

PUBLIC RECORDS REQUEST POLICY

Public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. 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. The purpose of this memorandum is to provide a policy to be followed by the Office of the Governor and cabinet agencies in managing these requests and in levying a reasonable special service charge in qualifying cases.

I. Initial Request

1. Public records requests shall be directed to a department public information officer (“PIO”). Agencies may ask requestors to submit their requests in writing, on or in accordance with a request form provided by the agency.¹ Agency request forms shall request the following information:
 - a. Date of the request
 - b. Name of the requestor (first and last)
 - c. Phone number of the requestor
 - d. Mailing address of the requestor
 - e. Email address of the requestor (if available)
 - f. A description of the records with sufficient detail to enable the agency to identify the records requested. This may include the following information:
 - i. Custodian of the record
 - ii. Name or title of the record
 - iii. Date or date range of the record(s)
 - g. Whether the requestor is seeking a copy or seeking to inspect the record
 - h. If the requestor is seeking a copy, in what medium and/or format. Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency keeps them. The available formats may be limited for records that require redaction. An agency must ensure that the records are redacted in a manner that ensures the requestor cannot determine the confidential information through image manipulation or removal of field protections.
2. An agency shall acknowledge receipt of the request within three (3) business days of receiving the request.
3. To the extent the agency PIO finds the request to be ambiguous, overly broad, or likely to require more than four (4) hours of staff time to fulfill, the PIO shall contact the requestor and attempt to clarify, narrow or revise the request. A narrow request limits the expenditure of agency resources, may help to avoid a special service charge, and permits the agency to respond to the request in a shorter timeframe. In these discussions, it is not permissible to ask the reason the request is being made.

¹ An agency may ask, but cannot require, a requestor to submit their records request in writing.

4. In making an initial response to a public records request, it is important a PIO understand and communicate the following as need be:
 - a. An agency is not required to create a new record in order to fulfill a public records request.
 - b. An agency is not required to provide records in a format they do not currently have.
 - c. Agency employees are not required to work on requests past normal working hours. N.C.G.S. § 132-6(a) requires agencies to respond “as promptly as possible” in providing copies of public records. Response time should be determined based on the size and scope of the request.
5. If the request is not revised, the PIO shall contact the requestor with an estimate of how long the request will take to fill and how much the request will cost. Before beginning to fulfill the request, the PIO shall confirm acceptance of the fees. If the total estimated charge is greater than \$25 the PIO shall ask the requestor to pay 50% of the estimated charges before the agency begins to fill the requestor. Location and production shall not begin until the deposit is received. The requestor shall pay the remaining balance prior to the agency releasing the records. If for any reason the final charge is less than the amount of the deposit, the agency shall return the remainder to the requestor.

II. Special Service and Copying Fees

1. By statute, an agency may charge a special service charge for any request that requires extensive use of information technology or extensive clerical or supervisory assistance by personnel of the agency. If a request takes more than four (4) hours of clerical or supervisory assistance to fill, the agency may assess a special service charge for the amount of staff time spent over four (4) hours. Staff time spent searching for, locating, collecting, sorting, copying and preparing the records to be produced will count towards the four (4) hour threshold. The special service charge shall be in addition to any copying fees.
2. All public employees involved in fulfilling a public records request shall keep a detailed record of the time spent (accounted for in 15 minute increments) searching for, locating, collecting, sorting, copying and preparing the records to be produced. This record shall be provided to the requestor upon request.
3. The special service charge for clerical or supervisory assistance shall approximate the hourly rate of pay plus benefits for the position of permanent, full-time Administrative Assistant I in the agency’s pay schedule. This is estimated to currently result in a rate of \$18 per hour.
4. Special service charges shall be not greater than the actual costs incurred.
5. Time spent separating confidential from non-confidential information shall not be considered in calculating the time it takes to respond to a request. This is a cost that the department must absorb pursuant to N.C.G.S. § 132-6(c). The time spent separating

confidential from nonconfidential information shall be noted by employees in recording time spent on a given request.

6. Multiple requests regarding the same issue made within a short period of time (1-2 weeks) from the same individual or organization shall be considered a single request for purposes of determining whether a special service charge will be levied.
7. An agency shall charge 5 cents for printed copies as this is the reasonable estimate of the actual cost to the public agency in making the copy.
8. In order to minimize costs and time spent on records requests for emails, agencies shall make use of email archives, and when applicable, authorized e-discovery tools to search for, locate and copy email records.
9. Electronic records shall be sent via email when possible. Otherwise, electronic records shall be produced on a flash drive or CD provided by the agency. The agency shall charge the actual cost of the flash drive or CD, no matter the amount of data stored on it. An agency shall only charge the cost of multiple flash drives or CDs if the total gigabytes of the requested files exceed the maximum gigabytes on a single flash drive or CD.
10. Once all documents have been collected, a PIO should prepare an invoice based on the actual time the holders of records report.

III. Agency Follow Up

1. If anyone requesting public records from any public agency is charged a fee that the requestor believes to be unfair or unreasonable, the requestor may ask the State CIO or his designee to mediate the dispute.
2. Agency legal counsel should be made aware of any extensive records request and should assist in reviewing documents, or portions of documents, as needed in order to ensure compliance with both the disclosure and confidentiality provisions of Chapter 132. Legal counsel should consider N.C.G.S. § 132-1.1 when identifying documents or information which are not public records. Agency legal counsel should also remain aware of and consider whether other statutory provisions in and beyond Chapter 132 may also restrict disclosure of documents requested. For examples, see appendix A.
3. Agencies are encouraged to keep a log to track all public records requests, the status of the response, the date the documents are produced, and the charges and payments associated with production. This log can serve as a tool to assist the agency in better managing requests and expending agency resources efficiently.

IV. Items to be aware of in managing public records

1. An agency must follow the document retention policy found in the General Schedule for State Agency Records produced by the Department of Cultural Resources, as well as any department specific schedules.
2. Public records should only be disposed of by an agency in accordance with these records schedules.
3. Governor McCrory's Executive Order 12 requires email retention for five years and orders all executive branch employees to treat e-mail messages which they send or receive in connection with the transaction of public business as public records.
4. Any time a personal e-mail account is used to conduct State business, the e-mail must be retained. Even if it is contained in a personal e-mail account, any e-mail related to the transaction of State business is a public record. It is recommended you either: (A) forward the e-mail from your personal e-mail account to your State e-mail account so it may be captured in the email archive, or (B) print the e-mail and keep it in a separate file. If printed, that printed record will need to be searched in response to any public records request for e-mails.

The recommendations presented in this document are intended to improve upon and streamline the process for responding to public records requests. This policy is meant to serve as general guidelines. We recognize that circumstances vary and encourage you evaluate each request on a case-by-case basis and consult with legal staff as needed.

Appendix A

Statutory provisions restricting disclosure of information or documents:

- a. N.C.G.S. § 132-1.1(a). Confidential legal communications.
- b. N.C.G.S. § 132-1.1(c). Public enterprise billing information.
- c. N.C.G.S. § 132-1.2. Confidential information – including trade secrets, account numbers, and electronic signatures.
- d. N.C.G.S. § 132-1.3(b). Certain settlements made by or on behalf of public agencies, officials or employees.
- e. N.C.G.S. § 132-1.4. Criminal investigation and criminal intelligence information.
- f. N.C.G.S. § 132-1.6. Emergency response plans.
- g. N.C.G.S. § 132-1.7. Sensitive public security information.
- h. N.C.G.S. § 132-1.9 Trial preparation materials.
- i. N.C.G.S. § 132-1.10. Social security numbers and other personal identifying information.
- j. N.C.G.S. § 132-1.11. Cost-benefit analyses and similar assessments with respect to economic development incentives.
- k. N.C.G.S. § 132-6(d). Records relating to the proposed expansion or location of specific business or industrial projects.
- l. N.C.G.S. § 143B-431. Financial statements submitted to the Department of Commerce.
- m. N.C.G.S. § 70-18. Information concerning the nature and location of any archaeological resource.
- n. N.C.G.S. § 133-33. If the agency has promulgated confidentiality rules, the agency's cost estimates for any public contract prior to bidding, and the identity of contractors who have obtained proposals for bid purposes for a public contract.
- o. N.C.G.S. § 143-129.8. Information technology bids and proposals.
- p. N.C.G.S. § 143-129(h). Public transportation bids and proposals.
- q. N.C.G.S. § 20-43.1/18 U.S.C. § 2721. Personal information from DMV records.
- r. N.C.G.S. § 105-259(b). Tax information.
- s. N.C.G.S. § 126-22. Personnel files of State employees.
- t. N.C.G.S. § 143-318.10(e). Minutes or general accounts of closed sessions.
- u. N.C.G.S. § 143-318.11(a)(3). Settlements discussed in closed sessions.
- v. N.C.G.S. § 7B-3001. Law enforcement records relating to juveniles.
- w. N.C.G.S. § 143B-431. Financial statements submitted to the Department of Commerce by a private company or individual seeking assistance from the Department.
- x. N.C.G.S. § 143B-426.39B. State Controller compliance review work papers and other supportive material.
- y. N.C.G.S. § 53C-2-7. Certain official records of the Office of the Commission of Banks.
- z. N.C.G.S. § 108A-80. List of names or other information concerning persons applying for or receiving public assistance or social services when the information comes from records of the department of social services.
- aa. N.C.G.S. § 8-53. Communications between a physician and a patient.

- bb. N.C.G.S. § 90-113.74. Prescription information submitted to the Department of Health and Human Services.
- cc. N.C.G.S. § 122C-3(9). Confidential information relating to an individual served by a facility for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.
- dd. N.C.G.S. § 122C-52(a). Confidential information acquired from attending or treating a client in an area mental health, developmental disabilities, or substance abuse authority.
- ee. N.C.G.S. § 130A-12. Health department patient medical and financial records.
- ff. N.C.G.S. § 130A-45.8. Public health authority patient medical and financial records.
- gg. N.C.G.S. § 130A-93, and 102. Certain information in birth certificates, including medical information.
- hh. N.C.G.S. § 130A-143. Information and records on individuals with communicable diseases.
- ii. N.C.G.S. § 130A-212. Records and reports of individual patients with cancer.
- jj. N.C.G.S. § 131E-97. Medical records compiled and maintained by health care facilities in connection with the admission, treatment, and discharge of patients.
- kk. N.C.G.S. § 143-518. EMS client records.
- ll. N.C.G.S. § 143B-139.6. Privileged patient medical records in the possession of the Department of Health and Human Services.
- mm. N.C.G.S. § 163-82.10(a). Certain information in a voter registration record.

This represents North Carolina statutory provisions identified during the production of this document; the list may not be exhaustive. Please be aware that federal laws and regulations may impose additional confidentiality requirements.