

N O R T H C A R O L I N A

Guide to Open Government and Public Records



Roy Cooper
North Carolina Attorney General

Dear friends:

North Carolina's public records laws are critical to operating a fair and open government and require careful study and practice to uphold.

My office, together with the North Carolina Press Association, has published this guide to help make sure people are allowed to watch their government in action.



Here you will find basic information on the laws and answers to commonly asked questions regarding access to public records and meetings.

The spirit with which public officials work to comply with the law is as important as the law itself. Recognizing that the public's business should be done in the open and honoring requests for help serves the people as well as those who seek to inform them.

In fact, the policy of the state of North Carolina is to allow public access to the activities of government.

In other words, when in doubt about how to interpret the state's open records and meetings laws – always work to resolve the question in favor of openness.

Strong laws and a commitment to openness will ensure that North Carolina residents are informed about government's business. Thank you for reviewing the laws and for your public service to your community and the people of North Carolina.

Sincerely,

A handwritten signature of Roy Cooper in cursive script.

Roy Cooper

A publication of the North Carolina Attorney General's Office and the North Carolina Press Association



INTRODUCTION

The policy of the state of North Carolina is to allow public access to the activities of government. This booklet explains North Carolina's Public Records Act and Open Meetings Law. These laws are commonly known as the "Sunshine Laws" because they shed light on the activities of government.

North Carolina Attorney General Roy Cooper and the North Carolina Press Association are providing this guide to help everyone — public officials and the general public — know more about open government. This booklet is not intended to provide legal advice. The goal is to provide a useful guide to help everyone understand North Carolina's Sunshine Laws.

FOR THE PUBLIC

Making a Public Records Request

There is no specified procedure or form necessary to request copies of public records. There is no requirement that requests be in writing, except in the case of requests for copies of computer databases. Some agencies might ask for written requests for their records in order to assure accuracy, but they cannot insist on it. There is no requirement that the person making the request refer specifically to the Public Records Law or disclose the reason for their request. Also, there is no requirement that the person making the request provide their name or any identification.

Receiving Notice and Attending a Meeting of a Public Body in North Carolina

In most cases, the public is entitled to be notified that a meeting is scheduled. Public bodies are required to send out individual notices of unscheduled meetings to anyone who submits a written request and pays a \$10 annual fee. Members of the news media do not have to pay the \$10 fee. Different bodies operate under different notice rules. The public can also check their local newspaper's web site for notices of upcoming meetings. The public has a right to see a meeting agenda and accompanying handouts (except exempted materials, such as attorney-client communications, etc.). The public has the right to see written minutes of closed meetings, once the situation that prompted the closed meeting has passed.

FOR GOVERNMENT OFFICIALS

Responding to a Public Records Request

1. Make a note of the requested information and the date of the request.
2. Determine if the request is for copies of docu-

ments or to inspect documents. The public and news media are entitled to both.

3. Determine whether there will be a cost — other than the cost for simple copying. Any fee charged must not exceed the actual cost of searching for and making copies. No fees may be charged for inspecting public records.

4. Notify the requesting party in writing that the request has been received and give a reasonable timetable for a response. Include information about costs.

5. Remember that public records includes all books, maps, photos, papers, cards, magnetic tapes, computer data or other documentary materials in the possession of a public body.

6. Be careful not to release private information such as Social Security numbers, drivers license numbers or bank account information.

7. If you have questions or concerns, contact the Attorney General's office at (919) 716-6938 or email the Open Government Unit at OpenGov@ncdoj.gov.

How to Properly Give Notice of and Conduct a Meeting

Make sure that all meetings of a public body, except emergency meetings, are formally noticed in accordance with the schedule established by the public body.

The formal notice of a "regular" public meeting must advise the public of the date, time, and place of the meeting.

If a special meeting is to be held (any meeting other than a regularly scheduled or emergency meeting), the public must be given notice of the meeting at least 48 hours in advance by posting the notice on the public body's principal bulletin board and by sending notice to any media that have requested notice of a special meeting.

An emergency meeting may only be convened if there are unexpected circumstances to warrant holding a meeting on less than 48 hours notice to the public. If such circumstances exist, formal notice of the emergency meeting must be given to all media that have requested notice.

If any meeting is recessed, formal notice of when and where it will be reconvened must be given publicly during the open meeting that was recessed.

PART I

THE PUBLIC RECORDS ACT

A. Background

The North Carolina Public Records Act makes clear that written materials and other information created or received by state and local government is the property of North Carolinians and gives the people a means of enforcing their right to see government records. The Public Records Act imposes obligations on all state and local government officials to: 1) allow inspection by any person or corporation of those government records not specifically exempted from disclosure; and 2) allow the public to copy promptly upon request and at minimal expense records of its government.

B. Liberal Interpretation in Favor of Openness

Consistent with the principle that records and information compiled by state and local government belong to the people, the North Carolina Supreme Court has developed guideposts for interpreting the law to be used by the courts and government officials charged with fulfilling their disclosure obligations to the public. Specifically: a) the Public Records Act is to be read liberally in favor of public access to records and information; and b) exemptions from the Act's mandatory disclosure requirement are to be read narrowly.

C. Frequently Asked Questions

1. What is the public policy regarding public records and open meetings?

Public Records – The North Carolina General Assembly has declared as a matter of public policy that public records and public information compiled by agencies of state government or its subdivisions, including local government, are the property of the people.

Open Meetings – The North Carolina General Assembly has declared it to be the public policy of North Carolina that the hearings, deliberations, and actions of public bodies be conducted publicly.

2. Does the North Carolina Public Records Law cover access to records of federal agencies?

No, unless those records are in the custody of state and local government agencies. The 1966 Freedom of Information Act (FOIA) generally provides that any person has a right to access federal agency records, except when all or parts of those records are protected by specific exemptions or specific law enforcement record exclusions. People seeking federal records under FOIA should contact the public information officer for the federal agency maintaining the records.

3. Are the Public Records and Open Meetings Acts the only laws dictating the public's right to access certain records or meetings?

No. There are times when other state or federal laws may protect public access to select records or meetings. For example, select state statutes may require disclosure

of particular records, such as limited items in a personnel record.

4. Who may inspect or get copies of public records?

Any person has the right to inspect, examine and get copies of public records. People requesting public records do not have to disclose their identity or their reason for requesting the information.

5. What are public records?

Public records are documentary materials made or received by government agencies in North Carolina in carrying on public business. Public records include materials written or created by the government and its employees. They also include materials written or made by private people or companies and submitted to the government, regardless of whether those materials were required or requested by the government or whether they were sent to the government voluntarily at the private person's initiative.

Public records include both paper and electronic documents, emails, 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.

Public records include documentary materials that government agencies are required by law to make or collect. Public records also include materials that government agencies make or collect at their discretion in carrying on government business.

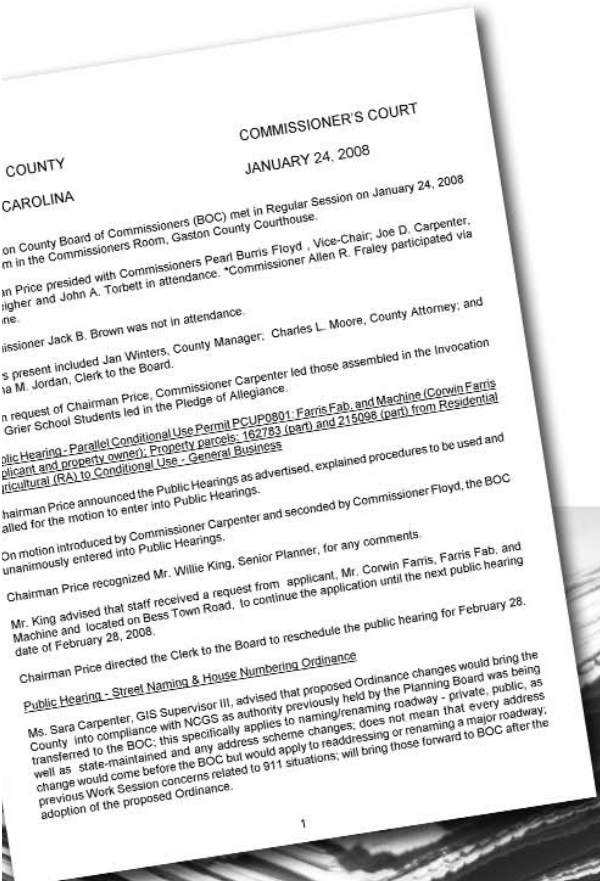
Some drafts are public records and others are not. If drafts have been received by a government agency in the course of doing public business, they become state property and as such, generally are considered public records. A draft does not have to be submitted to the members of a public body or the head of a public agency for approval to be considered a public record. Even if the author of the draft is not a government employee, the draft is public record if it has been received by a government agency.

Indexes of computer databases – which every public agency in North Carolina is required to produce – are public records. Indexes include information about data fields, lists of data fields to which public access is restricted and unrestricted, and a schedule of fees for producing copies. The indexing rule does not require a government agency to create a database it has not already created.

North Carolina Courts have interpreted the Act in a manner that favors disclosure of the documents listed above. There are numerous exceptions to the Act; however, they should be interpreted narrowly.

6. Which government agencies must permit inspection and furnish copies of records?

All state agencies must permit inspection and furnish copies of public records. These agencies include all public offices, officers and officials (elected or appointed),



staff members, institutions, boards, commissions, bureaus, councils, departments, authorities and other units of government. State, county, city and town governments and their departments, officials and employees are included, as are all other political subdivisions and special districts.

7. How can the public inspect public records?

Anyone may inspect and get copies of public records. Normally, a request to any employee in a government office should be sufficient to get access to records in that office. Each office should have a “custodian” of public records who is required to allow those records to be inspected. Government agencies that hold public records of other agencies for storage or safekeeping or to provide data processing are not “custodians” and therefore, are not required to allow inspection of those records.

8. Can the government require a person to tell why they want to see or obtain copies of public records?

No. The government may not require a person to give a reason for requesting to see public records. Access to public records should be permitted regardless of the intended use, even if a person’s interest is business-driven or is based solely on idle speculation.

9. Is there a specified procedure for requesting public records?

No. The law does not specify a procedure and there is no specific form for making requests. There is no requirement that requests be made in writing. There is no requirement that the person making the request refer specifically to the Public Records Law when making the request.

10. Is there a time period for government agencies to respond to records request?

The law does not require that requests be made in advance and it requires no specific waiting period between the time of the request and the time of inspection. At the same time, the Public Records Act does not permit an automatic delay by the government in releasing public records, either to allow for approval of disclosure or to notify those identified in public records. The law says inspection and examination of records should be allowed at “reasonable times” and under the supervision of the agency. This means that agencies may, within reason, determine how and when they will allow inspection. Agencies may require that an employee watch or supervise anyone inspecting records, and agencies may take precautionary measures to ensure that records are not damaged or taken. Agencies may take reasonable steps to ensure that private information is not disclosed. Agencies also may place reasonable restrictions on inspections to preserve records that are old or in poor condition, and they may take a reasonable amount of time to collect and present records for inspection. Agencies may not, however, withhold records based on the agency’s belief that immediate release of the records would not be “prudent or timely.”

11. How do agencies furnish copies?

There is no requirement that requests for copies be

made in advance. Agencies are required to furnish copies “as promptly as possible”. Agencies are not required to provide copies outside of their usual business hours.

12. Who can obtain copies of public records?

Anyone can obtain copies of public records. Requesters can simply ask the agency to make copies or they may make their own copies, using agency equipment. Some people bring their own equipment to make copies. Some may ask to take public records to another location (such as a library, copy store or their own office) to make copies. The law does not specify how copies must be made. Since copying public records is subject to agency supervision, agencies may have different rules covering how the public can use agency equipment, make their own copies or make copies elsewhere. The law makes it clear that agencies must “furnish” copies of public records to people who request them. At the least, this means that agencies must make copies of public records for people who request them.

13. Can citizens request copies of public records in any media available?

If an agency has the capability to provide copies in different kinds of media (for example, in print or on computer disk), requesters can ask for copies in any and all the media available. The agency may not refuse to provide copies in a particular medium because it has made, or prefers to make, copies available in another medium. However, agencies can assess different copying fees for different media. Agencies are not required to put a record into electronic form if that record is not already kept in that medium. If a request is granted, copies must be provided as soon as reasonably possible. If a request is denied, the agency must explain why at the time of denial. If asked to do so, the agency must promptly put in writing the reason for denial. NOTE: People requesting copies of public records may ask for certified or uncertified copies. Certified copies include a statement by the agency that the copy is a true and accurate copy of the original.

14. May an agency charge fees for public records?

Government agencies may not charge fees for inspecting public records. Under certain circumstances, fees may be charged for copies of public records. In general, the law says that copies of public records may be obtained free or at actual cost, unless there is another law that specifies otherwise. Fees for certifying copies of public records are to be charged as prescribed by law. (See Gen. Stat. 132-6.2b). For uncertified copies, agencies may not charge fees that are higher than the actual cost of making the copy. “Actual cost” is defined as “direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles.” The law does not give examples of actual costs but it does say that actual cost may not include costs the agency would have incurred if the copy request had not been made. That means that under most circumstances, fees may not include the labor costs of the agency employees who make the copies. However, if making the copies involves extensive clerical or supervisory assistance, the agency may charge a special service

fee in addition to actual duplication costs. This service charge must be reasonable and based on actual labor costs. Agencies also may charge to recover the costs of mailing copies. Complaints or disputes about all records copying fees may be directed to the state Chief Information Officer or their designee for mediation.

15. Must a public agency provide information in verbal form?

No. The law does not require that government agencies provide information verbally, although many agencies designate a public information officer to handle media requests.

16. Must a public agency create or compile a record upon request?

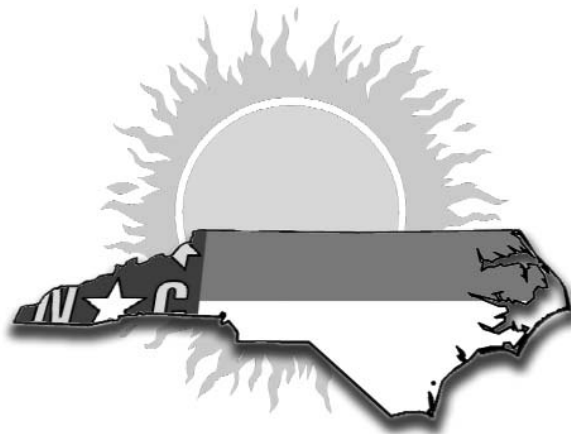
No. An agency may agree to compile or create a record and may negotiate a reasonable service charge for doing so. However, it is generally understood that agencies do not have to create or compile records in either situation.

17. How does an agency handle records that contain public AND confidential information?

Agencies may not refuse to permit inspection or provide copies of such material in its entirety but must permit inspection and provide copies of the public parts of these records. They can separate or redact the confidential parts. Agencies must bear the cost of separating confidential information.

18. What happens if an agency refuses to release or disclose a public record?

Anyone denied copies of or access to public records can bring a civil action in court against the government agency or official who denied access. Courts are required to set public records lawsuits for immediate hearings and give hearings of these cases priority over other cases. A government agency may not bring a pre-emptive lawsuit in such cases. An individual also may not bring a public records lawsuit as part of another legal action. If a person files a civil action and the judge orders the inspection or copying of public records, the court shall also order the agency to pay the successful party’s attorney fees. The court shall order an agency to pay attorney fees if it finds that the agency acted without substantial justification in denying access and there are no special circumstances that would make the award of attorney fees unjust.



PART II

Records Exempt from Disclosure

The Public Records Law says records containing certain communications between attorneys and their government clients, state tax information, trade secrets, certain lawsuit settlements, criminal investigation records, and records about industrial expansion are not public records and not subject to public disclosure requirements.

1. Attorney-client communications

The following written communications from attorneys to government bodies, if they are made within the attorney-client relationship by an attorney-at-law serving the governmental body, are not public records unless the government body that receives them decided to make them public:

- a. Communications about claims against or on behalf of the government body;
- b. Communications about claims against or on behalf of the governmental entity the government body represents;
- c. Communications about the prosecution, defense, settlement or litigation of judicial actions, administrative proceedings, or other proceedings to which the government body is a party;
- d. Communications about the prosecution, defense, settlement or litigation of judicial actions, administrative proceedings, or other proceedings which directly affect the government body, or which may directly affect the government body.

(NOTE: Public inspection of these written communications from attorneys to government bodies is restricted in this way only for three years after the public body receives them. After that, these written communications automatically become public records and they are then subject to inspection by the public.)

2. Trial preparation materials

Generally these are not public records. However, anyone denied access to a public record that is also claimed to be trial preparation material prepared in anticipation of a legal proceeding that has not yet been begun can ask a court to determine if the record is trial preparation material prepared in anticipation of a legal proceeding. After the legal proceeding is over – including all appeals – or in the case where no legal proceeding ever began, the custodian of a public record shall make the record available for public inspection.

3. Tax records

Most information from and about taxpayers may not be disclosed, except as allowed in state tax law. Information that may not be disclosed includes:

- a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed, and information obtained in taxpayer audits or in taxpayer correspondence;
- b. Information about whether a taxpayer has filed a

tax return or a tax report;

- c. Lists of taxpayer names, addresses, Social Security numbers or similar taxpayer information.

State employees and officials are permitted to make limited disclosures of this information in certain circumstances, which are listed in N.C. Gen. Stat. 105-259(b). Many of these circumstances involve disclosure to other government agencies to assist them in carrying out various laws.

4. Trade and corporate secrets of companies that deal with public agencies

Generally, this information is not subject to disclosure. Trade secrets are defined as business or technical information that has commercial value because it is not generally known or not easily discoverable through independent development or reverse engineering. Trade secrets may include formulas, patterns, programs, devices, compilations of information, methods, techniques or processes. For information to be considered a trade secret, the efforts to maintain its secrecy must be reasonable under the circumstances. For trade secret information to be exempt from disclosure by a public agency, the information must meet the statutory definition of a trade secret. The information must also be furnished to the agency through a business transaction with the agency (for example, performance of a contract or making of a bid, application or proposal), or furnished to the agency in compliance with laws or regulations. The trade secret information must be designated as “confidential” or as a “trade secret” at the time the information is initially given to the agency.

5. Settlement documents

Settlement documents in most lawsuits involving state and local governments are public records. Settlement documents are public records if the underlying suit or proceeding involves the public agency’s official actions, duties or responsibilities. Settlement documents include settlement agreements, settlement correspondence, consent orders, documents dismissing or ending the proceeding, and payment documents such as checks or bank drafts. A public agency may not enter into a settlement that includes a requirement that the settlement be kept confidential. No settlement document that is sealed by a judge’s order may be subject to public inspection. This section of the law does not apply to settlements of medical malpractice actions against hospital facilities. Those settlement documents are not public records. Parties settling these actions may agree that the terms of the settlement are confidential.

6. Certain criminal investigation/intelligence records

Except for the records below, criminal investigation records are not public records. This includes criminal investigation records compiled by prosecutors and law enforcement agencies as they are attempting to prevent or solve violations of criminal law, and criminal intelligence is information compiled by law enforcement agencies in an effort to anticipate, prevent or monitor possible violations of criminal law. However, the following investigative material is, generally, public:

- a. Time, date, location and nature of crimes or

apparent crimes reported to law enforcement agencies;

- b. Name, sex, age, address, employment, and alleged crime of a person arrested, charged or indicted;
- c. Circumstances surrounding an arrest;
- d. Contents of “911” and other emergency calls, except the name, address, telephone number, or other information that identifies the caller, victim or witness. However, contents of the 911 database is not a public record;
- e. Contents of communications between law enforcement personnel that are broadcast over public airways;
- f. The name, sex, age and address of a complaining witness. A law enforcement agency is required to temporarily withhold the name and address of a complaining witness if the agency has evidence of, and therefore reason to believe, that releasing the information is likely to pose a threat to that person’s mental or physical health or personal safety. The agency also must withhold this information temporarily if releasing it would compromise a criminal investigation or intelligence operation. The law enforcement agency is required to release this information as soon as the reason for withholding it no longer exists;
- g. Arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summonses, and non-testimonial identification orders.

7. Records about proposed business and industrial projects

Generally, these records are public unless disclosure would frustrate the purpose for which the records were created. This means that the agency with these records may withhold the records from public inspection if public knowledge of the records would interfere with negotiations or deter a business from locating or expanding in the state. When there is no longer a danger that releasing the records might prevent the project from materializing, the agency must then release the records for inspection.

8. Business and industrial projects/incentives

Once a business has selected a specific location to locate or expand in the state, local government must disclose the relevant public records. The term “local government records” include state-maintained records that relate to a local government’s efforts to attract the project. A 2005 amendment states that once a state or local government or specific business has communicated a commitment, or a decision by the State or local governments been announced, the government agency shall disclose as soon as practicable – and within 25 business days – public records requested for the announced project.

Since 2005, information agencies collect to conduct an assessment for the purpose of offering economic development incentives are subject to public records law, and must disclose that any information obtained is subject to

disclosure. The agency must also describe which information is subject to be withheld and the methods ensuring that confidential information is not disclosed.

9. Autopsy photos, video, audio records

The written report of an autopsy is a public record, available for inspection and copying upon demand. Autopsy photos may be inspected upon demand, but not copied without obtaining a court order.

10. Emergency response plans/public security plans

Emergency response plans and public security plans are not public records. The following are public records: (1) information relating to the general adoption of public security plans and arrangements; (2) budgetary information concerning the authorization or expenditure of public funds to implement public security plans and arrangements; (3) budgetary information concerning the construction, renovation or repair of public buildings and infrastructure facilities.

11. Social Security Numbers and other personal identifying information

Social Security numbers are not subject to disclosure. The law also entitles any person whose identifying information is listed on a public record displayed on an Internet website available to the general public to request that the Register of Deeds, Secretary of State, or Clerk of Court remove that information from the website.

NOTE: A public record that contains identifying information cannot be withheld but the identifying information must be redacted before allowing the document to be released.

12. Volunteer records maintained by local school boards

Records relating to volunteers in public schools may only be released upon a local board of education’s written finding – based upon substantial evidence – of the need to maintain the integrity of school operations or the quality of public school services through the release of the records.

13. State Ethics Board hearing records

The law says Ethics Commission complaints and responses, reports and other investigative documents are not public record unless a covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes public sanctions. When public sanctions are imposed on a covered person, the complaint, response, and Ethics Commission’s report to the employing entity shall be made public. Statements of economic interests filed by prospective state employees and written evaluations by the Ethics Commission of these statements are not public records until the prospective public servant is appointed or employed by the state. All other statements of economic interest and all other written evaluations by the Ethics Commission of those statements are public records.

PART III OPEN MEETINGS LAW

A. Background

The goal of government transparency is at the heart of the Open Meetings Law. All 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.

B. Frequently Asked Questions

1. What is the public policy regarding open meetings?

The General Assembly has declared it to be the public policy of North Carolina that the hearings, deliberations and actions of public bodies be conducted publicly.

2. What public bodies are subject to the statewide open meetings law?

Groups that are required to hold official meetings publicly, including: all state and local government authorities, boards, commissions, committees, councils or other bodies. The law applies to all these bodies of the state, or of one or more counties, cities, school administrative units, constituent institutions of the University of North Carolina, or other political subdivisions or public corporations. These groups are public bodies if they have two or more members, if their members are elected or appointed, and if they exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function.

3. What are official meetings?

An official meeting is defined by statute as a meeting, assembly, or gathering together of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, voting upon public business, or otherwise transacting public business. It does not matter when or where a meeting occurs. If a majority of the public body's members get together for one of these purposes it is an official meeting. Official meetings held by telephone conference call or other electronic means are also official meetings. The open meetings law states that each official meeting of a public body must be open to the public, and any person is entitled to attend an official meeting. Social gatherings or other informal assemblies of public body members are not official meetings if public business is not discussed or considered. Members of public bodies may not hold a social gathering or communicate through an intermediary – for example, in a series of telephone or other communications — to evade the spirit and purpose of the Open Meetings Law.

4. What kind of public notice is required for official meetings?

The Open Meetings Law contains detailed procedures that public bodies must follow to give the public advance notice of their official meetings. Requirements differ depending on whether the official meeting is a regular meeting, a meeting other than a regular meeting, or an



emergency meeting.

a. Regular Meetings

A public body is not required to set up a schedule of regular meetings. However, if a public body does make a schedule, it must keep a copy of that schedule on file with a clerk or secretary. The schedule should show the time and place of the regular meetings. If meetings are held by conference call or other electronic means, the notice should say where the public may go to listen. If a public body changes its schedule of regular meetings, it must file the revised schedule with the clerk or secretary. The revised schedule must be filed at least seven calendar days before the next meeting to be held under the revised schedule. Sometimes, a public body recesses one of its regularly scheduled meetings and agrees to continue the meeting at a different time or place. If the public body, during the regular meeting, announces the time and place for the continuation of the meeting, then no other notice is required. If the public body does not announce the time and place of a continued meeting during the regularly scheduled meeting, the public body must give an extra notice of the continued meeting.

b. Non-Regular Meetings

When a public body meets at a time not on its regular schedule, it must make a written notice giving the time, place and purpose of its next meeting. The public body must post this notice on its principal bulletin board (if the public body does not have a bulletin board it must post the notice at the door of its usual meeting room). The notice must be posted at least 48 hours before the meeting. The public body also MUST offer the media and the public the opportunity to put themselves on a list of people or organizations to be notified of all these meetings. Those who want to receive meeting notices may file written requests for notice with the clerk, secretary or some other person designated by the public body. The public body may require newspapers, wire services, radio stations, and television stations to renew these written requests annually. For all other people or organizations, the public body may require them to renew their requests quarterly and must charge them a \$10 annual fee to be placed on the list of people to receive meeting notices. If a media organization, person, or other organization has submitted a written request to be notified of the public body's unscheduled official meetings, the public body must mail or deliver a notice of these meetings to the person or organization at least 48 hours before the meeting.

c. Emergency Meetings

A meeting is an emergency meeting if it is called because of generally unexpected circumstances that require immediate consideration by the pub-

lic body. Public bodies must give the public, including the media, the opportunity to submit written requests for notification of emergency meetings. For emergency meetings, the public body must give notice to some, but not necessarily all, organizations and people who have submitted requests. The body must give notice to each local newspaper, wire service, radio station and television station that has filed a written request that contains a telephone number for emergency notice. NOTE: At an emergency meeting, the public body may consider only business connected with the emergency.

5. Can the public listen to an “electronic” meeting?

A public body may hold a meeting by conference telephone or other electronic means and the public has a right to listen. The body must provide a location and means for the public to listen and the meeting notice should indicate where the public may listen. The public body may charge up to \$25 to each listener to help pay for the cost of providing the location and listening equipment.

6. Can the public record and/or broadcast official meetings?

Any person may photograph, film, record or otherwise reproduce any part of an official meeting. Radio and television stations are entitled to broadcast all or any part of an official meeting. A public body may regulate the placement and use of equipment the public or media use to broadcast, photograph or record a meeting but only to prevent undue interference with the meeting. The public body must allow broadcasting and recording equipment to be placed in the meeting room so the equipment may be used. If the meeting room is not big enough to accommodate the public body, the public and the broadcasting equipment without interfering with the meeting, and if an adequate alternative meeting room is not readily available, the public body may require the pooling of equipment and the people operating it. If the meeting room is not big enough and the news media request an alternate site for the meeting, the public body may move the meeting to the alternate site and may require that the media requesting the alternate site pay for any costs incurred in securing the alternate site.

7. May public bodies conceal the subject of their actions or deliberations?

No. If members of a public body deliberate, vote or take other action on a matter at an official meeting, they must do so in a way that allows the public in attendance to understand what subject is being considered. The members may not consider matters by reference to letters, numbers, or other secret devices or methods with the intention of making it impossible for the public to understand what they are considering. The public body may deliberate, vote or take action by reference to an agenda if the agenda is worded so that the subjects to be considered can be understood and if copies of the agenda are available for public inspection at the meeting.

8. May public bodies vote by secret ballot?

No. Public bodies may vote by written ballot, but the following procedures must be followed: each member must sign the written ballot; the minutes of the meeting must show the vote of each member who votes; the written ballots must be made available for public inspection in the office of the clerk or secretary immediately after the meeting in which the vote took place; the written ballots must be kept available for inspection in that office until the minutes of the meeting — reflecting how the public officials voted — are approved. Only then may the written ballots be destroyed.

9. Must public bodies keep minutes of official meetings?

Yes. Every public body is required to keep full, accurate minutes of all portions of all official meetings, including closed sessions. Minutes may be kept in writing, or in the form of audio or video recordings. These minutes are public records, subject to public inspection and copying. Minutes of closed sessions are public records, but they may be withheld from public inspection only so long as public inspection would frustrate the purpose of the closed session.

10. May a public body ever hold a closed session of an official meeting?

Yes, but there are specific rules the body must follow. Public bodies may, in certain circumstances, exclude the public from certain portions of official meetings. However, closed sessions are not unofficial meetings where members of public bodies may discuss anything they want and take any action they want. The business conducted in a closed session is still considered public business. The subjects that may be discussed and actions that may be taken in closed sessions are limited and specific. A public body may hold a closed session only during an official meeting for which it gave proper public notice. During the open part of the official meeting, the public body must make and adopt a motion to hold a closed session. In making the motion, the public body must state which of the legally acceptable purposes it is relying upon to justify the closed session. Minutes must be kept and generally are public records. Once the closed session is completed, the public body must then re-open the meeting. During the closed session, the public body cannot engage in any other activities that are not related to the stated basis for the closed session. Motions to adjourn or recess, or to enter into another closed session are not permissible activities in a closed session. Establishing future meeting dates, times and places for reconvening meetings is not permitted in a closed session. All of these activities must take place in an open session.

11. What are the permitted purposes for holding closed sessions?

A public body may hold a closed session only when conducting such a session is in the public interest and is required to prevent public disclosure of the following types of information:

- a. Legally Confidential Information
Certain information is made confidential or privi-

leged by state or federal laws. (For example, patient medical and individually-identifiable student academic information is confidential. So are statutorily-defined trade secrets.) Public bodies may hold closed sessions to prevent disclosure of information that is legally confidential or privileged or is not subject to the Public Records Law. If a public body holds a closed session to prevent disclosure of this kind of information, when it makes the motion to hold the closed session it must state which law makes the information confidential or privileged.

- b. Honorary Degrees, Scholarships, Prizes and Awards
Public bodies may hold closed sessions to discuss honorary degrees, scholarships, prizes and awards so that these things will not be announced prematurely.
- c. Attorney-Client Discussions
A public body may hold a closed session to keep from revealing information and communications between the public body and its attorney which are subject to the attorney-client privilege. The law does not list all of the kinds of information that might be subject to attorney-client privilege but it specifies that a public body may hold an attorney-client closed session to consider and give instructions to an attorney in the handling or settlement of a claim, judicial action or administrative procedure. If the body considers or approves a settlement in a closed session, the terms of that settlement must be reported publicly and entered into the public minutes of the body as soon as possible within a reasonable time after the settlement is concluded. This does not apply to settlements of malpractice claims by or on behalf of hospitals. A body may not hold a closed session simply because its attorney is present. In a closed session, the public body may not discuss general policy matters. If the body holds a closed session to receive advice from its attorney about an existing lawsuit, the body must state the names of the parties in the lawsuit when the motion is made to hold the closed session.
- d. Location or Expansion of Businesses
A public body may hold a closed session to discuss matters related to the location or expansion of industries or other businesses in the area served by the public body.
- e. Contract Negotiations
A public body may hold a closed session to establish negotiating positions or to instruct its staff/agents about negotiating positions to be taken on certain types of contracts. The body may consider and discuss the public body's positions on the price or other material terms of contracts to acquire real property (but generally must disclose prior to the closed session the location of the property and identities of the parties to the proposed transaction) by purchase,

option, exchange or lease, as well as the amount of compensation and other material terms of employment contracts.

f. **Specific Personnel Matters**

A public body may hold a closed session in limited circumstances to consider certain personnel matters regarding individual employees or prospective employees. The body may consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of a current or prospective public employee or officer. The body also may hear or investigate a complaint, charge or grievance by or against an individual public employee or officer. A body may not remain in closed session to take any final action regarding these matters. A body must be in open session in an official meeting to take final action on the appointment, discharge or removal of employees or officers. These provisions apply only to employees and officers. They do not apply to members of the public, itself or members of other public bodies. A body may not hold a closed session to consider the qualifications, competence, performance, character, fitness, appointment or removal of one of its own members or members of any other public body. A body may not hold a closed session to consider or fill a vacancy among its own membership or the membership of other public bodies. All of these things must be considered and acted upon in open session. A body also is not permitted to consider general personnel policy issues in a closed session.

g. **Criminal Investigations**

A public body may hold closed sessions to hear reports about investigations, or to plan or conduct investigations, of alleged criminal misconduct.

12. What subjects are not permitted in closed sessions?

Public bodies may no longer hold closed sessions to consider the following matters:

- a. Budgeting matters;
- b. Employment and discharge of independent contractors;
- c. Contingency plans for strikes and other work slowdowns;
- d. Handling riots and disorders;
- e. Correction system security problems;
- f. Airport landing fees;
- g. Personal property gifts and bequests;
- h. Acquiring artworks and artifacts; and
- i. Election irregularities.

13. Are all public bodies subject to the Open Meetings Law?

Generally, the following bodies are not subject to the law:

- a. Certain public hospital boards. However, a public hospital board is subject to the Open Meetings Law if it is the governing board of a public hospital; a non-profit corporation to which a publicly owned hospital facility has been sold or con-

veyed; any subsidiary of such nonprofit corporation; and non-profit corporation owning the corporation to which a publicly owned hospital facility has been sold or conveyed.

- b. Grand and petit juries;
- c. The Judicial Standards Commission;
- d. The Legislative Ethics Committee;
- e. A conference committee of the General Assembly;
- f. A caucus by members of the General Assembly. However, no member of the General Assembly may take part in a caucus which is called to evade or subvert the Open Meetings Law;
- g. Law enforcement agencies;
- h. Professional and occupational licensing boards that determine applicant qualifications and take disciplinary actions are not subject to the Open Meetings Law when: they are preparing, approving, administering, or grading examinations; or meeting with respect to applicants or licensees;
- i. Public bodies that are subject to the Executive Budget Act, Chapter 143 of the General Statutes (most state government administrative agencies) are not subject to the Open Meetings Law when they meet to make decisions in adjudicatory actions;
- j. Boards of trustees of endowment funds authorized by Chapters 116-36 and 116-238 of the General Statutes;
- k. The Board of Awards;
- l. The General Court of Justice;
- m. A meeting solely among the professional staff of a public body; or
- n. The medical staff of a public hospital.

14. Are legislative commissions, committees, standing subcommittees and the Lottery Commission subject to the Open Meetings law?

Yes. With the exception of the Legislative Ethics Committee, General Assembly caucuses and conference committees, all committees of the state House of Representatives and Senate, their subcommittees, and study commissions are open and subject to the law. Reasonable public notice must be given for these meetings. That includes giving notice openly at a session of the Senate or House, or posting notice on the press room door of the Legislative Building and delivering notice to the Legislative Services Office. Violating these provisions is punishable according to the rules of the Senate and House. Meetings of these commissions and committees are subject to the Open Meetings Law provisions on minutes, closed sessions, electronic meetings, written ballots, acting by reference, broadcasting, recording, civil actions and disruptions of meetings.

The full text of North Carolina's Public Records and Open Meetings laws is readily available online via the North Carolina General Assembly's web page:

www.ncga.state.nc.us

From there, you can read the full text by statute.

For Public Records, check General Statute section 132

For Open Meetings, check General Statute section 143

Questions or concerns? Contact the Attorney General's office at (919) 716-6938 or e-mail the Open Government Unit at OpenGov@ncdoj.gov.

The North Carolina Press Association distributes, free of charge to all who ask, copies of the state's Sunshine laws. To request a copy, please e-mail holly@ncpress.com.

