



NORTH CAROLINA
OPEN
GOVERNMENT
GUIDE

Attorney General
Josh Stein



Attorney General

Josh Stein

Dear friends:

North Carolina law declares, “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.”

It is critical that public agencies understand and follow this law that gives you the right to know what state and local government officials are doing on your behalf. After all, it is your government.

Since the last time the Attorney General’s Office and the North Carolina Press Association authored a Guide to Open Government and Public Records in 2008, the world has gotten more complex and the ways in which we communicate have changed.

In 2008, almost all government communications took place via e-mail or on paper. Today, we also have text messages, Facebook posts, tweets – and more. These new technologies have created new challenges around retention and resources. Nonetheless, one thing that has not changed is that we in government are the guardians of essential public information. Although new methods of communication have emerged, they haven’t changed the responsibilities of government.

Under the Public Records Act, what matters is the content of the communication, not the channel. The guiding principle my office operates under is this: if it is the state’s business in an email, a letter or a memo, it is also the state’s business in a text message, Facebook post or Tweet.

The Open Government Unit in my office has worked collaboratively with the North Carolina Press Association and the Sunshine Center to create this updated guide, which we hope will provide clarity and guidance in this new age. We have added easy-to-use infographics that we hope will help you easily seek the records you wish to view.

In this guide, we aim to make North Carolina’s public records laws accessible and to answer some of the most commonly asked questions. If you have questions about this guide or open government laws, please call the Open Government Unit in my office at (919) 716-6938. We’ve also included some additional information on our resources page.

Thank you for your interest in the way government serves you.

Best,

Josh Stein
North Carolina Attorney General



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WHAT ARE PUBLIC RECORDS?




What is the definition of a public record?

Public records are materials (documents – electronic or otherwise) made or received by government agencies in North Carolina in carrying out public business. Public records include materials written or created by state and local government entities and their employees. They also include materials written or made by private people or companies that are submitted to the government, regardless of whether those materials were required or requested by the government or whether they were sent to the government voluntarily at the private person's initiative.

Public records include both paper and electronic documents, emails, 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. Therefore, text messages are considered public records if they are about public business.

Public records include documentary materials that government agencies are required by law to make or collect. Public records also include materials that government agencies make or collect at their discretion in carrying on government business.



Even if the author of the draft is not a government employee, the draft is a public record if it has been received by a government agency.

If drafts have been created or received by a government agency in the course of doing public business, they become state property and as such, generally are considered public records. A draft does not have to be submitted to the members of a public body or the head of a public agency for approval to be considered a public record. Even if the author of the draft is not a government employee, the draft is public record if it has been received by a government agency.

Indexes of computer databases – which every public agency in North Carolina is required to produce – are public records. Indexes include information about data fields, lists of data fields to which public access is restricted and unrestricted, and a schedule of fees for producing copies. The indexing rule does not require a government agency to create a database it has not already created.

State laws make some public records confidential and exempt from disclosure. These exceptions are discussed in the “Denials and Exemptions” section below.

What is the Public Records Act?

The foundation of our public records laws is the North Carolina Public Records Act (“the Act”). This law makes clear that written materials and other records created or received by state and local government are the property of North Carolinians, and it gives the people a means of enforcing their right to access government records.

The Public Records Act imposes obligations on all state and local government officials to:

- Allow inspection by any person or corporation of those government records not specifically exempted from disclosure, and
- Allow the public to obtain copies of public records — as promptly as possible upon request and at minimal expense.

In interpreting the Public Records Act, the North Carolina Supreme Court has said the Act is to be read liberally in favor of public access to records and information. Our courts also have said that any exemptions from the Act's mandatory disclosure requirement are to be read narrowly.

What is the public policy regarding public records?

The North Carolina General Assembly has declared as a matter of public policy that public records and public information compiled by agencies of state government or its subdivisions, including local government, are the property of the people.

Are the Public Records and Open Meetings Laws the only laws dictating the public's right to access certain records or meetings?

No. There are times when other state or federal laws may affect public access to select records or meetings. For example, select state statutes may require disclosure of particular information, such as limited items in a personnel record. At the federal level, the Freedom of Information Act (FOIA) allows for disclosure of records from federal executive branch agencies. FOIA does not apply to records held by state or local government agencies.

MAKING A PUBLIC RECORDS REQUEST



Is there a specified procedure for requesting public records?

No. The Act does not specify a procedure and there is no specific form for making requests. There is no requirement that requests be made in writing except in the case of requests for copies of computer databases. Some agencies might ask for written requests for their records to assure accuracy, but they cannot insist on it. There is no requirement that the person making the request refer specifically to the Public Records Law when making the request. Finally, there is no requirement that the person making the request provide their name or any identification. Requests for public records are public records.

Who may inspect or get copies of public records?

Describe what you are seeking in terms of documents, not questions.

Any person has the right to inspect, examine and get copies of public records. People requesting public records do not have to disclose their identity or their reason for requesting the information.

Which government agencies must permit inspection and furnish copies of records?

All state agencies must permit inspection and furnish copies of public records. These agencies include all public offices, officers and officials (elected or appointed), staff members, institutions, boards, commissions, bureaus, councils, departments, authorities, and other units of government. County, city, and town governments and their departments, officials, and employees are also included, as are all other political subdivisions and special districts.

How can the public inspect public records?

Anyone may inspect and get copies of public records. Normally, a request to any employee in a government office should be sufficient to get access to records in that office. Each office should have a “custodian” of public records who is required to allow those records to be inspected. The custodian can require that the inspection take place at a reasonable time and under reasonable supervision by the custodian. Government agencies that hold public records of other agencies

for storage or safekeeping or to provide data processing are not “custodians” and therefore are not required to allow inspection of those records.

Best Practices for Making a Public Records Request

You do not have to follow these practices, but they can make the Public Records Law process easier for you and the public agency.

- a. Submit your request in writing, making sure to keep a copy for your records.
- b. Be as clear as possible about the records you wish to inspect or have copied.
- c. Provide as many details as possible about the documents you are seeking (dates, subject, individuals or entities involved, etc.). The more specific your request is, the more quickly the agency will be able to find and produce the documents you seek.
- d. Describe what you are seeking in terms of documents, not questions. The agency must respond to a request for “All e-mails between John Doe and Jane Smith from November 2017 about streetlights.” The agency may not be able to respond to a Public Records Law request that reads, “Why are the streetlights out on Main Street?”
- e. Determine whether you want to ask to inspect the documents or instead have copies made and sent to you. You may choose both.

Sample Public Records Request

A public records request does not have to follow any particular format. One example of a simple letter making a request can be found on the next page.

Sample Public Records Request

[Date]

[Your Name]

[Your Mailing Address]

[Name of Custodian of Records]

[Agency Name]

[Mailing Address]

Dear [Custodian of Records]

Pursuant to the North Carolina Public Records Law, I request [choose one -- copies or inspection] of the following records:

[Describe the records you seek, using enough detail for the custodian of records to find each document.]

[Include this paragraph only if you ask for copies.] Before charging any fees for making copies of these records, please obtain my approval if the cost will exceed \$_____.

If you have any questions about my request, please feel free to contact me at [phone number or e-mail address].

Sincerely,
[Your Name]

Can the government require a person to tell why they want to see or obtain copies of public records?

No. The government may not require a person to give a reason for requesting to see public records. Access to public records should be permitted regardless of the intended use, even if a person's interest is business-driven or is based solely on idle curiosity.

How do you obtain copies of public records?

Requesters can simply ask the agency to make copies or they may make their own copies, using agency equipment. Some people bring their own equipment to make copies. Some may ask to take public records to another location (such as a library, copy store, or their own office) to make copies. The law does not specify how copies must be made. Since copying public records is subject to agency supervision, agencies may have different rules covering how the public can use agency equipment, make their own copies, or make copies elsewhere. The law makes it clear that agencies must "furnish" copies of public records to people who request them. At the least, this means that agencies must make copies of public records for people who request them.

How do agencies furnish copies?

Agencies are required to furnish copies "as promptly as possible." Agencies are not required to provide copies outside of their usual business hours.

Can I request copies of public records in any media available?



Agencies are not required to put a record into electronic form if that record is not already kept in that medium.

If an agency has the capability to provide copies in different kinds of media (for example, in print or on computer disk), requesters can ask for copies in any and all the media available. The agency may not refuse to provide copies in a particular medium because it has made, or prefers to make, copies

available in another medium.

However, agencies can assess different copying fees for different media. Agencies are not required to put a record into electronic form if that record is not already kept in that medium. If a request is granted, copies must be provided as promptly as possible. If a request for a computer database is denied, the agency must explain why at the time of denial. If asked to do so, the agency must promptly put in writing the reason for denial. An agency may elect to make a computer database available online. If the database is made available online, this satisfies the production requirement.

Because the law permits a requester to ask for records in any and all media in which the public agency is capable of providing them, a requester can ask to have records emailed.

NOTE: People requesting copies of public records may ask for certified or uncertified copies. Certified copies include a statement by the agency that the copy is a true and accurate copy of the original. Agencies may charge a special fee for certified copies.

Does the North Carolina Public Records Law cover access to records of federal agencies?

No, unless those records are in the custody of state and local government agencies. The FOIA generally provides that any person has a right to access federal agency records, except when all or parts of those records are protected by specific exemptions or specific law enforcement record exclusions. People seeking federal records under FOIA should contact the public information officer for the federal agency maintaining the records.

RESPONDING TO A PUBLIC RECORDS REQUEST



Tips for Responding to a Public Records Request

For government officials, following the tips below can make the Public Records Law process faster and more precise.

- a. You may want to make a note of the requested information and the date of the request.
- b. Determine if your agency is the custodian of the records requested and whether the request is for copies of documents or to inspect documents. The public and news media are entitled to both.
- c. Determine whether there will be a cost — other than the cost for simple copying. Any fee charged must not exceed the actual cost of making copies. No fees may be charged for inspecting public records.
- d. As a best practice, notify the requesting party in writing that the request has been received and give a reasonable timetable for a response. If this is a request for which fees might be charged, include information about those costs, but check with your agency's public records staff to make sure it is charging that kind of fee.
- e. Remember that public records include all books, maps, photos, papers, cards, magnetic tapes, computer data, or other documentary materials in the possession of a public body.
- f. Be careful not to release private information such as Social Security numbers, driver's license numbers, or bank account information.
- g. If you have questions or concerns, contact the Attorney General's office at (919) 716-6938 or email the Open Government Unit at OpenGov@ncdoj.gov.

Must a public agency create or compile a record upon request?

No. An agency may agree to compile or create a record and may negotiate a reasonable service charge for doing so. However, it is generally understood that agencies do not have to create or compile records in either situation.

Is there a time period for government agencies to respond to a records request?

Agencies are required to furnish copies “as promptly as possible.” Agencies are not required to provide copies outside of their usual business hours. The law does not require that requests be made in advance and it requires no specific waiting period between the time of the request and the time of inspection. At the same time, the Public Records Act does not permit an automatic delay by the government in releasing public records, either to allow for approval of disclosure or to notify those identified in public records.

The law says inspection and examination of records should be allowed at “reasonable times” and under the supervision of the agency. This means that agencies may, within reason, determine how and when they will allow inspection. Agencies may require that an employee watch or supervise anyone inspecting records, and agencies may take precautionary measures to ensure that records are not damaged or taken. Agencies must take reasonable steps to ensure that private information is not disclosed.

Agencies also may place reasonable restrictions on inspections to preserve records that are old or in poor condition, and they may take a reasonable amount of time to collect and present records for inspection.

Agencies may not...withhold records based on the agency's belief that immediate release of the records would not be prudent or timely.

Agencies may not, however, withhold records based on the agency's belief that immediate release of the records would not be prudent or timely.

Must a public agency provide information in verbal form?

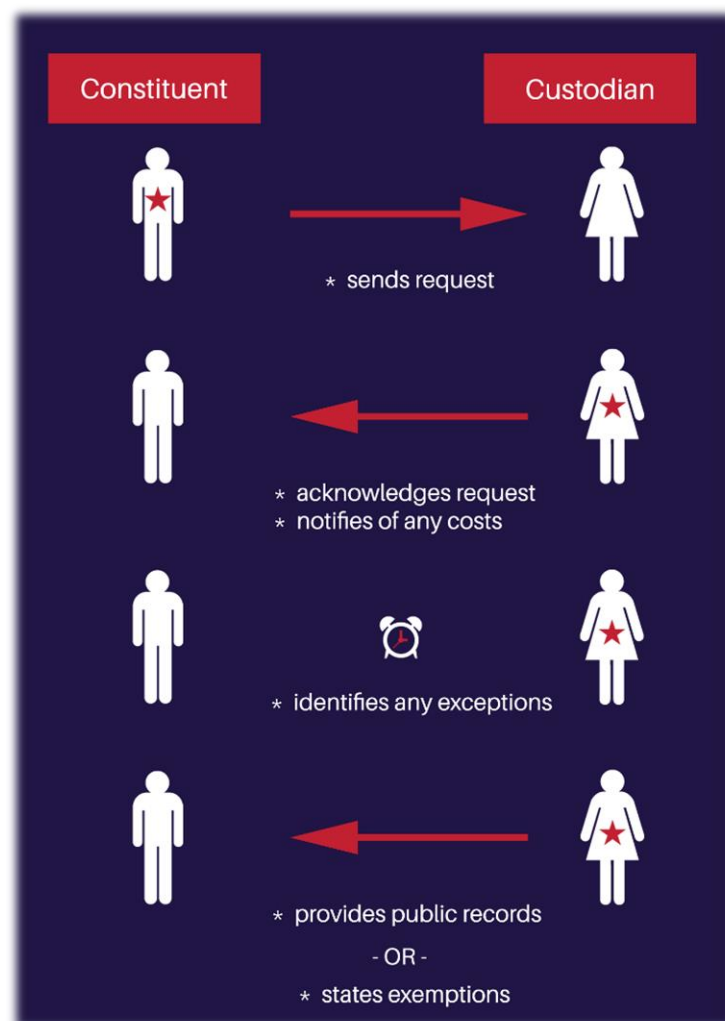
No. The law does not require that government agencies answer questions, although many agencies designate a public information officer to handle media requests.

How should an agency handle records that contain public AND confidential information?

Agencies may not refuse to permit inspection or provide copies of such material in its entirety but must permit inspection and provide copies of the public parts of these records. They can separate or redact the confidential parts. Agencies must bear the cost of separating confidential information.

Does posting records online meet an agency's obligation to provide records under the public records law?

A public agency or custodian may satisfy the requirements of the Public Records Act by making public records available online in a format that allows a person to view the public record and obtain a copy by printing or saving it. 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, the public agency or custodian is not required to provide copies of these public records.



DENIALS AND EXEMPTIONS



There are a number of public records that are exempt from disclosure, and your request may be denied as a result. There are also exceptions to the exemptions. Though not an exhaustive list, we have attempted to list some here.

The following are records that are exempted from disclosure:

Attorney-client communications

The following written communications from attorneys to government bodies, if they are made within the attorney-client relationship by an attorney-at-law serving the governmental body, are not public records unless the government body that receives them decides to make them public:

- a. Communications about claims against or on behalf of the government body;
- b. Communications about claims against – or – on behalf of the governmental entity the government body represents;
- c. Communications about the prosecution, defense, settlement or litigation of judicial actions, administrative proceedings, or other proceedings to which the government body is a party;
- d. Communications about the prosecution, defense, settlement, or litigation of judicial actions, administrative proceedings, or other proceedings which directly affect the government body, or which may directly affect the government body.

(NOTE: Public inspection of these written communications from attorneys to government bodies is restricted in this way only for three years after the public body receives them. After that, these written communications automatically become public records, unless they are subject to another exception, and they are then subject to inspection by the public. Also, a communication from a governmental body to an attorney is not confidential under this provision of the law.)

Trial preparation materials

Generally, trial preparation materials are not public records. However, anyone denied access to a public record that is also claimed to be trial preparation material prepared in anticipation of a legal proceeding that has not yet begun can ask a court to determine if the record is trial preparation material prepared in anticipation of a legal proceeding. The custodian of a public record shall make the record available for public inspection after the legal proceeding is over –

including all appeals – or if no legal proceeding ever began, after the expiration of the statute of limitations and the statute of repose.

Tax records

Most information from and about taxpayers may not be disclosed, except as allowed in state tax law. Information that may not be disclosed includes:

- Information contained on a tax record, a tax report, or an application for a license for which a tax is imposed, and information in taxpayer audits or in taxpayer correspondence;
- Information about whether a taxpayer has filed a tax return or tax report;
- Lists of taxpayer names, addresses, Social Security numbers, or similar taxpayer information.

State employees and officials are permitted to make limited disclosures of this information in certain circumstances, which are listed in N.C. Gen. Stat. 105-259(b). Many of these circumstances involve disclosure to other government agencies to assist them in carrying out various laws.

Trade and corporate secrets of companies that deal with public agencies

Generally, this information is not subject to disclosure. Trade secrets are defined as business or technical information that has commercial value because it is not generally known or not easily discoverable through independent development or reverse engineering. Trade secrets may include formulas, patterns, programs, devices, compilations of information, methods, techniques, or processes. For information to be considered a trade secret, the efforts to maintain its secrecy must be reasonable under the circumstances. For trade secret information to be exempt from disclosure by a public agency, the information must meet the statutory definition of a trade secret. The information must also be furnished to the agency through a business transaction with the agency (for example, performance of a contract or making of a bid, application, or proposal), or furnished to the agency in compliance with laws or regulations. The trade secret information must be designated as “confidential” or as a “trade secret” at the time the information is initially given to the agency.

Settlement documents

Settlement documents in most lawsuits involving state and local governments are public records. Settlement documents are public records if the underlying suit or proceeding involves the public agency’s official actions, duties or responsibilities. Settlement documents include settlement agreements, settlement correspondence, consent orders, documents dismissing or ending the

proceeding, and payment documents such as checks or bank drafts. A public agency may not enter into a settlement that includes a requirement that the settlement be kept confidential. However, a settlement document that is sealed by a judge's order is not subject to public inspection.

Another exception applies to settlements of medical malpractice actions against hospital facilities. Those settlement documents are not public records. Parties settling these actions may agree that the terms of the settlement are confidential.

Certain criminal investigation / intelligence records

A public agency may not enter into a settlement that includes a requirement that the settlement be kept confidential.

Criminal investigation records are not public records. This includes criminal investigation records compiled by prosecutors and law enforcement agencies as they are attempting to prevent or solve violations of criminal law, as well as criminal intelligence information compiled by law enforcement

agencies in an effort to anticipate, prevent or monitor possible violations of criminal law. Records of investigations conducted by the North Carolina Innocence Inquiry Commission and records prepared in connection with a criminal investigation by the State Crime Lab are not public records. Law enforcement agencies have the ability to release criminal investigative records at their discretion and a court can order their release.

However, the following investigative information is, generally, public:

1. Time, date, location, and nature of crimes or apparent crimes reported to law enforcement agencies.
2. Name, sex, age, address, employment, and alleged crime of a person arrested, charged, or indicted.
3. Circumstances surrounding an arrest.
4. The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the natural voice, name, address, telephone number, or other information that may identify the caller, victim, or witness. Calls may be released in the form of a written transcript or altered voice reproduction to protect the identity of a complaining witness.
5. Contents of communications between law enforcement personnel that are broadcast over public airways.

6. The name, sex, age, and address of a complaining witness. A law enforcement agency is required to temporarily withhold the name and address of a complaining witness if the agency has evidence of, and therefore reason to believe, that releasing the information is likely to pose a threat to that person's mental or physical health or personal safety. The agency also must withhold this information temporarily if releasing it would materially compromise a criminal investigation or intelligence operation. The law enforcement agency is required to release this information as soon as the reason for withholding it no longer exists. If the agency believes and can prove that releasing information would compromise a criminal investigation or intelligence operation, the agency may seek a court order to withhold the information.
7. Arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summonses, and non-testimonial identification orders.

Records about proposed business and industrial projects

Generally, these records are public unless disclosure would frustrate the purpose for which the records were created. This means that the agency with these records may withhold the records from public inspection if public knowledge of the records would interfere with negotiations or deter a business from locating or expanding in the state. When there is no longer a danger that releasing the records might prevent the project from materializing, the agency must then release the records for inspection.

Business and industrial projects/incentives

Once a business has selected a specific location to locate or expand in the state, local government must disclose the relevant public records. The term "local government records" include state-maintained records that relate to a local government's efforts to attract the project. Once a state or local government or specific business has communicated a commitment, or a decision by the State or local government has been announced, the government agency shall disclose as soon as practicable – and within 25 business days – public records requested for the announced project.

Autopsy photos, video, audio, and official report

The written report of an autopsy is a public record, available for inspection and copying upon demand. Autopsy photos may be inspected upon demand, but not copied without obtaining a court order.

Emergency response plans/public security plans

Emergency response plans and public security plans are not public records. The following are public records: (1) information relating to the general adoption of public security plans and arrangements; (2) budgetary information concerning the authorization or expenditure of public funds to implement public security plans and arrangements; (3) budgetary information concerning the construction, renovation or repair of public buildings and infrastructure facilities.

Social Security numbers and other personal identifying information

Social Security numbers are not subject to disclosure. The law also entitles any person whose identifying information (as defined in the statute) is listed on a public record displayed on an Internet website available to the general public to request that the Register of Deeds, Secretary of State, or Clerk of Court remove that information from their website.

NOTE: A public record that contains identifying information cannot be withheld but the identifying information must be redacted before the document is released.

Volunteer records maintained by local school boards

Records relating to volunteers in public schools may only be released upon a local board of education's written finding – based upon substantial evidence – of the need to maintain the integrity of school operations or the quality of public school services through the release of the records.

State Ethics Board hearing records

The law states Ethics Board complaints and responses, reports, and other investigative documents are not public record unless a covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes public sanctions. When public sanctions are imposed on a covered person, the complaint, response, and Ethics Board's report to the employing entity shall be made public. Statements of economic interests filed by prospective state employees and written evaluations by the Ethics Board of these statements are not public records until the prospective public servant is appointed or employed by the state. All other statements of economic interest and all other written evaluations by the Ethics Board of those statements are public records.

Personnel records

There are detailed statutes that provide what information is public with regard to most public employees. (Hospital employees are treated differently from all others.) For non-hospital

employees, the public has the right to know: (1) name; (2) age; (3) date of first public employment; (4) terms of any contract, whether written or oral; (5) current position; (6) title; (7) current salary; (8) date and amount of most recent change in salary; (9) date and type of any promotion, demotion or other change in classification; (10) date and reasons for each promotion; (11) date and type of each dismissal, suspension, or demotion for disciplinary reasons including written notice if the dismissal was for disciplinary reasons; and (12) the office or station to which employee is currently assigned. Salary is more than routine pay encompassing all forms of compensation, including benefits, incentives, and bonuses. Even non-public personnel data can be released under certain circumstances if release is important to maintain public confidence in the governmental institution. Before releasing information, though, the agency must create a memorandum that describes why release is important to maintain the integrity of the government agency.

Body camera and other law enforcement agency recordings

When a law enforcement agency makes an audio or video recording on a body-worn camera, dashboard camera, or other device when carrying out law enforcement responsibilities, it is not a public record or a personnel record, and it may be disclosed only under a specific procedure set out in state law.

Persons whose image or voice is in the recording may request that the law enforcement agency allow them to view the recording. If the request is granted, this person may watch or listen to the recording, but may not copy it.

Otherwise, these recordings may be released only upon court order. Any person or the law enforcement agency may petition the state Superior Court for release of the recording. The court shall consider whether the release is necessary to advance a compelling public interest, along with other factors set out in state law.

In addition, law enforcement agency recordings may be disclosed to other law enforcement agencies for any law enforcement purpose, to district attorneys for review of potential criminal charges or to comply with discovery requirements in a criminal prosecution, or for use in criminal proceedings in court.

CHARGING FEES



May an agency charge fees for inspecting public records?

Government agencies may not charge fees for inspecting public records.

May an agency charge fees for copying public records?

Under certain circumstances, fees may be charged for copies of public records. In general, the law says that copies of public records may be obtained free or at actual cost, unless there is another law that specifies otherwise. Fees for certifying copies of public records are to be charged as prescribed by law. For uncertified copies, agencies may not charge fees that are higher than the actual cost of making the copy.

“Actual cost” is defined as “direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles.” The law does not give examples of actual costs but it does say that actual cost may not include costs the agency would have incurred if the copy request had not been made. This means that under most circumstances, fees may not include the labor costs of the agency employees who make the copies.

However, if making the copies involves extensive clerical or supervisory assistance, the agency may charge a special service fee in addition to actual duplication costs. This service charge must be reasonable and based on actual labor costs but cannot be charged to recover fees for time spent examining or removing confidential information from records. Agencies also may charge to recover the costs of mailing copies. Complaints or disputes about all records copying fees may be directed to the State Chief Information Officer or their designee for mediation.

A service charge must be reasonable and based on actual labor costs but cannot be charged to recover fees for time spent examining or removing confidential information from records.

PUBLIC RECORD DISPUTES



What happens if an agency refuses to release or disclose a public record?

Anyone denied copies of or access to public records can bring a civil action in court against the government agency or official who denied access. After a civil action is filed, the parties must attend a mandatory mediation, unless they agree to waive the mediation requirement. Courts are required to set public records lawsuits for immediate hearings and give hearings of these cases priority over other cases. A government agency may not bring a pre-emptive lawsuit in such cases. If a person files a civil action and the judge compels the disclosure of public records, in most cases the court must also order the agency to pay the successful party's attorney fees.

Anyone denied copies of or access to public records can bring a civil action in court against the government agency or official who denied access.



Are emails public records?

Yes. Like any other kind of document, emails are public records if they are made or received in connection with the transaction of public business. Any message that discusses work, job conditions, or anything else about official business may be requested under the Public Records Act, and must be provided unless an exception applies.

Emails about official business are public records even if they are sent using the personal email account of an employee or official.

Are text messages or instant messages public records?

Yes. The Public Records Act covers any kind of document, “regardless of physical form or characteristics,” that is made or received in connection with doing public business. Text messages about work may be requested under the Public Records Act.

Are social media posts public records?

Yes. The Public Records Act covers communications about official business no matter whether they are made on the agency’s system or on a system controlled by a third party, like Facebook or Twitter. Both the posts of the agency employee and any feedback by users will become part of the public record.

Are videos public records?

Yes. The Public Records Act covers “films [and] sound recordings ... regardless of physical form or characteristics.” For example, if a city maintenance worker takes a video on his cell phone of a fire hydrant spilling water, that video can be requested under the Public Records Act.

Can public employees and officials destroy or delete public records?

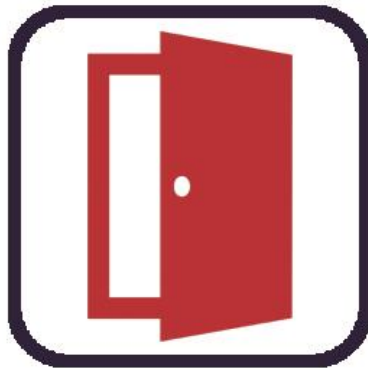
Retention of all types of records, including new media, is governed by the agency’s record retention guidelines approved by the NC Department of Natural and Cultural Resources.



Remember!

- ★ You do not have to cite any laws or reasons for making a request.
- ★ You do not have to provide your name or identification.
- ★ There is no specific procedure or form for making a request.
- ★ Your request does not have to be in writing unless it concerns copies of computer databases.

WHAT MEETINGS MUST BE OPEN?



Government transparency is at the heart of the Open Meetings Law. All official meetings of public bodies and decision-making by public bodies must be conducted openly to give meaning to the state's official policy that government operations are the people's business. For this reason, the Open Meetings Law requires notice of meetings, public access to meetings, and record-keeping of meetings through minutes.

What is the public policy regarding open meetings?

The General Assembly has declared it to be the public policy of North Carolina that the hearings, deliberations, and actions of public bodies be conducted publicly.

What meetings must be open and public?



The General Assembly has declared it to be the public policy of North Carolina that the hearings, deliberations, and actions of public bodies be conducted publicly.

The Open Meetings Law applies to any official meeting of a public body. An official meeting is defined by statute as a meeting, assembly, or gathering together of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, voting upon public business, or otherwise transacting public business. If a

majority of the public body's members get together for one of these purposes, it is an official meeting subject to the Open Meetings Law, regardless when or where the meeting occurs. Official meetings held by telephone conference call or other electronic means are also official meetings.

Social gatherings or other informal assemblies of public body members are not official meetings if public business is not discussed or considered. Members of public bodies may not hold a social gathering or communicate through an intermediary — for example, in a series of telephone or other communications — to evade the spirit and purpose of the Open Meetings Law.

What public bodies are subject to the statewide open meetings law?

All state and local government authorities, boards, commissions, committees, councils, or other bodies must hold official meetings publicly. The law applies to all these bodies 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. These groups are public bodies if they have two or more members, if their members are elected or appointed, and if they exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function.

Generally, the following bodies are not subject to the law:

- a. Grand and petit juries.
- b. The Judicial Standards Commission.
- c. The Legislative Ethics Committee.
- d. A conference committee of the General Assembly.
- e. A caucus by members of the General Assembly. However, no member of the General Assembly may take part in a caucus which is called to evade or subvert the Open Meetings Law.
- f. Law enforcement agencies.
- g. Boards of trustees of endowment funds authorized by Chapters 116-36 and 116-238 of the General Statutes.
- h. The General Court of Justice.
- i. A meeting solely among the professional staff of a public body.
- j. The medical staff of a public hospital.
- k. Under certain conditions, the governing boards of publicly owned hospitals may not be public bodies subject to the Open Meetings Law.
- l. Professional and occupational licensing boards that determine applicant qualifications and take disciplinary actions are not subject to the Open Meetings Law when they are preparing, approving, administering, or grading examinations; or meeting with respect to applicants or licensees.
- m. Public bodies that are subject to the Executive Budget Act, Chapter 143 of the General Statutes (most state government administrative agencies) are not subject to the Open Meetings Law when they meet to make decisions in adjudicatory actions.

Are legislative commissions, committees, standing subcommittees and the Lottery Commission subject to the Open Meetings Law?

Yes. With the exception of the Legislative Ethics Committee, General Assembly caucuses and conference committees, all committees of the state House of Representatives and Senate, their subcommittees, and study commissions are open and subject to the law.

Reasonable public notice must be given for these meetings. That includes giving notice openly at a session of the Senate or House, or posting notice on the press room door of the Legislative Building and delivering notice to the Legislative Services Office. Violating these provisions is punishable according to the rules of the Senate and House. Meetings of these commissions and committees are subject to the Open Meetings Law provisions on minutes, closed sessions, electronic meetings, written ballots, acting by reference, broadcasting, recording, civil actions and disruptions of meetings.



**Any person may photograph, film,
record, or otherwise reproduce any part
of an official meeting.**

ACCESS TO MEETINGS



Does the public have a right to attend a public meeting?

The open meetings law states that each official meeting of a public body must be open to the public, and any person is entitled to attend an official meeting.

Can the public listen to an electronic meeting?

A public body may hold a meeting by conference telephone or other electronic means and the public has a right to listen. The body must provide a location and means for the public to listen and the meeting notice should indicate where the public may listen. The public body may charge up to \$25 to each listener to help pay for the cost of providing the location and listening equipment.

Can a member of the public record and/or broadcast official meetings?

Any person may photograph, film, record or otherwise reproduce any part of an official meeting. Radio and television stations are entitled to broadcast all or any part of an official meeting. A public body may regulate the placement and use of equipment the public or media use to broadcast, photograph or record a meeting but only to prevent undue interference with the meeting. The public body must allow broadcasting and recording equipment to be placed in the meeting room so the equipment may be used. If the meeting room is not big enough to accommodate the public body, the public and the broadcasting equipment without interfering with the meeting, and if an adequate alternative meeting room is not readily available, the public body may require the pooling of equipment and the people operating it. If the meeting room is not big enough and the news media request an alternate site for the meeting, the public body may move the meeting to the alternate site and may require that the media requesting the alternate site pay for any costs incurred in securing the alternate site.

May public bodies conceal the subject of their actions or deliberations?

No. If members of a public body deliberate, vote or take other action on a matter at an official meeting, they must do so in a way that allows the public in attendance to understand what subject is being considered. The members may not consider matters by reference to letters, numbers, or other secret devices or methods with the intention of making it impossible for the public to understand what they are considering. The public body may deliberate, vote or take action by

reference to an agenda if the agenda is worded so that the subjects to be considered can be understood and if copies of the agenda are available for public inspection at the meeting.

May public bodies vote by secret ballot?

No. Public bodies may vote by written ballot, but the following procedures must be followed:

- Each member must sign the written ballot.
- The minutes of the meeting must show the vote of each member who votes.
- The written ballots must be made available for public inspection in the office of the clerk or secretary immediately after the meeting in which the vote took place.
- The written ballots must be kept available for inspection in that office until the minutes of the meeting — reflecting how the public officials voted — are approved. Only then may the written ballots be destroyed.

Must public bodies keep minutes of official meetings?

Yes. Every public body is required to keep full, accurate minutes of all portions of all official meetings, including closed sessions. Minutes may be kept in writing, or in the form of audio or video recordings. These minutes are public records, subject to public inspection and copying. Public bodies must keep a “general account” of what takes place in closed session, and that account must be reasonably specific with regard to what took place. The general account of closed sessions are public records, but they may be withheld from public inspection only so long as public inspection would frustrate the purpose of the closed session.

OFFICIAL MEETING NOTICE REQUIREMENTS



What kind of public notice is required for official meetings?

The Open Meetings Law contains detailed procedures that public bodies must follow to give the public advance notice of their official meetings. Requirements differ depending on whether the official meeting is a regular meeting, a special meeting, an emergency meeting, or a continuation of a meeting after it was recessed.

a. Regular Meetings

A public body is not required to set up a schedule of regular meetings. However, if a public body does make a schedule, copies of the schedule must be made available to the public as follows.

- The schedule must be posted on the public body's website, if it has a website.
- The schedule must also be on file with one of the following:
 - For public bodies that are part of State government, the Secretary of State.
 - For public bodies that are part of county government, the clerk to the board of county commissioners.
 - For public bodies that are part of city government, the city clerk.
 - For other kinds of public bodies, a clerk or secretary, or if the body does not have a clerk or secretary, the clerk to the board of county commissioners in the county where the public body normally holds its meetings.

The schedule should show the date, time, and place of the regular meetings. When a schedule changes, the revised schedule must be filed at least seven calendar days before the first meeting to be held under the revised schedule.

If meetings are held by conference call or other electronic means, the notice should say where the public may go to listen.

b. Special Meetings

A special meeting is any meeting – other than an emergency meeting or a recessed meeting -- that occurs at a time or place other than the time and place set out on a schedule of regular meetings filed by a public body.

The law requires three methods of notice for special meetings:

- First, at least 48 hours before the meeting, the public body must post written notice of the meeting on its principal bulletin board. (If the public body does not have a bulletin

board, it must post the notice at the door of its usual meeting room.) This notice must state the date, time, place, and purpose of the meeting.

- Second, at least 48 hours before the meeting, the public body must also mail, email, or deliver notice of the meeting to each person who has submitted a written request for this kind of notice. This notice must state the date, time, place, and purpose of the meeting.
- Third, if the public body has a website, the public body must post notice of the meeting on its website before the meeting begins.

Any issue can be addressed through a special meeting, but a public body cannot take up matters at a special meeting that were not identified in the notice of the meeting.

c. Emergency Meetings

A meeting is an emergency meeting if it is called because of generally unexpected circumstances that require immediate consideration by the public body. At an emergency meeting, the public body may consider only business connected with the emergency.

In this situation, one form of notice is required:

- Formal notice of the emergency meeting must be given to media that have requested notice.

d. Recessed Meetings

A recessed meeting takes place when a public body stops a regular, special, or emergency meeting, then resumes the same meeting later.

If a meeting is reconvened in this way:

- Notice of when and where the meeting will reconvene must be given publicly during open session.
- If the public body has a website maintained by its employees, it must post the time and place when the meeting will reconvene.

Does the public have the right to see written meeting materials?

The public has a right to see a meeting agenda and accompanying handouts (except exempted materials, such as attorney-client communications, etc.) as soon as they are created. Government officials cannot delay release of meeting materials until after they are sent to members of the public body or some other more convenient or advantageous time.

The public has the right to see written minutes of closed meetings, if the situation that prompted the closed meeting has passed.

Can individual members of the public request notice of meetings?

a. Regular Meetings

No special notice to the media or to individuals is required if a public body holds a meeting on the regular schedule it has posted on its website (if it has a website) and has filed as described above.

b. Special Meetings

Public bodies are required to send notice of special meetings to anyone who submits a written request. A \$10 annual fee may be required, but it cannot be charged if the notice is sent by e-mail or is sent to a member of the news media.

The public body must offer the media and the public the opportunity to put themselves on a list of people or organizations to be notified of special meetings. Those who want to receive meeting notices may file written requests for notice with the clerk, secretary or some other person designated by the public body. The public body may require these requests to be renewed annually (for media) or quarterly (for other members of the public).

c. Emergency Meetings

The public body must give notice of an emergency meeting to each local newspaper, local wire service, local radio station, and local television station that has filed a written request. The notice can be made by e-mail, telephone, or by whatever method was used to notify members of the public body. It must be given immediately after notice was given to the members of the public body. Private individuals do not have a right to receive notice of emergency meetings.

d. Recessed Meetings

No special notice to the media or to individuals is required if a public body recesses after announcing in open session the time and place at which the meeting will be continued. However, if the public body has a website, the public body must post on the website the time and place at which the meeting will be continued.

REASONS FOR CLOSED SESSIONS



May a public body ever hold a closed session of an official meeting?

Yes, but there are specific rules the body must follow. Public bodies may, in certain circumstances, exclude the public from certain portions of official meetings. However, closed sessions are not unofficial meetings where members of public bodies may discuss anything they want and take any action they want. The business conducted in a closed session is still considered public business. The subjects that may be discussed and actions that may be taken in closed sessions are limited and specific.

A public body may hold a closed session only during an official meeting for which it gave proper public notice. During the open part of the official meeting, the public body must make and adopt a motion to hold a closed session. In making the motion, the public body must state which of the legally acceptable purposes it is relying upon to justify the closed session. Minutes must be kept and generally are public records that must be produced if the situation that prompted the closed session has passed.

Once the closed session is completed, the public body must then re-open the meeting. During the closed session, the public body cannot engage in any other activities that are not related to the stated basis for the closed session.

Motions to adjourn or recess, or to enter into another closed session, are not permissible activities in a closed session. Establishing future meeting dates, times and places for reconvening meetings is not permitted in a closed session. All of these activities must take place in an open session.

What are the permitted purposes for holding closed sessions?

State law allows a public body to enter a closed session only in the following situations.

a. Legally Confidential Information

Certain information is made confidential or privileged by state or federal laws. For example, patient medical and individually identifiable student academic information is confidential. So are statutorily defined trade secrets.

Public bodies may hold closed sessions to prevent disclosure of information that is legally confidential or privileged or is not subject to the Public Records Law. If a public body holds a closed session to prevent disclosure of this kind of information, when it makes the motion to hold the closed session it must state which law makes the information confidential or privileged.

b. Honorary Degrees, Scholarships, Prizes and Awards

Public bodies may hold closed sessions to discuss honorary degrees, scholarships, prizes and awards so that these things will not be announced prematurely.

c. Attorney-Client Discussions

A public body may hold a closed session to keep from revealing information and communications between the public body and its attorney which are subject to the attorney-client privilege. The law does not list all of the kinds of information that might be subject to attorney-client privilege but it specifies that a public body may hold an attorney-client closed session to consider and give instructions to an attorney in the handling or settlement of a claim, judicial action or administrative procedure.

If the body considers or approves a settlement in a closed session, the terms of that settlement must be reported publicly and entered into the public minutes of the body as soon as possible within a reasonable time after the settlement is concluded. This does not apply to settlements of malpractice claims by or on behalf of hospitals. A body may not hold a closed session simply because its attorney is present. In a closed session, the public body may not discuss general policy matters. If the body holds a closed session to receive advice from its attorney about an existing lawsuit, the body must state the names of the parties in the lawsuit when the motion is made to hold the closed session.

In a closed session, the public body may not discuss general policy matters.

d. Location or Expansion of Businesses/ Military Installation Closure or Realignment

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.

e. Contract Negotiations

A public body may hold a closed session to establish negotiating positions or to instruct its staff/agents about negotiating positions to be taken on certain types of contracts. The body may consider and discuss the public body's positions on the price or other material terms of contracts to acquire real property by purchase, option, exchange or lease, as well as the amount of compensation and other material terms of employment contracts.

f. Specific Personnel Matters

A public body may hold a closed session in limited circumstances to consider certain personnel matters regarding individual employees or prospective employees. The body may consider the

qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of a current or prospective public employee or officer. The body also may hear or investigate a complaint, charge or grievance by or against an individual public employee or officer. A body may not remain in closed session to take any final action regarding these matters.

A public body must be in open session of an official meeting to take final action on the appointment, discharge or removal of employees or officers. These provisions apply only to employees and officers. They do not apply to members of the public, itself or members of other public bodies.

A public body must state which of the legally acceptable purposes it is relying upon to justify the closed session.

A public body may not hold a closed session to consider the qualifications, competence, performance, character, fitness, appointment or removal of one of its own members or members of any other public body. A public body may not hold a closed session to consider or fill a vacancy among its

own membership or the membership of other public bodies. All of these things must be considered and acted upon in open session. A public body also is not permitted to consider general personnel policy issues in a closed session.

g. Criminal Investigations

A public body may hold closed sessions to hear reports about investigations, or to plan or conduct investigations of alleged criminal misconduct.

h. School Violence Response Plans

A local board of education may hold closed sessions to formulate emergency response plans for school violence. A local board of education or school improvement team may hold closed sessions to formulate and adopt the school safety components of school improvement plans.

i. Anti-terrorism Actions

A public body may hold closed sessions to discuss and take public safety actions relating to existing or potential terrorist activity.

j. Law Enforcement Agency Recordings

As discussed elsewhere in this Guide, a detailed state law governs treatment of public record requests for recordings that were made by law enforcement agencies when carrying out their law enforcement responsibilities. A public body may go into closed session to view an audio or video recording that was released under this law.

RESOURCES

NORTH CAROLINA DEPARTMENT OF JUSTICE | OPEN GOVERNMENT UNIT

The Open Government Unit provides guidance on North Carolina’s public records and open meetings laws. It also helps mediate disputes about these issues. The Unit can be reached at opengov@ncdoj.gov or call (919) 716-6938.

NORTH CAROLINA PRESS ASSOCIATION

The North Carolina Press Association is a trade association of North Carolina newspapers. The NCPA provides statewide training – open to public officials and the public – on open government issues. The NCPA also has a “hotline” and will answer questions from the public. You can reach an NCPA attorney at (919) 833-3833.

NORTH CAROLINA OPEN GOVERNMENT COALITION | SUNSHINE CENTER

The North Carolina Open Government Coalition unites organizations interested in ensuring and enhancing the public's access to government activity, records and meetings. The nonpartisan coalition will educate people about their rights and support their efforts to gain access, and advocate the principles and benefits of open government. Education is critically important these days because, according to Elon Poll results, a majority of North Carolina residents are unaware of sunshine laws.

