**North Carolina Public Records Act**

*selected statutes*

**Summary**

1. “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. G.S § 132-1
   1. the legislature intended to provide that, as a general rule, the public would have liberal access to public records.
   2. documents falling within the definition of “public records” in the Public Records Act must be made available for public inspection.
   3. minutes of all official meetings, including closed sessions, are public records within meaning of Public Records Law
   4. those records that are kept in carrying out lawful duties.
   5. no deliberative process privilege exception
2. Public records, shall not include written communications. . . made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body [but] shall become public records three years from the date such communication was received by such. . . governmental body. G.S  § 132-2
3. No public official may destroy, sell, loan, or otherwise dispose of any public record. G.S  § 132-3
4. Whoever has the custody of any public records shall, at the expiration of his term of office deliver to his successor . . . all records, books, writings, letters and documents kept or received by him in the transaction of his official business. G.S  § 132-4
5. Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law. G.S  § 132-6
   1. “public records” must be made available for public inspection.
6. Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; however, that the court may order that all or any portion of any attorneys' fees be paid personally by any public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. G.S  § 132-9

**1.**

**§ 132-1. “Public records” defined**

(a) “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**. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) 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. As used herein, “minimal cost” shall mean the actual cost of reproducing the public record or public information.

**1a.**

**1d.**

**1b.**

**1e.**

**1c.**

CASE NOTES

By enacting the Public Records Act, **the legislature intended to provide that, as a general rule, the public would have liberal access to public records**. *News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).*

WHAT MUST BE MADE AVAILABLE FOR INSPECTION. --In the absence of clear statutory exemption or exception, **documents falling within the definition of “public records” in the Public Records Act must be made available for public inspection**. *News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).*

**Under *G.S. 143-318.10*, minutes of all official meetings, including closed sessions, are public records within meaning of Public Records Law, *G.S. 132-1* et seq.** *Boney Publishers, Inc. v. Burlington City Council, 151 N.C. App. 651, 566 S.E.2d 701 (2002),* cert. denied, *356 N.C. 297, 571 S.E.2d 221 (2002).*

THE PHRASE “PURSUANT TO LAW OR ORDINANCE IN CONNECTION WITH THE TRANSACTION OF PUBLIC BUSINESS” should include, in addition to those records required by law**, those records that are kept in carrying out lawful duties**. *News & Observer Publishing Co. v. Wake County Hosp. Sys., 55 N.C. App. 1, 284 S.E.2d 542 (1981),* cert. denied, *305 N.C. 302, 291 S.E.2d 151, 459 U.S. 803, 103 S. Ct. 26, 74 L. Ed. 2d 42 (1982).*

NO DELIBERATIVE PROCESS PRIVILEGE EXCEPTION. --The North Carolina's Public Records Act contains **no deliberative process privilege exception**. Whether one should be made is a question for the legislature, not the court. *News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).*

THIS CHAPTER COMPARED WITH THE OPEN MEETINGS LAW. --The Public Records Act (*G.S. 132-1* et seq.) and the Open Meetings Law (*G.S. 143-318.10*) are discrete statutes, each designed to promote in a different way openness in government. There is no suggestion in either statute that an agency not subject to one is, ipso facto, exempt from the other. *News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).*

**2.**

**§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information**

(a) Confidential Communications. -- Public records, as defined in *G.S. 132-1*, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof **shall become public records as defined in *G.S. 132-1* three years from the date such communication was received by such public board, council, commission or other governmental body.**

\* \* \* \*

**3.**

**4.**

**§ 132-3. Destruction of records regulated**

(a) Prohibition. -- **No public official may destroy, sell, loan, or otherwise dispose of any public record**, except in accordance with *G.S. 121-5* and *G.S. 130A-99*, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars ($ 10.00) nor more than five hundred dollars ($ 500.00).

\* \* \* \*

**§ 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 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.

**5.**

**§ 132-6. Inspection and examination of records**

(a) **Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law**. As used herein, “custodian” does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

(b) No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation on the following schedule:

\* \* \* \*

**5a.**

CASE NOTES

WHAT MUST BE MADE AVAILABLE FOR INSPECTION. --In the absence of clear statutory exemption or exception, **documents falling within the definition of “public records” in the Public Records Act must be made available for public inspection**. *News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).*

BUT, THE COURTS HAVE JURISDICTION TO ISSUE INJUNCTIONS to prevent the disclosure of documents which are exempt from disclosure under the *Public Records Act. North Carolina Elec. Membership Corp. v. North Carolina Dep't of Economic & Community Dev., 108 N.C. App. 711, 425 S.E.2d 440 (1993).*

**6.**

**§ 132-9. Access to records**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

\* \* \*

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed to those public records. The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

(1) A judgment or an order of a court applicable to the governmental unit or governmental body.

(2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.

(3) A written opinion, decision, or letter of the Attorney General.

**Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article.** No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs.

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