

## **Office of Governor Roy Cooper**

### **Guidance for Public Records and Meetings Access**

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The policy of the state of North Carolina is to allow public access to the activities of government. Governor Roy Cooper believes following the law in providing access to records and meetings is an important part of the everyday duties of office holders, government employees, as well as appointed and elected members of government boards and commissions.

North Carolina's Public Records Act and Open Meetings Law govern how public employees are to provide this access. While there are some exceptions to the North Carolina Public Records laws, in general the records of government are presumed to be publically available unless otherwise protected. That goes for drafts of documents, memos, voice recordings, social media posts, and more. This document provides additional guidance to Cabinet level employees and commissions on best practices to allow the public access to records and meetings.

#### **Receiving a Public Records Request**

There is no mandated legal procedure to request copies of public records, such as requiring that the requests be made in writing. However, agencies may find it useful to ask for a written request to ensure that the request is fulfilled accurately.

Designate a recipient for public records in your agency, such as a public information officer. Be sure the designated public records recipient knows how to find the relevant documents, and that all employees know they have a duty to provide records in a timely manner to respond to requests.

Obtain legal staff review for privilege, work product, or similar issues before releasing, and human resources officer review if the records involve personnel information about state employees in your agency.

Keep a database or spreadsheet of records requests that includes:

- Items requested;
- Date of request;
- Date of production (or dates, if rolling production);
- Name of requestor, if given;
- How the records were shared, whether by inspection or copies;
- What format was requested and produced, such as on paper or electronically.

While agencies may ask for written requests for their records in order to assure accuracy, they cannot require it.

There is no requirement that the person making the request cite the Public Records Law or say why they are asking for records.

There is no requirement that the person making the request provide his or her name or any identification.

The public is entitled to be notified that a meeting is scheduled.

The public has a right to see a meeting agenda and documents from the meeting. This applies as well to any written minutes of closed meetings, once the situation that prompted the closed meeting has passed.

### **Assessing a Cost**

Agencies may charge a nominal copying fee for records produced in printed format. Five cents per page is recommended, but no fee charged should exceed the actual cost of making copies. No fees may be charged for inspecting public records or records produced electronically.

### **What Public Records Includes**

All books, maps, photos, papers, notes, recordings, photographs, computer data or other documentary materials in the possession of a public body are public records. A public body includes agency employees, commission and committee members, and, in many cases, contractors performing public work at government expense.

The Administration remains committed to openness, but employees are also mandated to protect information the law shields. Keep a list of such protected items and screen each record for similar items: Social Security numbers, driver license numbers, tax or bank account information, medical information, trade secrets, criminal investigative files, protected personnel information and more.

Strive to reveal as much information as possible under the law. Documents that contain non-public items may themselves still be public records if those items are redacted. Similarly, headings of databases may be public while the actual data in the database is confidential.

### **Choosing a Record Format**

If an agency has the capability to provide copies in different forms (for example, on paper, by e-mail, or on a thumb drive), requesters can ask for copies in any form that is available.

If you are able to provide the records in the requested form, you should. In some cases, paper copies may be necessary, especially if protected information must be redacted by hand. Similarly, if records such as emails must be produced, electronic formats of the files may make it easier for the agency and requester to review.

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

## **Timing of Records Release**

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 the disclosure or to notify those people identified in the public records.

Public employees may not withhold records based on the agency or commission's belief that immediate release of the records would not be "prudent or timely" or cause embarrassment.

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

When a records request is submitted, records must be provided as soon as reasonably possible, whether all at once or as they become available. Producing information on a rolling basis can allow requesters to get information requiring no redactions quickly while review of other records is ongoing.

Always keep a copy of the produced records for yourself in order to answer any follow-up questions or in case a dispute arises about the information that has been shared.

The law says inspection and examination of records should be allowed at "reasonable times" and under the supervision of the agency. This means that you may determine how and when your agency will allow access during business hours.

Agencies may delegate an employee to watch anyone inspecting originals to make sure the records are not altered or taken. That is especially important with original copies of records and/or ones that are old or in poor condition.

Some requesters may ask for certified copies which include a statement by the agency that the copy is a true and accurate copy of the original. Check with your legal staff if you get such a request.

## **When a Records Request is Denied**

Certain records requests may not be able to be fulfilled. For example, no such record may exist or the requested record is specifically protected under the law. Agencies are not required to create a record that does not already exist.

In certain cases, as specified in the law, a record may not be public even though created and held by a government agency. In many cases, however, the record itself can be considered public once non-public information has been redacted or the reason for the document being treated as non-public no longer exists. Consult with your legal office for further guidance. Err on the side of openness, whenever possible.

If a records request is denied, the agency must give a reason at the time of denial. If asked to do so, the agency should cite the statute that prevents the information's release and whether circumstances could change. For example, certain legal records can be made public three years after litigation has concluded.

### **Content, Not Medium, Determines a Public Record**

**The determination of a public record is whether it's made or received in connection with public business.** Therefore, your personal e-mail, personal mobile phone records, or social media posts may contain public records.

That means you and anyone in your agency who uses any business or personal device to conduct public business are required to retain the public records and produce them in response to requests.

### **Additional Resources**

Take advantage of some of the resources we have governing state records. For example, the [Department of Cultural Resources](#) offers training and maintains the records retention schedule for each agency.

Meetings of Public Bodies Statutes: [N.C. Gen. Stat. § 143-318.9 et. seq.](#)

Public Records Statutes: [N.C. Gen. Stat. § 132-1 et. seq.](#)

### **Always Keep in Mind**

State employees and officials conduct the people's business. Our responsibility rests with following the law and providing members of the public with the information to which they are legally and ethically entitled.