type: none"> • Date and type of each personnel action (promotion, demotion, transfer, suspension, separation), or other change in position classification, • Office to which currently assigned, • General description of reasons for promotion, • Copy of final notice of dismissal for disciplinary reasons setting forth the bases for the dismissal
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Prohibited from releasing information about taxpayer's income or receipts (but not prohibited from releasing rest of record)



- Privilege license taxes:
 - If measure tax by gross receipts, may not release taxpayer's income or receipt information
- Property taxes:
 - May not release taxpayer income information contained in homestead exclusion or homestead circuit breaker applications
- Occupancy and prepared food taxes:
 - May not release taxpayer income or receipt information in tax returns
- Car and heavy equipment rental taxes:
 - May not release taxpayer income or receipt information in tax returns

Sharing taxpayer income or receipt info with other governments

- Counties may share income or receipts info with:
 - Regional public transportation authority/ Regional transportation authority
 - State Department of Revenue
 - Authorized finance officer in a municipality in the county, but ONLY as necessary to administer a tax.
- Municipalities may share income or receipts info with:
 - Authorized finance officer of the county in which municipality is located, but ONLY as necessary to administer a tax

Prohibited from releasing social security numbers or personal identifying information



Personal Identifying Information

- State id card numbers
- Checking account numbers
- Credit card numbers
- Personal identification number (PIN)
- Biometric data
- passwords
- Drivers license numbers
- Passport numbers
- Savings account numbers
- Debit card numbers
- Digital signatures
- Fingerprints

Sharing SS#s and Personal Identifying Info
With Other Government Officials

- Personal Identifying Information
 - May share this information with law enforcement or other departments within your unit of government
- Social Security Numbers
 - May not share this information with law enforcement or other departments if you collected SS# from individual and did not indicate in writing that you would share it with law enforcement or other departments

Allowed, but not required, to
release utility billing
information
(other than social security
numbers or other personal
identifying information)



Prohibited from releasing some
bids, but only for period of time



Bids

- Formal Bids (purchase contracts costing \$90,000 or more and construction and repair contracts costing \$500,000 or more)
 - Unit prohibited from unsealing formal bid or disclosing contents before public bid opening
 - Once bids are opened in public they are subject to public access
- Informal Bids (purchase contracts costing between \$30,000 and \$90,000 and construction and repair contracts costing between \$30,000 and \$500,000)
 - Bids not subject to public inspection until after the contract is awarded
- All Other Bids
 - Subject to public access as soon as received by unit (even before contract is awarded)

Assessing Costs



"Mind if I sneak in and make a quick 500 copies?"

Assessing Costs

- Cannot assess costs of providing access only
- Can assess direct costs of providing copies
- Special charge authorized if request for copies involves "extensive use of information technology resources or extensive clerical or supervisory assistance...."

