

# OPEN MEETINGS AND PUBLIC RECORDS



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A group of people, including a woman in the foreground wearing a white t-shirt and blue jeans, are working in a greenhouse. They are tending to plants growing on a trellis system. The scene is brightly lit, and the atmosphere appears to be collaborative and focused.

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# OPEN MEETINGS

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## *Government Transparency*

- All official meetings of public bodies and decision-making by public bodies must be conducted openly to give meaning to the state's official policy that government operations are the people's business.
- For this reason, the Open Meetings Law requires notice of meetings, public access to meetings, and record-keeping of meetings through minutes.

# OPEN MEETINGS

## *Basic Requirements*

- Official meetings of public bodies must:
  - > be conducted in public, and
  - > with notice as required by law (depending upon the type of meeting).
- Limited statutory exceptions allow a public body to meet in closed session.



# OPEN MEETINGS

## *Key Terms Defined*

- **Public Body:** Any elected or appointed authority, board, commission, committee, council or other body of the State or of one or more local governments (1) with two or more members; and (2) exercising or authorized to exercise any of the following powers:
  - > Legislative
  - > Policy-making
  - > Quasi-Judicial
  - > Administrative
  - > Advisory

# OPEN MEETINGS

## *Key Terms Defined*

- **Official Meetings:** (1) A meeting, assembly, or gathering together, or the simultaneous communication by conference telephone call or other means; (2) of a majority of the members of the public body; and (3) for the purpose of:
  - > conducting hearings;
  - > participating in deliberations; or
  - > voting on or otherwise transacting public business.

# OPEN MEETINGS

## *Public Notice Required*

- Regular Meetings : Schedule filed in a central location; posted on agency website.
- Special Meetings : Posted written notice; mailed upon request; posted on website at least 48 hours before the meeting.
  - > Public body cannot discuss matters not identified in the notice of the meeting.
- Emergency Meetings - Notice to media who have filed a written request.
  - > Public body may consider only business connected with the emergency.



# OPEN MEETINGS

## *Public Notice Required*

### > Recessed Meetings

- A recessed meeting takes place when a public body stops a regular, special, or emergency meeting, then resumes the same meeting later. If a meeting is reconvened in this way:
  - Notice of when and where the meeting will reconvene must be given publicly during open session.
  - If the public body has a website maintained by its employees, it must post the time and place when the meeting will reconvene.

# OPEN MEETINGS

## *Meeting Materials*

- > The public has a right to see a meeting agenda and accompanying handouts (except exempted materials, such as attorney-client communications, etc.) as soon as they are created.
- > Officials cannot delay release of meeting materials until after they are sent to members of the public body or some other more convenient or advantageous time.

# OPEN MEETINGS

## *Closed Session Procedures*

- Meeting notice still required.
- There must be an adopted motion giving the purpose (statutory) of the closed session.
- Members of the public body are entitled to attend; others may be admitted if their presence is necessary.
- Public body must prepare a general account of each closed session. Summary may be sealed, if necessary to prevent frustration of purpose of going into closed session.

## OPEN MEETINGS

### *Permitted Purposes (examples)*

- To consider confidential records. (personnel or educational records)
- To consult with a Board attorney on matters within the attorney-client privilege, including consideration of litigation or a claim.
  - > Settlement approval must be reported publically and included in minutes.
- To establish a negotiating position in the acquisition of real property  
To consider performance, etc. of individual employees and officers.
- Honorary Degrees, Scholarships, Prizes and Awards.

## OPEN MEETINGS

### *Miscellaneous*

- Secret ballots are prohibited; written ballots, however, are permitted, if each person signs his or her ballot.
- Any person may tape or film an open meeting; the media are entitled to broadcast any open meeting.

# PUBLIC RECORDS





# PUBLIC RECORDS

## *Preservation and Disclosure*

“The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the *property of the people*. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law.”

# PUBLIC RECORDS

## *Key Definitions*

- **Public records** include:
  - > 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; and
  - > Made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of N.C. government or its subdivisions.
- Some exceptions apply. (e.g., attorney-client privilege documents)

# PUBLIC RECORDS

## N.C. Public Records Act

- The Public Records Act imposes obligations on all state and local government officials to:
  - > Allow inspection by any person or corporation of those government records not specifically exempted from disclosure, and
  - > Allow the public to obtain copies of public records — as promptly as possible upon request and at minimal expense.
- The North Carolina Supreme Court has said the Act is to be read liberally in favor of public access to records and information and any exemptions from the Act's mandatory disclosure requirement are to be read narrowly.

# PUBLIC RECORDS

## *Duty to Maintain*

- Public Records Must Be Maintained:
  - > No public official may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Natural and Cultural Resources (DNCR).
  - > Anyone who removes or destroys a public record is guilty of a Class 3 misdemeanor and upon conviction must be fined a minimum of \$10.00 and a maximum of \$500.00.

# PUBLIC RECORDS

## *Retention of Public Records*

- The UNC System Office (with the consent of DNCR) has created a Records Retention and Disposition Schedule :(<https://www.ncat.edu/divisions/business-and-finance/policies-misc/rec-ret-pol.pdf>)
- Good rule of thumb: Save for six years.
- “Transitory Records” may be destroyed when reference value ends:
  - > Fax cover sheets containing only transmittal information;
  - > Memory aids; or
  - > Routing slips.

# PUBLIC RECORDS

## *Obligation to Disclose*

- Anyone can ask for any public record for any reason.
- If the University refuses to provide access or a copy, the person can bring suit against the University.
- If the court finds that the University should have disclosed the public records, the University must pay the attorneys' fees.
- An individual employee may be ordered by the court to pay some or all of the attorneys' fees if the court finds the employee knowingly or intentionally violated the statute.



# PUBLIC RECORDS

## *Protected Records*

- Certain public records cannot be disclosed because they are protected by law. For such documents, there is a duty to protect against disclosure:
  - > Most personnel records (Chapter 126 of the N.C.G.S.);
  - > Education Records (FERPA);
  - > Criminal Investigations;
  - > Social Security Numbers and other personally identifiable information (PII); and
  - > Medical Records. (Chapter 90 of the N.C. General Statutes)

## PUBLIC RECORDS

### *Public records on private devices and vice versa*

- When you email or text using your personal computer/cell phone and the message is related to University business:
  - > You have created a public record on your personal phone.
  - > The University will probably not confiscate your computer/phone, but we will ask you to provide the public records from your phone if a public records request is made.
- When you send a personal email using your University email account
  - > You have not created a public record

# PUBLIC RECORDS

## *Litigation*

- Discovery in litigation
  - > When someone files a lawsuit against the University (or one of its employees), the plaintiff has the right to conduct “discovery”: they may request documents having even the remotest apparent relevance.
  - > Documents protected by privacy rules may be produced in discovery.
- Litigation holds
  - > If it appears that someone may sue, or if someone has filed suit, Legal Affairs may issue a “litigation hold,” which asks you to hold all documents related to the potential complainant, including protected documents.

# PUBLIC RECORDS

## *Key Concepts*

- State law requires public agencies to provide broad access to records made or received in the transaction of public business. (G.S. § 132-1)
- Email and other electronic records are covered by the public records law.
- The law does not apply to records that do not involve the transaction of public business, such as personal (not work-related) communications.
- The content of a record, not its form or location, determines whether it is subject to disclosure under the public records law.
- The right of access includes the right to inspect and obtain a copy. [G.S. § 132-6(a)]

# QUESTIONS?

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