

Public Records

The Basics: A Brief Refresher

The University of North Carolina
Board of Governors Meeting

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Public Records



Summary Of Presentation

- Review Public Records Act.
- Address duties to retain records.
- Focus on electronic records.
- Questions.

North Carolina Public Records Act

- “The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people.”
 - G.S. §132.1.

Who Is Covered?

- Public officers or officials (whether elected or appointed), state employees, members of boards, commissions, and the like. As public officers, all members of the Board of Governors are covered by the North Carolina Public Records Act.

What Records Are Covered?

- All documents, regardless of the form, made or received in connection with your duties on the BOG.
 - Paper, letters, maps, books, films, sound recordings, tapes, disks, photos, artifacts
- Covered documents are public, no matter where they are kept or generated.
 - Formal file folders, briefcases, home offices, workplaces, computers

What Records Are Covered, cont.?

- Covered records include electronic documents and materials – including email and email attachments.

Your Duty To Retain Records

- “No public official may destroy, sell, loan, or otherwise dispose of any public record . . . without the consent of the Department of Cultural Resources.”
- Must retain and not destroy all records reflecting the business of the BOG in accordance with schedules generated by the Department of Cultural Resources.

Your Duty To Retain Records, cont.

- Records received from a UNC employee will be retained by that employee.
- But you are the “custodian” of your records.

What Can You Dispose Of?

- Duplicates
- Personal documents
- Spam and unsolicited advertisements
- CAVEAT: when in doubt about whether a document can be destroyed, err on the side of preserving the record

What Are The Penalties For Violating The Public Records Act?

- Alteration or destruction of a public record is a Class 3 misdemeanor, and carries fines upon conviction up to \$500.
- You could also be liable for attorneys fees if suit is successfully brought against you for violating the Act.

Your Duty To Disclose

- Upon request, all public records must be disclosed, regardless of who asks and why they are requested **unless** an exception applies.
- Exceptions include, but are not limited to:
 - Student records protected by federal law
 - Personnel records protected by state law
 - Attorney-client privileged documents concerning litigation

Your Duty To Disclose, cont.

- Internal audit working papers
- Items discussed in closed session as allowed by state law

Confidentiality

- It is a crime to disclose confidential personnel information improperly.
- Federal law prohibits disclosure of student records.
- Disclosing privileged attorney-client information destroys the privilege.
- You owe it to your colleagues and the University not to disclose closed session discussions.

If You Receive A Records Request

- Contact Division of Legal Affairs.
- Gather all the relevant records you have.
- Do not release the documents until they have been reviewed to determine whether any exception applies and for confidential information.

Ack!!



Electronic Communications

- We are not alone in struggling with the challenges of email.
- Federal and other state government agencies are experiencing the same problems.
- The problems include storage capacity, archiving, retention, and retrieval for public records responses.

Electronic Communications, cont.

- How should you deal with email?
 - Treat emails just like any other document, regardless of location – preserve them.
 - Location is irrelevant. Emails regarding the Board's business are public records, whether on your home or work computers, or hand-held devices.
 - It is your responsibility to maintain your email – you can put them on disks, keep them in folders or in your active in box.

KEY TAKEAWAYS

- Consider all the materials you receive or create regarding BOG business to be public records subject to disclosure and retention.
- Emails are included and need to be preserved regardless where they are stored.

Questions



Resources

- The North Carolina Public Records Act, G. S. 132.1 et. seq.
- Lawrence, David. Open Meetings, UNC-CH Institute of Government.
- U.S. Government Accountability Office, “Agencies Face Challenges in Managing Email.”
- UNC-GA Division of Legal Affairs.