**K-12 Chief Technology Officers School**

**Frayda S. Bluestein**

**June 8, 2011**

**North Carolina Public Records and Open Meetings Law**

**Requirements**

**Open Meetings**

**Basic Requirement:**

Official meetings of public bodies must be conducted in public, with notice as required by law (depending upon the type of meeting). Limited exceptions allow a public body to meet in closed session.

**Key Terms Defined:**[**G.S. 143-318.10**](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.10.html)

**Public Bodies :** Any elected or appointed authority, board, commission, committee, council or other body of the State or of one or more local governments:

 1. With two or more members, and

 2. Exercising or authorized to exercise any of the following powers:

 - Legislative

 - Policy-making

 - Quasi-Judicial

 - Administrative

 - Advisory

A public body *does not include* "a meeting solely among the professional staff of a public body."

**Official Meetings:**

1. A meeting, assembly, or gathering together, or the simultaneous communication by conference telephone call or other means;
2. Of a majority of the members of the public body;
3. For the purpose of

 - conducting hearings, or

 - participating in deliberations, or

 - voting on or otherwise transacting public business

An "Official Meeting" *does not include* a social occasion, unless it is called or held to evade the law.

**Public Notice of Official Meetings**

 Regular Meetings

A current copy of the regular meeting schedule must be filed in a central location and it must be posted on the agency’s website, if the agency maintains one.

Special Meetings

A "Special Meeting" is one held at some time or place different from the schedule of regular meetings.

Written notice (1) posted on the public body's principal bulletin board and (2) mailed or delivered to each person who has requested it, at least 48 hours before the meeting, and posted on the agency’s website.

 Emergency Meetings

An "Emergency Meeting" is one called "because of generally unexpected circumstances that require immediate consideration by the public body."

 Notice to local news media only, in same manner as public body itself is notified.

 Adjourned or Recessed Meetings

Post notice of time and place of the recessed meeting on the agency’s website at some time before the recessed portion of the meeting occurs.

 **Closed Sessions** [**G.S. 143-318.11**](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.11.html)

Procedures

* Meeting notice still required.
* There must be a motion, giving the purpose of the closed session
* Members of the public body are entitled to attend; others may be admitted if their presence is relevant
* Public body must prepare general account of each closed session and, if actions taken, minutes. Summary or minutes may be sealed, if necessary to maintain confidentiality.

Some Authorized Purposes

 - To consider confidential records

- To consult with an attorney on matters within the attorney-client privilege, including consideration of litigation or a claim

 - To consider industrial and business location

* To establish a negotiating position in the acquisition of real property

 - To consider performance, etc. of individual employees and officers

**Miscellaneous**

1. Secret ballots are prohibited; written ballots, however, are permitted, if each person signs his or her ballot.
2. Any person may tape or film an open meeting; the media are entitled to broadcast any open meeting.
3. Note: Different rules apply to legislative committees and commissions. [G.S. 143-318.14A](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.14A.html)

**Remedies:** Injunction against future violations; Invalidation of tainted actions, factors to be considered by the judge listed in the statute. [G.S. 143-318.16A](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.16A.html)

Resources: David M. Lawrence, [*Open Meetings and Public Records, County and Municipal Government in North Carolina, Article 8*](http://www.sog.unc.edu/pubs/cmg/cmg08.pdf)*,* viewable on line.

David M. Lawrence, [*Open Meetings and Local Governments in North Carolina: Some Questions and Answers*,](http://shopping.netsuite.com/s.nl/c.433425/it.A/id.1257/.f) 7th ed. 2008.

**Public Records**

Ten Key Concepts

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]](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.html)
2. Email and other electronic records are covered by the public records law.
3. The law does not apply to records that do not involve the transaction of public business, such as personal (not work-related) communications.
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)]](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-6.html)
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)]](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-6.html)
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”](http://www.records.ncdcr.gov/guidelines.htm#laws) 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]](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-6.2.html)

**Exceptions:**

Below is a list of some of the major exceptions to the public records law.

* 1. **Most personnel records** [[G.S. 115C-319](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-319.html), [320,](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-320.html) [321]](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-321.html). See below for list of information that is public.
	2. **Criminal investigation** records [[G.S. 132-1.4](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.4.html)]
	3. **Minutes of closed sessions** [[G.S. 143-318.10(e)]](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.10.html)
	4. **Social security numbers and other personal identifying information**, including drivers’ license numbers, financial account numbers, state identification or passport numbers, employer taxpayer identification numbers, digital signatures, finger prints, passwords, biometric data. [[G.S. 132-1.10](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.10.html)]
	5. **Medical records** [[G.S. 130A-12](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_130A/GS_130A-12.html), G.S[. 130A-143](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_130A/GS_130A-143.html)], including
		1. Records containing privileged patient information, and information about lead poisoning in children; and
		2. Information or records that identify a person who has AIDS virus infection or who has or may have a communicable disease or condition.
	6. **Student records** [G.S. 115C-402](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-402.html) (official records); [Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)](http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html)
	7. **Business trade secrets**, involves information that derives commercial value from not being generally known or independently ascertainable [[G.S. 132-1.2](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.2.html); [G.S. 66-152(2)(3))]](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_66/GS_66-152.html)

See also: State Archives Guidelines: [Laws Relating to Confidential Records Held by North Carolina Governments](http://www.records.ncdcr.gov/guides/confidential_publicrec_2009.pdf)

Resources:

 David M. Lawrence, *Open Meetings and Public Records, County and Municipal Government in North Carolina, Article 8,* viewable on line: <http://www.sog.unc.edu/pubs/cmg/cmg08.pdf>

 David M. Lawrence, [*Public Records Law for North Carolina Local Governments,*](http://shopping.netsuite.com/s.nl/c.433425/it.A/id.2178/.f)2d. ed., 2009.

 Kara Millonzi, [*Is Metadata a Public Record, Part 1,*](http://sogweb.sog.unc.edu/blogs/localgovt/?p=1984)

 [*Is Metadata a Public Records, Part 2*](http://sogweb.sog.unc.edu/blogs/localgovt/?p=2064)

**Records Retention**

[§ 121‑5.  Public records and archives.](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_121/GS_121-5.html)

State Archival Agency Designated. – The Department of Cultural Resources shall be the official archival agency of the State of North Carolina with authority as provided throughout this Chapter and Chapter 132 of the General Statutes of North Carolina in relation to the public records of the State, counties, municipalities, and other subdivisions of government… Destruction of Records Regulated. – No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Cultural Resources… Whoever unlawfully removes a public record from the office where it is usually kept, or alters, mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined at the discretion of the court.

Resources on Records Retention:

Department of Historical Resources, Archives and Records Section, Government Records Branch: <http://www.records.ncdcr.gov/default.htm>

General Guidelines: <http://www.records.ncdcr.gov/guidelines.htm#laws>

Electronic Records: <http://www.records.ncdcr.gov/erecords/default.htm>

Guidelines on Email: <http://www.records.ncdcr.gov/erecords/Email_Policy.pdf>

Personnel Information that is Public:

**§ 115C‑320.  Certain records open to inspection.**

(a)        Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1)        Name.

(2)        Age.

(3)        Date of original employment or appointment.

(4)        The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its possession.

(5)        Current position.

(6)        Title.

(7)        Current salary.

(8)        Date and amount of each increase or decrease in salary with that local board of education.

(9)        Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that local board of education.

(10)      Date and general description of the reasons for each promotion with that local board of education.

(11)      Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the local board of education. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the local board education setting forth the specific acts or omissions that are the basis of the dismissal.

(12)      The office or station to which the employee is currently assigned.

(b)        For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.