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Set the Record Straight...An Insider's Guide to Public Records

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Legal Symposium

Office of Legal Affairs
UNC Charlotte

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Agenda

- Public records overview
- Past vs. present changes in public records request
- State (PRA) vs. Federal laws (FOIA)
- Complex requests
- Processing requests
- Exceptions

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Why training is important?



Walton County officials testify in depositions about the handling of public records.

<https://www.youtube.com/watch?v=G9skNmDjGJk>

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What is a Public Record?

- All documents of any type “regardless of physical form or **characteristics...made or received in connection with the transaction** of public business by any agency of North Carolina (NCGS 132-1(A))
- **Note:** ▶ UNC Charlotte is considered a state agency
- Disposition of records are governed by law: NCGS 121 (Archives & History) & 132 (Public Records Act)

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Public Records Requests...

PAST



PRESENT



transparency...transparency...transparency

Past: Nick Shepherd / Getty Images
Present: <https://www.inhitec.london/insight/future-of-office-communications>


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Shift in Public Records

PAST	PRESENT
<ul style="list-style-type: none"> • Litigation • Media • Political • Voluminous paper copies 	<ul style="list-style-type: none"> • All included <p>PLUS:</p> <ul style="list-style-type: none"> • Advocacy groups • Political activists • Technology advances (Cell phones, Tablets, Text Messages, Video Chat, Instant Messaging, etc.) • Electronic/digital records • Aggrieved and unhappy people (contractors/bidders, etc.)

UNC CHARLOTTE **State vs. Federal**

- **State**
 - NC Public Records Act (NCGS § 132-1 et. seq.)
 - Respond to request “as promptly as possible”
- **Federal**
 - FOIA (Freedom of Information Act)
 - Government agencies must respond in writing within 20 business days (note: does not necessarily mean records need to be delivered within this time frame)



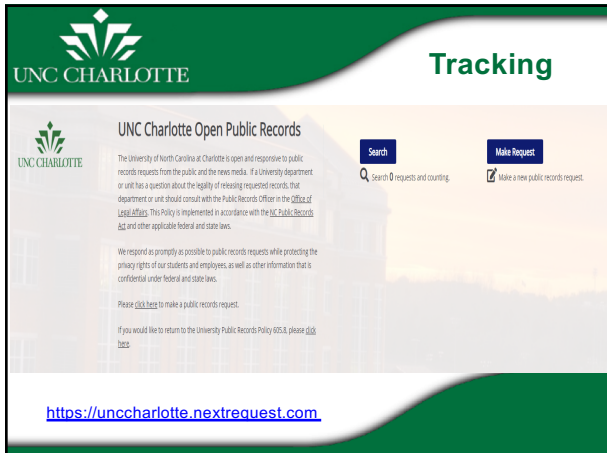
UNC CHARLOTTE **Public Records Data**

Year	# Requests Received	# of Hours Related to Review	% Hours Related to Redaction
2014	91	82.10	70%
2015	96	182	75%
2016	174	232.9	80%
2017	220	324.00	90%

Note: 20% increase in requests from last year

UNC CHARLOTTE **Public Records Process**

- Receipt of request
- Analyze request
- Contact custodian of record
- Review production document(s)
- Redact document (s)
- Prepare document(s) for delivery to requester
- Forward document(s) to requester
- File and log details



UNC CHARLOTTE **Tracking**

UNC Charlotte Open Public Records

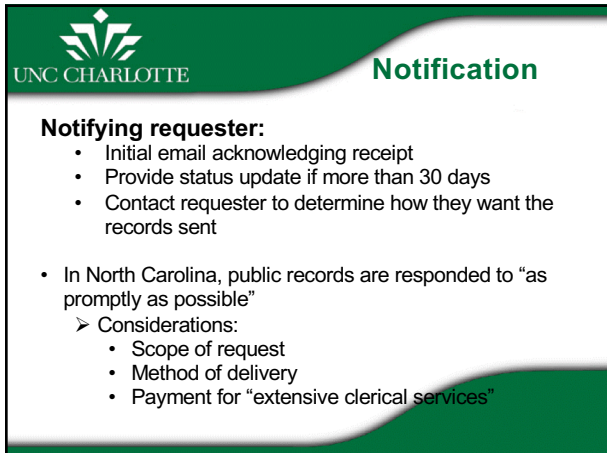
The University of North Carolina at Charlotte is open and responsive to public records requests from the public and the news media. If a university department or unit has a question about the legality of releasing requested records, that department or unit should consult with the Public Records Officer in the [Office of Legal Affairs](#). This Policy is implemented in accordance with the [UNC Public Records Act](#) and other applicable federal and state laws.

We respond as promptly as possible to public records requests while protecting the privacy rights of our students and employees, as well as other information that is confidential under federal and state laws.

Please [click here](#) to make a public records request.

If you would like to return to the University Public Records Policy 605.8, please [click here](#).

<https://unccharlotte.nextrequest.com>

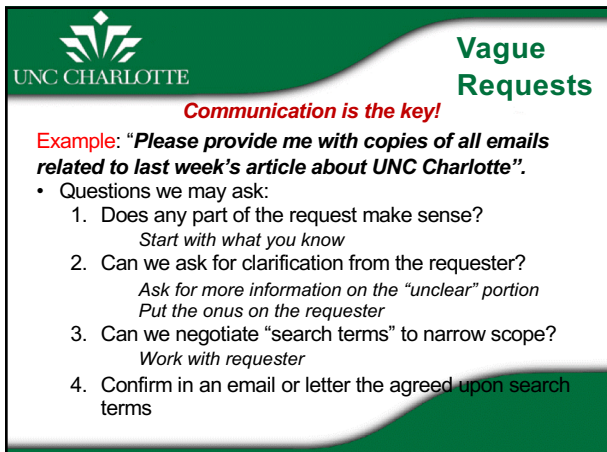


UNC CHARLOTTE **Notification**

Notifying requester:

- Initial email acknowledging receipt
- Provide status update if more than 30 days
- Contact requester to determine how they want the records sent

- In North Carolina, public records are responded to "as promptly as possible"
 - Considerations:
 - Scope of request
 - Method of delivery
 - Payment for "extensive clerical services"



UNC CHARLOTTE **Vague Requests**

Communication is the key!

Example: *"Please provide me with copies of all emails related to last week's article about UNC Charlotte".*

- Questions we may ask:
 1. Does any part of the request make sense?
Start with what you know
 2. Can we ask for clarification from the requester?
Ask for more information on the "unclear" portion
Put the onus on the requester
 3. Can we negotiate "search terms" to narrow scope?
Work with requester
 4. Confirm in an email or letter the agreed upon search terms

 **Complex Requests**

Strategize!

The **"any and all"** requests:

Questions we may ask:


1. Where do we start?
2. Who are the custodians?
3. Do we need to contact University Communications?
4. What exactly are they requesting? (emails, hard copies or both?)
5. How many documents are responsive?
6. Are there documents we can easily gather?
7. Is this considered "extensive services" or labor intensive?
8. Can the requester clarify or narrow the scope of the request?
9. Can we negotiate search terms?

 **Text Messages**

What do you mean I have to show you my text messages?



- Content **NOT** location determines the public record
 - Remember this includes: records made or received in connection with the transaction of public business
- May include:
 - personal computers
 - smart phones
 - iPads
 - tablets
 - voice mails





 **Best Practice**

What if an employee at UNC Charlotte directly receives a public records request?

- Administrators, faculty, and staff who receive a public records request should notify the Public Records Officer
- Consultation should take place prior to any record being released by the University


 **UNC CHARLOTTE** **Exceptions** 

- Personnel records: employee personnel records are confidential pursuant to North Carolina State Human Resources Act (except certain records subject to NCGS § 126-23 (a) (1-12)
- Attorney-client privilege: confidential communications subject to NCGS § 132-1.1
- Trade secrets: prohibits access to business trade secrets that have been shared with the government, as long as the business designated the material as confidential or trade secret at the time it was disclosed to the agency
- Certain criminal investigation and law enforcement records

 **UNC CHARLOTTE** **Exceptions** 

- Student Records
 - At UNC Charlotte: "Directory Information" includes:
 1. Student's name
 2. Major
 3. Field of study
 4. Dates of attendance
 5. Enrollment status
 6. Degrees and awards (scholarships)
- Students have the right to see their file and under FERPA, you have 45 days to respond to such requests



 **UNC CHARLOTTE** **Public Access**

What if a requester is denied access to a public record?

- Anyone who is denied access to public records may seek a court action to compel the State agency to turn over the records. (NCGS § 132-9(a))
- Burden is on the State (NCGS § 132-9(b))
- Presumption is that all State records are public

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Legal Holds

- "Litigation holds" are usually issued when there is a pending or threatened litigation
- You are required to suspend normal and routine destruction of records regardless of the established record retention schedule
- Upon notice you are also required to:
 - Recipient **MUST** acknowledge receipt
 - Immediately suspend deletion of relevant records
 - Preserve any electronic records generated OR received after receipt
 - Preserve hard copies of documents under your control
 - You **MUST** continue to monitor compliance

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Violation of Legal Holds

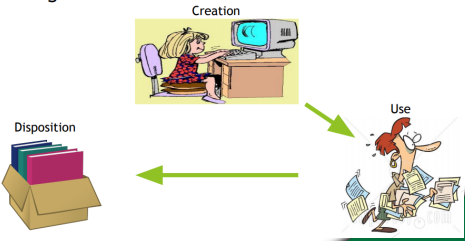
- It is against the law to **destroy, alter, withhold, or obscure** "evidence" once a legal hold has been initiated
- This is referred to as "spoliation"
 - Some courts have sanctioned spoliation by awarding attorneys' fees, fines, and punitive damages



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Life Cycle of a Record

3 stages:



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Four main values of a record

Administrative <ul style="list-style-type: none"> • Procedure Manuals • Retention Schedules • Memos • Reports 	Fiscal <ul style="list-style-type: none"> • Budget • Expenditure Loggers • Credit Card Reports • Payroll
Legal <ul style="list-style-type: none"> • Contracts • Agreements • Marriage Licenses • Property Records 	Historical <ul style="list-style-type: none"> • Oaths of Office • Directors' Correspondence • Meeting Minutes • Agency Histories

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Tracking and Retention

- Identify a responsible person for archiving in your area
- Adopt an internal policy on archiving, if needed
- Inventory documents in your area (monthly, bi-annually, annually)
- Purge documents accordingly
- Train new employees/attend workshops
- Familiarize yourself with the Retention Guidelines and Schedule (<https://legal.uncc.edu/policies/up-605.3>)

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Retention and Disposition


Example

Graduate Student X
Degree awarded
May 10, 2013

Shred after May 11, 2018 (5 years after)

- ❑ **Few exceptions:**
 - Disciplinary records, FERPA forms, theses/dissertations, transcripts, transfer records
 - Important to review Retention Schedule (UP 605.3)

Series #	Records Series Title and Description	Disposition Instructions	Citation
12.27	UNDERGRADUATE AND GRADUATE STUDENT ACADEMIC RECORDS Records documenting the academic record of students earning degrees. Includes major/minor declarations, external practica/internships/field placements/experiential learning programs, inter-institutional approval forms, comprehensive examination results, personal data, and other related records. <small>See also: Transcripts (page 72, item 12.25)</small>	a) Destroy in office records of graduated students 5 years after degree awarded. b) Destroy in office remaining records 10 years after last date of registration/activity at the University.	Confidentiality: 20 USC 1232g (FERPA)
12.28	WITHDRAWAL RECORDS Records documenting the withdrawal of a student from the University.	Destroy in office after 5 years.	Confidentiality: 20 USC 1232g (FERPA)




Retention and Disposition

Example

Faculty Governance Records

- Shred election records (1 year after)
- Transfer remaining records to University Archivist

1.18	FACULTY GOVERNANCE RECORDS Records documenting the actions of faculty governance bodies, such as the faculty senate or council and their committees. Includes minutes, attachments, reports, faculty code, correspondence, and other related records. Also includes election records.	a) Destroy in office election records after 1 year. b) Transfer remaining records to University Archives after 5 years for appraisal and final disposition.
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Retention and Disposition

Example

Student Admissions Record
8/20/2018

- Send transcript and application to Registrar's on 8/20/2018
- Destroy remaining records on or after 8/21/2021 (3 years after admission)
- If not enrolled or denied admission, destroy 8/21/2019 (1 year after application)

Series #	Records Series Title and Description	Disposition Instructions	Citation
13.1	ADMISSIONS RECORDS Records documenting student applications for admission to the University. Includes undergraduate and graduate applications, recommendations and student waivers for right of access, transcripts, committee and review records, appeals, correspondence, and other related records.	a) For enrolled students, transfer application and transcripts to Registrar's Office when student matriculates. Destroy remaining records in office 3 years after admission. b) For non-enrolled students and denied applications, destroy in office 1 year after application period.*	Confidentiality: G.S. § 132-1.1(f) 20 USC 1232g (FERPA)



Retention and Disposition

Example

Tracking Materials
- Certified mail receipts, postage authorizations

- Destroy when reference value ends.
- What does this mean?
- When should we destroy it?
- Reference value???

1.44	TRACKING MATERIALS Records documenting the receipt of information. Includes certified mail receipts, postage authorizations, and other related records.	Destroy in office when reference value ends. † University Policy: Destroy after _____
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† See signature page. The University hereby agrees that it will establish and enforce internal policies setting minimum retention periods for the records that the Department of Natural and Cultural Resources has scheduled with the disposition instruction "destroy when reference value ends." Please use the space provided.

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Tracking Example

Detailed List of Records Being Transferred

Box #	Series # and Title from Schedule	File Title and/or Description	Date(s)
2	2-3 Administrative Records	Dean's memorandums	2004-2006

Maintain this log in office to track your transferred records

To insert more rows, right click in any cell in the last row of the table, go to Insert, click on Insert Rows below OR put your cursor in the last cell of the last row and column and hit TAB.

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QUESTIONS?

QUESTIONS?
