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

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Legal Symposium

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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?

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

Public Records Requests...
transparency...transparency...transparency

Shift in Public Records

<table>
<thead>
<tr>
<th>PAST</th>
<th>PRESENT</th>
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<tbody>
<tr>
<td>• Litigation</td>
<td>• All included</td>
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<tr>
<td>• Media</td>
<td>PLUS:</td>
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<tr>
<td>• Political</td>
<td>• Advocacy groups</td>
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<td>• Voluminous paper copies</td>
<td>• Political activists</td>
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<td></td>
<td>• Technology advances (Cell phones, Tablets, Text Messages, Video Chat, Instant Messaging, etc.)</td>
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<td>• Electronic/digital records</td>
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<td>• Aggrieved and unhappy people (contractors/bidders, etc.)</td>
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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)

Public Records Data

<table>
<thead>
<tr>
<th>Year</th>
<th># Requests Received</th>
<th># of Hours Related to Review</th>
<th>% Hours Related to Redaction</th>
</tr>
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<tbody>
<tr>
<td>2014</td>
<td>86</td>
<td>82.10</td>
<td>70%</td>
</tr>
<tr>
<td>2015</td>
<td>94</td>
<td>182</td>
<td>75%</td>
</tr>
<tr>
<td>2016</td>
<td>174</td>
<td>232.9</td>
<td>80%</td>
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<tr>
<td>2017</td>
<td>220</td>
<td>324.00</td>
<td>90%</td>
</tr>
</tbody>
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Note: 20% increase in requests from last year

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
Tracking

https://unccharlotte.nextrequest.com

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”

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

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?

Strategize!

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
• 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

• 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

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
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

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

Life Cycle of a Record

3 stages:

- Creation
- Use
- Disposition
Four main values of a record

- Administrative
  - Procedures Manuals
  - Retention Schedules
  - Minutes
  - Reports
- Fiscal
  - Budget
  - Expenditure Ledgers
  - Credit Card Reports
  - Payroll
- Legal
  - Contracts
  - Agreements
  - Marital Licenses
  - Property Records
- Historical
  - Data of Office
  - Decisions
  - Minutes
  - Meetings
  - Agency Histories

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)

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)
Retention and Disposition

Example

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

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.

- Destroy in office election records after 1 year.
- Transfer remaining records to University Archives after 5 years for approval and final disposition.

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)

Tracking Materials 7/9/2018

- Records documenting the receipt of information includes certified mail receipts, postage authorizations, and other related records.

- Destroy in office when reference value ends.
- What does this mean?
- When should we destroy it?
- Reference value???
- Determine when the reference value ends
- Contact University Archivist
- Complete form
- Create an internal policy for that specific record

**Example:**
- 1/2/2017 Certified return receipt documentation
- Package delivered and received on 1/3/2017
- Reference value has ended
- Determine value ends 1 year after
- Destroy on 1/3/2018

- If you need to change the retention or disposition date of a particular record
- Contact University Archivist
- Complete form
- Create an internal policy for that specific record

- Use this form when sending records to University Archivist
Tracking Example

Maintain this log in office to track your transferred records

QUESTIONS?