

## PUBLIC RECORDS BASICS

- ▶ Who has the information you need?
- ▶ Is that person/agency/department subject to the law?
- ▶ What **records** have the information you need?
- ▶ Are those records exempt from the law?
- ▶ What records are public?
  - ▶ Documents
  - ▶ Made or received by a public agency/public agent
  - ▶ In connection with the transaction of public business.
  - ▶ All three branches of the government.
- ▶ It's public unless specifically exempted **by statute**.

## THINGS TO KNOW

- ▶ Medium doesn't matter
- ▶ Must be something tangible that already exists
  - ▶ don't have to create new records
  - ▶ don't have to answer questions
- ▶ You can ask questions, but under the Public Records Law, officials don't have to answer.
- ▶ Government officials don't have to create records that don't exist.
- ▶ If you can identify records that contain the answers to your questions, ask for those records.

## THREE CATEGORIES OF RECORDS

## Red Light – Green Light

- ▶ There are three categories of records:
  - ▶ records that are confidential and must **not** be produced
  - ▶ records that are public and **must** be produced
  - ▶ records in between – they **can be** but need not be produced

## WHO, WHAT, WHEN, WHERE

- ▶ Direct your request to the person who *has* the records you want, even though the statute says the legal custodian is the “public official in charge of an office having public records”
- ▶ You don’t have to say who you are or why you want the records, though in if you do it may move things along.
- ▶ If there is something specific you know you want, identify it specifically.
  - ▶ Also include a more broadly worded request that would catch within it things that would be interesting but that you may not be able to ID.
- ▶ You can chose what form you want
  - ▶ any medium the public agency *can* provide § 132-6.2(a)
- ▶ The statute doesn’t have time period controlling when/how fast records must be provided, so ask to receive records “as promptly as possible.” § 132-6
- ▶ The statute doesn’t say anything about whether you have to be present in person to receive records you have requested, so you should be able to request records by email and receive them by email.
- ▶ The language permitting you to request records “in any and all media in which the public agency is capable of providing them” suggests you should be able to ask to have records mailed, faxed or emailed to you.

## HOW DOES THE LAW WORK?

- ▶ Unless *specifically* exempted, public records must be produced for inspection and copying. § 132-6(a).
- ▶ Docs are public from the time of creation.
- ▶ Docs need not be in final form; drafts are public record (a few exceptions).
- ▶ Requester cannot be required to disclose purpose or motive for the request.  
G.S. § 132- 6(b)

- ▶ Agency unscrambles the egg: can't deny request because confidential information is mixed with non-confidential information § 132- 6(c)
- ▶ Generally, public agency may charge only actual cost of copying § 132-6.2(b)
  - ▶ May include: paper, a computer disk, etc.
  - ▶ May not include: overhead, staff time, equipment rental or office space
- ▶ Requester chooses form
  - ▶ any media in which the public agency can provide them § 132-6.2(a)
- ▶ Agencies must respond to requests *as promptly as possible* § 132-6

## GENERAL POINTERS

- ▶ If you request a large group of records, ask for them in batches.
  - ▶ “In recognition that some public records are more readily available than others, we specifically request that each record that is within the scope of our requests be made available to us “as promptly as possible” in compliance with G.S. § 132-6(a) without regard to the availability of other requested records. That is, we not only are prepared to receive the requested records in “piecemeal” fashion; we believe that is exactly what the law contemplates.”
- ▶ If you know you have a point of legal disagreement, tackle it head-on.
  - ▶ If there is a statute or case that is directly on point, cite it.
- ▶ Public records are public from the time they are created. They need not be final, and the fact that a record is in draft form is irrelevant to its status as a public record.
- ▶ You don’t have to say why you want the records. G.S. § 132-6 (b).
- ▶ The fact that a document has confidential information mixed in with non-confidential doesn’t matter. The public agency must remove the confidential information and release the non-confidential. N.C. Gen. Stat. § 132-6 (c).
- ▶ You may only be charged the actual cost for copies of public records, which can include such items as paper, a computer disk, or the like but not overhead items such as staff time, equipment rental or office space. G.S. § 132-6.2.
  - ▶ There are some exceptions to this spelled out by statute.
- ▶ If you are willing to discuss/narrow your request, say so.
- ▶ Scan records you get before doing anything else. If they already are electronic, make a copy.
- ▶ When you get records from multiple sources, compare to see if everyone gave you everything.

- ▶ If you have a cap on how much you are willing to pay, state it in your letter.
- ▶ If you know that the record you request contains confidential information, acknowledge the public agency's right to remove the confidential part and remind them of their obligation to bear that expense.
- ▶ Ask for explanation
  - ▶ “If you take the position that any of the requested records are not open to public inspection and copying pursuant to the Public Records Law, please provide us with citations to all statutes, court opinions and other authorities that support your position.”

## CRIMINAL RECORDS

- ▶ As a whole, criminal records are confidential, but *some* criminal information is public under G.S. § 132-1.4(c).
  - ▶ time, date, location, and nature of violation
  - ▶ name, sex, age, address, employment, and alleged violation of law of person arrested, charged, or indicted
  - ▶ circumstances of arrest (when, where, use of weapons, pursuit, items seized)
  - ▶ 911 and other emergency telephone calls
  - ▶ communications of law enforcement broadcast over the public airways
  - ▶ name, sex, age, and address of a complaining witness
  
- ▶ Information public under § 132-1.4(k)
  - ▶ arrest and search warrants returned by law enforcement agencies
  - ▶ indictments
  - ▶ criminal summons
  - ▶ nontestimonial identification orders
  
- ▶ By and large, there is no prohibition against law enforcement releasing investigation records; it's discretionary whether to keep it secret.

## WARRANTS

- ▶ A search warrant must be executed within 48 hours from the time of issuance. Any warrant not executed within that time limit is void and must be marked "not executed" and returned without unnecessary delay to the clerk of the issuing court. G.S. § 15A-248

- ▶ An officer who has executed a search warrant must, without unnecessary delay, return to the clerk of the issuing court the warrant together with a written inventory of items seized. The inventory, if any, and return must be signed and sworn to by the officer who executed the warrant. G.S. § 15A-257

## **FIRE REPORTS**

- ▶ § 58-79-1. Fires investigated; reports; records
  - ▶ [Law enforcement are] authorized to investigate the cause, origin, and circumstances of every fire occurring in such municipalities or counties in which property has been destroyed or damaged, and shall specially make investigation whether the fire was the result of carelessness or design...
- ▶ § 20-166.1. Reports and investigations required in event of accident
  - ▶ (e) ... A officer ... must make a written report of the accident within 24 hours of the accident
  - ▶ (i) [Reports ... are public records and are open to inspection by the general public at all reasonable times.

## **PERSONNEL RECORDS**

- ▶ As a whole, personnel records are confidential, but *some* information is public
  - ▶ Name.
  - ▶ Age.
  - ▶ Original employment date
  - ▶ terms of any contract
  - ▶ Current position
  - ▶ Title
  - ▶ Current salary\*\*
  - ▶ Date/amt of salary change
  - ▶ Date/type of promotion, demotion, etc.
  - ▶ Date/description of reasons for promotion
  - ▶ Date/type of each dismissal, suspension, etc.

- ▶ Office/station currently assigned.

\*\* salary includes all compensation

- ▶ The employing agency CAN release other information when a department head determines release of such information
  - ▶ is essential to maintaining the integrity of the department or to maintaining the level or quality of services provided by the department
- ▶ Prior to releasing information department head shall:
  - ▶ Prepare memo saying why disclosure is necessary and
  - ▶ Put the memo in the files
- ▶ The memo is a public record