

Public Records

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The Basics: Public Records

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

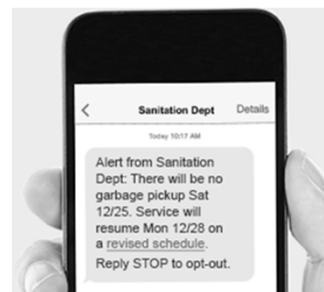


5 Questions About Public Records

1. What is a public record?
2. What is the right of access?
3. What can we charge?
4. What are some key exceptions?
5. What are the sanctions for violations?

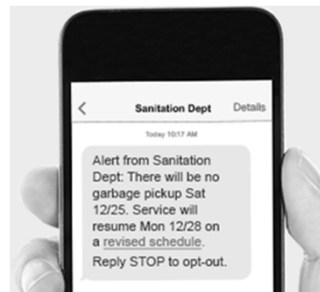
1. What is a Public Record?

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



What is a Public Record?

Content of records defined: Made or received in the transaction of public business.



Is This a Public Record?

- ? Mayor sends an email to the clerk regarding the agenda for the next council meeting using her personal email account and her personal computer.
- ? County clerk sends a personal email to her daughter using her town-issued email account and her town-issued computer.

2 Key Concepts

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



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



Rule to Remember

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



2. What is the right of access?

Provide records:

- to anyone who requests them
- to inspect or receive a copy
- regardless of why they want them
- in the medium requested if possible
- “as promptly as possible”



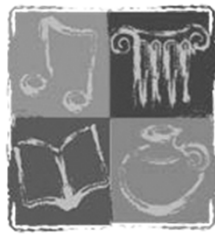
Aspects of Providing Access

- Can't control or limit use
 - Except GIS
- Can't require in writing; can request it
- Can require contract for payment



Records Retention

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



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3. What Can We Charge?

- ✓ Actual, direct costs only X Not personnel time



Special Service Fee

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



Who is a “custodian”

- City Clerks: All city records G.S. 160A-171
- General Law: The public official in charge of an office having public records is the custodian of those records. G.S. 132-2



Blog Post: [Custodians of Public Records](#)

Some Problems with e-Records

- Who has possession, custody or control of the record?
- What does that mean for provision of the record?
- Individuals with possession must provide access to the custodian.



4. What Are Some Key Exceptions?

Two types of exceptions:

1. *May release, but not required* when the exception says "not public records"
 - Examples: Criminal investigation, economic development information
2. *Shall not release* when the exception says "confidential"
 - Examples: Personnel, trade secrets, law enforcement recordings

Personnel Records – Confidential-Limited Access

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

Employee *Information* that IS Public

- Name
- Age
- Date of hire
- Terms of contract
- Current salary
- Date and amount of each increase and decrease (salary history)
- Date and type of certain personnel actions
- Date and general description of reasons for promotion
- Copy of notice of final dismissal for disciplinary reasons, setting forth basis for dismissal.

5. What Are the Sanctions for Violations?



A person denied access may file suit to force release of records.

1. Parties may mediate the dispute
2. Judge may require payment of attorneys fees unless city reasonably relied on case law or attorney general opinion
3. Individual liability only if not following city attorney's advice

A Framework For Responding to Public Records Requests

1. **Does a record exist that corresponds to the request?**
If not, no disclosure is required. If so, continue to question 2.
2. **Is the record "made or received in the transaction of public business?"**
If not, no disclosure is required. If so, continue to question 3.
3. **Is there an exception that applies?**
If not, the requested access must be provided. If so, continue to question 4.
4. **Does the exception apply to the entire record, or only to certain information, and does it prohibit disclosure or does it deny the right of access?**
If a prohibition applies to the entire record, do not disclose; if it applies only to certain information, redact and disclose. If there is no right of access to some or all of the information, but release is not prohibited, determine whether or not to release the entire or a redacted record.

Records vs. Information

- Must you create or compile a record?
 - Generally not (G.S. 132-6.2(e)), but note difference for personnel information.
- Must you search databases?
 - Probably, if requested information can be queried
- Must you search emails for specific names or subjects?
 - Probably

Applying the Framework

- The newspaper requests a list of all employees who have been suspended within the past 12 months.



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Some Open Questions

- Must metadata be provided as part of a public record? (Probably)
- Are records of purely political activity public records? (Probably not)
- May a public employer release to the public, nonpublic records made on public devices or accounts? (Depends on policies in place)
- What is the status of an email that has been deleted but is still archived in a bulk storage or backup medium? (Probably public)



Questions?