

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 direction and guidance to the cabinet agencies in managing these requests and in levying a reasonable special service charge in qualifying cases.

1. Public records requests should be directed to a department public information officer (“PIO”). To the extent a request is broadly worded, an agency PIO should confer with the person making the request to try to better understand the particular documents the person is seeking. 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. Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency keeps them. A PIO should also clarify the form or format in which the person making the request would like to receive the records. Remember that in these discussions, it is not permissible to ask why the request is being made.
2. 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. An immediate response is not required. Depending on the size and scope, a few hours to a few days is appropriate for simple requests. It may take additional time to respond to an extensive request depending on the time and resources required to locate, copy, re-file and make any redactions necessary.
3. In reviewing the request, the PIO should:
 - a. Identify all potential holders of records,
 - b. Estimate the number of documents which may have to be produced in response to the request, and
 - c. Estimate the time it will take holders of the records to locate, copy and re-file the records requested.
4. 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. When a request requires one holder of records, or any combination of holders, more than thirty (30) minutes cumulative to locate, copy and re-

file the records request, that request should be deemed “extensive” and a special service charge should be levied pursuant to N.C.G.S. § 132-6.2(b). The agency may charge, in addition to the actual cost of duplication, the cost of certain personnel time.

5. In estimating the special service charge, an agency employee should multiply the estimated time it will take for a holder of records to respond to the request by the actual cost of the holder’s labor, both salary and benefits.
6. Time spent determining whether a document is responsive to the request should be included in determining the special service charge. However, the time needed to separate confidential from non-confidential information should 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).
7. Before responding to a request, a PIO should notify the requester of the estimated special service charge, along with any other charges for certified or uncertified copies, and confirm the requester’s express desire to proceed with the request as currently worded.
8. A department may need to hire a temporary employee(s) in order to respond to a request. If a temporary employee is hired to work exclusively on a request, after notifying the person making the request, the cost of the temporary employee’s labor should be passed along to the person making the request in lieu of charging a N.C.G.S. § 132-6.2 special service charge.
9. If a records request includes e-mail, the holder of records should use the agency’s e-mail archiving system to locate e-mails responsive to the request. For those agencies using ITS as their e-mail service provider, e-mails are currently archived within the Mimosa Archive. ITS can provide additional guidance on how to search this archive, which is accessible through Microsoft Outlook.
10. If asked to respond to an extensive request, a holder of records should track the actual time it takes to locate, copy and re-file the records requested. Holders should calculate and round their time in the same fashion as they would within Beacon.
11. 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.
12. Once all documents have been collected, a PIO should prepare an invoice based on the actual time the holders of records report.

13. If the request includes paper copies of any record, the cost of producing the paper copy should be included in the records invoice. Five cents per page is an appropriate fee to charge.
14. Production in pdf format is preferred for general requests for records in electronic form. Documents should not be produced in “Word” or similar format. When documents are burned to a CD, an agency may charge the actual cost of the CD. An agency may also charge the actual cost of service for video or audio tape duplication or transcription service.
15. Confidential information must still be redacted in electronic records. When redacting any information, an agency must ensure that the records are redacted in a manner that ensures the requester cannot determine the confidential information through image manipulation or removal of field protections.
16. A PIO should require payment of the copying charge and the special service charge before producing the documents.
17. 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.

Items to be aware of in managing public records:

- A Department 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.
- Public records should only be disposed of by a Department in accordance with these records schedules.
- Governor Perdue’s Executive Order 18 still governs the retention of e-mail messages sent or received by department employees.
- Any time a personal e-mail account is used to conduct State business, the e-mail must be retained in accordance with Executive Order 18. 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 you State e-mail account so it may be captured in the Mimosas 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.

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. § 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.
- k. N.C.G.S. § 143-129.8. Information technology bids and proposals.
- l. N.C.G.S. § 143-129(h). Public transportation bids and proposals.
- m. N.C.G.S. § 20-43.1/18 U.S.C. § 2721. Personal information from DMV records.
- n. N.C.G.S. § 105-259(b). Tax information.
- o. N.C.G.S. § 126-22. Personnel files of State employees.
- p. N.C.G.S. § 143-318.10(e). Minutes or general accounts of closed sessions.
- q. N.C.G.S. § 143-318.11(a)(3). Settlements discussed in closed sessions.
- r. N.C.G.S. § 7B-3001. Law enforcement records relating to juveniles.
- s. N.C.G.S. § 132-6(d). Records relating to the proposed expansion or location of specific business or industrial projects
- t. 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.
- u. N.C.G.S. § 143B-426.39B. State Controller compliance review work papers and other supportive material.
- v. N.C.G.S. § 53C-2-7. Certain official records of the Office of the Commission of Banks.
- w. 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.
- x. N.C.G.S. § 8-53. Communications between a physician and a patient.
- y. N.C.G.S. § 90-113.74. Prescription information submitted to the Department of Health and Human Services.
- z. 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.

- aa. 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.
- bb. N.C.G.S. § 130A-12. Health department patient medical and financial records.
- cc. N.C.G.S. § 130A-45.8. Public health authority patient medical and financial records.
- dd. N.C.G.S. § 130A-93, and 102. Certain information in birth certificates, including medical information.
- ee. N.C.G.S. § 130A-143. Information and records on individuals with communicable diseases.
- ff. N.C.G.S. § 130A-212. Records and reports of individual patients with cancer.
- gg. 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.
- hh. N.C.G.S. § 143-518. EMS client records.
- ii. N.C.G.S. § 143B-139.6. Privileged patient medical records in the possession of the Department of Health and Human Services.
- jj. 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.