Public Records

UNC Asheville

Lucien “Skip” Capone III
scapone@unca.edu
Office of the General Counsel
October 22, 2014
An In-depth look at Two State Laws

- NC Public Records Act
- State Personnel Records Privacy Act
NC Public Records Act

What is a public record?
• documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material (includes email & text messages!)
• regardless of physical form or characteristics
• made or received pursuant to law or ordinance
• in connection with the transaction of public business by any [state] agency
General Rules

• The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people.

• Records are “public records” if they are:
  • used and kept in carrying out lawful or official duties and/or
  • encompass an action by or against the state agency arising out of the agency's official actions, duties or responsibilities.

• All institutional records should be considered open to the public unless a specific exception applies which would protect the privacy/confidentiality of the record.
Second Category of Public Records (1995 Amendment)

Electronic data-processing records

• An Agency that creates or compiles data or documents in a database management program or spreadsheet software must prepare an index to that database.

• Index must contain:
  • (1) a list of data fields
  • (2) a description of the format or record layout
  • (3) the time schedule when the database is updated
  • (4) a list of any data fields to which public access is restricted
  • (5) a description of the forms in which the database can be copied or reproduced using the agency's computing facilities, and
  • (6) a schedule of fees for the production of copies in each available form
BUT, Not All “Public Records” are Open to the General Public!

1. Confidential communications by legal counsel to a public board or agency
2. Individual tax liability information held by state agencies
3. Trade secrets furnished to a state agency in connection with a state contract
4. Certain sealed settlement agreements:
   • medical malpractice cases
   • judicially sealed settlement agreements
5. Criminal investigation records and intelligence information records
Exceptions (by virtue of other laws or public policy)

6. Minutes of closed meetings under open meetings law—NCGS 143-318 et seq.
7. Privileged disclosures (e.g. physician/patient)—Chapter 8 NCGS
8. State personnel files—Chapter 126 NCGS
9. Student education records--FERPA
10. Library records—NCGS 125-19
11. Public health—Chapter 130A NCGS
12. Protected Health Information – HIPAA
13. SSN & other personal identifying info.
Common Myths/Misconceptions

• Drafts are not public records
• Anything I do on my personal computer or smart phone is not subject to disclosure
• It’s confidential if I mark it “confidential”
• Copyrighted materials are not subject to public access
How to Respond to a Public Records Request

• First, CONTACT ME!
Complying with Requests

- Request may be made to “custodian” in any medium, except may require written request for computer database records.
- Do not have to create a record that does not exist or convert to a different medium, e.g. convert to electronic form.
- Must “redact” confidential data from public record requested.
- May not ask the purpose or motive for the request.
- Must comply “as promptly as possible” (within a reasonable time).
- Provide access "at reasonable times" and "under reasonable supervision”.
- May charge only actual cost for non-certified copy (see University Policy, http://administration.unca.edu/policies/3008).
- Written explanation for denial of request
- Intentional or knowing violations of statute subject to personal liability by state employee, unless acted upon advice of legal counsel.
Retention of Public Records

- Illegal to destroy a public record except as permitted by agreement with Department of Cultural Resources (Class 3 misdemeanor)

- Must take steps to preserve/archive

- UNC Asheville’s archivist and records retention officer is Gene Hyde
University Policy Highlights

http://administration.unca.edu/policies/3008

- Applies to all University employees
- Details proper procedures for complying with a public records request, namely contacting the General Counsel’s Office
- Outlines fee structure associated with records request
  - Standard requests – fewer than four hours
  - Extensive requests – more than four hours
- Describes enforcement and violations of the policy for EPA and SPA employees
• GENERAL RULE — Personnel records are not subject to disclosure under the NC Public Records Act.

• HOWEVER!!!!!!! Certain information about employees must be made public.
Public Personnel Information

(1) Name.
(2) Age.
(3) Date of original employment or appointment to State service.
(4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.
(5) Current position.
(6) Title.
(7) Current salary (includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity).
(8) Date and amount of each increase or decrease in salary with that department, agency, institution, commission, or bureau.

(9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau.

(10) Date and general description of the reasons for each promotion with that department, agency, institution, commission, or bureau.

(11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the department, agency, institution, commission, or bureau. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting forth the specific acts or omissions that are the basis of the dismissal.

(12) The office or station to which the employee is currently assigned.
Personnel Record Resources

• Personnel Records section of OSHR Policy Manual:

• UNC Asheville Personnel policies:
  http://administration.unca.edu/policies/3110
Questions?

&… Please help us with Assessment by participating in the questionnaire and quiz you will receive in the next day or two!