

Public Records Act & Open Meetings Law

Phillip T. Reynolds, Special Deputy Attorney General*
Commissions, Coastal & Administrative Section
Environmental Division, NC Dept. of Justice

Overview of Public Records Act & Open Meetings Law

- ▶ *This information is not intended to be and should not be considered a formal or informal opinion by the Attorney General's Office, and it has not been reviewed in accordance with the procedures applicable to the issuance of such opinions.
- ▶ This information is intended to provide an overview of the Public Records Act and Open Meetings Law.
- ▶ As with most other matters, the application of the two sets of law to any given situation is fact-dependent.

Public Records Act

NC General Statute, Chapter 132

- ▶ “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....” N.C.G.S. § 132-1(b)
- ▶ “‘Public record’ or ‘public records’ shall mean all documents, 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, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.” N.C.G.S. § 132-1(b)
- ▶ Broad definition, broad application

Public Records Act

NC General Statute, Chapter 132

▶ § 132-4. Disposition of records at end of official's term.

Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the Department of Natural and Cultural Resources, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of 10 days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a Class 1 misdemeanor.

Public Records Requests

- ▶ The Department is the “keeper of the record” for the Commission.
- ▶ Public records requests should be directed to the Department.
- ▶ If the Department receives a public records request, it will coordinate with the members to fulfill the request.

Open Meetings Law

Chapter 143, Article 33C

▶ Public Policy

“Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.”

N.C.G.S. § 143-318.9

Official Meetings Open to the Public

N.C.G.S. § 143-318.10

- ▶ (a) Except as provided in G.S. 143-318.11, 143-318.14A, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.
- ▶ “Public body” includes the commission, but does not include meetings solely among professional staff of a public body
- ▶ (d) “Official meeting” means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

Minutes of Meetings

N.C.G.S. § 143-318.10(e)

- ▶ Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

Closed Sessions, N.C.G.S. § 143-318.11

- ▶ (a) Permitted Purposes. -- It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:
 - ▶ (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
 - ▶ (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

Procedure for Calling a Closed Session

- ▶ (c) Calling a Closed Session. -- A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

Public Notice, N.C.G.S. § 143-318.12

- ▶ There must be public notice in advance of any meeting of a public body. If the public body has a regular or current schedule of meetings, it should be kept on file with the Secretary of State.
- ▶ If the public body changes its schedule of regular meetings it must cause the revised schedule to be disseminated at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.
- ▶ If a public body holds an official meeting at a time or place other than that on the schedule, a “called meeting,” it has to give public notice of the time and place of that meeting at least 48 hours before the time of the meeting.
- ▶ For an emergency meeting (one called because of generally unexpected circumstances that require immediate consideration), the public body shall cause the notice of the meeting to be given to those local newspapers, radio stations, television stations, etc. having filed a written request for such notice.

Remedies for Violations of the Open Meetings Law

- ▶ A citizen may seek an injunction against the Commission. N.C.G.S. § 143-318.16.
- ▶ A citizen may institute a suit in Superior Court for a declaratory judgment and a determination that any action taken by the Commission is null and void. N.C.G.S. § 143-318.16A.
- ▶ These remedies may be sought separately or together.
- ▶ The prevailing party in such suit may be entitled to reasonable attorneys fees to be taxed against the losing party. Additionally, the Court may order that all or any portion of any fee assessed *be paid personally by any individual member or members* of the public body found by the Court to have knowingly or intentionally violated the Open Meetings Law. N.C.G.S. § 143-318.16B.