

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

NORTH CAROLINA

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



OPEN GOVERNMENT GUIDE  
OPEN RECORDS AND MEETINGS LAWS IN  
**NORTH CAROLINA**

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Access to Public Records and Meetings in

## NORTH CAROLINA

**SIXTH EDITION  
2011**

Previously Titled  
Tapping Officials' Secrets

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## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



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**FOREWORD**

In North Carolina, public access to information about the workings of government is provided primarily through the Open Meetings Law (G.S. §§ 143-318.9 through 143-318.18 (1991)) and the Public Records Law (G.S. §§ 132-1 through 132-10 (1995)). These two statutes, coupled with a tradition of tenacity and ingenuity on the part of the state's newspapers and a deeply entrenched sense of entitlement on the part of the state's citizens, open many meeting rooms, files and databases that otherwise would remain closed. At the same time, both statutes include ambiguities and weaknesses that provide fertile ground for disputes and disagreements between citizens who seek information and public officials who want to conceal it. In many respects, therefore, the Open Meetings Law and the Public Records Law define not the rules of the game, but the playing field on which the access game is played.

Because North Carolina has no official legislative history, the origins and motivations for the state's two "sunshine laws" are, ironically, shrouded in historic mist. The Public Records Law dates from 1935. The principal purpose of the original statute was the *preservation* of public records; the preamble to the act, which was ratified as Chapter 265 of the 1935 Session Laws, lamented that the state's failure

to make systematic provision for the preservation and availability of public records has resulted in untold losses from fire, water, rats and other vermin, carelessness, deliberate destruction, sale, gifts, loans and the use of impermanent paper and ink . . .

The basic access provisions have remained little changed since their enactment. A significant amendment occurred in 1975, when Common Cause and other groups successfully supported an amendment to extend the law to computerized records and other non-traditional forms of data storage and retrieval. The most recent amendments took great strides to address the issues of pricing for copies of records and the timing of responding to requests.

The Open Meetings Law was originally enacted in 1971 as part of the wave of "open government" reform of the late 1960s and early 1970s that included the federal Freedom of Information Act.

Although the original Open Meetings Law required the "governing and governmental bodies" of the state and its political subdivisions to conduct their "official meetings" in public, it did not expressly require that notice of such meetings be given in advance. This anomaly led the North Carolina Court of Appeals to hold in a 1976 case that a public body was required to give "reasonable" notice of its meetings — a standard as to which ordinary citizens and public officials clearly would and did differ. *See, e.g., News & Observer Publishing Co. v. Interim Board of Education for Wake County*, 29 N.C. App. 37, 223 S.E.2d 580 (1976), in which the Court of Appeals held that, while one hour's notice of a school board meeting was unreasonably short, a 48-hour notice requirement imposed by the trial court's injunction was unreasonably long. One year later, the North Carolina Supreme Court ruled that a meeting of the faculty of the School of Law at the University of North Carolina was not covered by the Open Meetings Law because the faculty was neither a "governing" or "governmental" body of the state. *Student Bar Association v. Byrd*, 293 N.C. 594, 239 S.E.2d 415 (1977).

As a direct response to the shortcomings of the Open Meetings Law

revealed by these two decisions, the North Carolina Press Association and the North Carolina Association of Broadcasters mounted a major lobbying effort to improve the law in the 1979 General Assembly. The efforts were largely successful, in that the revised Open Meetings Law contained extensive and detailed provisions for public notice of regular, special, and emergency meetings; detailed provisions authorizing the broadcasting and recording of public meetings; and improvements in the provisions relating to injunctive relief.

The Open Meetings Law remained essentially unchanged from 1979 until 1986, when the North Carolina Press Association again spearheaded an effort to add a new remedy whereby a court could declare null and void actions of a public body "taken, considered, discussed, or deliberated" in violation of the law. This "voidability" remedy, which was vehemently opposed by local government groups and the North Carolina Hospital Association, was viewed as a prophylactic provision, in that it would be used primarily to force corrective action. The limited experience with the provision since its enactment suggests that this view was correct.

The North Carolina Open Meetings Law includes the following forceful policy statement:

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.

Ironically, the General Assembly, which promulgated the foregoing policy statement, was effectively exempted from the law until 1991, because a section of the Open Meetings Law (since repealed) provided that legislative committees and subcommittees had the "inherent right" to hold an executive session to prevent personal embarrassment or "when it is in the best interest of the state." Moreover, while the rules and procedures adopted by the House and Senate resulted in the legislative process being generally accessible and open, the General Assembly lapsed into a habit of having an unofficial, off-the-books group of powerful legislators meet in secret to formulate key details of the state budget. Editorial pressure curtailed this process for a few years, but in recent sessions it has emerged again.

In 1994, the statute was further amended to broaden the definition of a public body; reduce the number of justifications for closed sessions; institute procedural safeguards when a public body goes into closed session; require minutes be kept of all meetings — open or closed; expose public officials to personal liability for attorneys' fees if they violate the law; establish a procedure for obtaining an expedited hearing on alleged violations; and include constituent institutions of the University of North Carolina within the ambit of the Open Meetings Law.

In 1996, the North Carolina Supreme Court ruled in *Maready v. City of Winston-Salem*, 342 N.C. 708, 467 S.E.2d 615 (1996), that recordation of the single word "discussion" constituted full and accurate minutes of a closed session. In response, the General Assembly further amended the law to require that "[w]hen a public body meets in a closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings." G.S. § 143-318.10(e).

Most elected state officials give considerable lip service to the concept of open meetings and public records, and many provide substantive support for improvements in the statutes. On the other hand, the depth of commitment is reflected in the fact that almost all members of the General Assembly (including some who have been advocates for the principles of open government) are adamantly opposed to imposing civil penalties or criminal fines on public bodies or public officials who violate the Open Meetings Law or the Public Records Law. Since there also is general agreement that district attorneys would almost

never choose to prosecute such violations even if criminal sanctions were available, proponents have chosen to support remedies which can be enforced by “any person” who is willing to institute suit.

The 1995 amendments to the Public Records Law added a strong policy statement in § 132-1(b):

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. As used herein, ‘minimal cost’ shall mean the actual cost of reproducing the public record or public information.

Among other recent, significant changes are provisions defining particular criminal information as public information; a prohibition against asking a requester for what purpose he seeks a record; a requirement that public agencies provide access to non-confidential information that may be commingled with confidential data; a requirement that agencies maintain indexes of their databases; a narrower definition of “actual cost” of producing a public record; and better judicial remedies for violations of the law.

The principal public support for the protection and improvement of the Open Meetings Law and the Public Records Law in recent years has been provided by the North Carolina Press Association and the North Carolina Association of Broadcasters. The North Carolina League of Municipalities, the North Carolina Association of County Commissioners, and the North Carolina Hospital Association repeatedly oppose measures to strengthen the Open Meetings Law and Public Records Law.

In 2004 and 2005, the North Carolina appellate courts ruled that government agencies may not use either the Public Records Law or the Open Meetings Law as a sword by suing private citizens for a declaratory judgment to resolve disputes over the proper interpretation of the law. The courts held that both statutes were enacted for the benefit of the public and that allowing governmental bodies to sue would discourage citizens from seeking access to records and meetings and pervert the purposes of the statutes. *McCormick v. Hanson Aggregates Southeast Inc.*, 164 N.C. App. 459, 596 S.E.2d 431. *cert. denied and appeal dismissed*, 359 N.C. 69, 603 S.E.2d 131 (2004). *See also City of Burlington v. Boney Publishers Inc.*, 166 N.C. App. 186, 600 S.E.2d 872 (2004), *disc. rev. improvidently allowed*, 359 N.C. 422, 611 S.E.2d 833 (2005).

Attorney General Roy Cooper recently published a *Guide to Open Government and Public Records* (“AG Guide”), in which he summarizes and reiterates the basic principles of open government such as the strong preference to interpret in favor of openness.

## Open Records

### I. STATUTE -- BASIC APPLICATION

#### A. Who can request records?

##### 1. Status of requestor.

The Public Records Law provides, in G.S. § 132-6, that public records may be requested by “any person.” The North Carolina Press Association is not aware of any access problems arising out of the citizenship or residency of a person requesting access, and the *AG Guide* confirms that “any person has a right to inspect, examine and get copies of public records.”

##### 2. Purpose of request.

The requester’s purpose is irrelevant, and public officials are prohibited from inquiring about it. G.S. § 132-6(b).

##### 3. Use of records.

Generally, North Carolina law makes no restrictions on the use of public records. The only exception is that a requester of a geographical information system may be required to agree that he will not resell or use copies for “trade or commercial purposes.” G.S. § 132-10.

#### B. Whose records are and are not subject to the act?

On its face, the Public Records Law does not exclude any agency of government. However, the Public Records Law must be read in conjunction with other statutes and in light of court decisions and opinions issued by the Attorney General.

##### 1. Executive branch.

###### a. Records of the executives themselves.

Records of the governor and other executive branch officials are covered by the law, and there appear to be no statutes or court decisions that confer any special “executive privilege.” Governors have asserted that some of their records, such as those compiled in connection with the exercise of the clemency power, are beyond the reach of the Public Records Law, and the Court of Appeals found such records outside the reach of the Public Records Law. *News & Observer Pub. Co. v. Easley*, 182 N.C. App. 14, 641 S.E.2d 698 (2007).

###### b. Records of certain but not all functions.

In 1987, the North Carolina Public Records Law was amended to provide that public records relating to the proposed expansion or location of specific business or industrial projects in the state may be withheld “so long as their inspection, examination or copying would frustrate the purpose for which such public records were created . . .” G.S. § 132-6(d). This amendment, which was enacted to prevent other states from inspecting North Carolina’s proposals concerning several important scientific projects, does not exempt these records from the law, but does permit them to be withheld from public scrutiny temporarily.

##### 2. Legislative bodies.

Most records of legislative bodies are covered by the law, but a separate statute allows legislators to maintain the confidentiality of their requests to the legislative staff for information or drafting assistance. G.S. § 120-129. The Attorney General has opined that correspondence sent to legislators by their constituents is public.

##### 3. Courts.

Court records are covered by the law. G.S. § 7A-109(a). *Virmani v. Presbyterian Health Services Corp.*, 350 N.C. 449, 515 S.E.2d 675 (1999); *France v. France*, \_ N.C. App. \_, 705 S.E.2d 399 (2011). Records of juvenile proceedings, however, are excluded. G.S. § 7B-2901. Additionally, the contents of a will placed on file with the clerk of

superior court in a North Carolina county is not a public record or open to inspection until the will is offered for probate. G.S. § 31-11. A written pre-sentence report and the record of an oral pre-sentence report are not public records and may not be made available to any person except as provided in this section. G.S. § 15A-1333.

#### 4. Nongovernmental bodies.

##### a. Bodies receiving public funds or benefits.

The North Carolina Public Records Law covers records relating to “the transaction of public business by any agency of North Carolina government or its subdivisions.” Although “agency” is broadly defined, the law does not automatically reach nongovernmental bodies merely because they receive public funds or benefits. In 2007, the legislature reorganized and recodified the laws related to non-state entities receiving state funds. Such organizations are subject to review by the State Auditor. G.S. 143C-6-23.

If a city or county grants \$1,000 or more in any fiscal year to a nonprofit corporation or organization, the city or county may require that the nonprofit have an audit performed for the fiscal year in which the funds are received and may require that the nonprofit corporation or organization file a copy of the audit report with the city or county. Any nonprofit corporation or organization that receives \$1,000 or more in state funds shall, at the request of the State Auditor, submit to an audit by the office of the State Auditor for the fiscal year in which such funds were received. Every nonprofit corporation or organization which has an audit performed pursuant to this section must file a copy of the audit report with the office of the State Auditor. G.S. § 159-40.

##### b. Bodies whose members include governmental officials.

Because the North Carolina Public Records Law covers only records made or received “in connection with the transaction of public business,” it does not cover records of “nongovernmental groups” generally.

#### 5. Multi-state or regional bodies.

Because the law covers all records made or received “in connection with the transaction of public business,” it would cover records relating to multistate or regional bodies if North Carolina public officials are members.

#### 6. Advisory boards and commissions, quasi-governmental entities.

The records of advisory boards and commissions are covered.

### C. What records are and are not subject to the act?

#### 1. What kind of records are covered?

The Public Records Law covers “all records . . . made or received pursuant to law or ordinance in connection with the transaction of public business . . .” G.S. § 132-6(a). Courts have held that the phrase “made or received pursuant to law or ordinance in connection with the transaction of public business” includes, in addition to those records required to be kept by law, all records that are in fact kept by a public official or agency in carrying out the agency’s lawful duties. *News and Observer Publishing Company v. Wake County Hospital System*, 55 N.C. App. 1, 13, 284 S.E.2d 542, 549 (1981), cert. denied, 305 N.C. 302, 291 S.E.2d 151, cert. denied, 459 U.S. 803, 103 S. Ct. 26, 74 L. Ed. 2d 42 (1982); 1996 WL 925098 (N.C.A.G.); 1996 WL 925156 (N.C.A.G.). The AG’s recent guide to open government contains an affirmation of this: “Public records also include materials that government agencies make or collect at their discretion in carrying on government business.”

In *Advance Publications v. City of Elizabeth City*, 53 N.C. App 504, 506, 281 S.E.2d 69, 70 (1981), the North Carolina Court of Appeals held that the North Carolina Public Records Law is to be liberally construed in favor of public access. In *N.C. Press Association v. Span-*

*gler*, 87 N.C. App. 169, 360 S.E.2d 138 (1987), the trial court held that reports compiled by chancellors of 15 constituent campuses of the University of North Carolina system concerning intercollegiate athletics were subject to the Public Records Law, despite the defendants’ claims that the reports were “drafts” or “working papers.” The Court of Appeals dismissed defendants’ appeal as moot. The North Carolina Supreme Court reached the same result in *News and Observer Publishing Co. v. Poole*, 330 N.C. 465, 484, 412 S.E.2d 7 (1992), holding that “Our statute contains no deliberative process privilege exception.” Two trial courts have applied the rulings of *Spangler* and *Poole*. *Piedmont Pub. Co. v. Surry County Board of Commissioners*, 24 Media L. Rep. (BNA) 1371 (N.C. Sup. Ct. 1995); *Durham Public Schools Bd. of Educ. v. Bussian*, Case No. 94 CVS 484, unpublished opinion (Durham Co. Sup. Ct. Feb. 18, 1994). The Court of Appeals went so far as to hold the working papers of a public attorney to be public records in the absence of a specific exemption. *McCormick v. Hanson Aggregates Southeast Inc.*, 164 N.C. App. 459, 596 S.E.2d 431, cert. denied and appeal dismissed, 359 N.C. 69, 603 S.E.2d 131 (2004). (Since *Hanson*, an exemption for trial preparations has been enacted. G.S. § 132-1.9.)

As noted above, numerous government records facially subject to the Public Records Law are exempted from disclosure by other statutes. Some examples include:

Driver license and automobile registration records. As mandated by the federal Driver’s Privacy Protection Act (18 U.S.C. § 2721-2725), North Carolina enacted G.S. § 20-43.1, which prohibits the release of personal information regarding driver’s licenses and automobile registrations in the absence of written consent. Social security numbers provided in obtaining driver’s licenses and registrations are not matters of public record. G.S. § 20-7 and G.S. § 20-52. In addition, law enforcement agents, IRS agents and public officials may apply for private registration tags to be issued where the applicant provides information establishing a need on the basis of personal safety. The application and registration are confidential. G.S. § 20-56.

Records relating to business activities of the state-owned North Carolina Railroad. G.S. § 124-3.

Numerous other examples are listed in Section II(B), below.

#### 2. What physical form of records are covered?

The Public Records Law defines “public records” as including 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. . .” G.S. § 132-1. Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. G.S. § 132-6.2.

#### 3. Are certain records available for inspection but not copying?

With one exception, all public records are subject to both inspection and copying. G.S. § 132-6. Following the high profile death of Dale Earnhardt, and a battle for photographs from his autopsy, autopsy photographs and audio/video recordings may be inspected but not copied. G.S. 130A-389.1.

### D. Fee provisions or practices.

#### 1. Levels or limitations on fees.

Except as otherwise provided by law, a public agency may charge only the actual cost of making a copy. “Actual cost” is defined as “direct, chargeable costs related to the reproduction of a public record . . . and does not include costs that would have been incurred by the public agency if a request . . . had not been made.” G.S. § 132-6.2(b). In practice, many public agencies do not charge for copies made in response to routine requests.

#### 2. Particular fee specifications or provisions.

Several statutes fix the fees for copies of specific types of records. For example, G.S. § 20-26 sets the fee for a copy of a driver license

record at \$8.00 (\$11.00 if the copy is certified). G.S. § 7A-308(12) requires clerks of court to charge \$2.00 for the first page of a copy and 25 cents for each additional page. G.S. § 58-6-5(3) sets the fee for copies of Department of Insurance records at 50 cents per page. Anyone requesting copies of public records should verify in advance what fees the agency providing the copies proposes to charge for them.

#### a. Search.

If producing a record requires “extensive use of information technology resources” or extensive clerical or supervisory assistance, the agency may charge a reasonable service charge based on the actual cost incurred. G.S. § 132-6.2(b). Additionally, if a public agency agrees, as a service to the requester, to create or compile a record, it may negotiate a reasonable charge for the service with the requester. G.S. § 132-6.2(e).

#### b. Duplication.

Only actual costs can be charged. G.S. § 132-6.2(b)

### 3. Provisions for fee waivers.

There are no provisions for fee waivers, but as noted in Section D(1), many agencies do not require payment of fees for routine copies.

### 4. Requirements or prohibitions regarding advance payment.

There are no requirements or prohibitions regarding advance payment for copies.

### 5. Have agencies imposed prohibitive fees to discourage requesters?

Some agencies have attempted to impose prohibitive fees to discourage requesters, but these efforts have been rare and futile. In *News & Observer v. Johnston County*, Case No. 95-CVS-1671, Johnston Co. Sup. Ct. (1995), the *News & Observer* made a request for an electronic copy of the records maintained by the Register of Deeds using software developed by an outside vendor. The vendor provided an electronic copy of the record and attempted to charge the *News & Observer* \$5,180.00, purportedly representing the cost of removing the proprietary software from the raw data. After hearings on cross motions for summary judgment, the case was resolved by a consent order under which the vendor agreed to “write, and install on one of the public access terminals in the Johnston County Register of Deeds’ office, a ‘download program’ that will provide the public the ability to copy the Register of Deeds’ electronic records,” and that “Johnston County Register of Deeds will provide blank computer disks for the public to purchase for making copies and the Johnston County Register of Deeds shall not charge the public more than its actual cost of providing the disks.” A 1999 public records audit conducted jointly by the North Carolina Press Association and the Associated Press News Council revealed that most public agencies are charging nominal fees or no fee at all for the production of public records.

#### E. Who enforces the act?

North Carolina’s Public Records Law is enforced almost exclusively through civil suits instituted by private citizens or media organizations.

### 1. Attorney General’s role.

In response to requests from public officials, the Attorney General issues opinions interpreting the law; otherwise, the Attorney General plays a very limited role in enforcing the Public Records Law.

### 2. Availability of an ombudsman.

There is no ombudsman, but “[i]f anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.” G.S. 132-6.2(b).

### 3. Commission or agency enforcement.

None.

#### F. Are there sanctions for noncompliance?

No, except that a requester who prevails in a civil suit brought pursuant to the Public Records Law may seek an award of attorney fees. The statute has been amended to make an award of attorney fees to a party winning access virtually mandatory. The court “shall” award fees unless the noncompliant public agency was following a judgment or order of a court, a published appellate opinion, or a written opinion from the Attorney General. G.S. § 132-9(c).

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

##### a. General or specific?

Most of the exemptions from the Public Records Law are not set out in the Public Records Law itself but are sprinkled through the North Carolina General Statutes. For examples, see Section II.B, below.

##### b. Mandatory or discretionary?

Some exemptions, such as those protecting tax information and trade secrets, are mandatory. Others, including the exemption for privileged communications from an attorney, are discretionary.

##### c. Patterned after federal Freedom of Information Act?

The exemptions to the Public Records Law are not patterned after the federal Freedom of Information Act.

#### 2. Discussion of each exemption.

A few exemptions are set out in the text of the Public Records Law.

One exemption covers written communications from an attorney acting within the scope of the attorney-client privilege. G.S. § 132-1.1(a). The exemption covers only communications *from* the attorney *to* the public body, not vice versa. Even then, such communications are excluded from the coverage of the law only for a period of three years, after which they become public records.

A second exemption covers state and local tax information, which may not be disclosed except in limited circumstances set out in the state tax code. G.S. § 132-1.1(b)

The law also exempts “Public Enterprise Billing Information,” which includes the bills for electric power and other public utilities sent to consumers by counties and municipalities that provide such services to their citizens. G.S. § 132-1.1(c).

G.S. § 132-1.1(d) exempts the addresses and telephone numbers of persons enrolled in a program to protect the confidentiality of a relocated victim of domestic violence, sexual offense or stalking.

G.S. § 132-1.1(e) exempts information contained in the state’s Controlled Substances Reporting System.

G.S. § 132-1.1(f) exempts personally identifiable admissions information for the University of North Carolina and its constituent institutions.

G.S. § 132-1.2(1) exempt information which: (1) constitutes a “trade secret” as defined in G.S. § 66-152(3); (2) is the property of a private “person” as defined in G.S. § 66-152(2); (3) is disclosed or furnished to the public agency in connection with the owner’s performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the state, or political subdivisions of the state and (4) is designated or indicated as “confidential”

or as a “trade secret” at the time of its initial disclosure to the public agency. Note that *all four* criteria must be met in order for a document to be withheld lawfully.

G.S. § 132-1.2(2) exempts account numbers for electronic payments.

G.S. § 132-1.2(3) exempts document, file number, or passwords maintained by the Secretary of State.

G.S. § 132-1.2(4) exempts electronically capture images of an individual’s signature, date of birth, driver’s license number or social security number.

G.S. § 132-1.2(5) exempts the seal of certain licensed professionals.

The Public Records Law also provides that public records relating to the expansion or location of specific business or industrial projects “may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created.” G.S. § 132-6(d). The section of the law setting out this exemption includes detailed provisions as to when such information must be released. This exemption does not protect records relating to general economic policies or activities.

The Public Records Law provides an exemption for certain records of criminal investigations conducted by law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies. G.S. § 132-1.4.

G.S. § 132-1.6 exempts emergency response plans of UNC, community colleges or public hospitals.

G.S. § 132-1.7 exempts certain emergency security plans.

G.S. § 132-1.8 exempts photographs and audio or video recordings made pursuant to an autopsy.

G.S. § 132-1.9 exempts certain trial preparation materials (otherwise known as litigation work product).

G.S. § 132-1.10 exempts social security numbers and other identifying information but also puts limitations on when such information may be collected.

G.S. § 132-1.11 temporarily exempts certain information about economic development incentives.

G.S. § 132-1.12 exempts identifying information about minors participating in local government parks and recreation programs.

Some other provisions of the Public Records Law that create exemptions or limitations on specific types of records are discussed in Sections II(E) and IV, below.

## B. Other statutory exclusions.

Some of the more significant exclusions from the Public Records Law that are set out in other statutes include the following:

1. *Adoption.* All records created or filed in connection with an adoption, except the decree of adoption and the entry in the special proceedings index in the office of the clerk of court, and on file with or in the possession of the court, an agency, the state, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter. G.S. § 48-9-102. The department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement, but such reports are not public records. G.S. § 48-3-309.

2. *Adult Care Homes.* Complaints relating to adult care homes filed with the Department of Human Resources are confidential, as are all resident records inspected by the department. G.S. § 131D-27.

3. *Agriculture.* The North Carolina Department of Agriculture is required to compile statistical data relating to agriculture, but such

data is classified so as to prevent the identification of data received from individual farm operators. G.S. §§ 106-24 and 106.24.1.

4. *Amusements.* The North Carolina Commissioner of Labor is required by law to inspect, and certify the safety of, carnival rides and similar amusement devices. All information reported to the commissioner in connection with these duties that constitutes a trade secret is confidential. G.S. § 95-111.17. *See also* G.S. § 132-1.2

5. *Antifreeze.* All statements furnished to the Commissioner of Agriculture in connection with an application for a license or permit to sell antifreeze, stating the contents, formulas or trade secrets, are privileged and confidential. G.S. § 106-579.11.

6. *Archaeological resources protection.* Information regarding archaeological resources, such as Indian mounds and potential archaeological sites, may be made available to the public unless the Secretary of Cultural Resources determines that such disclosure would create a risk of harm to such resources or sites. G.S. § 70-18.

7. *Audit information.* Audit reports issued by the State Auditor are public records, but audit work papers are confidential. G.S. § 147-64.6(d). Audit reports of the Department of Health and Human Services are public records, though internal work papers are not. G.S. § 143B-216.51.

8. *Autopsy Photos.* Effective Dec. 1, 2005, photographs and video or audio recordings made in the course of a mandatory autopsy are subject to inspection, but copies may be obtained only by law enforcement officials, district attorneys and others, such as medical researchers, deemed to have a special need or use for them. The statute, G.S. § 130A-389.1, provides that anyone denied a copy of such photographs or recordings may institute a special judicial proceeding and may be allowed to obtain copies upon a showing of good cause.

9. *Bail bondsmen and runners.* A list of all surety bondsmen and runners appointed by insurers shall be furnished to the Commissioner of Insurance annually. In the event of termination of a surety bondsman, an insurer must file written notice with the commissioner stating the reasons, if any, for the termination. This information shall be privileged and shall not be used as evidence for any action against insurer or its representatives. G.S. § 58-71-115; G.S. § 58-71-125.

10. *Common Carriage Shipments.* It is unlawful for any common carrier or its agents engaged in intrastate commerce to disclose any information relating to the nature of property delivered to the common carrier, without the consent of such shipper, if the information could be used by a competitor to the detriment of the shipper. G.S. § 62-324(a).

11. *Information Concerning Illegitimate Children.* No district attorney, attorney-at-law appointed to assist a district attorney, or any agent or employee of such, shall disclose any information relating to an illegitimate child, or his or her parents, unless such disclosure is deemed necessary by the district attorney in the performance of his duties. G.S. § 15-155.3.

12. *Formulas for Commercial Feed.* The formulations for commercial feeds, which must be filed with the Department of Agriculture, are treated as trade secrets. Any person who discloses to persons other than authorized persons any information concerning such formulations is guilty of a misdemeanor. G.S. § 106-284.44(f).

13. *Commitment Records.* Records of commitment hearings are confidential, and involuntary commitment hearings are to be closed to the public unless the respondent requests otherwise. G.S. § 122C-207; G.S. § 122C-267(f).

14. *Competency Evaluations.* In a civil competency proceeding, the clerk of court may order a multidisciplinary evaluation of the respondent. Such evaluations are not public records, and can be released only by order of the clerk. G.S. § 35A-1111. In criminal proceedings, any report made to the court concerning a defendant’s capacity to stand trial is not a public record unless it is introduced into evidence. G.S. § 15A-1002(d).

15. *Controlled Substances — Treatment and Rehabilitation Services.* Medical and other licensed practitioners may not divulge the name of any person who requests treatment and rehabilitation for drug dependence to any law enforcement agent, nor shall such information be used as evidence in court unless authorized by the person seeking the treatment. G.S. § 90-109.1(a).

16. *Controlled Substances - Research.* The Department of Human Resources may withhold the names of any persons who are the subjects of research on the use and effects of controlled substances. G.S. § 90-113.3(e).

17. *Corporations — Information disclosed by interrogatories.* The North Carolina Business Corporation Act (Chapter 55 of the General Statutes), the Non-Profit Corporation Act (Chapter 55A of the General Statutes) and the Limited Liability Company Act (Chapter 57 of the General Statutes) authorize the Secretary of State to propound “interrogatories” to any corporation in order to determine whether it is subject to the Act. The Secretary may disclose neither the interrogatories nor the answers unless they are required for evidence in an action by the state. G.S. § 55-1-33; G.S. § 55A-1-33; G.S. § 57-1-33.

18. *Credit Unions.* Various information compiled by and reported to the Administrator of Credit Unions — including records of audits and examinations, records that disclose the names of borrowers and records of credit union members who lodge complaints with the Administrator — is confidential. G.S. § 54-109.105. However, the information contained in an application for a new credit union is public information. G.S. § 54-109.105(c). No information concerning the private business and affairs of an individual shall be disclosed by any person employed by a credit union. G.S. § 54-109.105(d).

19. *Dairy Farms.* Certain types of information provided to the Southern Dairy Compact Commission by milk producers is confidential and cannot be disclosed except in an administrative or judicial proceeding to enforce the compact. G.S. § 106-810.

20. *Dental Peer Review Committees.* All proceedings and records of a dental review committee shall be held in confidence, except those relating to Medicare and Medicaid charges or payments. G.S. § 90-48.10.

21. *DNA.* DNA profiles and samples submitted to the SBI DNA Database and Databank are not public records. G.S. § 15A-266.12.

22. *Elevators.* Any information obtained by the Commissioner of Labor in connection with the inspection and supervision of elevators that contains a trade secret shall be deemed confidential, except to the extent that disclosure is necessary in carrying out the Commissioner’s duties. G.S. § 95-110.14.

23. *Emergency Response Plans.* Emergency response plans adopted by a constituent institution of The University of North Carolina, a community college, or a public hospital are not public records. G.S. § 132-1.6.

24. *Employment Security Records.* Any information supplied to the Employment Security Commission by an employer or an individual in filings required by statute shall be held confidential and is not to be disclosed to the public. Likewise, information obtained by the North Carolina State Employment Service Division from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program is privileged, and not subject to public disclosure. G.S. § 96-4(t). The Commission shall furnish to the State Controller any information the State controller needs to prepare and publish a comprehensive annual financial report of the state. G.S. § 96-4(t)(1)(vi). Information obtained by the ESC identifying participants in job training, education or placement programs is confidential. G.S. § 96-32.

25. *Energy Data.* The Department of Administration, which is authorized to obtain energy data such as wholesale supplies of petroleum products, is required to keep confidential any individual record

containing energy data about a person and any such data shall not be subject to public disclosure. G.S. § 143-345.14(f).

26. *Escheats. Lists of Owners.* The State Treasurer is required to deliver to each clerk of court, prior to November 1 of each year, a list of escheated and abandoned property. The supporting data and identities of apparent owners of escheated and abandoned property may remain confidential for six months. However, information may be disclosed to owners of reported property requesting information about their property. G.S. § 116B-62(f). *Records of Abandoned Property.* The State Treasurer is authorized to examine the records of insurers, banks and other holders of escheated and abandoned property. Documents and working papers obtained or created in connection with the examination of records of abandoned property shall be considered confidential and not available to the public. G.S. § 116B-72.

27. *Expunged Records.* If an expunction is granted, all official records are removed from public files. G.S. § 15A-146; G.S. § 90-96; G.S. § 90-113.14 (drug charges); G.S. § 15A-145 (first offenders). A person entitled to expungement may obtain an order requiring the SBI to remove his or her DNA record from the State DNA Databank. G.S. § 15A-146(b)(1) and (2).

28. *Fertilizer.* Sellers of commercial fertilizers are required to furnish the Commissioner of Agriculture with a written statement of the tonnage of each grade of fertilizer sold in the state. Such statements are not public records. G.S. § 106-677.

29. *Fires and Fire Protection — Information About Suspicious Fires and Arson Investigations.* Fire insurance companies are required by law to provide information about suspicious fires to fire chiefs, fire marshals, or the SBI. Any official who receives such information shall hold this information and keep it confidential until such time as the information is required for a criminal or civil proceeding. G.S. § 58-79-40. The law also provides that records of the Office of Insurance Commissioner related to the investigation of suspected arson are not public records and may be made available to the public only upon an order of court of competent jurisdiction. G.S. § 58-2-100. Fire incident reports compiled by local fire chiefs and fire marshals are public records, however. G.S. § 58-79-45.

30. *Forest Products.* In order to collect assessments levied against the processors of forest products, the Department of Revenue is permitted to review production records of such companies. Any person who discloses information from a production report, except as necessary for collection, shall be guilty of a misdemeanor punishable by a fine not to exceed fifty dollars (\$50.00) G.S. § 113A-195(f).

31. *General Assembly Records.* The following are confidential and not subject to public disclosure: (1) a drafting request made to a legislative employee from a legislator; (2) an information request made to a legislative employee from a legislator; (3) any supporting document submitted or caused to be submitted to a legislative employee by a legislator in connection with a drafting or information request; (4) documents prepared by legislative employees upon request of legislators; and (5) a request from the Fiscal Research Division in connection with a preparation of a fiscal note. G.S. § 120-130; 120-131; 120-131.1.

32. *Geologists.* The North Carolina Board for Licensing of Geologists shall treat as confidential and not subject to public disclosure individual test scores and applications and material relating thereto, including letters of reference relating to an application. G.S. § 89E-14(c).

33. *Grand Juries — Secrecy of Proceedings.* — Grand jury proceedings are secret and, except as expressly provided for by law, members of the grand jury and all persons present during its sessions shall keep its secrets and refrain from disclosing anything which transpires during any of its sessions. G.S. § 15A-623(e).

34. *Grand Juries — Bills of Indictment.* A presiding judge may direct that a bill of indictment be kept secret until a defendant is arrested or appears before the court. The clerk must seal the bill of indictment

and no person, including a witness, may disclose the bill of indictment, or the proceedings leading to the finding, except when necessary for the issuance and execution of an order or arrest. G.S. § 15A-623(f).

35. *Health and Medical Records.* All privileged patient medical records in the possession of the Department of Human Resources or local health departments shall be confidential and are not available to the public. G.S. § 130A-12. All medical records in connection with admission, treatment and discharge compiled and maintained by health care facilities are not public records. This also encompasses patient charges, accounts, credit histories and other personal financial records in a health care facility's possession. G.S. § 131E-97. Medical records of individual patients shall be confidential and shall not be publicly disclosed unless authorized by the patient or for *bona fide* research purposes. G.S. § 130A-374(a). The State Center for Health Statistics is required to take appropriate measures to protect the security of health data collected by the center developing a system for monitoring security. G.S. § 130A-374(b).

36. *Health Care Records of Teachers and Other State Employees.* Any medical and claims information in the possession of the executive administrator and the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan or its claims processor shall be confidential and exempt from public disclosure. G.S. § 135-37.

37. *Health Maintenance Organizations.* Data or information pertaining to the diagnosis, treatment, or health of an enrollee or applicant of a health maintenance organization obtained from such person by the organization shall be held in confidence and shall not be disclosed to any person except to the extent required by law, or upon the express consent of the enrollee or applicant, or in the event of claim or litigation between such person or health maintenance organization wherein such data or information are pertinent. G.S. § 58-67-180.

38. *Competitive Health Care Information.* Information relating to competitive health care activities by or on behalf of public health authorities and public hospitals shall be confidential and not a public record, but any contract entered into by or on behalf of a public health authority or public hospital shall be a public record unless otherwise exempted by law. G.S. § 130A-45.11; G.S. § 131E-97.3. The financial terms and other competitive health care information directly related to the financial terms in a health care services contract between a hospital or a medical school and a managed care organization, insurance company, employer, or other payer is confidential and not a public record under Chapter 132 of the General Statutes. G.S. § 131E-99.

39. *Hospice Patient Records.* The Department of Human Resources is prohibited from disclosing any confidential or privileged information obtained from a review of the records of a hospice patient unless the patient or his legal representative authorizes such disclosure. G.S. § 131E-207.

40. *Industrial Commission.* Records of the Industrial Commission, which adjudicates worker compensation claims, are generally confidential other than awards made by individual commissioners and reviews of awards by the full commission. G.S. § 97-84; G.S. § 97-85; G.S. § 97-92.

41. *Inspections of Regulated Facilities.* Many records related to inspections of government-regulated facilities are exempt from the Public Records Law, e.g., mental health facilities (G.S. § 122C-25); hospitals (G.S. § 131E-80); nursing homes (G.S. § 131E-105); home care agencies (G.S. § 131E-141); ambulatory surgical facilities (G.S. § 131E-150); cardiac rehabilitation programs (G.S. § 131E-170); water and air condition inspections (G.S. § 143-215.19); local confinement facilities (G.S. § 153A-222).

42. *Juvenile Records — Cases Alleging Abuse, Neglect or Dependency.* Court records in juvenile cases alleging abuse, neglect or dependency are not subject to public inspection and may be examined in the absence of a court order only by the juvenile, his parent, guardian, custodian, or other authorized representative. G.S. § 7B-2901(a).

43. *Juvenile Records — Juveniles Under Protective Custody of the Department of Social Services.* Records in cases of juveniles under protective custody of the Department of Social Services are not subject to public inspection; in the absence of a court order, they may be examined only by the juvenile or by his or her guardian *ad litem*. G.S. § 7B-2901(b). However, certain records relating to the fatality or near fatality of a juvenile may be released. G.S. § 7B-2902.

44. *Juvenile Records — Delinquent and Undisciplined Juveniles.* Court records in juvenile cases alleging delinquency are not subject to public inspection; in the absence of a court order they may be examined only by the juvenile; the juvenile's parent, guardian, custodian, or other authorized representative; the prosecutor; and court counselors. G.S. § 7B-3000.

45. *Juvenile Records — Court Counselors' Records and Law Enforcement Records.* Juvenile records maintained by court counselors and law enforcement officials are not subject to public inspection; in the absence of a court order they may be examined only by the juvenile; the juvenile's parent, guardian, custodian, or other authorized representative; the district attorney or prosecutor; court counselors; and law enforcement officers. G.S. § 7B-3001.

46. *Library User Records.* Except pursuant to subpoena, court order, or as otherwise required by law, or upon written consent of the user, or if reasonably necessary for the operation of the library, library records that identify persons who have requested specific materials, information, or services, or as otherwise having used the library, may not be disclosed. G.S. § 125-19.

47. *Licensure Records.*

*Certified Public Accountants.* Records containing information collected or compiled by the Board of Certified Public Accountant Examiners as a result of a complaint, investigation, inquiry, or interview in connection with an application for examination, certification, or registration, or in connection with a certificate holder's professional ethics and conduct, are not public records. Any notice or statement of charges against a certificate holder or applicant, or any notice to a certificate holder or applicant of a hearing to be held by the board is a public record, even though it may contain information collected and compiled as a result of a complaint, investigation, inquiry, or interview conducted by the board. If any record containing information collected and compiled by the board is admitted into evidence in a hearing held by the board, it is a public record. G.S. § 93-12.2.

*Dental Licensing Board.* Records containing information collected or compiled by the North Carolina State Board of Dental Examiners as a result of investigations conducted in connection with a licensing or disciplinary matter are not public records. However, any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding, is a public record, notwithstanding that it may contain information collected and compiled as a result of any investigation, inquiry, or interview. If any document containing information collected and compiled by the board is received and admitted into evidence in any hearing before the board, it shall then be a public record. G.S. § 90-41(g).

*Medical Review Committees.* The proceedings of a medical review committee, and the records and materials it produces and considers, are confidential. Such records are not subject to discovery or introduction into evidence in any civil action against a hospital or provider of professional health services which results from matters which are the subject of evaluation or review by the committee. No person who was in attendance at a meeting of the committee can be required to testify at any civil action as to any evidence or other matters produced or presented during the proceedings of the committee. A member of the committee who testifies in a civil action may not be asked about his testimony before the committee or any opinions formed as a result of the committee hearings. G.S. § 131E-95. This provision was at the heart of a court access controversy that made its way to the N.C. Supreme Court. *Virmani v. Presbyterian Health Services Inc.*, 350

N.C. 449, 515 S.E.2d 675, 27 Media L. Rep. (BNA) 2537 (1999). At issue was the question of whether the public has a right of access to civil court proceedings and records pertaining to medical peer review evaluations. Dr. Ron Virmani brought suit against Presbyterian Health Services Corporation following the suspension of his medical staff privileges and despite the provision prohibiting their use as evidence, his medical review records were entered into the record in his lawsuit. The court closed the courtroom during testimony about those records and sealed that portion of the file. The Supreme Court upheld a challenge to those sealing orders, finding that the trial court lawfully closed the courtroom and did not have any obligation to allow the *Charlotte Observer's* request to intervene to challenge the closure. See also, G.S. § 90-21.22A(c).

**Pastoral Counselors.** In any proceeding or record of any hearing before the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors and in any complaint or notice of charges against any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate and in any decision rendered by the board, the board shall endeavor to withhold from public disclosure the identity of any counselees or clients who have not consented to the public disclosure of treatment by the certified fee-based pastoral counselor or certified fee-based pastoral counseling associate. All records containing information collected and compiled by the board as a result of investigations conducted in connection with certification or disciplinary matters are not public records. However, any notice or statement of charges against any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate, any notice to any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding is a public record, except that identifying information concerning the treatment or delivery of services to a counselee or client who has not consented to the public disclosure of such treatment or services may be deleted. Any record containing information collected and compiled by or on behalf of the board that is received and admitted in evidence in any hearing before the board is a public record, subject to any deletions of identifying information concerning the treatment or delivery of pastoral counseling services to a counselee or client who has not consented to public disclosure of the treatment or services. G.S. § 90-390(c).

**Physicians.** All records containing information collected and compiled by the North Carolina Medical Board as a result of investigations conducted in connection with a licensing or disciplinary matter are not public records. Any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding is a public record, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview. If any such record containing information theretofore collected and compiled by the board is received and admitted in evidence in any hearing before the board, it shall thereupon be a public record. G.S. § 90-16. The Board of Medical Examiners and its members and staff may release confidential or non-public information to any health care licensing board in this state or another state about the issuance, denial, annulment, suspension or revocation of a license, or the voluntary surrender of a license by a board-licensed physician, including the reasons for the action, or investigative report made by the board. G.S. § 90-14(d).

**Psychological Professionals.** The North Carolina Psychology Board may withhold from public disclosure the identity of any clients or patients who have not consented to the public disclosure of psychological services' having been provided by the licensee or applicant. All records containing information collected and compiled by the board as a result of investigations conducted in connection with licensing or disciplinary matters are not public records. However, any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding, is a public record, notwithstanding that it may contain information collected and compiled as a result of such investigation, inquiry, or

hearing except that identifying information concerning the treatment of or delivery of services to a patient or client who has not consented to the public disclosure of such treatment or services may be deleted. If any such record containing information theretofore collected and compiled by the board is received and admitted in evidence in any hearing before the board, it shall thereupon be a public record, subject to any deletions of identifying information concerning the treatment or delivery of psychological services to a patient or client who has not consented to the public disclosure of such treatment or services. G.S. § 90-270.15(e).

**Refrigeration Contractors.** All records, papers, and other documents containing information collected and compiled by the State Board of Refrigeration Contractors as a result of investigations, inquiries, or interviews conducted in connection with a licensing or disciplinary matter, are confidential. G.S. § 87-59(e).

48. **Medical Database Commission.** The databases compiled by the North Carolina Medical Database Commission are public records, but the records of patient information furnished to the Commission by hospitals and other providers of medical services, from which the databases are compiled, are not public. G.S. § 131E-214.3.

49. **Court records related to involuntary commitments of persons who are mentally ill or substance abusers.** — Court records made in all proceedings related to the involuntary commitment of mental health patients or substance abusers are confidential and are not open to the general public. G.S. § 122C-207.

50. **National Guard records.** No records of the National Guard in the Department of Crime Control and Public Safety shall be disclosed or used for any purpose except for official purposes. G.S. § 127A-17.1.

51. **Nursing Home Complaints.** The identities of persons who file complaints with the Department of Human Resources relating to nursing homes are confidential. G.S. § 131E-124(c).

52. **Occupational Safety and Health Inspections. Trade secrets.** Information reported to or otherwise obtained by the Commissioner of Labor or his agents or representatives in connection with any safety inspection or proceeding which might reveal a trade secret shall be considered confidential. G.S. § 95-152.

53. **Pharmacy Records.** Written prescription orders on file in a pharmacy are not public records and their contents may only be disclosed to (1) an adult patient for whom the prescription was issued or his legal guardian, (2) an emancipated minor patient for whom the prescription was ordered or his legal guardian, (3) a parent or person in *loco parentis* of an unemancipated minor patient for whom the prescription was issued, (4) the licensed practitioner who issued the prescription, (5) the licensed practitioner who is treating the patient for whom the prescription was issued, (6) a pharmacist who provides pharmaceutical services to the patient for whom the prescription was issued. G.S. § 90-85.36(a).

54. **Porcine Animal Data.** A buyer of porcine animals shall keep records of the number of porcine animals purchased and the date purchased. All information or records regarding purchases of porcine animals by individual buyers shall be kept confidential by employees or agents of the Department of Agriculture and the North Carolina Pork Producers Association, and shall not be disclosed except by court order. G.S. § 106-794(d).

55. **Precious Metal Dealers.** The files of local law enforcement agencies which contain copies of record book entries of precious metal dealers shall not be subject to inspection and examination except as necessary for law enforcement investigation or civil or criminal proceedings. G.S. § 66-169.

56. **Probation Records.** Unless and until otherwise ordered by a judge of the court or the Secretary of Correction, all information and data obtained in the discharge of the official duty of a probation officer shall be privileged information. G.S. § 15-207.

57. *Public Assistance Records.* Information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department of Human Services or the county boards of social services, or county departments of social services or acquired in the course of performing official duties are not public records. G.S. § 108A-80(a).

58. *Public Utility Inspection Data.* Except as he may be directed by the Utilities Commission or by a court or judge thereof, no agent or employee of the utilities commission shall knowingly and willfully divulge any fact or information which may come to his knowledge during the course of any examination or inspection made pursuant to his duties. G.S. § 62-316.

59. *Records Related to Participants in the Retirement System for Cities and Counties.* Any Social Security number, current name and address, or any other information provided to the retirement system by a board, agency, department, institution, or subdivision of the state shall be treated as confidential except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the retirement system. G.S. § 128-28(q).

60. *Records Related to Participants in the Retirement System for Teachers and State Employees.* Any Social Security number, current name and address, or any other information provided to the retirement system by a board, agency, department, institution, or subdivision of the state shall be treated as confidential except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the retirement system. G.S. § 135-6(p).

A 1979 Attorney General Opinion held that “[i]nformation contained in the Retirement System account of an individual member” constitutes a public record and that there is no statutory exemption that would permit withholding the information.” 48 N.C. Opp. Atty. Gen. 129 (1979).

61. *Savings and Loan Associations.* The following records or information of the North Carolina Banking Commission, the Commissioner of Banks or the agent(s) of either shall be confidential and shall not be disclosed except pursuant to a court order:

- (1) Information obtained or compiled in preparation of or anticipation of, or during an examination, audit or investigation of any association;
- (2) Information reflecting the specific collateral given by a named borrower, the specific amount of stock owned by a named stockholder, or specific withdrawable accounts held by a named member or customer;
- (3) Information obtained, prepared or compiled during or as a result of an examination, audit or investigation of any association by an agency of the United States, if the records would be confidential under federal law or regulation;
- (4) Information and reports submitted by associations to federal regulatory agencies, if the records or information would be confidential under federal law or regulation;
- (5) Information and records regarding complaints from the public received by the division which concern associations when the complaint would or could result in an investigation, except to the management of those associations;
- (6) Any other letters, reports, memoranda, recordings, charts or other documents or records which would disclose any information of which disclosure is prohibited above. G.S. § 54B-63(a) and (b).

The information contained in an application to establish a savings and loan association shall be deemed to be public information. Disclosure shall not extend to the financial statements of the incorporators nor to any further informa-

tion deemed by the Administrator to be confidential. G.S. 54B-63(c). Compliance review documents in the custody of an association or regulatory agency are not public records. G.S. § 54B-63.1.

62. *Savings Banks.* The following records are not public: (1) investigatory audit information, (2) information related to collateral from a borrower, stock owned by a stockholder, a stockholder list, or deposit accounts held by members or customers; (3) confidential information submitted to federal regulatory agencies, and (5) information regarding complaints from the public concerning savings banks when the complaint would or could result in an investigation, except to the management of those savings banks; and (6) any other letters, reports, memoranda, recordings, charts or other documents or records that would disclose any information of which disclosure is prohibited in this subsection. G.S. § 54C-60.

63. *Sexual Predator Registry.* The name, sex, address, physical description, picture, conviction date, offense for which registration was required, the sentence imposed as a result of the conviction, and registration status of adjudicated sexually violent predators is public record. The sheriff shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration. Any person may obtain a copy of an individual’s registration form, a part of the county registry, or all of the county registry, by submitting a written request for the information to the sheriff. However, the identity of the victim of an offense that requires registration shall not be released. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate. G.S. § 14-208.6A; G.S. § 14-208.10.

Juveniles found delinquent for first- and second-degree rape or sexual offense who were at least 11 years old at the time of the incident may be required to register as a sexual offender if the court determines the juvenile is a danger to the community. Their registration is only available to law enforcement agencies. G.S. § 14-208.26; G.S. § 14-208.29.

64. *Tax Information.* It is unlawful for any person working in the office of the Secretary of Revenue, local tax authorities and former local tax authorities, or with the Commissioner of Insurance to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax, or other taxes or any part that might be determined, deduced, or estimated. It shall likewise be unlawful to reveal whether or not any taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or corporation not otherwise entitled, information relating to the amount of income, income tax, or other taxes of a taxpayer, or a list of names, addresses, Social Security numbers or other personal information concerning such taxpayer. G.S. § 105-259. City and county tax records that contain information about a taxpayer’s income or receipts are not public records. G.S. § 153A-148.1; § 160A-208.1

65. *Tax Setoffs.* The Setoff Debt Collection Act, G.S. § 105A-15, permits the Secretary of Revenue to setoff against any tax refund any debt owed to the state by the refund recipient. All exchanges of information among the department, the claimant agency, and the debtor necessary to accomplish this article are lawful. Any person employed by claimant agency who discloses any information for any other purpose except as allowed by the Act shall be penalized in accordance with the terms of the taxpayer confidentiality statute, G.S. § 105-259.

66. *Toxic substances. Emergency information* — Hazardous substance lists, filed with fire chiefs by employers who store hazardous wastes, shall be confidential and shall not be disclosed to anyone other than those who will take place in pre-planning emergency response. Such persons receiving this information shall not disclose the information received and shall use such information only for the purpose of pre-planning emergency response activities. G.S. § 95-194(f). Any person may request in writing a list of chemicals used or stored at a facility.

The request shall include the name and address of the requester and a statement of the purpose for the request. G.S. § 95-208(a).

67. *University of North Carolina Liability Insurance Records.* Records pertaining to the University of North Carolina's liability insurance program shall not be considered public records and shall not be subject to discovery under the Rules of Civil Procedure. G.S. § 116-222.

68. *Uranium Exploration.* If a person engaged in uranium exploration shows to the satisfaction of the Department of Natural Resources and Community Development that logs, surveys, plats, and reports filed pursuant to law are of a proprietary nature relating to his competitive rights, that information shall be confidential and not subject to inspection and examination for four years after receipt of the information by the department. G.S. § 74-88.

69. *Veterans.* No records of the Division of Veterans Affairs and the Department of Administration shall be disclosed or used for any purpose except for official purposes. G.S. § 165-11.1.

70. *Victims Compensation Records.* All medical information relating to the mental, physical, or emotional condition of a victim or claimant and all law enforcement records and information and any juvenile records shall be held confidential by the Victims Compensation Commission and Director. G.S. § 15B-8.1. Except for information held confidential under this subsection, the records of the Division are open to public inspection.

71. *Wage and Hour Investigations.* Files and other records relating to investigations and enforcement proceedings relating to purported employment discrimination discharges shall not be subject to inspection and examination by the public while such investigations and proceedings are pending. G.S. § 95-25.20(b).

72. *"911" Databases.* Automatic number identification and automatic location identification information that consists of the name, address, and telephone numbers of telephone subscribers which is contained in a county 911 database is confidential and is not a public record if that information is required to be confidential by the agreement with the telephone company by which the information was obtained. Dissemination of the information contained in the 911 automatic number and automatic location database is prohibited except on a call-by-call basis only for the purpose of handling emergency calls or for training. G.S. § 132-1.5

### C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

North Carolina has no court-derived exclusions or privileges, and the North Carolina appellate courts have held that there can be none. The North Carolina Court of Appeals has held that the only exemptions to the Public Records Law are those that are expressly provided by statute. *Virmani v. Presbyterian Health Services Inc.*, 350 N.C. 449, 515 S.E.2d 675, 27 Media L. Rep. (BNA) 2537 (1999); *McCormick v. Hanson Aggregates Southeast Inc.*, 164 N.C. App. 459, 596 S.E.2d 431, cert. denied and appeal dismissed, 359 N.C. 69, 603 S.E.2d 131 (2004); *Advance Publications v. City of Elizabeth City*, 53 N.C. App. 504 (1981).

### D. Are segregable portions of records containing exempt material available?

No request for records may be denied "on the grounds that confidential information is commingled with the requested non-confidential information." All public agencies must bear the expense of separating confidential from non-confidential information. G.S. § 132-6(c)

### E. Homeland Security Measures.

In 2002, the General Assembly added the following language to the Public Records Law under the heading "Sensitive Public Security Information":

(a) Public records as defined in G.S. 132-1 shall not include information containing specific details of public security plans and arrangements or the detailed plans and draw-

ings of public buildings and infrastructure facilities.

(b) Public records as defined in G.S. 132-1 do not include plans to prevent or respond to terrorist activity, to the extent such records set forth vulnerability and risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public or the security of any governmental facility, building, structure, or information storage system.

(c) Information relating to the general adoption of public security plans and arrangements, and budgetary information concerning the authorization or expenditure of public funds to implement public security plans and arrangements, or for the construction, renovation, or repair of public buildings and infrastructure facilities shall be public records.

G.S. § 132-1.7.

## III. STATE LAW ON ELECTRONIC RECORDS

### A. Can the requester choose a format for receiving records?

Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. G.S. § 132-6.2.

### B. Can the requester obtain a customized search of computer databases to fit particular needs?

The Public Records Law requires every public agency to create an index of computer databases compiled or created by the agency. The indices of databases are public records. The Public Records Law provides that a public agency need not "respond to a request for a copy of a public record by creating or compiling a record that does not exist." G.S. § 132-6.2(e). If an agency agrees to create or compile such a record, however, it may negotiate a "reasonable charge for the service." G.S. § 132-6.2(e).

### C. Does the existence of information in electronic format affect its openness?

The definition of public record in North Carolina makes clear that the format of a record has no bearing on its status as a public record. In fact, the law explicitly provides that no public agency shall "purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records." G.S. § 132-6.1(a).

### D. How is e-mail treated?

E-mail is not expressly addressed in the Public Records Law but falls within the definition of a public record, which includes any "documents, papers, letters, . . . regardless of physical form or characteristics, made or received . . . in connection with the transaction of public business." G.S. § 132-1(a). The Attorney General of North Carolina has advised public agencies that e-mail messages related to the performance of a public employee's duties are public records. The AG's recent open government guide confirms: "Public records include both paper and electronic documents, emails, papers . . ."

#### 1. Does e-mail constitute a record?

Yes.

#### 2. Public matter on government e-mail or government hardware

Given the definition of public records as those records related to the transaction of public business, all materials on a government-issued computer or email address should be public if they relate to government business.

### 3. Private matter on government e-mail or government hardware

Given the definition of public records as those records related to the transaction of public business, private matter on a government-issued computer or email address arguably is not a public record. However, Governor Perdue signed Executive Order 18, which governs certain executive branch employees and provides that all materials on government-issued equipment or email accounts will be treated as public records regardless of its content.

### 4. Public matter on private e-mail

Courts consistently have held that it is the content, not the location, of information/documents that governs whether it is public. Therefore, information related to government functions that resides in a private email account would be treated as public. *News Reporter Co., Inc. v. Columbus County*, 184 N.C. App. 512, 516, 646 S.E.2d 390, 393 (2007) (“Whether a document is part of a ‘personnel file,’ within the meaning of § 153A-98(a), depends upon the nature of the document and not upon where the document has been filed.”)

### 5. Private matter on private e-mail

Because the nature of an email, rather than its location, governs, private email on a private email account would not be considered a public record. However, Governor Perdue signed Executive Order 18, which governs certain executive branch employees and provides that all materials on government-issued equipment or email accounts will be treated as public records regardless of its content.

### E. How are text messages and instant messages treated?

Because the definition of public record is broad, including “electronic data-processing records” and expressly disavowing any significance of “physical form or characteristics,” text or instant messages are no different from other records. If they meet the definition of a public record, they will be treated as public records. If they are not “of and concerning” public business or they concern public business that otherwise is exempt, they would not be subject to disclosure. In a highly publicized scandal, the PIO of the N.C. State Highway Patrol conducted an extra-work relationship with his secretary via text messages. The Highway Patrol released all the texts he sent to his secretary and released the work-related text messages the secretary sent to the PIO, but the court declined to order the production of non-work text messages sent by the secretary to the PIO. *WNCN et al. v. Department of Crime Control et al.*, Wake County Superior Court Case No. 10 CVS 11621 (2010).

#### 1. Do text messages and/or instant messages constitute a record?

If they otherwise meet the definition of public records, yes.

#### 2. Public matter message on government hardware.

The location of the message is irrelevant; the content of the message controls. If they otherwise meet the definition of public records, yes.

#### 3. Private matter message on government hardware.

Generally, no. However, Governor Perdue signed Executive Order 18, which governs certain executive branch employees and provides that all materials on government-issued equipment or email accounts will be treated as public records regardless of its content.

#### 4. Public matter message on private hardware.

The location of the message is irrelevant; the content of the message controls. If they otherwise meet the definition of public records, yes.

#### 5. Private matter message on private hardware.

No.

### F. How are social media postings and messages treated?

This has not been addressed.

### G. How are online discussion board posts treated?

This has not been addressed.

### H. Computer software

#### 1. Is software public?

The Public Records Law does not address this question, but an opinion of the Attorney General found that “the explicit language of G.S. §132-6.1 distinguishes software used to generate records from records it generates. Thus, we are of the opinion that in light of current law, the General Assembly did not intend to mandate disclosure of State-owned computer software pursuant to G.S. §132-1 et seq.” 1998 WL 459785 (N.C.A.G. May 28, 1998)

#### 2. Is software and/or file metadata public?

This has not been addressed.

### I. How are fees for electronic records assessed?

The law permits a charge for only the actual cost of reproducing a record. Therefore, if the electronic record were copied onto a disk or magnetic tape, the cost of the disk or tape could be charged, but nothing more.

### J. Money-making schemes.

#### 1. Revenues.

There is no statutory treatment of this.

#### 2. Geographic Information Systems.

GIS systems are public records available for inspection and copying, G.S. § 132-10, but may not be reproduced for commercial purposes.

### K. On-line dissemination.

There is no statutory treatment of this.

## IV. RECORD CATEGORIES -- OPEN OR CLOSED

### A. Autopsy reports.

Reports of autopsies performed at the request of the medical examiner or other designated public officials are open pursuant to the Public Records Law and pursuant to North Carolina G. S. § 130A-389. As of December 1, 2005 photographs and recordings (video and audio) created in connection with such autopsies are subject to review and inspection, but copies may be obtained only by district attorneys, law enforcement officials and superior court judges. G.S. § 130A-389.1. See also, G.S. § 132-1.8. Reports of private autopsies performed at the request of a family member are not public.

### B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

#### 1. Rules for active investigations.

A law enforcement officer who investigates a reportable accident must make a written report of the accident within 24 hours of the accident, and that report is a public record. G.S. § 20-166.1 (e).

#### 2. Rules for closed investigations.

The fact that an investigation is closed has no bearing on whether it is public or exempt from disclosure. *Gannett Pac. Corp. v. N.C. State Bureau of Investigation*, 164 N.C. App. 154, 161, 595 S.E.2d 162, 166 (2004) (“As currently enacted, the Public Records Act contains no exception for disclosure of records where an investigation is complete.”)

### C. Bank records.

Records of official acts, rulings and transactions of the North Carolina Commissioner of Banks are public records pursuant to the Public Records Law and pursuant to North Carolina General Statute § 53-

99. However, certain bank records are confidential, including records of audits and examinations, records that disclose the names of borrowers, and records relating to complaints that may result in an investigation. G.S. §§ 53-99, 53-125, 53-42.1.

#### D. Budgets.

Budgets are not treated independently in the statutes but would meet the threshold definition of public records. G.S. § 132-1.

#### E. Business records, financial data, trade secrets.

Business records, financial data and trade secrets of private businesses are closed, unless disclosed in a submission to a government entity. However, G.S. §§ 133-33, 143-52 and 143-53, which govern the competitive bid procedures to be followed in awarding state contracts, provides that while all bids shall be open to public inspection following the award of a contract, “trade secrets, test data and similar proprietary information” submitted in connection with a bid may remain confidential.

#### F. Contracts, proposals and bids.

The competitive bidding statute, G.S. § 143-52, provides that every bid or proposal which is submitted to the state and which “conforms to the terms of the invitation” shall become a matter of public record and shall, following the award of the contract, “be open to public inspection.” However, “trade secrets, test data and similar proprietary information” included in a bid or proposal may remain confidential.

#### G. Collective bargaining records.

There are no records relating to collective bargaining by public employees in North Carolina. G.S. §§ 95-97 and 95-98 prohibit public employees from joining unions or engaging in collective bargaining.

#### H. Coroners reports.

The office of coroner has been abolished in more than one-third of North Carolina’s counties. In those counties which retain the office, the coroner is required to file his reports of inquests and investigations with the county medical examiner and the district attorney. G.S. § 152-7. Subject to certain limitations on copies of photographs and recordings, records created by medical examiners are public records; therefore coroner’s reports are also public records.

#### I. Economic development records.

When a public agency performs a cost benefit analysis with respect to economic development incentives, the agency must describe in detail the assumptions and methodologies used in completing the analysis or assessment, and that description is a public record. G.S. 132-1.11(a). Records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their release would frustrate the purpose for which such public records were created. G.S. § 132-6(d). Moreover, this provision may not justify withholding general policies or activities. *Id.* Once a decision has been made by the public agency (or the proposed business) – either in favor of or against relocation – the justification for withholding no longer applies, and the agency shall disclose as soon as practicable, but no later than within 25 business days, public records requested for the project that are not otherwise made confidential by law. *Id.* If records are withheld under this provision, the public agency bears the burden of proving that release would have frustrated the project. G.S. § 132-9(b).

#### J. Election records.

Election records generally are open, and the North Carolina election laws include some specific provisions specifying the public character of certain categories of election records.

*Voter Registration Records.* G.S. § 166-82.10, which governs the compilation and release of voter registration records, provides that:

Upon request . . . the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county.

The same section provides that a county board of elections may, upon request, furnish “selective lists” according to party affiliation, sex, race, date of registration and various other categories. Persons provided with such “selective lists” must reimburse the board for the actual costs incurred in their compilation. The county boards may charge service fees up to \$25.00 for providing such lists in magnetic or electronic media. By submitting a written request to the State Board of Elections, any person may obtain a magnetic copy of the statewide computerized voter registration data base. Anyone who obtains a copy of the database must reimburse the State Board of Elections for the actual costs incurred in preparing it. G.S. § 163-82.13(b).

*Dates of Birth and Other Personal Data Exempt from Disclosure.* The data provided by boards of election may include the age, but not the date of birth, of an individual voter. G.S. § 163-82.10B. Election officials also may not release electronic images of the signatures of voters; full or partial Social Security numbers; or driver license numbers. G.S. § 163082.10.

*Registry of Absentee Ballots.* G.S. § 163-228 provides that each county’s register of absentee ballot applications and ballots issued “shall constitute a public record,” and shall be open to inspection by any registered voter of the county at any time within 50 days before and 30 days after an election in which absentee ballots were authorized, and at other times as necessary. G.S. § 163-232 requires that the chairman of each county board of elections compile a certified list of executed absentee ballots. The county board must file one copy with the State Board of Elections and keep another available for public inspection. The chief election judge of each precinct is required to post one copy of the precinct absentee ballot list “in a conspicuous location in the voting place.”

*Campaign Finance Reports.* All campaign finance reports required to be filed by candidates for public office are filed with the State Board of Elections. Such reports are public records. G.S. §§ 163-278.9, 163-278.22(4).

#### 1. Voter registration records.

Individual voter registration information is public with the exception of full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered, and driver’s license numbers. G.S. §§ 163-82.10(a). The signature on the registration may be viewed but not copied. *Id.*

#### 2. Voting results.

Voted ballots and records of individual voted ballots are confidential and shall not be disclosed to members of the public. G.S. § 163-165.1.

#### K. Gun permits.

Permits for handguns and other weapons issued by sheriffs pursuant to G.S. § 14-402 through 14-405 and pursuant to Article 54B of the General Statutes (G.S. §§ 14-415.10 through 14-415.24) are public records.

#### L. Hospital reports.

If a hospital is a “public agency of North Carolina government or its subdivisions,” the hospital’s business and administrative records are public records. Owing to the varied and complex organizational structures of certain hospitals, numerous questions have arisen in recent years as to whether certain hospitals are “public agencies” within the meaning of the Public Records Law. In some cases, the governing bodies of hospitals concede that the hospital itself is a “public agency” but contend that affiliated operations and businesses — such as subsidiaries that own and operate medical office buildings — are not “public

agencies.” These questions have become further complicated since the passage in 1983 of a comprehensive re-codification of the state statutes governing public hospitals. (Chapter 131E of the General Statutes). Among other things, this chapter authorizes local governments to lease, sell or convey public hospitals to non-profit corporations, provided the corporations agree to operate the hospital for the benefit of the public, and provided that the conveyance includes reversionary rights in the event that the non-profit corporation fails to meet its obligations. G.S. § 131E-13(a).

The North Carolina courts have provided some guidance by applying the public records law to a hospital that claimed that it was not a “public agency” within the meaning of the Public Records Law. *News and Observer Publishing Company v. Wake County Hospital System*, 55 N.C. App. 1, 284 S.E.2d 542 (1981), *rev. denied*, 305 N.C. 302, 291 S.E.2d 151, *appeal dismissed and cert. denied*, 459 U.S. 803, 103 S. Ct. 26, 74 L. Ed.2d 47 (1982). In that case, the Wake County Hospital System Inc. was held to be an “agency” of Wake County within the purview of the Public Records Law, notwithstanding that it is a non-profit corporation and an independent contractor. The trial court’s ruling was based, among other factors, upon the fact that (1) the hospital was required to transfer its assets to the county upon dissolution; (2) all appointments to the board of directors were subject to approval by the Wake County Board of Commissioners; (3) the county-owned hospital premises were leased to the non-profit corporation for \$1.00 per year; (4) the county commissioners were entitled to review and approve the hospital’s annual budget; (5) the hospital’s books were subject to audit by the county; (6) the hospital system was financed by county bonds, the revenue from which was treated as revenue of the county; and (7) the hospital system was not authorized to alter its corporate existence or amend its articles of incorporation without the county’s written consent.

The Wake County hospital case indicates that North Carolina’s courts, in assessing whether a particular hospital is a “public agency” within the meaning of the Public Records Law, will closely scrutinize the details of the hospital’s corporate structure, operating agreements, and funding in order to evaluate the ties between the hospital and government. The opinion of the North Carolina Court of Appeals includes two holdings that are of significant importance to the interpretation of the Public Records Law generally. First, the court held that “a corporate entity may be considered an agency of government” if its ties to the government are sufficient to make it an arm of the government. In other words, a public agency cannot divest itself of its public character merely by choosing the corporate form of organization. 55 N.C. App. at 11, 284 S.E.2d at 547.

Second, the court construed broadly the phrase in G.S. § 132-1 that describes a public record as any record made or received “pursuant to law or ordinance in connection with the transaction of public business.” The hospital system argued that this language should be construed as permitting public access only to those records which the system was required to compile. The Court of Appeals rejected this argument, holding that the phrase includes “in addition to those records required by law, those records that are kept in carrying out lawful duties.” 55 N.C. App. at 13, 284 S.E.2d 549. The Attorney General’s office has repeated that holding in advisory opinions. “[T]he phrase ‘made or received pursuant to law or ordinance in connection with the transaction of public business’ includes, in addition to those records required to be kept by law, ‘records that are kept in carrying out [the agency’s] lawful duties.’” 1996 WL 925098, \*2 (N.C.A.G.) (citation omitted). 1996 WL 925156, \*1 (N.C.A.G.) (“This includes records kept in carrying out lawful duties.”).

Medical records of individual patients are not public records. See G.S. § 130A-374(a).

#### M. Personnel records.

In North Carolina, personnel records for state, county and municipal employees are addressed in separate chapters of the General

Statutes. The principal statutes governing personnel records of state employees are G.S. §§ 126-22, 126-23 and 126-24. County employee personnel records are covered by G.S. § 153A-98. The personnel records of municipal employees are governed by G.S. § 160A-168. The personnel records of employees of local school boards are governed by G.S. §§ 115C-319 through 115C-321. The personnel records of employees of public hospitals are governed by G.S. § 131E-257.2. In each case, the statutes provide that personnel records generally are exempt from the Public Records Law but that certain fundamental information may be disclosed. Amendment to each of the personnel statutes in 2010 opened up access to more personnel information, and as of this writing, legislation is pending that would provide even greater access. The information that is consistently public is: Name; age; date original employment or appointment; the terms of any contract by which the employee is employed; current position; title; current salary; date and amount of each increase or decrease in salary; date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification; date and general description of the reasons for each promotion with that department, agency, institution, commission, or bureau; date and type of each dismissal, suspension, or demotion for disciplinary reasons, and 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; and the office or station to which the employee is currently assigned. The sole exception to this general list is that employees of public hospitals, whose personnel statute is markedly different. G.S. §§ 131E-257.2.

Personnel records of hospital employees are treated differently from all other public employees. For all employees, the public has a right of access to a core of information (name; age; date of employment; current position; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned.) G.S. § 131E-257.2. For licensed medical providers employed by or with privileges to practice in a public hospital, the public also may find out educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists. *Id.* The law provides additional information for the five most highly compensated “key employees” (people having responsibilities similar to those of an officer, including the chief management and administrative officials of a public hospital) plus “covered officers” (such as the CEO). For those individuals, the following is public: Base salary, bonus compensation, plan-based incentive compensation and the dollar value of all other compensation, which includes any perquisites and other personal benefits. *Id.*

#### 1. Salary.

Public.

#### 2. Disciplinary records.

Partially public. The date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification is public. The date and type of each dismissal, suspension, or demotion for disciplinary reasons is public, and 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 is public.

#### 3. Applications.

Not public.

#### 4. Personally identifying information.

Only the specifically identified “personnel records” are public.

#### 5. Expense reports.

Public.

## N. Police records.

Section 132-1.4 of the General Statutes governs criminal investigations and intelligence information records, which generally are not public records. Certain information, however, *is* public:

The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.

The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.

The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.

The contents of “911” and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness.

The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.

The name, sex, age, and address of a complaining witness.

G.S. § 132-1.4(c).

### 1. Accident reports.

A law enforcement officer who investigates a reportable accident must make a written report of the accident within 24 hours of the accident, and that report is a public record. G.S. § 20-166.1 (e).

### 2. Police blotter.

Police blotters are not specifically addressed. The information identified by G.S. § 132-1.4(c) is public, regardless of where it is kept.

### 3. 911 tapes.

Recordings of 911 calls are public. G.S. § 132-1.4(c)(4)

### 4. Investigatory records.

#### a. Rules for active investigations.

The law makes no distinction between open or closed investigations. The information identified in G.S. § 132-1.4(c) is public, regardless of the status of an investigation.

#### b. Rules for closed investigations.

The law makes no distinction between open or closed investigations. The information identified in G.S. § 132-1.4(c) is public, regardless of the status of an investigation.

### 5. Arrest records.

The information identified in G.S. § 132-1.4(c) is public, regardless of the status of an investigation.

### 6. Compilations of criminal histories.

To the degree compilations are in existence, they would be public.

### 7. Victims.

North Carolina has no statute that categorically would exempt from disclosure any information about victims of crime. Law enforcement may temporarily “withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation.” G.S. § 132-1.4(d).

### 8. Confessions.

Confessions are not specifically addressed by statute but likely could be withheld as criminal intelligence or criminal investigative records. G.S. § 132-1.4(b).

## 9. Confidential informants.

Confidential informants are not specifically addressed by statute but likely could be withheld as criminal intelligence or criminal investigative records. G.S. § 132-1.4(b).

## 10. Police techniques.

Police techniques are not specifically addressed by statute but likely could be withheld as criminal intelligence or criminal investigative records. G.S. § 132-1.4(b).

## 11. Mug shots.

Mug shots are not specifically addressed by statute. Photographs are included within the definition of “records of criminal investigations,” which may be withheld, but mug shots routinely are released in North Carolina.

## 12. Sex offender records.

Records of sex offenders are not specifically addressed by statute. The information of criminal convictions would be public, as judicial records are public. G.S. § 7A-109.

## 13. Emergency medical services records.

EMS records are not specifically addressed by statute but should generally be public under the broad definition of public records. However, North Carolina EMS departments increasingly are withholding information pursuant to HIPAA.

## O. Prison, parole and probation reports.

The North Carolina Supreme Court has ruled that internal prison records, such as information relating to the behavior, classification, and status of prisoners, is confidential and may not be disclosed to prisoners or to the general public. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638 (1971), *aff’d*, 281 N.C. 307, 188 S.E.2d 347 (1972). In the *Goble* case, the North Carolina appellate courts interpreted G.S. § 148-74 and 148-76 as permitting such information to be made available only to law enforcement agencies, courts, correctional agencies, or other officials requiring criminal identification, crime statistics and other information respecting crimes and criminals.

Similarly, records used in connection with prisoner grievance proceedings are closed. Prisoner grievances are handled by the Grievance Resolution Board pursuant to G.S. §§ 148-118.1 through 148-118.9. These statutes establish and govern the corrections Administrative Remedy Procedure. G.S. § 148-118.5 provides that “all reports, investigations, and like supporting documents prepared by the Department [of Corrections] for purposes of responding to the prisoner’s request for an administrative remedy shall be deemed to be confidential.” The same section also provides, however, that the prisoner shall be furnished with “all formal written responses” to his grievance request.

It is important to note that the confidentiality of prison records is limited to *internal* matters, such as prisoner behavior, discipline, consideration for work release, and the like. Matters such as the length of a prisoner’s sentence, the beginning and ending date of the sentence, and the like are matters of public record. See G.S. § 148-59.

At least 30 days before a transfer of a North Carolina inmate to another state correctional system is approved, the Secretary of Correction shall give notice of the proposed transfer by: (1) notifying the district attorney of the district where the prisoner was convicted, the judge who presided at the prisoner’s trial, the law enforcement agency that arrested the prisoner, and the victim of the prisoner’s crime; (2) posting notice at the courthouse in the county in which the prisoner was convicted; and (3) notifying any other person who has made a written request to receive notice of a transfer of the prisoner. All written comments regarding a transfer are public records under General Statutes Chapter 132 unless the Secretary determines that notice or disclosure would jeopardize the safety of persons or property. G.S. § 148-121.

## P. Public utility records.

Records of public utilities generally are public, though specific billing records are not. G.S. § 132-1.1(c).

## Q. Real estate appraisals, negotiations.

### 1. Appraisals.

Appraisals are not treated by statute.

### 2. Negotiations.

Real estate negotiations are not treated by the public records law, though the Open Meetings Law contains an exemption to permit closed session discussions of certain aspects of potential real estate transactions.

### 3. Transactions.

Real estate negotiations are not treated by the public records law, though the Open Meetings Law contains an exemption to permit closed session discussions of certain aspects of potential real estate transactions.

### 4. Deeds, liens, foreclosures, title history.

Public.

### 5. Zoning records.

Public.

## R. School and university records.

As of the writing of this, a case is pending in Wake County Superior Court (*News and Observer Publishing et al. v. Baddour et al.*, Case No. 10 CVS 1941) that will affect the interpretation of the interplay between the Public Records Law and the state and federal laws requiring confidentiality of education records. A coalition of nine media organizations has sued the University of North Carolina for access to records related to an NCAA investigation of improprieties in the football program. UNC has withheld certain records (including phone records and parking tickets) on the basis of FERPA and the North Carolina statute relating to confidentiality of student records.

### 1. Athletic records.

There is no specific statute that covers this.

### 2. Trustee records.

There is no specific statute that covers this. Trustees would be public agents generally subject to the Public Records Law, and thus any records in their possession would be public unless specifically exempted by a statute (such as the statute providing for confidentiality of student records).

### 3. Student records.

“The official record of each student is not a public record as the term “public record” is defined by G.S. 132-1. The official record shall not be subject to inspection and examination as authorized by G.S. 132-6.” G.S. § 115C-402.

“Records maintained by The University of North Carolina or any constituent institution, or by the Community Colleges System Office or any community college, which contain personally identifiable information from or about an applicant for admission to one or more constituent institutions or to one or more community colleges shall be confidential and shall not be subject to public disclosure pursuant to G.S. 132-6(a).” G.S. § 132-1.1

## S. Vital statistics.

### 1. Birth certificates.

Birth certificates, with the exception of the names of children and parents, the addresses of parents (other than county of residence and postal code), and the social security numbers of parents, are public records. G.S. § 130A-93.

## 2. Marriage & divorce.

Public. Marriage Licenses are records of the Register of Deeds. G.S. § 51-8. Upon presentation of a current and valid “Address Confidentiality Program authorization card,” the Register of Deeds may use a substitute address when creating a new marriage license. G.S. § 51-16.1. Records of divorce are judicial records that are public. G.S. § 7A-109.

## 3. Death certificates.

Death certificates are filed with the register of deeds and are public records. G.S. § 130A-99. Only certain people may obtain certified copies.

## 4. Infectious disease and health epidemics.

No statute specifically addresses this issue, though personally identifiable medical information in the possession of public agencies is confidential. G.S. § 130A-12.

## V. PROCEDURE FOR OBTAINING RECORDS

### A. How to start.

There are no prescribed procedures to follow or forms to submit in connection with the inspection, examination or copying of public records in North Carolina. Experience indicates that the overwhelming majority of such requests are made orally and are fulfilled readily and informally. North Carolina’s Public Records Law requires that access to public records must be granted by “every person having custody of public records.” Thus requests can be, and are, addressed to virtually any public employee.

### 1. Who receives a request?

Requests for public records may be made to the custodian of the public record. One trial court ruled that a local government cannot construct barriers to public records access by requiring requests to be filtered through a county manager or some other designated public official. *Dawes v. Buncombe County Board of Commissioners*, 99 CVS 03497 (September 1, 1999).

### 2. Does the law cover oral requests?

With two exceptions, the Public Records Law does not require a request to be in writing. A public agency may require a request for copies of computer databases to be made in writing, and a public agency providing copies of a geographical information system may require an agreement in writing that the requester will not use the record for commercial purposes. G.S. §§ 132-6.2(c) and 132-10.

#### a. Arrangements to inspect & copy.

The law permits any person to request to inspect public records. There is no magic language in the statute related to how the request is made, and it says records may be “inspected and examined at reasonable times and under reasonable supervision by any person.” G.S. § 132-6(a).

#### b. If an oral request is denied:

##### (1). How does the requester memorialize the refusal?

This is not addressed in the statute, which (generally) contains no requirement that requests be in writing.

##### (2). Do subsequent steps need to be in writing?

This is not addressed in the statute, which (generally) contains no requirement that requests be in writing.

### 3. Contents of a written request.

There are no statutory requirements of the particular form of a request. It is common practice to identify the records with as much particularity as is possible; to agree to pay the actual cost of providing the records but to request to be notified in advance if the total will exceed

a particular amount; and to request, as provided by statute, that the records be provided “as promptly as possible.” G.S. § 132-6(a).

**a. Description of the records.**

The law does not contain any requirements related to description of the records.

**b. Need to address fee issues.**

The law does not contain any requirements related to payment of fees, though it is customary to agree to pay the actual costs up to a pre-set limit with a request to be notified of excess expense.

**c. Plea for quick response.**

The law requires records to be produced “as promptly as possible,” but if there is a particular timeframe at play, it would be wise to advise the public agency of the pending deadline.

**d. Can the request be for future records?**

Some reporters are able to make arrangements to be included on distribution lists of records or to be copied on a particular class of emails or other records, but this is not specifically addressed by statute.

**B. How long to wait.**

**1. Statutory, regulatory or court-set time limits for agency response.**

The Public Records Law imposes no specific time limits on either requests or responses. G.S. § 132-6 states that a custodian of public records shall make them available “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.” These standards apparently have not been interpreted by the courts. In counseling members of the North Carolina Press Association concerning the timeliness of requests and responses, the NCPA’s general counsel has assumed that the quantity and nature of the documents requested would be considered in determining whether a request was timely and whether the response was reasonably prompt.

As noted above, the overwhelming majority of requests for public records in North Carolina are made orally. If a reporter’s request is denied, the usual next step is for the oral request to be reiterated by an editor or other person in authority in writing. If this request is denied, NCPA member newspapers frequently proceed to (1) obtain the opinion of an attorney, such as the NCPA’s General Counsel, with regard to whether the documents requested are indeed public records; (2) to publicize the fact of the denial, and the attorney’s opinion, in a news story; and (3) to initiate a written request from the newspaper’s management to the official who has refused to disclose the documents. The NCPA recommends that such a request describe the documents in question, point out that the documents appear to be covered by the North Carolina Public Records Law, and ask that if the request is denied, the official state in writing “any statute, case precedent, regulation or rule upon which you rely in declining public access to the documents in question.”

**2. Informal telephone inquiry as to status.**

Public agencies are generally responsive to a request for a status report.

**3. Is delay recognized as a denial for appeal purposes?**

No North Carolina cases have construed undue delay as a denial of a request. The requirement that records be provided “as promptly as possible” has existed for approximately seven years, and no appellate court has applied that requirement. The N.C. Court of Appeals explicitly declined to consider timeliness when it was not required by the case. “Whether the length of defendants’ delay in producing copies of the requested public records constitutes a denial of access is not

a question we need address at this time because we have found plaintiff’s complaint sufficient on other grounds.” *State Employees Ass’n of N. Carolina, Inc. v. N. Carolina Dept. of State Treasurer*, 364 N.C. 205, 213, 695 S.E.2d 91, 96-97 (2010) One trial court did find the Public Records Law “does not provide relief for mere delay in producing copies of public records,” *Quality Built Homes, Inc. v. Vill. of Pinehurst*, 1:06CV1028, 2008 WL 3503149 (M.D.N.C. Aug. 11, 2008).

**4. Any other recourse to encourage a response.**

No other.

**C. Administrative appeal.**

The North Carolina Public Records Law contains no requirements or procedures for administrative appeals in instances where access to public records is denied. If anyone is charged a fee that the requester believes is excessive, the requester may ask the Information Resource Management Commission to mediate the dispute. G.S. § 132-6.2(c).

**1. Time limit.**

No specific statute of limitations appears in the Public Records Law; the Public Records Law is not included in the general statutes relating to limitation; and no case has addressed the time limits of bringing suit. An argument could be made that the statute is three years, G.S. § 1-52(2) or that the general “all other actions” limitation of ten years applies. Any arguable statute of limitations problem could be fixed by a repeat of the public records request.

**2. To whom is an appeal directed?**

Claims for violation of the Public Records Law could properly be filed in the district or superior court divisions of the General Court of Justice. Most cases are brought in superior court.

**a. Individual agencies.**

There are no particular provisions related to particular agencies.

**b. A state commission or ombudsman.**

There is no provision for such.

**c. State attorney general.**

The attorney general can provide non-binding opinions to public agencies but not to members of the public.

**3. Fee issues.**

“[I]f anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.” G.S. 132-6.2(b).

**4. Contents of appeal letter.**

**a. Description of records or portions of records denied.**

There is no provision for administrative appeal, by letter or otherwise.

**b. Refuting the reasons for denial.**

There is no provision for administrative appeal, by letter or otherwise.

**5. Waiting for a response.**

There is no provision for administrative appeal, by letter or otherwise.

**6. Subsequent remedies.**

There is no provision for administrative appeal, by letter or otherwise.

## D. Court action.

### 1. Who may sue?

The Public Records Law provides that “any person” who is denied access to public records may apply to the appropriate division of the General Court of Justice for an order compelling disclosure. G.S. § 132-9.

### 2. Priority.

Actions brought under the Public Records Law “shall be set down for immediate hearing,” and subsequent proceedings are accorded priority. G.S. § 132-9(9).

### 3. Pro se.

A petition seeking public records may be filed *pro se*, but this procedure is not recommended.

### 4. Issues the court will address:

G.S. § 132-9 provides that the courts shall have jurisdiction to issue orders “compelling disclosure” of public records. North Carolina case law makes it clear that the courts can and do consider and rule upon related issues, such as the practice of charging excessive fees in order to discourage requests. Although the public records law makes no specific reference to declaratory judgments, an order compelling disclosure of a particular type or category of document is, as a practical matter, tantamount to a declaratory judgment with respect to all similar documents. Courts issuing orders compelling disclosure frequently include wording to make it clear that future requests for the same or similar categories or documents must also be honored.

#### d. Patterns for future access (declaratory judgment).

Most complaints for violation of the public records law contain parallel requests for declaratory relief under the Declaratory Judgment Act. G.S. §§ 1-253 *et seq.*

### 5. Pleading format.

G.S. § 132-9 does not prescribe any particular form of pleadings, but most public records cases are commenced by the filing of a petition.

### 6. Time limit for filing suit.

No specific statute of limitations appears in the Public Records Law; the Public Records Law is not included in the general statutes relating to limitation; and no case has addressed the time limits of bringing suit. An argument could be made that the statute is three years, G.S. § 1-52(2) or that the general “all other actions” limitation of ten years applies. Any arguable statute of limitations problem could be fixed by a repeat of the public records request.

### 7. What court.

G.S. § 132-9 provides that petitions seeking disclosure of public records may be filed in either division of the General Court of Justice — i.e., Superior Court or in District Court. Most petitioners elect to file in Superior Court. However, in rural counties where Superior Court is held infrequently, actions are sometimes commenced in District Court.

### 8. Judicial remedies available.

The principal remedy available in a proceeding commenced pursuant to G.S. § 132-9 is for the court to enter an order compelling the

custodian of the records to make them available for public inspection, examining and copying.

## 9. Litigation expenses.

### a. Attorney fees.

A requester who prevails in a civil suit brought pursuant to the Public Records Law may seek an award of attorney fees. The statute has been amended to make an award of attorney fees to a party winning access virtually mandatory. The court “shall” award fees unless the noncompliant public agency was following a judgment or order of a court, a published appellate opinion, or a written opinion from the Attorney General. G.S. § 132-9(c).

### b. Court and litigation costs.

This is not addressed in the statute.

## 10. Fines.

The Public Records Law does not provide for any fines, criminal sanctions, or other penalties for the unauthorized withholding of public records.

## 11. Other penalties.

None

## 12. Settlement, pros and cons.

Although the Public Records Law provides that actions brought shall be set down for immediate hearing, experience has proven that there often still is a several-month delay in court action. Therefore, if an out-of-court resolution can be reached, it likely will be a faster route to obtaining records. In the experience of the NCPA, however, few public agencies have, in the middle of a dispute, reversed their decision of whether a record was public.

## E. Appealing initial court decisions.

### 1. Appeal routes.

A decision of a district or superior court denying access to a public record is appealable to the North Carolina Court of Appeals.

### 2. Time limits for filing appeals.

An appeal from a judgment or order in a civil action must be taken within 30 days after its entry. N.C.R. App. P. 3(c) (1997).

### 3. Contact of interested amici.

The North Carolina Press Association, the North Carolina Press Foundation and North Carolina newspapers individually have been supportive of colleagues in filing *amicus curiae* briefs on public records and open meetings issues. The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues.

## F. Addressing government suits against disclosure.

In 2004, the North Carolina courts ruled that government agencies may not use the Public Records Law as a sword by suing private citizens over a public records dispute. *McCormick v. Hanson Aggregates Southeast Inc.*, 164 N.C. App. 459, 596 S.E.2d 431. *cert. denied and appeal dismissed*, 359 N.C. 69, 603 S.E.2d 131 (2004). *See also City of Burlington v. Boney Publishers Inc.*, 166 N.C. App. 186, 600 S.E.2d 872 (2004), *disc. rev. improvidently allowed*, 359 N.C. 422, 611 S.E.2d 833 (2005).

# Open Meetings

## I. STATUTE -- BASIC APPLICATION.

### A. Who may attend?

North Carolina General Statute Section 143-318.9 provides that public bodies “exist solely to conduct the people’s business” and should conduct their business openly. Therefore, anyone is entitled to attend an open session of a public body.

### B. What governments are subject to the law?

All “public bodies” in North Carolina are covered, regardless of whether they function on behalf of the state, or of one or more counties, cities, school administrative units, or other political subdivisions. G.S. § 143-318.10(b).

#### 1. State.

Covered.

#### 2. County.

Covered.

#### 3. Local or municipal.

Covered.

### C. What bodies are covered by the law?

G.S. § 143-318.10(b) defines “public bodies” as follows:

A public body is an elected or appointed body (i) with two or more members that (ii) exercises a legislative policy-making, quasi-judicial, administrative, or advisory function. Any group that carries out activities on behalf of a public body or advises a public body is treated as a public body for the purposes of the Open Meetings Law. A public body may not delegate responsibility to private entities and thereby avoid performing public functions in a public manner.

A committee of a public body is a public body. If a board qualifies as a public body under the basic definition and if that board has committees composed of its own members, those committees are fully public.

“Constituent institutions of the University of North Carolina” are subject to the Open Meetings Law.

If the local government has outstanding debt for the hospital or if the local government appropriates funds to support the hospital, then the governing board of that hospital (and any subdivision thereof) is a public body. If a non-profit corporation agrees to operate the hospital as a community general hospital, the hospital’s governing board is a public body.

#### 1. Executive branch agencies.

Executive branch agencies are covered by the Open Meetings Law if they meet the basic requirements of G.S. § 143-318.10(b).

##### a. What officials are covered?

Any two or more officials who officially comprise a committee or subcommittee would constitute a public body subject to the Open Meetings Law. No individual official acting alone is covered, nor are ad hoc committees.

##### b. Are certain executive functions covered?

Provided the body is exercising a legislative, policy-making, quasi-judicial, administrative, or advisory function, the body is covered by the Open Meetings Law.

##### c. Are only certain agencies subject to the act?

No; any two or more people who, by election or appointment, are exercising a legislative, policy-making, quasi-judicial, administrative, or advisory function, are covered by the Open Meetings Law.

## 2. Legislative bodies.

A slightly modified version of the Open Meetings Law applies to the North Carolina General Assembly generally, including its committees, subcommittees and commissions. The variation from the standard provisions is that the General Assembly has different notice provisions. G.S. § 143-318.14A. The Legislative Ethics Committee, conference committees, and a caucus by members of the General Assembly are not subject to the Open Meetings Law. However, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article. G.S. § 143-318.18.

## 3. Courts.

G.S. § 143-318.18 provides that “grand and petit juries,” and “the General Court of Justice” (i.e., the District and Superior Courts) are exempt from the Open Meetings Law.

## 4. Nongovernmental bodies receiving public funds or benefits.

Generally speaking, the source of funds has nothing to do with determining whether a body is a “public body” for purposes of the Open Meetings Law. However, the Court of Appeals ruled in *Chatfield v. Wilmington Housing Finance and Development Inc.*, 166 N.C. App. 703, 603 S.E.2d 837 (2004), that loss of government funding was one factor to consider in determining if a housing agency was subject to the Open Meetings Law. Generally speaking, however, nongovernmental bodies are not covered, regardless of whether they receive government funds.

## 5. Nongovernmental groups whose members include governmental officials.

Nongovernmental bodies are not covered, although the records of an official serving on a nongovernmental group by virtue of his or her governmental position might be subject to the Public Records Law.

## 6. Multi-state or regional bodies.

Although the Open Meetings Law does not expressly address multi-state bodies, it seems clear that a delegation of two or more members appointed by a political subdivision of North Carolina would constitute a “public body” subject to the Open Meetings Law.

## 7. Advisory boards and commissions, quasi-governmental entities.

Advisory boards and commissions are covered by the law, provided they meet the definition of a “public body.”

## 8. Other bodies to which governmental or public functions are delegated.

All bodies are covered if they meet the definition of a “public body” under G.S. § 143-318.10.

## 9. Appointed as well as elected bodies.

Appointed as well as elected bodies are covered if they meet the definition of “public body.”

## D. What constitutes a meeting subject to the law.

The law covers all “official meetings” of public bodies. An official meeting is defined as “a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body.” G.S. § 143-318.10(d).

### 1. Number that must be present.

#### a. Must a minimum number be present to constitute a “meeting”?

A majority of the members of a public body must be present in order for an “official meeting” to occur. G.S. § 143-318.10(d).

**b. What effect does absence of a quorum have?**

The absence of a quorum means the meeting is not “official,” and the Open Meetings Law requirements do not attach.

**2. Nature of business subject to the law.**

All meetings are covered if they are for the purpose of “conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business . . .” G.S. § 143-318.10(d).

**a. “Information gathering” and “fact-finding” sessions.**

Covered.

**b. Deliberations toward decisions.**

Covered, unless exempted by the closed session provisions.

**3. Electronic meetings.****a. Conference calls and video/Internet conferencing.**

The Open Meetings Law provides that a body may hold a meeting by conference call but must provide a location and means for members of the public to listen to the meeting. The body may charge a fee of up to \$25.00 to each listener to defray the cost of providing the necessary location and equipment. G.S. § 143-318.13(a).

**b. E-mail.**

E-mail is not expressly addressed in the Open Meetings Law but would fall within the definition of a public record, which includes any “documents, papers, letters, . . . regardless of physical form or characteristics.” G.S. § 132-1(a).

**c. Text messages.**

Questions have arisen about public officials texting each other during meetings, and open government advocates take the position that such activity violates the Open Meetings law requirement to provide public access to electronic meetings. G.S. § 143-318.13(a).

**d. Instant messaging.**

Questions have arisen about public officials texting each other during meetings, and open government advocates take the position that such activity violates the Open Meetings law requirement to provide public access to electronic meetings. G.S. § 143-318.13(a).

**e. Social media and online discussion boards.**

Not addressed by statute.

**E. Categories of meetings subject to the law.****1. Regular meetings.****a. Definition.**

“Regular meetings” are not defined in the Open Meetings Law. In essence, they consist of all official meetings except “special meetings” and “emergency meetings.”

**b. Notice.****(1). Time limit for giving notice.**

Public bodies must establish a schedule of regular meetings and make that schedule public. Otherwise, there is no requirement of notice of each meeting. G.S. § 143-318.12. If a meeting is recessed rather than adjourned, it may be continued without notice beyond an announcement in the Open Meeting of the time and place the meeting will continue. G.S. § 143-318.12(b)(1)

**(2). To whom notice is given.**

Public bodies having a schedule of regular official meetings must keep the schedule on file for public inspection. G.S. § 143-318.12(a).

**(3). Where posted.**

The schedule for state government public bodies must be on file with the Secretary of State. G.S. § 143-318.12(a)(1).

The schedule for county government public bodies must be on file with the clerk to the board of county commissioners. G.S. § 143-318.12(a)(2).

The schedule for city government public bodies must be on file with the city clerk. G.S. § 143-318.12(a)(3).

For other public bodies, the schedule must be on file with its clerk or secretary or if none, with the clerk to the board of county commissioners where the public body normally meets. If the schedule is revised, the revised schedule must be filed as indicated above at least seven days before the date of the first meeting held under the revised schedule. G.S. § 143-318.12(a)(4).

**(4). Public agenda items required.**

The Open Meetings Law contains no requirement that bodies have an agenda for regular meetings. However, if an agenda is created, it is a public record under the Public Records Law. G.S. § 132-1.

**(5). Other information required in notice.**

None.

**(6). Penalties and remedies for failure to give adequate notice.**

The penalties and remedies are the same as for any other violation of the Open Meetings Law, i.e. the meeting may be declared illegal and action taken *may* be voided. G.S. § 143-318.16, 143-318.16A, 143-318.16B.

**c. Minutes.****(1). Information required.**

The Open Meetings Law requires that “full and accurate” minutes be kept of all meetings, regardless of whether they are open or closed. When a public body meets in a closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. G.S. § 143-318.10(e). The North Carolina Court of Appeals has adopted the position of former UNC School of Government Professor David M. Lawrence on the difference between minutes and a general account. “The purpose of minutes is to provide a record of the actions taken by a board and evidence that the actions were taken according to proper procedures. If no action is taken, no minutes (other than a record that the meeting occurred) are necessary. The purpose of a general account, on the other hand, is to provide some sort of record of the discussion that took place in the closed session, whether action was taken or not.” *Multimedia Publishing of North Carolina Inc. v. Henderson County*, 145 N.C. App. 365, 372-73, 550 S.E.2d 846, 851-52 (2001) (quoting *Open Meetings and Local Governments in North Carolina: Some Questions and Answers* (5th ed.1998)).

**(2). Are minutes public record?**

Minutes of both open and closed sessions are a public record, though minutes of closed sessions may be withheld so long as “public inspection would frustrate the purpose of a closed session.” G.S. § 143-318.10(e). In *Piedmont Publishing Co. v. Surry County*, 24 Media L. Rep. (BNA) 1371 (N.C. Sup. Ct. 1995), the court held that minutes of meetings are a public record upon creation and that “[a]pproval of the minutes of an official meeting of a public body is not a prerequisite to their classification as a public record.” The court went further and required county commissioners to produce copies of any notes taken at the meeting, as well. The Court of Appeals also has held that only minutes of legal closed sessions may be withheld from the public. “The plain language of G.S. § 143-318.10 requires that a closed ses-

sion be conducted in compliance with G.S. § 143-318.11 in order for the minutes of such session to be withheld from public inspection.” *Boney Publishers Inc. v. Burlington City Council*, 151 N.C. App. 651, 659, 566 S.E.2d 701, 706 (2002).

## 2. Special or emergency meetings.

### a. Definition.

A “special meeting” is any meeting other than a regular or emergency meeting. An emergency meeting is “one called because of generally unexpected circumstances that require immediate consideration by the public body.” G.S. § 143-318.12(b)(3).

### b. Notice requirements.

#### (1). Time limit for giving notice.

Notice of special meetings must be given at least 48 hours before the time of the meeting. Public notice of an emergency meeting must be given immediately after notice has been given to members of the public body.

#### (2). To whom notice is given.

Notice of special meetings must be given by posting on the principal bulletin board of the public body or, if there is no such board, at the door of its usual meeting room. Additionally, notice must be mailed or delivered to all media or individuals that have filed a written request to be notified.

#### (3). Where posted.

Notice of special meetings must be given by posting on the principal bulletin board of the public body or, if there is no such board, at the door of its usual meeting room.

#### (4). Public agenda items required.

Notice of a special or emergency meeting must include the purpose of the meeting.

#### (5). Other information required in notice.

None.

#### (6). Penalties and remedies for failure to give adequate notice.

The penalties and remedies are the same as for any other violation of the Open Meetings Law.

### c. Minutes.

#### (1). Information required.

The minutes requirement for special or emergency meetings are the same as those for regular meetings. The Open Meetings Law requires that “full and accurate” minutes be kept of all meetings, regardless of whether they are open or closed. When a public body meets in a closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. G.S. § 143-318.10(e).

#### (2). Are minutes a public record?

Minutes are a public record unless “public inspection would frustrate the purpose of a closed session.” G.S. § 143-318.10(e).

## 3. Closed meetings or executive sessions.

### a. Definition.

The Open Meetings Law does not contain a definition of closed sessions but specifically defines the nine circumstances in which a closed session may be held.

### b. Notice requirements.

#### (1). Time limit for giving notice.

Public bodies must establish a schedule of regular meetings and make that schedule public. Otherwise, there is no requirement of no-

tice of each meeting. Nor is there any requirement that notice be provided that the public body will meet in closed session.

#### (2). To whom notice is given.

Same as for open meeting.

#### (3). Where posted.

Same as for open meeting.

#### (4). Public agenda items required.

Same as for open meeting.

#### (5). Other information required in notice.

None.

#### (6). Penalties and remedies for failure to give adequate notice.

The penalties and remedies are the same as for any other violation of the Open Meetings Law.

### c. Minutes.

#### (1). Information required.

The Open Meetings Law requires that “full and accurate” minutes be kept of all meetings, regardless of whether they are open or closed. When a public body meets in a closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. G.S. § 143-318.10(e).

#### (2). Are minutes a public record?

Minutes kept by public bodies are public records pursuant to G.S. § 132-6. However, G.S. § 143-318.10(e) provides that minutes of a closed session may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session.

#### d. Requirement to meet in public before closing meeting.

A closed session may be held only upon the passage of a proper motion, at an open session, to go into a closed session. G.S. § 143-318.11(c).

#### e. Requirement to state statutory authority for closing meetings before closure.

A member of the public body must make a motion, stating the authority for going into closed session, and the motion must pass before going into closed session. If the reason for the closed session is to discuss pending litigation, the motion must identify the parties to the litigation. G.S. § 143-318.11(c).

#### f. Tape recording requirements.

None.

### F. Recording/broadcast of meetings.

#### 1. Sound recordings allowed.

The Open Meetings Law provides, in G.S. § 143-318.14, that “any person” may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

#### 2. Photographic recordings allowed.

The Open Meetings Law provides, in G.S. § 143-318.14, that “any person” may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

### G. Are there sanctions for noncompliance?

The possible “sanctions” for noncompliance are (1) a declaration that a meeting was held in violation of the Open Meetings Law; (2) an

injunction prohibiting further violations; (3) an order declaring null and void any action taken by a public body in violation of the Open Meetings Law; and (4) a possible award of attorney fees to the prevailing party in litigation brought under the Open Meetings Law. G.S. § 143-318.16, 143-318.16A, 143-318.16B.

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open meetings statute.

#### 1. Character of exemptions.

The Open Meetings Law contains only nine permitted purposes for going into closed session. In *Advance Publications v. City of Elizabeth City*, 53 N.C. App 504, 506, 281 S.E.2d 69, 70 (1981), the North Carolina Court of Appeals held that the North Carolina Public Records Law is to be liberally construed in favor of public access, and held in *News & Observer Publishing Co. v. Interim Board of Education for Wake County*, 29 N.C. App. 37, 47, 223 S.E.2d 580 (1976), that exceptions to the Open Meetings Law should be strictly construed. *Boney Publishers Inc. v. Burlington City Council*, 151 N.C. App. 651, 655, 566 S.E.2d 701, 704 (2002) (“[E]xceptions to the operation of open meetings laws must be narrowly construed.”).

##### a. General or specific.

The only “general” exemption is G.S. § 143-318.11(a)(1), which permits a closed session to prevent disclosure of information that is privileged or confidential under state or federal laws or information that is not considered a public record under the meaning of Chapter 132 of the General Statutes.

##### b. Mandatory or discretionary closure.

Most exemptions are discretionary. The only time a public body could be *required* to go into closed session would be to protect statutorily confidential information such as personnel or student records.

#### 2. Description of each exemption.

The permitted purposes for closing a session are:

i. *Confidential and Privileged Information.* A public body may close a meeting to prevent disclosure of information that is privileged or confidential under state or federal laws or information that is not considered a public record under the meaning of Chapter 132 of the General Statutes. G.S. § 143-318.11(a)(1).

ii. *Honoraria.* A public body may close a meeting to prevent the premature disclosure of an honorary degree, scholarship, prize or similar award. G.S. § 143-318.11(a)(2).

iii. *Attorney-Client Privilege.* A public body may close a session to consult with an attorney with regard to the handling or settlement of a claim, judicial action or administrative procedure. The terms of a settlement (other than of a medical malpractice case) approved in a closed session must be reported and entered into the minutes “as soon as possible within a reasonable time after the settlement is concluded.” The statute explicitly states that nothing in this section shall be construed to permit a public body to close a session simply because its attorney is present. The law also requires that every motion to close a meeting under this provision must reference the lawsuit and the parties about which or whom the public body expects to receive advice. G.S. § 143-318.11(a)(3).

A UNC Institute of Government Professor has cautioned public bodies against inclusion of third parties in closed sessions called under this provision: “Caution should be exercised, however, in allowing someone who is not an employee or official of the entity to attend a closed session held to protect the attorney-client privilege. The presence of an outsider, even someone such as a consultant to the governmental entity, might destroy the attorney-client privilege at the meeting and thus make the closed session invalid.” *Open Meetings and Local Governments in North Carolina*, (6th Ed. 2002).

This provision was at the heart of a lawsuit that went to the North Carolina Court of Appeals in 2000. *Multimedia Pub. of North Carolina Inc. v. Henderson County*, 136 N.C. App. 567, 525 S.E.2d 786 (2000). A county commission met in closed session with their attorney with regard to a proposed moratorium on construction of new racetracks; the commission came out of closed session and voted, without discussion, to pass the moratorium. The local newspaper objected to the closed session and requested copies of the minutes from the session. The trial court found nothing improper about the closed session and did not even address the paper’s request for minutes. The court found that the attorney-client exemption was narrower than the commission urged and broader than the newspaper urged. Additionally, the court wrote that “notwithstanding the countervailing policy favoring confidentiality between attorneys and clients,” exemptions to the Open Meetings Law must be construed narrowly. The “legislature has explicitly forbidden general policy matters from being discussed during closed sessions,” the court wrote, and quoting an Arizona case, “public bodies cannot simply delegate responsibilities to attorneys and then cloak negotiations and closed sessions in secrecy by having attorneys present.” The only specific guidance the opinion gave was by way of example: “Thus, discussions regarding the drafting, phrasing, scope, and meaning of proposed enactments would be permissible during a closed session. Discussions regarding their constitutionality and possible legal challenges would likewise be so included. But as soon as discussions move beyond legal technicalities and into the propriety and merits of proposed enactments, the legal justification for closing the session ends.”

Most importantly, the court addresses burden of proof. Recognizing that “requiring a plaintiff to plead and prove specific facts regarding alleged violations that are taking place in secret is a circular impossibility,” the Court placed the burden on the public body to establish the validity of the closure. The court wrote that in meeting its burden, “government bodies may not simply treat the words ‘attorney-client privilege’ or ‘legal advice’ as some talisman, the mere utterance of which magically casts a spell of secrecy over their meetings. After all, ‘the incantation of an attorney-client rationale is not an abracadabra to which this Court must defer judgment.’” The public body must come forward with “objective indicia” that the exception is justified, not merely rely on assertions by the public body or its lawyers.

After remand and a second appeal, the Court of Appeals found the minutes were sufficient. Following the *Multimedia* case, Professor Lawrence wrote extensively about what outside parties might be present at a closed session: “If outside parties are present, the conversation is per se not confidential, and a closed session may not be held. Therefore, it is crucial that the public body and its attorney be careful about who is allowed in the room while the closed session is in progress.” David M. Lawrence, *Closed Session Under the Attorney-Client Privilege*, *Local Gov’t Law Bulletin*, April 2002, at 3-4.

iv. *Industry/Business Expansion.* A public body may discuss matters relating to the location or expansion of industries or business in the area in a closed session. Following the North Carolina Supreme Court’s decision in *Maready v. City of Winston-Salem*, 342 N.C. 708, 467 S.E.2d 615 (1996), the General Assembly amended the exemption to make clear that it allows discussion but not final decisions or final actions to be taken in closed session. The law now provides a public body may meet “to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.” G.S. § 143-318.11(a)(4).

v. *Real Estate Acquisitions and Employment Contracts.* A public body may meet in a closed session *only* to establish (or instruct its agents concerning) its position with regard to negotiating (i) the *price* or other

*material terms* of a real property acquisition or (ii) the compensation or other material terms of an employment contract. G.S. § 143-318.11(a)(5). A Court of Appeals decision held that only issues that will be negotiated related to real estate transactions may be withheld from public disclosure and that ordinarily the location, intended use and owner of land under consideration would not be exempt from disclosure. *Boney Publishers, Inc. v. Burlington City Council*, 151 N.C. App. 651, 656, 566 S.E.2d 701, 705 (2002).

vi. *Specific personnel and employee issues.* A public body may consider the qualifications or conditions of initial employment of or investigate complaints or charges against an individual public officer or employee at a closed session. Final action on these issues must be taken at an open meeting. General personnel issues may not be considered in a closed session, and a public body may only address filling a vacancy in the public body during an open meeting. G.S. § 143-318.11(a)(6). A Moore County court found that the Village of Whispering Pines Village Council had violated the law by discussing and coming to consensus in closed session about hiring a new chief of police without formally taking action in open session. *Stout v. Village of Whispering Pines*, Case No. 04 CVS 0494 (Moore Co. Sup. Ct. 2005).

vii. *Criminal misconduct.* A public body may plan, conduct, or receive reports regarding investigations of alleged criminal conduct. G.S. § 143-318.11(a)(7).

viii. *Emergency response plans.* A local board of education may formulate plans relating to emergency response to incidents of school violence. G.S. § 143-318.11(a)(8).

ix. *Public safety.* A public body may discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and may receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity. G.S. § 143-318.11(a)(9).

#### **B. Any other statutory requirements for closed or open meetings.**

None.

#### **C. Court mandated opening, closing.**

No decisions except in context of Open Meetings Law.

### **III. MEETING CATEGORIES -- OPEN OR CLOSED.**

#### **A. Adjudications by administrative bodies.**

Public bodies subject to the Executive Budget Act (G.S. § 143-1 *et seq.*) exercising “quasi-judicial functions” during a session held solely for the purpose of making a decision in an adjudicatory action or proceeding are not subject to the Open Meetings Law. G.S. § 143-318.18(7).

##### **1. Deliberations closed, but not fact-finding.**

Deliberations are open unless they fall within a specific statutory exemption.

##### **2. Only certain adjudications closed, i.e. under certain statutes.**

Deliberations are open unless they fall within a specific statutory exemption.

#### **B. Budget sessions.**

G.S. § 143-14 requires the appropriations committees of the House of Representatives and the Senate to “sit jointly in open sessions while considering the budget.” The same statute also contains other language making it clear that the public also may attend meetings of the appropriation subcommittees. All “budget sessions” of other public bodies must be public pursuant to the Open Meetings Law.

#### **C. Business and industry relations.**

A public body may meet in closed session to “discuss” the location or expansion of industries or businesses within the area served by the public body. G.S. § 143-318.11(a)(4). However, final decisions or actions cannot be taken in closed session.

#### **D. Federal programs.**

The Open Meetings Law permits a public body to meet in closed session to protect information that federal law directs be kept confidential. G.S. § 143-318.11(a)(1).

#### **E. Financial data of public bodies.**

Financial data of public bodies is a matter of public record pursuant to the Public Records Law, and nothing in the Open Meetings Law permits or requires such data to be the subject of a closed meeting.

#### **F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

The Open Meetings Law makes no reference to discussions of any of these topics. However, a public body could go into closed session if an open session would reveal information that is a trade secret under G.S. § 132-1.2.

#### **G. Gifts, trusts and honorary degrees.**

Public bodies may meet in closed session to “consider and authorize” the acceptance of certain gifts, and to choose the recipients of honors, awards, honorary degrees, and the like. G.S. § 143-318.11(a)(2).

#### **H. Grand jury testimony by public employees.**

All grand jury proceedings are exempt from the Open Meetings Law. G.S. § 143-318.18(1). In addition, G.S. § 15A-623 provides that during grand jury proceedings, no one shall be admitted to the grand jury room except (1) members of the grand jury; (2) the witness being examined; (3) an interpreter, if needed; and (4) a law enforcement officer holding a witness in custody. All persons admitted to the grand jury room, other than a witness, must first take an oath to keep the proceedings secret; breach of the oath is punishable as contempt.

#### **I. Licensing examinations.**

Professional licensing boards are exempt from the Open Meetings Law “while preparing, approving, administering, or grading examinations.” G.S. § 143-318.18(6).

#### **J. Litigation; pending litigation or other attorney-client privileges.**

A public body may close a session to consult with an attorney with regard to the handling or settlement of a claim, judicial action or administrative procedure. G.S. § 143-318.18(3). The terms of a settlement (other than of a medical malpractice case) approved or considered in a closed session must be reported and entered into the minutes “as soon as possible within a reasonable time after the settlement is concluded.” The statute explicitly states that nothing in this section shall be construed to permit a public body to close a session simply because its attorney is present. The law also requires that every motion to close a meeting under this provision must reference the lawsuit and the parties about which or whom the public body expects to receive advice.

The issue of closed sessions to consult with legal counsel was at the heart of a North Carolina Court of Appeals case. *Multimedia Pub. of North Carolina Inc. v. Henderson County*, 136 N.C. App. 567, 525 S.E.2d 786 (2000). A county commission met in closed session with their attorney with regard to a proposed moratorium on construction of new racetracks; the commission came out of closed session and voted, without discussion, to pass the moratorium. The local newspaper objected to the closed session and requested copies of the minutes from the session. The trial court found nothing improper about the closed

session and did not even address the paper's request for minutes. The court found that the attorney-client exemption was narrower than the commission urged and broader than the newspaper urged. Additionally, the court wrote that "notwithstanding the countervailing policy favoring confidentiality between attorneys and clients," exemptions to the Open Meetings Law must be construed narrowly. The "legislature has explicitly forbidden general policy matters from being discussed during closed sessions," the court wrote, and quoting an Arizona case, "public bodies cannot simply delegate responsibilities to attorneys and then cloak negotiations and closed sessions in secrecy by having attorneys present." The only specific guidance the opinion gave was by way of example: "Thus, discussions regarding the drafting, phrasing, scope, and meaning of proposed enactments would be permissible during a closed session. Discussions regarding their constitutionality and possible legal challenges would likewise be so included. But as soon as discussions move beyond legal technicalities and into the propriety and merits of proposed enactments, the legal justification for closing the session ends."

Most importantly, the court addresses burden of proof. Recognizing that "requiring a plaintiff to plead and prove specific facts regarding alleged violations that are taking place in secret is a circular impossibility," the court placed the burden on the public body to establish the validity of the closure. The court wrote that in meeting its burden, "government bodies may not simply treat the words 'attorney-client privilege' or 'legal advice' as some talisman, the mere utterance of which magically casts a spell of secrecy over their meetings. After all, 'the incantation of an attorney-client rationale is not an abracadabra to which this Court must defer judgment.'" The public body must come forward with "objective indicia" that the exception is justified, not merely rely on assertions by the public body or its lawyers.

On remand, the trial court examined the minutes from the meeting and found that it had been improperly closed. After remand and a second appeal, the Court of Appeals found the minutes were sufficient.

#### **K. Negotiations and collective bargaining of public employees.**

Not applicable. In North Carolina, public employees are prohibited by law from engaging in collective bargaining.

##### **1. Any sessions regarding collective bargaining.**

Not applicable. In North Carolina, public employees are prohibited by law from engaging in collective bargaining.

##### **2. Only those between the public employees and the public body.**

Not applicable. In North Carolina, public employees are prohibited by law from engaging in collective bargaining.

#### **L. Parole board meetings, or meetings involving parole board decisions.**

The Open Meetings Law contains no exemption or other specific provision relating to the North Carolina Board of Paroles.

#### **M. Patients; discussions on individual patients.**

Under G.S. § 143-318(a)(1), a session might be closed if it would disclose confidential patient information. G.S. § 131E-97.

#### **N. Personnel matters.**

A public body may consider the qualifications or conditions of initial employment of or investigate complaints or charges against an individual public officer or employee at a closed session. Final action on these issues must be taken at an open meeting. General personnel issues may not be considered in a closed session, and a public body must address filling a vacancy in the public body during an open meeting. G.S. § 143-318.11(a)(6). The law was amended in 1994 to eliminate the exemption permitting closed session discussions of independent contractors.

#### **1. Interviews for public employment.**

Inasmuch as G.S. § 143-318.11(a)(6) permits a public body to meet in closed session to consider such personal attributes as the qualifications, character, and fitness of a prospective public officer or employee, it seems clear that a face-to-face interview for the purpose of assessing these and similar characteristics may take place in a properly called closed session.

#### **2. Disciplinary matters, performance or ethics of public employees.**

The Open Meetings Law expressly provides that a public body may meet in closed session to consider the "performance" of a public employee. A public body also may meet in executive session to hear or investigate "a complaint, charge or grievance" against a public officer or employee. G.S. § 143-318.11(a)(6). Therefore, to the extent that the basis for potential disciplinary action may stem from such a charge or complaint, such disciplinary matters may be discussed in executive session.

#### **3. Dismissal; considering dismissal of public employees.**

Again, G.S. § 143-318.11(a)(6), which permits a public body to meet in executive session to assess the performance and fitness of a public officer or employee, clearly implies that the dismissal of the employee may be discussed in executive session. The same section also provides, however, that "final action making an appointment or discharge or removal by a public body . . . shall be taken in an open meeting."

#### **O. Real estate negotiations.**

The Open Meetings Law, in G.S. § 143-318.11(a)(5), permits a public body to meet in closed session to establish price or other material terms of a real estate contract. Once negotiations are completed, final authorization to purchase or lease property must be given at an open meeting. There is no authorization for discussing the disposition of property in closed session. In an Attorney General opinion released less than a month after the 1994 amendments to the Open Meetings Law, the Attorney General's office took the position that "a public body may not lawfully reserve for closed session discussions and instructions to staff about material terms of a property purchase contract unless the public body intends, in good faith, to negotiate over such terms." October 17, 1994, 1994 WL 1026170 (N.C.A.G.).

Following the 1994 Attorney General opinion, the *Winston-Salem Journal* brought two lawsuits challenging government bodies from withholding information that should have been public, and the trial courts rendered different rulings. In *Piedmont Pub. Co. v. Surry Co.*, 24 Media L. Rep. (BNA) 1371 (N.C. Sup. Ct. 1995), the Surry County Commission authorized in closed session the purchase of option contracts on five parcels of property. The court found, "There was no requirement for the board to hold a closed session with regard to the location of the parcels described in the proposed option contracts, the names of the owners, or the intended use or uses of the properties, as Defendants have failed to make any showing of a need or desire to establish, or to instruct staff concerning, any negotiating position to be taken upon these aspects of the proposed option contracts." In *Piedmont Pub. Co. v. Kernersville Board of Aldermen*, Case No. 95 CVS 5884 (Forsyth Co. Sup. Ct., 1996), the court reached the opposite result, finding that the public body had an interest in keeping confidential essentially all information about the proposed transaction until the culmination of the purchase.

Most recently, the Court of Appeals ruled in *Boney Publishers Inc. v. Burlington City Council*, 151 N.C. App. 651, 657, 566 S.E.2d 701, 705 (2002), that "the language of G.S. § 143-318.11(a)(5) does not permit a public body to deny the public access to information which is not a material term subject to negotiation regarding the acquisition of real property. Therefore, we hold that a public body, such as defendants here, may not reserve for discussion in closed session, under the guise of G.S. § 143-318.11(a)(5), matters relating to the terms of a contract

for acquisition of real property unless those terms are material to the contract and also actually subject to negotiation.”

**P. Security, national and/or state, of buildings, personnel or other.**

The Open Meetings Law permits a public body to meet in closed session to “discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.” G.S. § 143-318.11(a)(9),

**Q. Students; discussions on individual students.**

The Open Meetings Law does not include any provision relating to students, though the “catch-all” exemption would permit protection of student records. G.S. § 143-318.11(a)(1),

The question of whether student disciplinary proceedings are public was litigated in *DTH Pub. Corp. v. University of North Carolina at Chapel Hill*, 128 N.C. App. 534, 496 S.E.2d 8, (1998). The *Daily Tar Heel*, the student newspaper at the University of North Carolina at Chapel Hill, sued the Undergraduate Court for access to the Court’s proceedings and records. The University defended on the basis that the Court is not a public body within the meaning of the Open Meetings Law and that the records are exempt from disclosure pursuant to the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g. The trial court found that the Undergraduate Court was a public body subject to the Open Meetings Law but that it was entitled to conduct its inquiries in closed session pursuant to FERPA. The North Carolina Court of Appeals affirmed the trial court’s findings in all respects. Noting the 1994 changes to the definition of public body, the Court of Appeals had little trouble finding the Undergraduate Court subject to the Open Meetings Law. “Here, the parties’ stipulations demonstrate that the Student Body President and the Student Congress derive their authority to appoint and confirm Undergraduate Court members from the Chancellor, who in turn derives his authority on this matter from the UNC-CH Board of Trustees. The Chancellor and the UNC-CH Board of Trustees derive their authority from the Board of Governors of the University of North Carolina (UNC) which, in turn, derives its authority from N.C. Gen.Stat. § 116-11(2) (1994) and Article IX, Section 8 of our North Carolina Constitution. Thus, the Undergraduate Court members are clearly appointed and confirmed by those who are authorized to do so under the laws of this State and pursuant to the policies and regulations of UNC-CH and UNC.” *Id.* at 11. However, the court also found that the potential withdrawal of federal funds was sufficient to establish a federal “requirement” that schools not disclose student records and that, therefore, closed sessions were justified to maintain the confidentiality of students brought before the court. *Id.* at 12-13.

## IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

### A. When to challenge.

#### 1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

The North Carolina Open Meetings Law provides direct and immediate access to the courts by any person who is barred from attending a meeting of a public body or who otherwise becomes aware of a threatened or actual violation of the Open Meetings Law. The aggrieved person is not required to complain or appeal to the public body, to exhaust any administrative remedies, or to comply with any other requirements or prerequisites before filing suit.

#### 2. When barred from attending.

Any person can file suit to challenge being barred from attending a meeting of a public body and seek injunctive relief allowing access to the meeting.

### 3. To set aside decision.

The Open Meetings Law allows a party to seek avoidance of any action taken at an improper closed session by filing suit within 45 days of the initial disclosure of the action, though no court has overturned a public body’s action under this provision. The North Carolina Court of Appeals affirmed a trial court decision finding a violation of the Open Meetings Law but refusing to void the decision made in closed session on the basis that the trial court’s decision could only be reversed for an abuse of discretion and no such abuse existed. *HBS v. Cumberland Co. Bd. of Educ.*, 122 N.C. App. 49, 468 S.E.2d 517 (1996).

### 4. For ruling on future meetings.

G.S. § 143-318.16 allows a party to seek mandatory injunctive relief prohibiting future violations of the law.

#### B. How to start.

##### 1. Where to ask for ruling.

North Carolina has no formal form or procedure, other than court action, for enforcing or obtaining rulings concerning the Open Meetings Law.

Experience has proven that the most effective informal remedy for enforcement of the Open Meetings Law is publicity concerning the public body’s course of action, which often serves to galvanize public opinion, to embarrass public officials who participate in excluding the public and concealing their own actions, and to give comfort and encouragement to public officials who favor openness.

##### a. Administrative forum.

Not applicable.

##### (1). Agency procedure for challenge.

Not applicable.

##### (2). Commission or independent agency.

Not applicable.

##### b. State attorney general.

North Carolina citizens faced with an apparent violation of the Open Meetings Law sometimes seek informal assistance from the state attorney general. While such a course may be helpful, particularly in the case of a glaring or flagrant violation, it more often proves to be of little or no utility. In the first place, the attorney general has no authority to issue “rulings” relating to the Open Meetings Law; the attorney general merely issues opinions, which have no greater force of law than the opinions of any other attorney. Moreover, the North Carolina Attorney General issues formal, written opinions only in response to formal requests from public officials or public employees.

##### c. Court.

G.S. § 143-318.16 provides that a court in either division of the General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin threatened, recurring, or continuing violations of the Open Meetings Law. Thus, suits seeking injunctive relief may be filed in District Court or in Superior Court.

G.S. § 143-318.16A, which was added to the Open Meetings Law by the General Assembly in 1985, provides that a suit seeking a declaratory judgment under the Open Meetings Law must be filed in Superior Court. In view of the likelihood that suits brought pursuant to the Open Meetings Law are likely to seek both an injunction and a declaratory judgment, suits brought to enforce the Open Meetings Law generally will be filed in Superior Court.

Suits arising out of Open Meetings Law violations by local public bodies, such as city councils, school boards, and boards of county commissioners, should be filed in the county in which the public body conducts its business and exercises its jurisdiction. Most suits arising

out of violations by state bodies should be filed in the Superior Court of Wake County, where such bodies generally conduct their business.

## 2. Applicable time limits.

There is no time limit set forth in the statute for seeking a ruling on the propriety of a closed session or for seeking injunctive relief. A suit brought under G.S. § 143-318.16A(b), however, must be brought within 45 days of the initial disclosure of the action.

## 3. Contents of request for ruling.

There are no special pleading requirements for a lawsuit brought pursuant to the Open Meetings Law.

## 4. How long should you wait for a response?

There is no prescribed “response time” for compliance with the Open Meetings Law. Of course, public bodies are obliged to comply with its requirements at the time of meeting. If a meeting was held in violation of the law, it is common practice to demand access to the full minutes of the meeting in order to review what transpired. The Court of Appeals also has held that only minutes of legal closed sessions may be withheld from the public. “The plain language of G.S. § 143-138.10 requires that a closed session be conducted in compliance with G.S. § 143-318.11 in order for the minutes of such session to be withheld from public inspection.” *Boney Publishers Inc. v. Burlington City Council*, 151 N.C. App. 651, 659, 566 S.E.2d 701, 706 (2002). If the request for minutes is denied, the next step is filing a lawsuit.

## 5. Are subsequent or concurrent measures (formal or informal) available?

Beyond negotiation with the public body, the only redress for an Open Meetings Law violation is the filing of a lawsuit.

### C. Court review of administrative decision.

#### 1. Who may sue?

The Open Meetings Law provides that “any person” may institute a suit seeking relief under the Open Meetings Law, G.S. § 143-318.16 and 143-318.16(a). The North Carolina Court of Appeals decided in a 2004 case that “any person” does not include the government. *City of Burlington v. Boney Publishers, Inc.*, 166 N.C. App. 186, 600 S.E.2d 872 (2004). The Court of Appeals agreed and found that “[b]ased on the purpose of promoting openness in the daily workings of public bodies, and the policy consideration for disclosure under the act, it was error for the trial court to allow a public body to file a declaratory judgment action in the instant case.” *Id.* at 192, 600 S.E.2d at 876 (internal punctuation omitted). The City sought review from the N.C. Supreme Court which, after briefing and oral argument, ruled that discretionary review had been improvidently granted. *City of Burlington v. Boney Publishers Inc.*, 359 N.C. 422, 611 S.E.2d 833 (2005).

#### 2. Will the court give priority to the pleading?

The statute contains a provision that actions brought under the Open Meetings Law will be set down for immediate hearing and that all subsequent proceedings shall be accorded priority. G.S. § 143-318.16C.

#### 3. Pro se possibility, advisability.

Although a person seeking relief under the Open Meetings Law is entitled to proceed *pro se*, such procedure is generally not advisable because the public body invariably will be represented by counsel.

#### 4. What issues will the court address?

##### a. Open the meeting.

The courts have the ability to render mandatory injunctive relief to enjoin a continuing violation of the Open Meetings Law. G.S. § 143-318.16.

##### b. Invalidate the decision.

The courts have the ability to declare null and void any action taken by a public body in violation of the Open Meetings Law. G.S. § 143-

318.16A. In making such a determination, the court must consider six relevant factors:

(i) the extent to which the violation affected the substance of the challenged action;

(ii) the extent to which the violation thwarted or impaired access to meetings or proceedings that the public had a right to attend;

(iii) the extent to which the violation prevented or impaired public knowledge or understanding of the people’s business;

(iv) whether the violation was an isolated occurrence, or was a part of a continuing pattern of violations of this Article by the public body;

(v) the extent to which persons relied upon the validity of the challenged action, and the effect on such persons of declaring the challenged action void;

(vi) whether the action was committed in bad faith for the purpose of evading or subverting the public policy embodied in this Article.

G.S. § 143-318.16A(c). The Court of Appeals considered and applied these factors in *HBS v. Cumberland Co. Bd. of Educ.*, 122 N.C. App. 49, 468 S.E.2d 517 (1996). Similarly, Superior Court Judge Howard Manning considered and applied these factors in *Bladen County Board of Educ. v. Bladen County Board of Commissioners*, 05 CVS 0461 (Bladen Co. Sup. Ct. 2005).

### c. Order future meetings open.

The courts have the ability to enjoin threatened violations and recurrence of past violations of the Open Meetings Law.

#### 5. Pleading format.

The Open Meetings Law does not prescribe or require any particular pleading format. However, complaints filed pursuant to the Open Meetings Law often include a request that it be treated as a petition for extraordinary injunctive relief, in the nature of a writ of mandamus.

#### 6. Time limit for filing suit.

The Open Meetings Law does not prescribe any time limit for filing a suit for injunctive relief. However, G.S. § 143-318.16A provides that a suit seeking declaratory relief and avoidance of action taken in an illegal meeting must be commenced within forty-five (45) days following the “initial disclosure” of the action that the suit seeks to have declared null and void. If the challenged action is recorded in the minutes of the public body, its “initial disclosure” is deemed to have occurred on the date the minutes are first available for public inspection; otherwise, the date of “initial disclosure” is to be determined by the court.

#### 7. What court.

G.S. § 143-318.16 provides that a court in either division of the General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin threatened, recurring, or continuing violations of the Open Meetings Law. Thus, suits seeking injunctive relief may be filed in District Court or in Superior Court.

G.S. § 143-318.16A provides that a suit seeking a declaratory judgment under the Open Meetings Law must be filed in Superior Court. In view of the likelihood that suits brought pursuant to the Open Meetings Law are likely to seek both an injunction and a declaratory judgment, suits brought to enforce the Open Meetings Law generally are filed in Superior Court.

Suits arising out of Open Meetings Law violations by local public bodies, such as city councils, school boards, and boards of county commissioners, should be filed in the county in which the public body

conducts its business and exercises its jurisdiction. Most suits arising out of violations by state bodies should be filed in the Superior Court of Wake County, where such bodies generally conduct their business.

## 8. Judicial remedies available.

G.S. § 143-318.16 authorizes the courts to enter “mandatory or prohibitory injunctions” to enjoin (1) threatened violations of the Open Meetings Law, (2) the recurrence of past violations, or (3) continuing violations.

G.S. § 143-318.16A authorizes the Superior Court to enter a judgment declaring that any action of the public body was “taken, considered, discussed, or deliberated” in violation of the Open Meetings Law and, upon such a finding, to declare any such action null and void.

G.S. § 143-318.16A(e) expressly restricts courts from considering any challenge to an enacted law or joint resolution or passed simple resolution of either house of the General Assembly when that challenge is based on an alleged violation of the Open Meetings Law.

## 9. Availability of court costs and attorneys’ fees.

G.S. § 143-318.16B provides that in any suit brought pursuant to the Open Meetings Law, the court may make written findings specifying the prevailing party and may award a reasonable attorney fee to be taxed against the losing party as part of the cost. Additionally, the court may order that any or all of the fees assessed be paid personally “by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation,” unless that individual sought and followed the advice of legal counsel.

The courts have applied this provision and awarded attorney fees in several instances. Following a Court of Appeals ruling that the *Outer Banks Sentinel* was entitled to receive copies of records they requested from the Town of Kitty Hawk, *Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council*, 181 N.C. App. 1, 639 S.E.2d 96 (2007), the trial court awarded almost \$100,000 in attorney fees to the paper. In *HBS v. Cumberland Co. Board of Education*, 122 N.C. App. 49, 468 S.E.2d 517 (1996), the court affirmed an award of attorney fees against the defendant. *Accord, Jacksonville Daily News v. Bd. of Educ.*, 113 N.C. App. 127, 439 S.E.2d 607 (1993); *Piedmont Pub. Co. v. Surry County Board of Commissioners*, 24 Media L. Rep. (BNA) 1371 (N.C. Sup. Ct. 1995). As a cautionary note, the Superior Court for Forsyth County awarded attorney fees to the defendant in an Open Meetings Law action when the court found the defendant to be the prevailing party. *Piedmont Pub. Co. v. Town of Kernersville*, Case No. 95 CVS 5884, unpublished opinion (Forsyth Co. Sup. Ct., 1996).

## 10. Fines.

The North Carolina Open Meetings Law makes no provision for the imposition of fines or other penalties against public bodies or individual members of public bodies. However, the court may order that any or all of an attorney fees assessment be paid personally “by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation,” unless that individual sought and followed the advice of legal counsel.

## 11. Other penalties.

The North Carolina Open Meetings Law makes no provision for the imposition of other penalties against public bodies or individual members of public bodies.

### D. Appealing initial court decisions.

#### 1. Appeal routes.

Appeals from orders and decisions of the District and Superior Courts ordinarily are filed in the North Carolina Court of Appeals. In cases of special significance or urgency, the appellant may petition the Supreme Court of North Carolina, in its discretion, to accept the appeal directly. Such “bypass petitions” are rarely granted, but in an appropriate case — such as a suit for injunctive relief seeking admission

to an impending meeting of a public body — this procedure might enable the litigants to obtain a definitive and timely ruling.

#### 2. Time limits for filing appeals.

An appeal from a judgment or order in a civil action must be taken within 30 days after its entry. N.C.R. App. P. 3(c) (1997).

#### 3. Contact of interested amici.

Media and public interest organizations, such as the North Carolina Press Association, the North Carolina Association of Broadcasters, the American Society of Newspaper Editors, and the Reporters Committee for Freedom of the Press frequently support litigants in public access cases by filing *amicus curiae* briefs, sharing legal research, and the like.

## V. ASSERTING A RIGHT TO COMMENT.

### A. Is there a right to participate in public meetings?

Cities and towns, county boards of commissioners, and local boards of education must provide at least one opportunity for public comment per month at a regular meeting of the council. G.S. § 160A-81.1; G.S. § 153A-52.1; 115C-51.

The North Carolina Department of Transportation may designate state highway system roads in addition to those highways designated by the U.S. Secretary of Transportation for use by certain vehicles only after a public hearing is held or the opportunity for a public hearing is provided in each county through which the designated highway passes, after two weeks’ notice posted at the courthouse and published in a newspaper of general circulation in each county through which the designated state highway system road passes, and consideration is given to the comments received prior to the designation. G.S. § 20-115.1

The Insurance Commissioner shall approve any merger or other acquisition of control of domestic insurer only after a public hearing held within 120 days after the required statement is filed, and the commissioner shall give at least 30 days’ notice of the hearing to the person filing the statement, to the insurer, and to such other persons as may be designated by the commissioner. At the hearing, any person whose interest may be affected by the hearing shall have the right to present evidence, examine and cross-examine witnesses, and offer oral or written arguments; and in connection therewith shall be entitled to conduct discovery proceedings at any time after the statement is filed with the commissioner under this section and in the same manner as is presently allowed in the superior courts of this state. G.S. § 58-19-15.

Procedure for a medical, hospital, or dental service corporation to convert to a stock accident and health insurance company or stock life insurance company. Within 20 days of receiving a plan to convert, the Commissioner shall publish a notice in one or more newspapers of general circulation in the corporation’s service area describing the name of the corporation, the nature of the plan filed under G.S. § 58-65-131(d), and the date of receipt of the plan. The notice shall indicate that the Commissioner will solicit public comments and hold three public hearings on the plan. The public hearings must be completed within 60 days of the filing of the conversion plan. The written public comment period will be held open until 10 days after the last public hearing. For good cause the Commissioner may extend these deadlines once for a maximum of 30 days. The Commissioner shall provide copies of all written public comments to the Attorney General. All applications, reports, plans, or other documents under G.S. § 58-65-131, G.S. § 58-65-132, and G.S. § 58-65-133 are public records unless otherwise provided in this Chapter. The Commissioner shall provide the public with prompt and reasonable access to public records relating to the proposed conversion of the corporation. Access to public records covered by this section shall be made available for at least 30 days before the end of the public comment period. G.S. §§ 58-65-131(g) and (h).

Before the Department of Environment and Natural Resources is-

sues a permit for the mining of land, the owners of adjacent land shall be provided notice and an opportunity to request a public hearing regarding the proposed mining operation. G.S. § 74-50.

The Department of Health and Human Services shall hold a public hearing with the opportunity for the submission of oral and written public comments before issuing a certificate of public advantage governing a cooperative agreement among physicians, hospitals, and others for the provision of health care services. G.S. § 90-21.27. G.S. § 131E-192.4.

Before the Industrial Commission adopts maximum fees for medical compensation, it must hold a public hearing no earlier than 15 days after publication of notice of the hearing and must be open to receive written comments for at least 30 days or until the public hearing, whichever is later. G.S. § 97-26.

Before the granting of shellfish cultivation leases to persons who reside in North Carolina, there shall be a public hearing in the county where the proposed leasehold lies and must twice provide legal notice. The right to comment at the public hearing is implied in the statute. G.S. § 113-202.

Prior to adoption or amendment of any land-use plan, the body charged with its preparation and adoption shall hold a public hearing at which public and private parties shall have the opportunity to present comments and recommendations. Notice of the hearing shall be given not less than 30 days before the date of the hearing and shall state the date, time, and place of the hearing; the subject of the hearing; the action which is proposed; and that copies of the proposed plan or amendment are available for public inspection at a designated office in the county courthouse during designated hours. G.S. § 113A-110.

Prior to adopting any rule permanently designating any area of environmental concern, the Secretary of the Environment and Natural Resources and the Coastal Resources Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Notice of the hearing shall be given not less than 30 days before the date of the hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the secretary is available for public inspection at the county courthouse of each county affected. Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin. Any person who desires to be heard at such public hearing shall give notice thereof in writing to the secretary on or before the first date set for the hearing. The secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section. G.S. § 113A-115.

Prior to adopting an implementation and enforcement program, the local governing body of each city in the coastal area that filed an affirmative letter of intent shall hold a public hearing at which public and private parties shall have the opportunity to present comments and views. Notice of the hearing shall be given not less than 15 days before the date of the hearing, and shall state the date, time and place of the hearing, the subject of the hearing, and the action which is to be taken. The notice shall state that copies of the proposed implementation and enforcement program are available for public inspection at the county courthouse. Any such notice shall be published at least once in one newspaper of general circulation in the county at least 15 days before the date on which the public hearing is scheduled to begin. G.S. § 113A-117.

The State Board of Education shall provide public hearings, ad-

equate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations related to the education of children with special needs. G.S. § 115C-110.

When the General Assembly incorporates a city or town that includes within its territory 50 percent or more of the territory of a sanitary district, the governing body of the city or town shall become ex officio the governing board of the sanitary district if the General Assembly provides for this action in the incorporation act and if the existing sanitary district board adopts a final resolution pursuant to this section. Upon adoption of a preliminary resolution, the chairperson of the sanitary district board shall publish a notice of the public hearing once at least 10 days before the hearing in a newspaper of general circulation within the sanitary district. This notice shall set forth the time and place of the hearing and shall briefly describe its purpose. At the hearing, the board shall hear any citizen of the sanitary district or of the city or town who wishes to speak to the subject of the preliminary resolution. G.S. § 130A-51.

A sanitary district board is authorized to establish as zoning units any portions of the sanitary district not under the control of the United States or the state. The board shall hold a public hearing to obtain comment on the proposed creation of the zoning area. A notice of public hearing must be published in a newspaper of general circulation in the county at least two times, and a copy of the notice shall be posted at the county courthouse and in three other public places in the sanitary district. G.S. § 130A-55. When a petition has been filed to dissolve a sanitation sanitary district, there shall be a public hearing. The county board of commissioners shall give notice of the hearing by posting notice at the courthouse door of the county or counties and also by publication in a newspaper or newspapers circulating in the district at least once a week for four consecutive weeks. G.S. § 130A-73.

When a petition has been made for a certificate of need, the Department of Health and Human Services shall ensure that a public hearing is conducted at a place within the appropriate health service area if the review to be conducted is competitive; the proponent proposes to spend five million dollars (\$5,000,000) or more; a written request for a public hearing is received before the end of the written comment period from an affected party, or the agency determines that a hearing is in the public interest. At such public hearing oral arguments may be made regarding the application or applications under review; and this public hearing shall include an opportunity for any affected person to present comments regarding the applications under review. G.S. § 131E-185.

Portions of rail corridors held by the North Carolina Department of Transportation in fee simple absolute may be leased by the Department for interim public recreation use provided that before requesting trail use, a sponsoring unit of local government has held a public hearing in accordance with G.S. § 143-318.12 and notified the owners of all parcels of land abutting the corridor as shown on the county tax listing of the hearing date, place, and time by first-class mail at the last addresses listed for such owners on the county tax abstracts. A transcript of all public comments presented at the hearing must have been sent to the North Carolina Department of Transportation at the time of requesting use of the corridor. G.S. § 136-44.36D.

The appropriations committees of the House of Representatives and the Senate and subcommittees thereof shall sit jointly in open sessions while considering the budget, and all taxpayers or other persons interested in the estimates under consideration shall be admitted with the right to be heard. G.S. § 143-14.

Upon receipt of a petition for the transfer of water from one river basin to another, the Environmental Management Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice, including the procedure to be followed by anyone wishing to submit comments on the proposed water transfer. G.S. § 143-215.22I.

A state agency must accept comments on a notice of proposed rule-making proceedings. G.S. § 150B-21.2. There are exceptions for temporary rules in the case of emergencies. G.S. § 150B-21.1.

Before closing a public road or easement within a county, the board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for three successive weeks before the hearing. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights. G.S. § 153A-241. Similar provisions apply to closure of city streets and alleys. G.S. § 160A-299.

Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation and shall conduct a public informational hearing. All persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given the opportunity to ask questions and receive answers regarding the proposed annexation. Property owners and residents also shall be afforded the opportunity to be heard at the public hearing at which the issue is decided. G.S. § 160A-49.

Any city intending to create extraterritorial jurisdiction shall inform the landowner of the effect of the extension of extraterritorial jurisdiction and of the landowner's right to participate in a public hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction. G.S. § 160A-360.

#### **B. Must a commenter give notice of intentions to comment?**

There is no provision in the Open Meetings Law. Each statute providing a right of public comment has its own provisions. See Section V.A. above.

#### **C. Can a public body limit comment?**

There is no provision in the Open Meetings Law. Each statute providing a right of public comment has its own provisions. See Section V.A. above. The public comment provisions for city, county and school boards permit the bodies to adopt reasonable rules regarding the time allowed per speaker, the designation of spokesmen for groups of people taking the same position, and providing for the maintenance of decorum.

#### **D. How can a participant assert rights to comment?**

There is no provision in the Open Meetings Law. Each statute providing a right of public comment has its own provisions. See Section V.A. above.

#### **E. Are there sanctions for unapproved comment?**

There is no provision in the Open Meetings Law. Each statute providing a right of public comment has its own provisions. See Section V.A. above.

## Statute

### Open Records

*North Carolina General Statutes*

*Chapter 132. Public Records*

#### **§ 132-1. "Public records" defined.**

(a) "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.

(b) 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. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

#### **§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information.**

(a) Confidential Communications. – Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information. – Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise, excluding airports, is not a public record as defined in G.S. 132-1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

- (1) That the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;
- (2) That is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or
- (3) That is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

As used herein, “billing information” means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311, excluding subdivision (9), and G.S. 153A-274, excluding subdivision (4), or other public entity providing utility services, excluding airports, relating to services it provides or will provide to the customer.

(d) **Address Confidentiality Program Information.** – The actual address and telephone number of a program participant in the Address Confidentiality Program established under Chapter 15C of the General Statutes is not a public record within the meaning of Chapter 132. The actual address and telephone number of a program participant may not be disclosed except as provided in Chapter 15C of the General Statutes.

(e) **Controlled Substances Reporting System Information.** – Information compiled or maintained in the Controlled Substances Reporting System established under Article 5E of Chapter 90 of the General Statutes is not a public record as defined in G.S. 132-1 and may be released only as provided under Article 5E of Chapter 90 of the General Statutes.

(f) **Personally Identifiable Admissions Information.** – Records maintained by The University of North Carolina or any constituent institution, or by the Community Colleges System Office or any community college, which contain personally identifiable information from or about an applicant for admission to one or more constituent institutions or to one or more community colleges shall be confidential and shall not be subject to public disclosure pursuant to G.S. 132-6(a). Notwithstanding the preceding sentence, any letter of recommendation or record containing a communication from an elected official to The University of North Carolina, any of its constituent institutions, or to a community college, concerning an applicant for admission who has not enrolled as a student shall be considered a public record subject to disclosure pursuant to G.S. 132-6(a). Nothing in this subsection is intended to limit the disclosure of public records that do not contain personally identifiable information, including aggregated data, guidelines, instructions, summaries, or reports that do not contain personally identifiable information or from which it is feasible to redact any personally identifiable information that the record contains. As used in this subsection, the term “community college” is as defined in G.S. 115D-2(2), the term “constituent institution” is as defined in G.S. 116-2(4), and the term “Community Colleges System Office” is as defined in G.S. 115D-3.

### § 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

- (1) Meets all of the following conditions:
  - a. Constitutes a “trade secret” as defined in G.S. 66-152(3).
  - b. Is the property of a private “person” as defined in G.S. 66-152(2).
  - c. Is disclosed or furnished to the public agency in connection with the owner’s performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
  - d. Is designated or indicated as “confidential” or as a “trade secret” at the time of its initial disclosure to the public agency.
- (2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.
- (3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.
- (4) Reveals the electronically captured image of an individual’s signature, date of birth, drivers license number, or a portion of an individual’s social security number if the agency has those items because they are on a voter registration document.
- (5) Reveals the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes that has been submitted for project approval to (i) a municipality under Part 5 of Article 19 of Chapter 160A of the General Statutes or (ii) to a county under Part 4 of Article 18 of Chapter 153A of the General Statutes. Notwithstanding this exemption, a municipality or county that receives a request for a document submitted for

project approval that contains the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes and that is otherwise a public record by G.S. 132-1 shall allow a copy of the document without the seal of the licensed design professional to be examined and copied, consistent with any rules adopted by the licensing board under Chapter 83A or Chapter 89C of the General Statutes regarding an unsealed document.

### § 132-1.3. Settlements made by or on behalf of public agencies, public officials, or public employees; public records.

(a) Public records, as defined in G.S. 132-1, shall include all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions, as defined in G.S. 132-1, in connection with or arising out of such agency’s official actions, duties or responsibilities, except in an action for medical malpractice against a hospital facility. No agency of North Carolina government or its subdivisions, nor any counsel, insurance company or other representative acting on behalf of such agency, shall approve, accept or enter into any settlement of any such suit, arbitration or proceeding if the settlement provides that its terms and conditions shall be confidential, except in an action for medical malpractice against a hospital facility. No settlement document sealed under subsection (b) of this section shall be open for public inspection.

(b) No judge, administrative judge or administrative hearing officer of this State, nor any board or commission, nor any arbitrator appointed pursuant to the laws of North Carolina, shall order or permit the sealing of any settlement document in any proceeding described herein except on the basis of a written order concluding that (1) the presumption of openness is overcome by an overriding interest and (2) that such overriding interest cannot be protected by any measure short of sealing the settlement. Such order shall articulate the overriding interest and shall include findings of fact that are sufficiently specific to permit a reviewing court to determine whether the order was proper.

(c) Except for confidential communications as provided in G.S. 132-1.1, the term “settlement documents,” as used herein, shall include all documents which reflect, or which are made or utilized in connection with, the terms and conditions upon which any proceedings described in this section are compromised, settled, terminated or dismissed, including but not limited to correspondence, settlement agreements, consent orders, checks, and bank drafts.

### § 132-1.4. Criminal investigations; intelligence information records; Innocence Inquiry Commission records.

(a) Records of criminal investigations conducted by public law enforcement agencies, records of criminal intelligence information compiled by public law enforcement agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

(b) As used in this section:

- (1) “Records of criminal investigations” means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements.
- (2) “Records of criminal intelligence information” means records or information that pertain to a person or group of persons that is compiled by a public law enforcement agency in an effort to anticipate, prevent, or monitor possible violations of the law.
- (3) “Public law enforcement agency” means a municipal police department, a county police department, a sheriff’s department, a company police agency commissioned by the Attorney General pursuant to G.S. 74E-1, et seq., and any State or local agency, force, department, or unit responsible for investigating, preventing, or solving violations of the law.
- (4) “Violations of the law” means crimes and offenses that are prosecutable in the criminal courts in this State or the United States and infractions as defined in G.S. 14-3.1.
- (5) “Complaining witness” means an alleged victim or other person who reports a violation or apparent violation of the law to a public law enforcement agency.

(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be public records within the

meaning of G.S. 132-1.

- (1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.
  - (2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.
  - (3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.
  - (4) The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness.
  - (5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.
  - (6) The name, sex, age, and address of a complaining witness.
- (d) A public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132-6 as soon as the circumstances that justify withholding it cease to exist. Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.
- (e) If a public law enforcement agency believes that release of information that is a public record under subdivisions (c)(1) through (c)(5) of this section will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such action the law enforcement agency shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.
- (f) Nothing in this section shall be construed as authorizing any public law enforcement agency to prohibit or prevent another public agency having custody of a public record from permitting the inspection, examination, or copying of such public record in compliance with G.S. 132-6. The use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record.
- (g) Disclosure of records of criminal investigations and criminal intelligence information that have been transmitted to a district attorney or other attorney authorized to prosecute a violation of law shall be governed by this section and Chapter 15A of the General Statutes.
- (h) Nothing in this section shall be construed as requiring law enforcement agencies to disclose the following:
- (1) Information that would not be required to be disclosed under Chapter 15A of the General Statutes; or
  - (2) Information that is reasonably likely to identify a confidential informant.
- (i) Law enforcement agencies shall not be required to maintain any tape recordings of "911" or other communications for more than 30 days from the time of the call, unless a court of competent jurisdiction orders a portion sealed.
- (j) When information that is not a public record under the provisions of this section is deleted from a document, tape recording, or other record, the law enforcement agency shall make clear that a deletion has been made. Noth-

ing in this subsection shall authorize the destruction of the original record.

- (k) The following court records are public records and may be withheld only when sealed by court order: arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders.
- (l) Records of investigations of alleged child abuse shall be governed by Article 29 of Chapter 7B of the General Statutes.

#### § 132-1.5. 911 database.

Automatic number identification and automatic location identification information that consists of the name, address, and telephone numbers of telephone subscribers, or the e-mail addresses of subscribers to an electronic emergency notification or reverse 911 system, that is contained in a county or municipal 911 database, or in a county or municipal telephonic or electronic emergency notification or reverse 911 system, is confidential and is not a public record as defined by Chapter 132 of the General Statutes if that information is required to be confidential by the agreement with the telephone company by which the information was obtained. Dissemination of the information contained in the 911, electronic emergency notification or reverse 911 system, or automatic number and automatic location database is prohibited except on a call-by-call basis only for the purpose of handling emergency calls or for training, and any permanent record of the information shall be secured by the public safety answering points and disposed of in a manner which will retain that security except as otherwise required by applicable law.

#### § 132-1.6. Emergency response plans.

Emergency response plans adopted by a constituent institution of The University of North Carolina, a community college, or a public hospital as defined in G.S. 159-39 and the records related to the planning and development of these emergency response plans are not public records as defined by G.S. 132-1 and shall not be subject to inspection and examination under G.S. 132-6.

#### § 132-1.7. Sensitive public security information.

- (a) Public records, as defined in G.S. 132-1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities.
- (b) Public records as defined in G.S. 132-1 do not include plans to prevent or respond to terrorist activity, to the extent such records set forth vulnerability and risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public or the security of any governmental facility, building, structure, or information storage system.
- (c) Information relating to the general adoption of public security plans and arrangements, and budgetary information concerning the authorization or expenditure of public funds to implement public security plans and arrangements, or for the construction, renovation, or repair of public buildings and infrastructure facilities shall be public records.

#### § 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A-389(a), is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a).

#### § 132-1.9. Trial preparation materials.

- (a) Scope. – A request to inspect, examine, or copy a public record that is also trial preparation material is governed by this section, and, to the extent this section conflicts with any other provision of law, this section applies.
- (b) Right to Deny Access. – Except as otherwise provided in this section, a custodian may deny access to a public record that is also trial preparation material. If the denial is based on an assertion that the public record is trial preparation material that was prepared in anticipation of a legal proceeding that has not commenced, the custodian shall, upon request, provide a written justification for the assertion that the public record was prepared in anticipation of a legal proceeding.
- (c) Trial Preparation Material Prepared in Anticipation of a Legal Proceeding. – Any person who is denied access to a public record that is also claimed to be trial preparation material that was prepared in anticipation of a

legal proceeding that has not yet been commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is trial preparation material that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. –

(1) When a legal proceeding is subject to G.S. 1A-1, Rule 26(b)(3), or subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending proceeding may seek access to such record only by motion made in the pending legal proceeding and pursuant to the procedural and substantive standards that apply to that proceeding. A party to the pending legal proceeding may not directly or indirectly commence a separate proceeding for release of such record pursuant to G.S. 132-9 in any other court or tribunal.

(2) When a legal proceeding is not subject to G.S. 1A-1, Rule 26(b)(3), and not subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending legal proceeding may petition the court pursuant to G.S. 132-9 for access to such record. In determining whether to require the custodian to provide access to all or any portion of the record, the court or other tribunal shall apply the provisions of G.S. 1A-1, Rule 26(b)(3).

(3) Any person who is denied access to a public record that is also claimed to be trial preparation material and who is not a party to the pending legal proceeding to which such record pertains, and who is not acting in concert with or as an agent for any party to the pending legal proceeding, may petition the court pursuant to G.S. 132-9 for a determination as to whether the public record is trial preparation material.

(e) Following a Legal Proceeding. – Upon the conclusion of a legal proceeding, including the completion of all appeals and postjudgment proceedings, or, in the case where no legal proceeding has been commenced, upon the expiration of all applicable statutes of limitations and periods of repose, the custodian of a public record that is also claimed to be trial preparation material shall permit the inspection, examination, or copying of such record if any law that is applicable so provides.

(f) Effect of Disclosure. – Disclosure pursuant to this section of all or any portion of a public record that is also trial preparation material, whether voluntary or pursuant to an order issued by a court, or issued by an officer in an administrative or quasi-judicial legal proceeding, shall not constitute a waiver of the right to claim that any other document or record constitutes trial preparation material.

(g) Trial Preparation Materials That Are Not Public Records. – This section does not require disclosure, or authorize a court to require disclosure, of trial preparation material that is not also a public record or that is under other provisions of this Chapter exempted or protected from disclosure by law or by an order issued by a court, or by an officer in an administrative or quasi-judicial legal proceeding.

(h) Definitions. – As used in this section, the following definitions apply:

(1) Legal proceeding. – Civil proceedings in any federal or State court. Legal proceeding also includes any federal, State, or local government administrative or quasi-judicial proceeding that is not expressly subject to the provisions of Chapter 1A of the General Statutes or the Federal Rules of Civil Procedure.

(2) Trial preparation material. – Any record, wherever located and in whatever form, that is trial preparation material within the meaning of G.S. 1A-1, Rule 26(b)(3), any comparable material prepared for any other legal proceeding, and any comparable material exchanged pursuant to a joint defense, joint prosecution, or joint interest agreement in connection with any pending or anticipated legal proceeding.

**§ 132-1.10. Social security numbers and other personal identifying information.**

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social

Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following:

(1) Collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a social security number from an individual, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a valid public records request.

(3) Fail, when collecting a social security number from an individual, to provide, at the time of or prior to the actual collection of the social security number by that agency, that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than the purpose stated.

(5) (For applicability date – See Editor's note) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information", as used in this subdivision, shall have the same meaning as in G.S. 14-113.20(b), except it shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or drivers license numbers appearing on law enforcement records. Identifying information shall be confidential and not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information. The presence of identifying information in a public record does not change the nature of the public record. If all other public records requirements are met under this Chapter, the agency of the State or its political subdivisions shall respond to a public records request, even if the records contain identifying information, as promptly as possible, by providing the public record with the identifying information removed or redacted.

(6) Intentionally print or imbed an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(8) Require an individual to use the individual's social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed. A social security number that is permitted to be mailed under this subdivision may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) To social security numbers or other identifying information disclosed pursuant to a court order, warrant, or subpoena.

(3) To social security numbers or other identifying information disclosed for public health purposes pursuant to and in compliance with Chapter 130A of the General Statutes.

(4) To social security numbers or other identifying information that have been redacted.

(5) To certified copies of vital records issued by the State Registrar and other authorized officials pursuant to G.S. 130A-93(c). The State Registrar may disclose any identifying information other than social security numbers on any uncertified vital record.

(6) To any recorded document in the official records of the register of deeds of the county.

(7) To any document filed in the official records of the courts.

(c1) If an agency of the State or its political subdivisions, or any agent or employee of a government agency, experiences a security breach, as defined in Article 2A of Chapter 75 of the General Statutes, the agency shall comply with the requirements of G.S. 75-65.

(d) No person preparing or filing a document to be recorded or filed in the official records of the register of deeds, the Department of the Secretary of State, or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.

(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of deeds or the Department of the Secretary of State. The register of deeds or the Department of the Secretary of State may not reject an instrument presented for recording because the instrument contains an individual's personal information.

(f) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.

(f1) Without a request made pursuant to subsection (f) of this section, a register of deeds or clerk of court may remove from an image or copy of an of-

ficial record placed on a register of deeds' or clerk of court's Internet Web site available to the general public, or placed on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, a person's social security or drivers license number contained in that official record. Registers of deeds and clerks of court may apply optical character recognition technology or other reasonably available technology to official records placed on Internet Web sites available to the general public in order to, in good faith, identify and redact social security and drivers license numbers.

(g) A register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request a register of deeds or clerk of court to remove, from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.

(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by a register of deeds or clerk of court.

#### § 132-1.11. Economic development incentives.

(a) Assumptions and Methodologies. – Subject to the provisions of this Chapter regarding confidential information and the withholding of public records relating to the proposed expansion or location of specific business or industrial projects when the release of those records would frustrate the purpose for which they were created, whenever a public agency or its subdivision performs a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business or industrial project, the agency or its subdivision must describe in detail the assumptions and methodologies used in completing the analysis or assessment. This description is a public record and is subject to all provisions of this Chapter and other law regarding public records.

(b) Disclosure of Public Records Requirements. – Whenever an agency or its subdivision first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project, the agency or subdivision must disclose that any information obtained by the agency or subdivision is subject to laws regarding disclosure of public records. In addition, the agency or subdivision must fully and accurately describe the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed.

**§ 132-1.12. Limited access to identifying information of minors participating in local government parks and recreation programs.**

(a) A public record, as defined by G.S. 132-1, does not include, as to any minor participating in a park or recreation program sponsored by a local government or combination of local governments, any of the following information as to that minor participant: (i) name, (ii) address, (iii) age, (iv) date of birth, (v) telephone number, (vi) the name or address of that minor participant's parent or legal guardian, or (vii) any other identifying information on an application to participate in such program or other records related to that program.

(b) The county, municipality, and zip code of residence of each participating minor covered by subsection (a) of this section is a public record, with the information listed in subsection (a) of this section redacted.

(c) Nothing in this section makes the information listed in subsection (a) of this section confidential information.

**§ 132-1.13. Electronic lists of subscribers in certain named localities open for inspection but not available for copying.**

(a) Notwithstanding this chapter, when a unit of local government maintains an electronic mail list of individual subscribers, this chapter does not require that unit of local government to provide a copy of the list. The list shall be available for public inspection in either printed or electronic format or both as the unit of local government elects.

(b) If a unit of local government maintains an electronic mail list of individual subscribers, the unit of local government and its employees and officers may use that list only: (i) for the purpose for which it was subscribed to; (ii) to notify subscribers of an emergency to the public health or public safety; or (iii) in case of deletion of that list, to notify subscribers of the existence of any similar lists to subscribe to.

(c) This section applies only to Wake and Yadkin Counties, the City of Raleigh, and the Towns of Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon.

**§ 132-2. Custodian designated.**

The public official in charge of an office having public records shall be the custodian thereof.

**§ 132-3. Destruction of records regulated.**

(a) Prohibition. – No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5 and G.S. 130A-99, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).

(b) Revenue Records. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Department of Revenue has been copied in any manner, the original record may be destroyed upon the order of the Secretary of Revenue. If a record of the Department of Revenue has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Secretary of Revenue.

(c) Employment Security Commission Records. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Employment Security Commission has been copied in any manner, the original record may be destroyed upon the order of the Chairman of the Employment Security Commission. If a record of the Commission has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Chairman of the Employment Security Commission.

**§ 132-4. Disposition of records at end of official's term.**

Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the Department of Cultural Resources, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of 10 days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a Class 1 misdemeanor.

**§ 132-5. Demanding custody.**

Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for 10 days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a Class 1 misdemeanor.

**§ 132-5.1. Regaining custody; civil remedies.**

(a) The Secretary of the Department of Cultural Resources or his designated representative or any public official who is the custodian of public records which are in the possession of a person or agency not authorized by the custodian or by law to possess such public records may petition the superior court in the county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such public records. The court may order such public records to be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the petitioner may request that the court enforce such order through its contempt power and procedures.

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

(1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or

(2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

**§ 132-6. Inspection and examination of records.**

(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. As used herein, "custodian" does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

(b) 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.

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation on the following schedule:

State agencies after June 30, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project.

(e) The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act.

(f) Notwithstanding the provisions of subsection (a) of this section, the inspection or copying of any public record which, because of its age or condition could be damaged during inspection or copying, may be made subject to reasonable restrictions intended to preserve the particular record.

#### § 132-6.1. Electronic data-processing records.

(a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software.

(b) Every public agency shall create an index of computer databases compiled or created by a public agency on the following schedule:

State agencies by July 1, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option. The form, content, language, and guidelines for the index and the databases to be indexed shall be developed by the Office of Archives and History in consultation with officials at other public agencies.

(c) Nothing in this section shall require a public agency to create a computer database that the public agency has not otherwise created or is not otherwise required to be created. Nothing in this section requires a public agency to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security sys-

tems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes.

(d) The following definitions apply in this section:

(1) Computer database. – A structured collection of data or documents residing in a database management program or spreadsheet software.

(2) Computer hardware. – Any tangible machine or device utilized for the electronic storage, manipulation, or retrieval of data.

(3) Computer program. – A series of instructions or statements that permit the storage, manipulation, and retrieval of data within an electronic data-processing system, together with any associated documentation. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(4) Computer software. – Any set or combination of computer programs. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(5) Electronic data-processing system. – Computer hardware, computer software, or computer programs or any combination thereof, regardless of kind or origin.

#### § 132-6.2. Provisions for copies of public records; fees.

(a) Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, "actual cost" is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made. Notwithstanding the provisions of this subsection, 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, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which 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. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.

(c) Persons requesting copies of computer databases may be required to make or submit such requests in writing. Custodians of public records shall respond to all such requests as promptly as possible. If the request is granted, the copies shall be provided as soon as reasonably possible. If the request is denied, the denial shall be accompanied by an explanation of the basis for the denial. If asked to do so, the person denying the request shall, as promptly as possible, reduce the explanation for the denial to writing.

(d) Nothing in this section shall be construed to require a public agency to respond to requests for copies of public records outside of its usual business hours.

(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. If a public agency, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium.

**§ 132-7. Keeping records in safe places; copying or repairing; certified copies.**

Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

**§ 132-8. Assistance by and to Department of Cultural Resources.**

The Department of Cultural Resources shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. When requested by the Department of Cultural Resources, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Secretary of Cultural Resources, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the Department of Cultural Resources shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make available space in its Records Center for the filing of semicurrent records so scheduled and in its archives for non-current records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.

**§ 132-8.1. Records management program administered by Department of Cultural Resources; establishment of standards, procedures, etc.; surveys.**

A records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of official records shall be administered by the Department of Cultural Resources. It shall be the duty of that Department, in cooperation with and with the approval of the Department of Administration, to establish standards, procedures, and techniques for effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the Department of Cultural Resources in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government.

**§ 132-8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.**

In cooperation with the head of each State agency and the governing body of each county, municipality, and other subdivision of government, the Department of Cultural Resources shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of such essential public records. Preservation duplicates shall be durable, accurate, complete and clear, and such duplicates made by a photographic, photostatic, microfilm, micro card, miniature photographic, or other process which accurately reproduces and forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original

record. Such preservation duplicates shall be preserved in the place and manner of safekeeping prescribed by the Department of Cultural Resources.

**§ 132-9. Access to records.**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed to those public records. The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

- (1) A judgment or an order of a court applicable to the governmental unit or governmental body.
- (2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.
- (3) A written opinion, decision, or letter of the Attorney General.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs.

(e) Notwithstanding subsection (c) of this section, the court may not assess attorneys' fees against a public hospital created under Article 2 of Chapter 131E of the General Statutes if the court finds that the action was brought by or on behalf of a competing health care provider for obtaining information to be used to gain a competitive advantage.

**§ 132-10. Qualified exception for geographical information systems.**

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose. For purposes of this section, resale at cost by a real estate trade association or Multiple Listing Services operated by a real estate trade association shall not constitute a resale or use of the data for trade or commercial purposes.

## Open Meetings

### *Article 33C. Meetings of Public Bodies*

#### Article 33C.

#### Meetings of Public Bodies.

#### § 143-318.9. Public policy.

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly. (1979, c. 655, s. 1.)

#### § 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, 143-318.14A, 143-318.15, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body 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 in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) "Public body" does not include (i) a meeting solely among the professional staff of a public body, or (ii) the medical staff of a public hospital or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8.

(d) "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session. (1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 4; 1991, c. 694, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 570, s. 1; 1995, c. 509, s. 135.2(p); 1997-290, s. 1; 1997-456, s. 27.)

#### § 143-318.11. Closed sessions.

(a) Permitted Purposes. – It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(8) To formulate plans by a local board of education relating to emergency response to incidents of school violence.

(9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.

(b) Repealed by Session Laws 1991, c. 694, s. 4.

(c) Calling a Closed Session. – A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

(d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 2. (1979, c. 655, s. 1; 1981, c. 831; 1985 (Reg. Sess., 1986), c. 932, s. 5; 1991, c. 694, ss. 3, 4; 1993 (Reg. Sess., 1994), c. 570, s. 2; 1995, c. 509, s. 84; 1997-222, s. 2; 1997-290, s. 2; 2001-500, s. 2; 2003-180, s. 2.)

#### § 143-318.12. Public notice of official meetings.

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

- (1) For public bodies that are part of State government, with the Secretary of State;
- (2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;
- (3) For the governing board and each other public body that is part of a city government, with the city clerk;
- (4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

- (1) If a public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.
- (2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station that has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed, e-mailed, or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and mailed, e-mailed, or delivered at least 48 hours before the time of the meeting. The notice required to be posted on the principal bulletin board or at the door of its usual meeting room shall be posted on the door of the building or on the building in an area accessible to the public if the building containing the principal bulletin board or usual meeting room is closed to the public continuously for 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars (\$10.00) per calendar year, and may require them to renew their requests quarterly. No fee shall be charged for notices sent by e-mail.
- (3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by e-mail, by telephone, or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) Repealed by Session Laws 1991, c. 694, s. 6.

(d) If a public body has a Web site and has established a schedule of regular meetings, the public body shall post the schedule of regular meetings to the Web site.

(e) If a public body has a Web site that one or more of its employees maintains, the public body shall post notice of any meeting held under subdivisions (b)(1) and (b)(2) of this section prior to the scheduled time of that meeting.

(f) For purposes of this section, an "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body. (1979, c. 655, s. 1; 1991, c. 694, ss. 5, 6; 2009-350, s. 1.)

**§ 143-318.13. Electronic meetings; written ballots; acting by reference.**

(a) **Electronic Meetings.** – If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A fee of up to twenty-five dollars (\$25.00) may be charged each such listener to defray in part the cost of providing the necessary location and equipment.

(b) **Written Ballots.** – Except as provided in this subsection or by joint resolution of the General Assembly, a public body may not vote by secret or written ballot. If a public body decides to vote by written ballot, each member of the body so voting shall sign his or her ballot; and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

(c) **Acting by Reference.** – The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon. However, this subsection does not prohibit a public body from deliberating, voting, or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon, are available for public inspection at the meeting. (1979, c. 655, s. 1.)

**§ 143-318.14. Broadcasting or recording meetings.**

(a) Except as herein below provided, any radio or television station is entitled to broadcast all or any part of a meeting required to be open. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

(b) A public body may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting. However, the public body must allow such equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of such equipment shall not be declared to constitute undue interference; provided, however, that if the public body, in good faith, should determine that the size of the meeting room is such that all the members of the public body, members of the public present, and the equipment and personnel necessary for broadcasting, photographing, filming, and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public body, acting in good faith and consistent with the purposes of this Article, may require the pooling of such equipment and the personnel operating it; and provided further, if the news media, in order to facilitate news coverage, request an alternate site for the meeting, and the public body grants the request, then the news media making such request shall pay any costs incurred by the public body in securing an alternate meeting site. (1979, c. 655, s. 1.)

**§ 143-318.14A. Legislative commissions, committees, and standing subcommittees.**

(a) Except as provided in subsection (e) below, all official meetings of commissions, committees, and standing subcommittees of the General Assembly (including, without limitation, joint committees and study committees), shall be held in open session. For the purpose of this section, the following also shall be considered to be "commissions, committees, and standing subcommittees of the General Assembly":

(1) The Legislative Research Commission;

(2) The Legislative Services Commission;

(3) Repealed by Session Laws 2006-203, s. 93, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter;

- (4) The Joint Legislative Utility Review Committee;
- (5) The Joint Legislative Commission on Governmental Operations;
- (6) The Joint Legislative Commission on Municipal Incorporations;
- (7) Repealed by Session Laws 1997, c. 443, s. 12.30, effective August 28, 1997.
- (8) The Joint Select Committee on Low-Level Radioactive Waste;
- (9) The Environmental Review Commission;
- (10) The Joint Legislative Transportation Oversight Committee;
- (11) The Joint Legislative Education Oversight Committee;
- (12) The Joint Legislative Commission on Future Strategies for North Carolina;
- (13) The Commission on Children with Special Needs;
- (14) The Legislative Committee on New Licensing Boards;
- (15) The Agriculture and Forestry Awareness Study Commission;
- (16) The North Carolina Study Commission on Aging; and
- (17) The standing Committees on Pensions and Retirement.

(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, “reasonable public notice” includes, but is not limited to:

- (1) Notice given openly at a session of the Senate or of the House; or
- (2) Notice mailed or sent by electronic mail to those who have requested notice, and to the Legislative Services Office, which shall post the notice on the General Assembly web site.

G.S. 143-318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly.

(c) A commission, committee, or standing subcommittee of the General Assembly may take final action only in an open meeting.

(d) A violation of this section by members of the General Assembly shall be punishable as prescribed by the rules of the House or the Senate.

(e) The following sections shall apply to meetings of commissions, committees, and standing subcommittees of the General Assembly: G.S. 143-318.10(e) and G.S. 143-318.11, G.S. 143-318.13 and G.S. 143-318.14, G.S. 143-318.16 through G.S. 143-318.17. (1991, c. 694, s. 7; 1991 (Reg. Sess., 1992), c. 785, s. 4; c. 1030, s. 42; 1993, c. 321, s. 169.2(f); 1997-443, s. 12.30; 2003-374, s. 1; 2006-203, s. 93.)

**§ 143-318.15:** Repealed by Session Laws 2006-203, s. 94, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter.

**§ 143-318.16. Injunctive relief against violations of Article.**

(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (i) threatened violations of this Article, (ii) the recurrence of past violations of this Article, or (iii) continuing violations of this Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

(b) Any injunction entered pursuant to this section shall describe the acts enjoined with reference to the violations of this Article that have been proved in the action.

(c) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 932, s. 3, effective October 1, 1986. (1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 3.)

**§ 143-318.16A. Additional remedies for violations of Article.**

(a) Any person may institute a suit in the superior court requesting the entry of a judgment declaring that any action of a public body was taken, considered, discussed, or deliberated in violation of this Article. Upon such a finding, the court may declare any such action null and void. Any person may seek such a declaratory judgment, and the plaintiff need not allege or prove

special damage different from that suffered by the public at large. The public body whose action the suit seeks to set aside shall be made a party. The court may order other persons be made parties if they have or claim any right, title, or interest that would be directly affected by a declaratory judgment voiding the action that the suit seeks to set aside.

(b) A suit seeking declaratory relief under this section must be commenced within 45 days following the initial disclosure of the action that the suit seeks to have declared null and void; provided, however, that any suit for declaratory judgment brought pursuant to this section that seeks to set aside a bond order or bond referendum shall be commenced within the limitation periods prescribed by G.S. 159-59 and G.S. 159-62. If the challenged action is recorded in the minutes of the public body, its initial disclosure shall be deemed to have occurred on the date the minutes are first available for public inspection. If the challenged action is not recorded in the minutes of the public body, the date of its initial disclosure shall be determined by the court based on a finding as to when the plaintiff knew or should have known that the challenged action had been taken.

(c) In making the determination whether to declare the challenged action null and void, the court shall consider the following and any other relevant factors:

- (1) The extent to which the violation affected the substance of the challenged action;
- (2) The extent to which the violation thwarted or impaired access to meetings or proceedings that the public had a right to attend;
- (3) The extent to which the violation prevented or impaired public knowledge or understanding of the people’s business;
- (4) Whether the violation was an isolated occurrence, or was a part of a continuing pattern of violations of this Article by the public body;
- (5) The extent to which persons relied upon the validity of the challenged action, and the effect on such persons of declaring the challenged action void;
- (6) Whether the violation was committed in bad faith for the purpose of evading or subverting the public policy embodied in this Article.

(d) A declaratory judgment pursuant to this section may be entered as an alternative to, or in combination with, an injunction entered pursuant to G.S. 143-318.16.

(e) The validity of any enacted law or joint resolution or passed simple resolution of either house of the General Assembly is not affected by this Article. (1985 (Reg. Sess., 1986), c. 932, s. 1; 1991, c. 694, s. 8.)

**§ 143-318.16B. Assessments and awards of attorneys’ fees.**

When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court may make written findings specifying the prevailing party or parties, and may award the prevailing party or parties a reasonable attorney’s fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of any fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation; provided, that no order against any individual member shall issue in any case where the public body or that individual member seeks the advice of an attorney, and such advice is followed. (1985 (Reg. Sess., 1986), c. 932, s. 2; 1993 (Reg. Sess., 1994), c. 570, s. 3.)

**§ 143-318.16C. Accelerated hearing; priority.**

Actions brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts. (1993 (Reg. Sess., 1994), c. 570, s. 4.)

**§ 143-318.16D. Local acts.**

Any reference in any city charter or local act to an “executive session” is amended to read “closed session”. (1993 (Reg. Sess., 1994), c. 570, s. 4.)

**§ 143-318.17. Disruptions of official meetings.**

A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a Class 2 misdemeanor. (1979, c. 655, s. 1; 1993, c. 539, s. 1028; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 143-318.18. Exceptions.**

This Article does not apply to:

- (1) Grand and petit juries.
- (2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.
- (3) The Judicial Standards Commission.
- (3a) The North Carolina Innocence Inquiry Commission.
- (4) Repealed by Session Laws 1991, c. 694, s. 9.
- (4a) The Legislative Ethics Committee.
- (4b) A conference committee of the General Assembly.
- (4c) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.
- (5) Law enforcement agencies.

(6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supersede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

(7) Any public body subject to the State Budget Act, Chapter 143C of the General Statutes and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.

(8) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238.

(9) Repealed by Session Laws 1991, c. 694, s. 9.

(10) The Board of Awards.

(11) The General Court of Justice. (1979, c. 655, s. 1; 1985, c. 757, s. 206(e); 1991, c. 694, s. 9; 2006-184, s. 6; 2006-203, s. 95; 2010-171, s. 5.)

