

Appendix D: PUBLIC RECORDS FAQs

Written by the North Carolina Open Government Coalition. Originally published at <http://www.elon.edu/e-web/academics/communications/ncopengov/holders/faq.xhtml#Qs1>. Used with permission.

The Law

What are considered public records in NC local governments?

With very few exceptions, all records created or received by officials and employees while transacting official government business are public records and must be retained, stored, disposed of, and made available for inspection and copying in accordance with the law. This applies to records in officials' and employees' homes and on home or personal computers if the record pertains to government business. The public records law is primarily contained in N.C.G.S.132-1 through N.C.G.S. 132-10, which is on-line at:http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_132.html. Public records include paper and electronic documents (including emails and other electronic messages), photos, videos, maps, computer files, computer communications and voice mail messages. Unless the purpose and content of a record is personal in nature and not related to the transaction of local government business, then it is a public record and should be managed according to the Records Retention and Disposition Schedule ("Schedule"), if your governing board has adopted this Schedule. If your governing board has not adopted this Schedule, then you must retain all records about your government forever.

There are certain records that are exempted from the definition of public records, and there are certain public records that do not have to be disclosed.

Who owns public records in NC local government?

NC local government public records and public information are the property of the people. Employees and officials are records custodians, and are responsible for retaining these records and making them available to the public when they request them.

Who is responsible for keeping local government records?

The public official in charge of an office is designated to be the custodian of records for that office (N.C.G.S. § 132-2). Practically, each official and employee is responsible for retaining the public records in his or her possession. For example, if you work in a particular department and you send/receive emails about official government business, you're responsible for retaining them for the appropriate retention period, unless your local government has established policies that direct others to be responsible for retaining them.

Who may request local government public records?

Anyone.

Records Management and Retention and Disposition

Do I have to keep every record I send/receive about local government business forever?

If your governing board has adopted the Records Retention and Disposition Schedule, then you may likely dispose of records after they've exceeded the retention period outlined in that document. However, we must retain all records that are subject to litigation, audits, or that have outstanding requests pertaining to them even after they've exceeded the retention period. You must keep these records until the outstanding action is resolved. And, in some local governments, accreditation agencies may require you to keep certain

records for a longer period of time. Always work with your supervisor or legal staff if you have any questions.

If your governing board has not adopted the Records Retention and Disposition Schedule, then you must keep all records about local government business forever – you may not dispose of anything.

How do I know how long I need to keep records?

Refer to the Records Retention and Disposition Schedule, which describes the minimum retention period.

It's good to set aside time once a year for records management duties (making decisions about what files to keep and purge according to the Records Retention and Disposition Schedule).

Remember, records must be retained if there is an outstanding record request, court subpoena or court order, some state or federal law or grant requirement, if litigation is pending or threatened or if there is any other outstanding action pertaining to the record.

And, even if the record has surpassed the minimum retention period, if it's an active record that you use in your duties, then keep it as long as it's useful to you.

How long do I keep emails and other types of electronic messages I sent/received about local government business?

Emails and any other type of electronic messages are just as much “official” records as paper records. The content of the electronic message determines its record series status according to the Records Retention and Disposition Schedule. It's a good practice to develop good electronic message folder systems to ensure easy retrieval of these messages, instead of keeping them in your inbox and sent box. As with your paper records, if an email is transitory, then you likely do not need to retain it once it no longer has value to you. You should segregate confidential and protected electronic messages from others messages so you don't inadvertently release them in response to a public records request.

How should I file my emails and other electronic messages to ensure easy retrieval when I need them to respond to a record request?

Create electronic message file folders just as you would paper file folders. An electronic message file system should follow the same philosophy as a paper file system. For example, you may file general emails by calendar or fiscal years; you may develop subject folder systems, etc.

What are transitory records?

Transitory records are records that are ephemeral, temporary, or transient in nature and have only short-term administrative value.

Transitory records are public records, but because of their nature, they do not typically have to be retained. Transitory records include (but are not limited to) messages with short-term or no administrative value, such as many, but not all, voice mails, self-sticking notes, facsimile cover sheets that do not contain substantive information, and telephone messages. Transitory records are created primarily for the informal communication of information and not to perpetuate or formalize knowledge. Transitory records do not set policy, establish guidelines or procedures, discuss a local government business matter, discuss a decision, certify a transaction, or act as evidence of receipt. (Certified or registered mail return receipts that contain important information about the names of the sender/recipient and pertinent dates are not transitory.) Transitory records may be treated as having a reference or administrative value that ends when you no longer need the information in the record. Transitory records may be purged when their reference value ends unless there is some other reason that record should be retained, such as an outstanding record

request, court subpoena or court order, some state or federal law or grant requirement, or if litigation is pending or threatened. However, if a record request is received for a transitory record before that transitory record has been purged, that transitory record must be disclosed.

What are the appropriate methods of destroying records after the time period for keeping those records has expired (according to the Records Retention and Disposition Schedule)?

If the governing board has adopted the Records Retention and Disposition Schedule, then after records have surpassed the retention period, we may dispose of them as allowed by N.C. Administrative Code, Title 7, Chapter 4, Subchapter M, Section .0510 (except those records that are the subject of litigation, audits or any outstanding actions):

We should shred paper records that contain confidential, protected or secure information with a crosscut shredder. We may recycle paper records that do not contain confidential, sensitive or secure information, as long as the contract with the recycling provider stipulates that recycled materials will not be resold as documents or records.

If the governing board has not adopted the Records Retention and Disposition Schedule, then you may not destroy any of your records.

Is it OK for me to maintain government records on my personal computer?

We should not maintain government records on personal computers or devices. Maintain all government records on the local government computer/device. This will ensure that we're never in a position of being asked to provide or search personal technology to satisfy a record request.

Likewise, it's best to maintain personal records on personal devices. If it's important to maintain a personal record on a government device for a brief period of time (and if the local government allows this), then create a separate folder for these personal records. Delete personal records when they're no longer needed from the government issued device.