

## Public Records: Ten Key Concepts (Frayda Bluestein, UNC SOG)

1. State law requires public agencies to provide broad access to records made or received in the transaction of public business. [G.S. 132-1]
2. Email and other electronic records are covered by the public records law.
3. The law does not apply to records that are personal or do not involve the transaction of public business.
4. The content of a record, not its form or location, determines whether it is subject to disclosure under the public records law.
5. The right of access includes the right to inspect and obtain a copy. [G.S. 132-6(a)]
6. The purpose or motive for which a person seeks a public record is irrelevant and cannot be requested as a condition of providing access. [G.S. 132-6(b)]
7. The law does not require public agencies to create records; only to provide access to records that exist.
8. A record is subject to disclosure under the public records law unless a specific exception in the law allows or requires that it not be disclosed.
9. There is no exception for “drafts” of public records. State rules dictate what records must be retained and for how long. Records of “short term value” may be discarded, but if they exist when a request is received, they must be provided unless an exception applies.
10. Public agencies may charge only “actual costs” for providing copies of public records, which means only those costs that would not have been incurred but for the request. Direct costs do not include employee time spent responding to the request. [G.S. 132-6.2]

Framework:

- 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.*