

PUBLIC RECORDS & PRIVACY PRESENTATION



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DEFINITION OF PUBLIC RECORDS

(G. S. 132-1(A))



- A **public record** is any document, regardless of physical form, that is made or received in connection with the public business of any state agency. "Regardless of physical form" means that films, audio tapes, pictures, photographs, computer files and email, etc. may be considered public records as paper records.



PUBLIC ACCESS

(G. S. 132-6)

- **Who has a right to access public records?**

In general, any person may inspect public records from a government agency during reasonable business hours and under reasonable supervision ([G.S 132-6\(a\)](#)). The individual requesting to see the public records does not have to give any reason why they wish to see the record ([G.S. 132-6\(b\)](#)).

- **Must computer records be available also?**

Computerized records must also be available to the public.

In addition, all databases and spreadsheets created after July 1, 1996, must be listed or maintained in an electronic index that is available to the public ([G. S. 132-6.1 \(b\)](#)). The index must include a list of data fields, descriptions of the formats, how often the data is updated, any restrictions to access, how the data base may be reproduced by the agency's computer facilities, and a schedule of fees for production of documents. For more information, see [Index of University Databases](#)

PUBLIC ACCESS

(G. S. 132-6)

- **What about historical documents that could be damaged?**
For old or fragile records, public access may be restricted to the extent needed to protect the records (G.S. 132-6(f)).
- **Can the State agency charge a fee to make copies?**
Anyone may get copies of public documents from the State agency at a "minimal cost." Minimal cost generally means the cost of the copies themselves, but not the cost of labor or other overhead expenses in the production of the copies. However, a custodian may charge labor fees to fulfill extraordinary requests (see G.S. 132-6.2(b)).
- **Who must provide the public records?**
Only the custodian of the records is responsible for providing access to those records under her/his control. This means that one agency or office does not have a responsibility to make copies of another agency's records. A custodian is also not required to create or compile records that do not exist to fulfill a request (G.S. 132-6.2(e)).

EXCEPTIONS- RECORDS KEPT CONFIDENTIAL OR NOT CONSIDERED "PUBLIC"

Exceptions that make records confidential include:

1. Trade secrets: information owned by private individuals or companies and labeled as confidential when provided to the State agency, including formulas, patterns, devices, and other technical information ([G. S. 132-1.2\(1-4\)](#)) ([G.S. 66-152](#))
2. Library user records ([G. S. 125-19](#))
3. Certain law enforcement records ([G. S. 132-1.4\(a\)](#))
4. An attorney's written communications when the attorney is representing the State agency ([G. S. 132-1.1\(a\)](#)). However, these communications must be regarding actual or potential legal claims and in the scope of the attorney's duty. Having a lawyer prepare records not concerning litigation will not make all information from that record confidential (see News & Observer Publishing v. Poole, 330 N.C. 465 (1992)).
5. State agencies may make some information confidential concerning expansion or attempts to attract other businesses to the area ([G. S. 132-6\(d\)](#))
6. Most medical records kept by doctors (see [G. S. 8-53](#))
7. Prescriptions ([G. S. 90-85.36\(a\)](#))

EXCEPTIONS- RECORDS KEPT CONFIDENTIAL OR NOT CONSIDERED "PUBLIC"

8. Most records from psychologists and other counselors that fall under the physician-patient privilege (see [G. S. 8-53.3](#) and [8-53.4](#))
9. Information about employees and applications for employment ([G. S. 126-22](#))
10. Education records of students in attendance at Fayetteville State
11. Personally identifiable information from or about an applicant for admission to Fayetteville State (except that communications from elected officials about applicants remain public records). ([G.S. 132-1.1\(f\)](#))
12. Bids for State contracts before the award of the contract ([G.S. 143-52](#))
13. Settlement documents from suits or arbitration in which any State agency is a party and are ordered sealed by the court ([G. S. 132-1.3\(b\)](#))
14. Other records made confidential by law

EXCEPTIONS- RECORDS KEPT CONFIDENTIAL OR NOT CONSIDERED "PUBLIC"

- **IMPORTANT:** The State agency has the responsibility and must pay any costs of separating any confidential information from otherwise accessible public records. An agency cannot deny access to an entire file if only part of that record has confidential information ([G.S. 132-6\(c\)](#)).
- Anyone who is denied access to public records may seek a court action to compel the State agency to turn over the records ([G.S. 132-9\(a\)](#)). In the court action, the State agency has the burdens at trial to show the record was confidential ([G.S. 132-9\(b\)](#)). The presumption is that all State records should be open to the public.



MAINTAINING PUBLIC RECORDS

- **How should public records be kept?**

Custodians should keep all public records in a secure, preferably fireproof place that is also easily accessible to the public ([G.S. 132-7](#)). Generally, public records should be kept in the same building where they are normally used. The Department of Cultural Resources is responsible for establishing standards, procedures, and techniques for managing public records ([G.S. 132-8.1](#)).

- **Can a custodian dispose of old/unused public records?**

No person may destroy, sell, loan, or otherwise dispose of public records without consent of the Department of Cultural Resources or under approved procedures ([G.S. 132-3\(a\)](#) and [G.S. 121-5\(b\)](#)). University records must be destroyed according to the "[University General Schedule](#)" and the "[University Records Retention and Disposition Regulation \(REG01.25.12\)](#)." These schedules set out how long the University must keep certain records before those records may be destroyed.

MAINTAINING PUBLIC RECORDS

- **How should electronic mail be treated?**

Email can be a public record, if it is made or received by a state employee in connection with State business. And since it's public record, it must be retained for a period of time that varies according to the subject matter of the record. The way to determine how long to keep a particular record is to view the "[Office Specific Retention Schedule](#)"

The most authoritative source on email as public records is at the Division of Archives, which has legal responsibility for oversight of public record retention. See their website at <http://www.ah.dcr.state.nc.us/records/>

PUBLIC RECORDS AND RETENTION SCHEDULE

- **1) What is the "University Records Retention and Disposition Schedule"?**

This document---also known as the University General Schedule---is a tool for the staff and faculty of the institutions of higher education in the University of North Carolina System (UNC) to use when managing the records in their offices. It lists records commonly found in University offices and gives an assessment of their value by indicating when (and if) those records should be destroyed. The University Archivist is authorized to retain any record that he or she deems to have archival value. This schedule is also an agreement between the UNC System and the Department of Cultural Resources (OCR). If your University already has records schedules for individual offices on your campus, this University General Schedule does not supersede those schedules without specific authorization by your Chancellor, University Counsel, and your University Records Officer or Archivist. Your institution's use and application of this University General Schedule and existing individual office records schedules fall under the direction and authority of these officials. This schedule serves as the inventory and schedule that the Department of Cultural Resources is directed by G.S. 121-5 (c) and G.S. 132-8 to provide. It supersedes all previous editions, including the University General Schedule issued in 1991.

- **2) Why do I need this schedule?**

According to G.S. 121-5 and G.S. 132-3, you may only destroy public records with the consent of the Department of Cultural Resources. This schedule, along with individual office schedules, is the primary way OCR gives its consent. Records, regardless of medium, not listed on this schedule or in an individual office records schedule may not be destroyed without the consent of OCR and your University Records Officer.

PUBLIC RECORDS AND RETENTION SCHEDULE

- **3) What are public records?**

The General Statutes of North Carolina, Chapter 132, provides this definition of public records: "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.

- **4) Are the documents and other records on my computer also "public records"?**

Yes. G.S. 132 (above) points out that any record generated in the conduct of the University's business is a public record, "regardless of physical form or characteristics."

- **5) How can I know for sure if I have any "public records"?**

Nearly every position in a University or in state government generates, receives, or uses records. Computer files of any kind, including drafts and email, are public records. Even if your records aren't the official or final version, your records are public records. Not all records have high historical, legal, or fiscal value, but they all must be destroyed in accordance with the provisions of the appropriate records schedule.

PUBLIC RECORDS AND RETENTION SCHEDULE

- **6) Do I have to have all of the records listed on this schedule?**

No. This is not a list of records you must have in your office.

- **7) What if I can't find some of my records on this schedule?**

Call your University Records Officer or Archivist. He or she will work with you to create an individual office schedule or amend a current schedule.

- **8) How do I get a specific records schedule to cover the "record series" for my office or department?**

Contact your University Records Officer or Archivist and ask whether a records schedule already exists for your office. If it does, determine the date of the records schedule and ask for an update if necessary. If a schedule has never been done, request an inventory of your records under the guidance of your University Records Officer or Archivist, or request help in using this University General Schedule.

MAINTAINING PUBLIC RECORDS

- **9) If we scan and image our records, do we need to keep the paper version?**

You may scan any record, including permanent records. Your office should follow the instructions in the North Carolina Guidelines for Managing Public Records Produced by Information Technology Systems to conduct the Self Warranty process. You should consult the University Records Officer before destroying any permanent records on paper that have been digitized. I will discuss with you the appropriate medium or format for the permanent preservation of the records concerned. Computer systems do not have long life cycles. Each time you change computer systems, you will have to convert all records to the new system so that you can assure their preservation and provide access. The essential task is to assure that records with historical value remain accessible indefinitely into the future. Non-permanent records may be retained in any format. You will have to take precautions with records that you must keep longer than about 10 years for the same reasons addressed above regarding the short life cycle of computer systems. Your office will still be required to conduct the Self-Warranty process described above.

- **10) Should I print my email out and file it?**

As long as the email is not a permanent record, as defined by the schedule, you may elect to keep it in electronic format. Some Universities may have email policies that give specific guidance for when emails should be printed out. Check with your University Records Officer.

- **11) Why don't we just keep all of our computer records since computer storage is so cheap?**

The best practice is to destroy all records that have met their retention requirements at the same time, regardless of format or medium.

ACCESSING PUBLIC RECORDS

- **12) Can anyone see my records?**

Yes, except as restricted by specific provisions in state or federal law. G.S. 132-6 instructs: "Every custodian of public records shall pre-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... 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."

- **13) What about confidential records?**

Not all records meeting the statutory definition of a public record under G.S. 132-1 are open to public inspection. Exceptions to the access requirements in G.S. 132-6 and the definition of public records in G.S. 132-1 are found throughout the General Statutes and in federal law (particularly student records, most personnel records, and medical records of students or staff). You must be able to cite a specific provision in the General Statutes or federal law when you restrict or deny access to a particular record.

- **14) Why don't I just use my personal email account for work since it is more private?**

The best practice is to avoid using personal resources, including private email accounts, for public business. G.S. 132-1 states that records "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" are public records (emphasis added). The fact that public records reside in a personal email account is irrelevant. Likewise, use of a state-owner computer for personal email does not mean that personal email is not subject to inspection by third parties. Your university may prohibit use of a personal email account for official business.

DESTRUCTION OF PUBLIC RECORDS

- **15) What is a "legal hold" or "litigation hold" on records and when does it apply?**

A legal hold or litigation hold means that records that are the subject of the legal hold or litigation hold **must be preserved and thus must not be destroyed until officially released from the hold**. A legal hold or litigation hold is placed when either an official discovery order is served on the University requesting the production of the records in question (for a litigation, regulatory investigation, audit, open records request, etc.) or litigation is pending and the University is thus on notice to preserve all potentially relevant records. You must also ensure that for a claim or litigation that appears to be reasonably foreseeable or anticipated but not yet initiated, any records (in paper or electronic formats) relevant to such a claim or litigation are preserved and not destroyed until released by your University Counsel. The records in question must not be destroyed until the completion of the action and the resolution of all issues that arise from it regardless of the retention period set forth in this schedule. If you have any questions contact your University Counsel.

- **16) When can I destroy records?**

Each records series listed on this schedule or in a specific office records schedule has specific disposition instructions that will indicate how long that series must be kept in your office. In some cases, the disposition instructions will call for permanent retention in an Archives, a designated, authorized storage space meeting certain conditions, or your office. (See also the question above, "What do I do with permanent records?")

DESTRUCTION OF PUBLIC RECORDS

- **17) How do I destroy records?**

Records which have met their required retention requirements and are not subject to legal or other audit holds should be destroyed in one of the following ways:

A) burned, unless prohibited by local ordinance

B) shredded, or torn up so as to destroy the record content of the documents or material concerned

C) placed in acid vats so as to reduce the paper to pulp and to terminate the existence of the documents or materials concerned

D) buried under such conditions that the record nature of the documents or materials will be terminated

E) sold as waste paper, provided that the purchaser agrees in writing that the documents or materials concerned will not be resold as documents or records - N.C. Administrative Code, Title 7, Chapter 4, Sub-Chapter M, Section .0510

F) for records subject to the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), a method of destruction that complies with federal requirements.

- Confidential records should be destroyed in a secure manner so that the information contained in them cannot be viewed, used or recreated. For electronic records, permanent erasure or deletion of records or data requires specialized software, equipment, and/or skills. If this level of destruction is required, it is best to consult with IT professionals. Physical destruction of hard drives, magnetic tapes, CDs, or other electronic storage media is another means of disposal of media containing confidential or sensitive electronic records or data.

- Non-confidential records may be recycled or thrown out in accordance with the waste disposal policies and procedures of your University. Documenting record series destruction is advised. Contact your University Records Officer or Archivist for more information.

DESTRUCTION OF PUBLIC RECORDS

○ 18) When can I delete my email?

Electronic mail is just as much a record as any traditional paper record, and must be treated in the same ways. It is the content of each message that is important. If a particular message would have been filed as a paper memo, it should still be filed (either in your email program or in your regular directory structure), and it should be retained the same length of time as its paper counterparts. It is inappropriate to destroy email simply because storage limits have been reached.

Three of our publications will be particularly helpful:

- • *E-Mail as a Public Record in North Carolina: Guidelines for its Retention and Disposition*
- • *E-Mail User Guidelines Checklist*
- • *North Carolina Public Records with Short-Term Value: Guidelines for their Retention and Disposition (located at the end of this section).*

○ 19) How do we destroy records that are not listed on any schedule?

Contact the University Records Officer. He or she will discuss the nature of the records with you to determine if the records have historical value. If the records do have historical value, he or she will discuss the possibility of transferring the records to the Archives or to another designated, authorized permanent storage area.

- If the records are an active records series, the University Records Officer will help you develop or amend a schedule so that you can continue to destroy the records appropriately. If the records do not have historical value and are not currently being created, the University Records Officer or Archivist will ask you to complete a "Request and Approval of Unscheduled Records Disposal Form." He or she will forward that form to the OCR Government Records Branch to make a determination about that destruction.

DESTRUCTION OF PUBLIC RECORDS

- **20) Should I keep track of or inform someone about the records being destroyed?**

We recommend that you report on your records retention activities to your University Records Officer or Archivist on an annual basis. This report does not need to be detailed, but it is important that significant destructions be reported to University Records Officer.



HISTORICAL RECORDS

- **21) What do I do with permanent records?**

Permanent records (records with permanent historical value) should be transferred in accordance with the disposition requirements of this University General Schedule, or the provisions of your individual office records schedule, to your University Archives. If no other space is available, the records must be maintained permanently in the office that created the records, or in a storage space that is controlled for temperature and humidity, free of pests and insects, and secure from unauthorized entry. Your office must ensure that any records stored away from your main office area are well protected from natural and man-made problems, while remaining readily available to your staff and the public. Public records are public property.

- **22) What does it mean for records to have historical value?**

Records with historical value document significant events, actions, decisions, conditions, relationships, and similar developments. These records have administrative, legal, fiscal, or evidential importance for the University, for state government, or for its citizens. Call your University Records Officer or Archivist for further assistance.

- **23) What should I do with the really old records that I have just found?**

Call your University Records Officer or Archivist. He or she will help you examine the records and assess their historical value.

- **24) Can I give my old records to the historical society or public library?**

Before you offer any record to a historical society, public library, or any other entity, you must contact your University Records Officer or Archivist. Permanent records must be kept either in your offices, in your University Archives, or in an authorized space designated for the storage of permanently valuable records.



DISASTER RECOVERY



- **25) What should I do in case of fire or flood?**

Secure the area, and keep everyone out until fire or other safety professionals allow entry. Then, call your University Records Officer (Office of Legal Affairs (910) 672-1145) immediately after taking the steps noted above.

- ***DO NOT ATTEMPT TO MOVE OR CLEAN ANY RECORDS.***

Damaged records are extremely fragile and require careful handling. Our staff is trained in preliminary recovery techniques, and professional vendors can handle your larger disasters.

- **26) What help do you give in case of an emergency?**

We will do everything we can to make a visit to you at the earliest opportunity to provide hands-on assistance. We can assist you in appraising the records that have been damaged so that precious resources (and especially time) are not spent on records with lesser value. We can provide lists of professional recovery vendors that you can contact to preserve your essential and permanent records.

End of Presentation

Contact Information

Terrance B. Robinson
Office of Legal Affairs
Ext. 1145

Email: trobinson@uncfsu.edu