

**COUNTY OF WAYNE
NORTH CAROLINA**

PUBLIC RECORDS POLICY

A. PURPOSE

The purpose of this policy is to aid in determining what is a public record, general protocol for determining which departments need to respond, and protocol for how the County's Attorneys are to be used in responding to public records requests, among other items listed below. It is the policy of the County of Wayne to comply with all requests for public records in accordance with the law. Public records are the property of the people.

B. PUBLIC RECORDS

1. Public Records Defined

North Carolina General Statute (NCGS) 132-1(a) defines public records as "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."

According to NCGS 132-6.2(e), "Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist." Requestors should be aware that the Public Records Policy does not require the

County to do research, analyze data, or answer written questions.

2. **Protected Records**

All records maintained by the County of Wayne are public unless they are exempt from disclosure under North Carolina Public Records Law.

Exempted records include, but are not limited to:

- Confidential communications from the attorney to the client within the scope of the attorney-client relationship as defined in NCGS 132-1.1(a).
- Criminal investigation records and records of criminal intelligence information, as provided in NCGS 132-1.4 (active and closed investigations).
- Sensitive public security information, including specific details of public security plans and arrangements, detailed plans and drawings of public buildings and infrastructure facilities, and certain plans to prevent and respond to terrorist activity, as provided in NCGS 132-1.7, and technology security information, as provided in NCGS 132-6.1.
- Records of minors per NCGS 132-1.4, 132-1.12, and 7B-2901.
- All information contained in County employees' personnel files maintained by the County is confidential in accordance with NCGS 153A-98, except information deemed by NCGS 153A-98(b) to be a matter of public record. These rules apply to personnel information for applicants, current employees, and former employees.
- Tax information pertaining to a taxpayer's income or gross receipts may not be disclosed, as provided in NCGS 132-1.1(b).
- Social security numbers and other personal identifying information is confidential and unlawful to disclose to the public. In addition to social security numbers, "personal

identifying information" includes: employer taxpayer identification numbers; drivers' license numbers, state identification card numbers, and passport numbers; checking, savings, credit, and debit account numbers; personal identification code (PIN) numbers used to access financial resources; digital signatures; any other numbers or information that can be used to access a person's financial resources; biometric data; fingerprints; and passwords, all as provided in NCGS 132-1.10, NCGS 75-61, and NCGS 14-113.20.

-Trade secrets and electronic payment account numbers are protected as set forth in NCGS 132-1.2. (Note that to protect a "trade secret" detailed requirements must be met.)

- The seal of an architect, engineer, or land surveyor when that seal has been submitted for project approval under Part 4 of Article 18, Chapter 153A (Building Inspections) as set forth in NCGS 132-1.2.

-Certain "trial preparation materials" are protected as provided in NCGS 132-1.9. If records are created for or at the request of an attorney for the County when the County is engaged in litigation or litigation is anticipated, these records are likely protected "trial preparation materials." The County's Attorneys should be consulted if there is a request for such records.

- Names and addresses of complaining witnesses to crimes must be temporarily withheld if release of the information is reasonably likely to pose certain threats to the witnesses or materially compromise the investigation, as provided in NCGS 132-1.4.

- Certain economic development incentives are temporarily protected, but the County must make certain prior disclosures to applicants, as provided in NCGS 132-1.11 and NCGS 132-6(d).

-Closed session meeting minutes that are deemed protected under NCGS 143-318.10(e).

- Public enterprise billing information, as provided in NCGS 132-1.1(c).

- Records protected by copyright. The County must permit inspection of records protected by copyright, but cannot make copies of copyrighted records, pursuant to 17 U.S.C.

§ 106(1).

C. RECORDS REQUESTS

1. Responding to a Public Records Request

According to NCGS 132-6(a), "Every custodian of public records shall permit any record in the custodian's custody to be inspected and 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." A public records request shall be placed with Clerk to the Board of Commissioners. Describe the information you are seeking, including as

much detail as possible. The County will work on a timely, thorough, and transparent response to all records requests. The requestor will receive an email response acknowledging the request within two business days after receipt of the request by the Clerk to the Board of Commissioners. If the County requires additional information before beginning to process the request, the County will contact the requestor. Within five business days of receipt of the records request, the County will respond by 1) providing copies of the records in physical format, or providing access to the records; 2) if there are no responsive records, providing a written statement that a search was made and no responsive records were located; 3) if the responsive records are exempt from the Public Records law, either denying access to the entire records or providing the records with the exempt information redacted; or 4) informing the requestor that more time is needed and providing an estimated deadline for the response. If a response takes longer than five business days, the County will contact the requestor to provide an update on the request.

a. Responding to Requests for Emails and Other Digital Communications

Upon receipt of a request for emails, the County will determine the appropriate search keywords and date range for a search of the County's email archive. The County will contact the requestor and discuss the request and search strategy. The requestor may modify the search keywords and date range. County employees will review identified emails. As with other records that are exempt from disclosure under state or federal laws, the County may deny access to the protected emails. The County will provide the number of such emails along with the legal justification for denial of access.

b. Public Records Requested by a Member of the Board of Commissioners

Any Public Records request placed by a County Commissioner will be treated like any other request.

D. RETENTION AND DISPOSITION OF PUBLIC RECORDS

North Carolina's Public Records law requires that public records in all formats be managed in a manner that protects their integrity and allows public inspection and copying. Except for public records that are retained in office permanently, such as the minutes of Board of Commissioners, the County may destroy public records, both physical and digital, after the records are retained for the correct time periods in the records retention schedules published by the North Carolina Department of Natural and Cultural Resources.

E. RESPONSIBILITY FOR RECORDS

The County department that is the custodian of the requested record will be assigned the public information request. The County's Attorneys will be involved in requests where it is the custodian of the records or where legal determinations need to be made.

2. Redacting Protected Information

If the content of a record is partially public and responsive to the request and partially exempt, the exempt portion of the content will be redacted. Redaction is "the process of masking or removing sensitive information in a document before releasing it for public use" (ARMA International, *Glossary of Records Management and Information Governance Terms*, 5th ed., 2016). The County will cite the statutes that protect the redacted information.

3. Special Service Charge for Producing Records

In most cases, public records are easily retrievable. There is a charge of twenty five cents (\$0.25) per page. Pursuant to NCGS 132-6.2(b), a special service charge can also be applied "if the

request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested ..." The special service charge "shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency" (NCGS 132-6.2(b)).

The requestor will be charged for time spent reviewing records that resulted from a search, determining which records are responsive to a public records request, and redacting confidential information.

The special service charge will be the hourly rate in accordance with the employees who would be conducting the work.

The County will provide the requestor with a written estimate and extend the option of the requestor paying the charge. The requestor will be granted the opportunity to narrow the scope of the request to reduce or avoid the service charge.

The requestor is required to pay the County of Wayne in advance of fulfillment of the request. If the time taken exceeds the estimate, an additional deposit will be required. Unused portions of the deposited funds are refunded. Payment can be made in-person at the Office of the Clerk to the Board of Commissioners or at the Finance Office of the County of Wayne.

If the requestor wishes to dispute the special service charge, he/she may file a complaint to the Clerk to the Board of Commissioners within ten (10) business days of receiving the response to his/her request. The appeals process is found below in Paragraph 4.

4. Disputing a Records Request and Appeals Process

If a requestor has a concern or complaint regarding the initial response sent, the County asks that the requestor first contact the Clerk to the Board of Commissioners to file a complaint within ten (10) business days of receiving the response to the public information request. The first appeal will be submitted to the Assistant County Manager, or his designee, who will review the records request, the information provided, and the dispute, and make a determination based on the appeal request. If further actions are requested beyond the first step, the appeal can be presented to the County Manager or his designee for review and determination.

5. Request by a Member of the Board of Commissioners for Information Not Covered by Public Records Request.

If a member of the Board of Commissioners requests information from a department, it shall go to the Department Manager. If the Department Manager determines that the request will take more than two hours to complete, the Chairman of the Board of Commissioners must approve. If the Chairman does not approve, the Board of Commissioners may overrule the Chairman.