

Access to State and Local Government Documents	1
What is a public record?	2
Who is entitled to access?	5
What constitutes access?	6
What fees can be charged?	8
Are there special rules for computerized records?	11
What happens when confidential and nonconfidential information are mingled?	12
Can public officials destroy their records?	13
Which records are public records and which are not?	13
What can you do if you are denied access?	90

Access to State and Local Government Documents

By Cathy Packer and Elizabeth A. Woolery

North Carolina’s Public Records Law, Chapter 132 of the General Statutes, clearly states that the public and the media have a right of access to most documents made or received by state and local governments. A 1995 amendment to the law says public records “are the property of the people,”¹ and the state’s courts repeatedly have declared that the state’s public records law must be construed liberally in favor of disclosure² and the exceptions construed narrowly.³ This chapter will address access to records of the legislative and executive branches of state and local governments in North Carolina. Access to court records is addressed in the chapter of this book

¹ N.C. GEN STAT. §132-1(b).

² *See, e.g.,* Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 462, 515 S.E.2d 675, 685 (1999).

³ *See, e.g.,* Boney Publishers, Inc. v. Burlington City Council, 151 N.C. App. 651, 655-56, 566 S.E.2d 701, 704 (2002).

on access to the judicial process.

Public records laws vary from state to state. To obtain access to records of a state or local government outside North Carolina, you should familiarize yourself with that state's law.⁴

Many government records — in North Carolina and elsewhere — are available for the asking. Minutes of city council meetings, arrest reports and comprehensive zoning plans, for example, routinely are available to the press and public. However, the wide variety of records made or received by the government sometimes makes it difficult to generalize about them, so there are frequent disagreements between government officials and the press about whether particular records are public. This confusion is complicated by the fact that few appellate court decisions have been written interpreting the North Carolina law and that there are dozens of additional state statutes and some federal statutes that either grant or deny public access to specific government information. However, the Public Records Law makes this one thing clear: *Disclosure of public records is the rule, and withholding them from the public and the press is the exception.*

What is a public record?

Public records are defined in the North Carolina law as “documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material.”⁵ No records are excluded because of their physical form.

⁴ The Reporters Committee for Freedom of the Press publishes online a state-by-state guide to open government laws. <http://www.rcfp.org/open-government-guide>

⁵ N.C. GEN STAT. §132-1(a).

Public records are further defined as the records of an agency of North Carolina government or its subdivisions, which means the records of 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.”⁶ That means all levels of government from state government down. It includes advisory boards and commissions.

The definition of public records includes all records “made or received pursuant to law or ordinance in connection with the transaction of public business.”⁷ The N.C. Court of Appeals has said this means all records specifically required to be kept by law, as well as others that are kept by a public official or agency in carrying out the agency’s lawful duties.⁸ In addition, the North Carolina attorney general has said that “it has always been the view of this office that the statutory phrase ‘in pursuance of law’ is not to be narrowly construed so as to limit the chapter to only documents specifically prescribed by law to be made or received. In the opinion of this office, the phrase is more properly interpreted to mean or describe an act done in one’s public employment capacity as opposed to a private act.”⁹ For example, all letters sent or received by a public official in his or her official capacity are public records, but a personal letter mailed to his government address is not.

The definition of public records as records “made or received pursuant to law or

⁶ *Id.*

⁷ *Id.*

⁸ *News & Observer Publ’g Co. v. Wake Cnty. Hosp. Sys.*, 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 (1982).

⁹ *Public Records; North Carolina State University at Raleigh; Textbook Lists; Right of Inspection*, 41 Op. N.C. Att’y Gen. 199 (1971).

ordinance in connection with the transaction of public business” also suggests that the law covers records relating to multi-state or regional bodies if North Carolina public officials are members.

What is a public agency?

The N.C. Public Records Law covers records relating to public business transacted by any agency of the state or its subdivisions. In 1981 the N.C. Court of Appeals relied on federal case law to define a public agency as “any administrative unit with substantial independent authority in the exercise of specific functions. Administrative entities that perform neither rule-making nor adjudicative duties also may be agencies. ‘The important consideration is whether [the administrative entity] has any authority in law to make decisions.’”¹⁰ The court applied that definition to Wake County Hospital, which was established by Wake County to provide medical care to the general public, including the poor, and found the hospital to be a public agency whose documents were public records. The court acknowledged that the hospital was organized as a private, non-profit corporation but concluded that it was so intertwined financially and administratively with the county government as to be a public agency. The county owned the hospital building and leased it to the hospital corporation for \$1 per year, reviewed and approved the hospital’s annual budget, financed the hospital through county bond orders and approved the members of the hospital’s board of directors.

In 1999 the N.C. Court of Appeals ruled in another case that hinged in part on whether a

¹⁰ *News & Observer Publ’g Co. v. Wake Cnty. Hosp. Sys.*, 55 N.C. App. 1, 8, 284 S.E.2d 542, 547 (1981), *cert. denied*, 305 N.C. 302, 291 S.E.2d 151, *cert. denied*, 459 U.S. 803 (1982) (quoting *Washington Research Project, Inc. v. Dep’t of Health, Educ. & Welfare*, 504 F.2d 238, 248 (D.C.Cir. 1974), *cert. denied*, 421 U.S. 963, 95 S. Ct. 1951 (1975)). *See also* *Wilmington Star News v. New Hanover Reg’l Med. Ctr.*, 125 N.C. App. 174, 480 S.E.2d 53, *appeal dismissed*, 346 N.C. 557, 488 S.E.2d 826 (1997).

corporation was a private entity or a public agency under the law. The court clearly ruled that a public utility – in this case a telephone company – was private under the law, not a public agency.¹¹ The court explained that a telephone company’s independent authority was not overshadowed by the N.C. Utilities Commission’s control of the company. The Utilities Commission’s control of the company was material but not comprehensive, the court said.

While “agency” is defined broadly, it does not automatically include nongovernmental organizations that receive public funds or benefits. A 1992 lawsuit over whether MCNC (formerly the Microelectronics Center of North Carolina) was a public agency for purposes of the state Public Records Law was settled with a consent judgment. In the consent judgment, MCNC agreed to comply voluntarily with most of the provisions of the Public Records Law, but it did not admit being an agency of North Carolina government legally bound by the Public Records Law.¹² A non-profit organization created by state government in 1980 to foster the state’s growing microelectronics industry, MCNC received more than \$240 million from the state. The North Carolina media also have argued – unsuccessfully – for access to the financial records of North Carolina Amateur Sports, a non-profit organization that receives state funds to sponsor amateur sporting events.

Who is entitled to access?

Everyone is entitled to access to public records, according to the Public Records Law. It doesn’t matter who you are or how you plan to use the record. The N.C. Court of Appeals has

¹¹ Utilities Comm’n v. MCI Telecomms. Corp., 132 N.C. App. 625, 514 S.E.2d 276 (1999).

¹² Microelectronics Ctr. of North Carolina v. North Carolina (N.C. Super. Ct. Sept. 21, 1992).

specifically stated that a news media organization is a “person” entitled to access under the Public Records Law.¹³ Also, the Public Records Law stipulates, “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.”¹⁴

In 2004 the N.C. Court of Appeals ruled that government agencies may not use the Public Records Law to sue private citizens for a declaratory judgment to resolve public records disputes. To allow such lawsuits, the court reasoned, would discourage citizens from seeking access to records and pervert the purpose of the public records statute.¹⁵

What constitutes access?

The N.C. Public Records Law says, “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.”¹⁶ No more specific response time is mandated by North Carolina law.

This section of the law was the subject of litigation in Buncombe County Superior Court in 1999. At issue was a provision of the county’s “Multiple Information Requests Policy” that required citizens seeking public records from the county to submit written requests to the county

¹³ *Advance Publ’ns, Inc. v. City of Elizabeth City*, 53 N.C. App. 504, 281 S.E.2d 69 (1981).

¹⁴ N.C. GEN. STAT. §132-6(b).

¹⁵ *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).

¹⁶ N.C. GEN. STAT. §132-6(a).

manager. The court declared that portion of the policy void. It explained that the law does not permit government to impose a “gatehouse” or “overseer” between members of the public who desire access to records and the custodians of those records. The custodian, the court said, is the person who in fact possesses the records. The court said, however, that the county was entitled to develop reasonable rules governing its production of public records. The county can require citizens having requests for voluminous copies to make their requests in writing (see a sample request letter here), to pay in advance and to wait a reasonable length of time.¹⁷

The Public Records Law says that access to public records must be granted by “[e]very custodian of public records. . . .”¹⁸ Thus requests can be, and are, addressed to virtually any public employee. However, the law clarifies that the “custodian” who is legally bound to grant access does not include “an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.”¹⁹

With two exceptions, requests for records need not be in writing. The two exceptions are requests for copies of computer databases²⁰ and requests for copies of a geographical information system.²¹ The latter may require an agreement in writing that the requester will not use the record for commercial purposes.

A public agency is not obliged to respond to requests for copies of public records outside

¹⁷ Dawes v. Buncombe Cnty. Bd. of Comm’rs, No. 99 CVS 03497 (N.C. Super. Ct. Sept. 1, 1999).

¹⁸ N.C. GEN. STAT. §132-6(a).

¹⁹ *Id.*

²⁰ N.C. GEN. STAT. §132-6.2(c).

²¹ N.C. GEN. STAT. §132-10.

of its usual business hours.²² Neither is it required to respond to a request for public records “by creating or compiling a record that does not exist” or by putting records into an electronic format.²³

What fees can be charged?

No fees can be charged merely to examine a public record, and many government agencies do not charge for copies of public records. However, you can be required to pay for a copy of a record. The state Public Records Law says that “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.”²⁴

The law further states that “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.”²⁵ That means that actual costs are the cost of the paper, the ink and the energy it takes to run the copier. Actual costs do not include staff time, a portion of the lease on the copier or anything else the agency would have to pay if you had not made your request.

There are exceptions to the “actual cost” rule, however. One exception to that rule would be a request that required more extensive use of information technology resources or of supervisory or

²² N.C. GEN. STAT. §132-6.2(d).

²³ *Id.*

²⁴ N.C. GEN. STAT. §132-1(b).

²⁵ N.C. GEN. STAT. §132-6.2(b).

clerical assistance than an agency had available to assign to this task. In that case, the agency may levy a special service charge in addition to the actual cost. Unfortunately, the term “extensive” is not defined in the Public Records Law or case law. However, the statute does say that the service charge “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. . . .”²⁶

Also, if an agency agrees to create or compile a new record as a courtesy to a requester, the agency may negotiate with the requester a reasonable charge for that service.²⁷

Finally, several statutes fix fees for copies of specific types of records:

Agency	Permitted Cost	Statutory Authority
Register of Deeds	Certified copies - \$5 for first page and \$2 per additional page Uncertified copies - “ees that the register of deeds determines bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed from time to time, but the amount. . . Shall at all times be uniform and prominently posted in the office of the register of deeds.”	N.C. Gen. Stat. §161-10
Division of Motor Vehicles	Certified copies of “any document of the Division” except those listed below - \$10 Accident reports - \$5 Limited extract copy of license record, for period up to 3 years - \$8 Complete extract copy of license record - \$8 Certified true copy of complete license record - \$11 Partial crash report, driver license and vehicle registration data in bulk form – 3 cents per record	N.C. Gen. State. §20-42-20-43.1
Clerk of Court	\$2 for first page of each document requested and 25 cents for each additional page	N.C. Gen. Stat. §7A-308

²⁶ *Id.*

²⁷ N.C. GEN. STAT. §132-6.2(e).

Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors	Copies of license - \$15	§21 N.C.A.C. § 50.1104
Department of Cultural Resources (State archival agency)	Copies of public records no longer in current official use - "Department may charge reasonable fees for these copies. The Department may answer written inquiries for nonresidents of the State and for this service may charge a . . . fee not to exceed \$25. The receipts from this fee shall be used to defray the cost of providing this service."	N.C. Gen. Stat. §121-5
Secretary of State (Trademarks/ Service Marks)	"Fees for copying, comparing, and certifying a copy of any filed document relating to a trademark or service mark: \$5 for the certificate, and \$1 per page for copying."	N.C. Gen. Stat. §80-7
Secretary of State (Uniform Federal Lien Registration Act)	Copy of a notice of a federal lien or of a notice or certificate affecting a federal lien - \$1 per page	N.C. Gen. Stat. §44-68.1
Secretary of State (Financing statements)	Copy of any filed financing statement or statement of assignment - \$2 per page	N.C. Gen. Stat. §25-9-5
Department of Commerce: Commissioner of Banks	Public records copies from commissioner of banks - \$2 for first page, 10 cents for each additional page	§4 N..C Administrative Code 3C.1601
Insurance Commission	"Any record or paper" in the office of the Commissioner of Insurance - 50 cents per copy sheet	N.C. Gen. Stat. §58-6-5

If you feel a fee is unfair or unreasonable, you can ask the Information Resource Management Commission in Raleigh to mediate the dispute.²⁸ A commission staff member will contact the agency from which you are seeking the record and inquire about how the fee was set. If the staff member concludes the fee is reasonable, the staff member will explain that to you. Otherwise, the staff member will negotiate with the agency to have the fee lowered.

²⁸ N.C. GEN. STAT. §132-6.2(b).

Are there special rules for computerized records?

In 1995 the N.C. General Assembly amended the Public Records Law to facilitate public access to computerized records. First, the General Assembly said that persons requesting copies of public records may 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.”²⁹

A public agency is not required to convert paper records to electronic format.³⁰ However, if an agency agrees to create an electronic record, it may negotiate a “reasonable charge” for the service.³¹

You may legally be required to make a written request for copies of computer databases. (See a sample request letter here.) Custodians of public records then must respond “as promptly as possible,” according to the Public Records Law. If the request is granted, the copies should be provided “as soon as reasonably possible.” If your request is denied, an explanation must be given, and it must be given in writing, if you so request.³²

Also according to the Public Records Law, no public agency may use a computerized record-keeping system that impedes public access to its records. The law says no public agency may “purchase, lease, create, or otherwise acquire any electronic data-processing system for the

²⁹ N.C. GEN. STAT. §132-6.2(a).

³⁰ N.C. GEN. STAT. §132-6.2(e).

³¹ *Id.*

³² N.C. GEN. STAT. §132-6.2(c).

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."³³

Furthermore, each public agency must create an index of the computer databases it has compiled or created. The indexes are public records and must include at least the following information: "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."³⁴

The Public Records Law states that a public agency is not required to disclose its software security measures, including its passwords.³⁵

What happens when confidential and nonconfidential information are mingled?

The Public Records Law says, "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."³⁶ The law further stipulates that the public agency must

³³ N.C. GEN. STAT. §132-6.1(a). *See also* News & Observer Publ'g Co. v. Johnston Cnty., No. 95 CVS 1671 (N.C. Super. Ct. 1997).

³⁴ N.C. GEN. STAT. §132-6.1(b).

³⁵ N.C. GEN. STAT. §132-6.1(c).

³⁶ N.C. GEN. STAT. §132-6(c).

bear the cost of separating the information in order to permit access to public records.³⁷

Can public officials destroy their records?

The state Public Records Law prohibits public officials from destroying or otherwise disposing of public records except in accordance with law or with the consent of the Department of Cultural Resources. Anyone who unlawfully removes, destroys, alters or mutilates public records is guilty of a misdemeanor, punishable by a fine of \$10 to \$500.³⁸ The Department of Cultural Resources is assigned to assist public officials in preparing inventories of records and to devise retention and disposal schedules.³⁹

Which records are public records and which are not?

The Public Records Law makes access to records the rule and denial of access the exception. Furthermore, the N.C. Supreme Court has ruled that public agency records are public unless there is a specific statutory exception.⁴⁰

The following is a list of types of records that we are relatively certain are either public or not public. The Public Records Law includes some specific exceptions to its mandate for access. Court decisions and attorney general opinions have interpreted the Public Records Law. And many state statutes, in addition to the Public Records Law, make specific information either public or not public. Many of those state statutes make certain government information

³⁷ *Id.*

³⁸ N.C. GEN. STAT. §132-3.

³⁹ N.C. GEN. STAT. §132-8.

⁴⁰ *News & Observer Publ'g Co. v. Poole*, 330 N.C. 465, 412 S.E.2d 7 (1992).

confidential and make it a misdemeanor for a government employee to release it.

Records not included in the list below are public if they fit the description of public records detailed above.

Adoption records. The decree of adoption and the entry in the special proceedings index in the office of the clerk of court are public records. However, all other records created or filed in connection with an adoption on file with the court, with any other government agency, an attorney or other provider of professional services are not public records.⁴¹ The criminal histories of prospective adoptive parents of minors in the care of county departments of social services are not public records either.⁴²

Adult care home records. According to state statute, the N.C. Department of Health and Human Services must protect the confidentiality of all persons who file complaints about adult care home facilities. Furthermore, the records of residents of such facilities used by the department to investigate complaints are not public records.⁴³

Advisory board records. These are public records under the broad protection of the N.C. Public Records Law.

Agriculture records.

Animal health records. The N.C. Department of Agriculture and Consumer Services collects information from individual farm operators for its animal health programs. That information may be disclosed by the state veterinarian to assist in the implementation of these

⁴¹ N.C. GEN. STAT. §48-9-102(a).

⁴² N.C. GEN. STAT. §48-3-309(f).

⁴³ N.C. GEN. STAT. §131D-27.

programs. However, animal disease diagnostic tests that identify the owner of an animal cannot be disclosed to the public without the permission of the owner unless the state veterinarian determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health.⁴⁴

Commercial feed formulas. Formulas for commercial feed must be filed with the N.C. Department of Agriculture and Consumer Services but are not public records; they are trade secrets. A government employee who discloses this information to anyone except an authorized person is guilty of a misdemeanor.⁴⁵ (See also Trade secrets.)

Dairy farm records. Information furnished to or acquired by the Southern Dairy Compact Commission, a regional board that works to insure consumers have an adequate, local supply of pure and wholesome milk, is not public record. However, state statute allows the commission to issue general statements that do not identify individuals who supplied information and to release the name of any person violating a commission regulation, together with a statement of the particular provisions violated by that person.⁴⁶

Fertilizer records. Anyone selling commercial fertilizer in the state must furnish the state commissioner of agriculture a written statement of the tonnage of each grade of fertilizer sold. This information is not public record.⁴⁷

Forest product processing records. In order to collect assessments, the Department of

⁴⁴ N.C. GEN. STAT. §106-24.1.

⁴⁵ N.C. GEN. STAT. §106-284.44(f).

⁴⁶ N.C. GEN. STAT. §106-810, art. VI, §15(b).

⁴⁷ N.C. GEN. STAT. §106-677.

Revenue reviews the production records of companies that process forest products in the state. Those production records are not public records, and it is a misdemeanor for a state employee to disclose them.⁴⁸

Porcine animal (hog) data. A buyer of porcine animals must keep records of the number of animals purchased and the dates they are purchased as part of the process of collecting funds to help promote the pork production industry in the state. That purchase information is reported to the N.C. Department of Agriculture and Consumer Services and the N.C. Pork Producers Association, but it is not public record. State law mandates that the department and the association keep confidential all information or records regarding purchases of porcine animals by individual buyers.⁴⁹

Statistical data. The N.C. Department of Agriculture and Consumer Services is required to compile statistical data about agriculture. However, the department is prohibited from releasing data that identify information received from individual farm operators.⁵⁰

Amusement records. The state's Amusement Device Safety Act requires the commissioner of labor to inspect and certify the safety of carnival rides and similar amusements. Any information reported to the commissioner in connection with these duties that reveals a trade secret is confidential and not a public record.⁵¹ (See also Trade secrets.)

Animal research records. In 1991 the N.C. Court of Appeals ruled that a University of

⁴⁸ N.C. GEN. STAT. §113A-195(f).

⁴⁹ N.C. GEN. STAT. §106-794(d).

⁵⁰ N.C. GEN. STAT. §106-24.1.

⁵¹ N.C. GEN. STAT. §95-111.17.

North Carolina at Chapel Hill committee's documents relating to the use and care of animals in scientific research are public records.⁵² The documents in question were forms filed by researchers with the University's Institutional Animal Care and Use Committee. The committee was created in accordance with federal law to inspect facilities where animals are housed and studied at the University and to review proposed procedures for the care and use of the animals in experiments.

The court ruled that the records did not contain trade secrets that could be withheld from public scrutiny. It also said the First Amendment does not create an academic freedom exception to disclosure of documents. However, the court said that public policy requires that the following information is not public and can be deleted from the records before they are released to the public: the names of researchers and their staff members, their telephone numbers and addresses, their experience and the names of their departments. It also said that applications submitted to a University committee that decides whether proposed experiments would appropriately minimize pain and distress for animals used in research need not be made public if the applications are not approved. (See also Trade secrets.)

Antifreeze records. When the Department of Labor receives an application for a license or permit to sell antifreeze in this state, the commissioner may require the applicant to furnish a statement of the contents of the antifreeze. That information is a trade secret and not a public record.⁵³ (See also Trade secrets.)

Archaeological records. The state collects information on the location and nature of

⁵² S.E.T.A. v. Huffines, 101 N.C. App. 292, 399 S.E.2d 340 (1991).

⁵³ N.C. GEN. STAT. §106-579.11.

archaeological resources, such as rock carvings and Native American burial grounds. Under state statute, that information is public record unless the Secretary of Cultural Resources decides “that the disclosures would create a risk of harm to such resources or to the site at which such resources are located.”⁵⁴

Athletic booster club and educational foundation audits. It is the policy of the University of North Carolina system that the annual audits of all foundations linked to constituent institutions of the University are public records. UNC-CH and North Carolina State University each have more than a dozen such foundations.

Attorney-client privilege. North Carolina’s Public Records Law says an attorney-client privilege shields some government documents from public inspection. Written communications from an attorney serving a public body to that public body “made within the scope of the attorney-client privilege” are not public records if those statements concern “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.”⁵⁵ Such records become public three years from the date they are received by the government.⁵⁶

In 1992 the N.C. Supreme Court ruled that while state law exempts from public disclosure records of communications from a public body’s attorney to that public body, it does

⁵⁴ N.C. GEN. STAT. §70-18.

⁵⁵ N.C. GEN. STAT. §132-1.1(a).

⁵⁶ *Id.*

not exempt written communications that travel in the opposite direction, that is, from a public body to its attorney.⁵⁷

Also, in 2007 the N.C. Court of Appeals ruled that a town could not assert that because town attorneys, and not the town itself, possessed government records, the records were not available for public inspection.⁵⁸ The court noted that the records in question were paid for by town and were made or received in connection with town's business and therefore they were public records.

Trial-preparation materials. The Public Records Law says that a government records custodian can deny access to a public record that is also trial-preparation material.⁵⁹ State law defines trial-preparation material as “documents and tangible things . . . prepared in anticipation of litigation or for trial”⁶⁰ in civil proceedings in state or federal court or in local, state or federal administrative or quasi-judicial proceedings.⁶¹ If the denial of access 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 must, upon request, provide a written justification to that effect.⁶² Both before and during legal proceedings, you can petition the court for a determination as to whether the public record is indeed trial-preparation material.⁶³ At the conclusion of a legal proceeding, after all appeals and post-judgment proceedings, or in cases

⁵⁷ News & Observer Publ’g Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

⁵⁸ Womack Newspapers, Inc. v. Town of Kitty Hawk, 181 N.C. App. 1, 639 S.E.2d 96 (2007).

⁵⁹ N.C. GEN. STAT. §132-1.9(b).

⁶⁰ Rules Civ. Proc., N.C. GEN. STAT. §1A-1, Rule 26(b)(3).

⁶¹ N.C. GEN. STAT. §132-1.9(h)(1).

⁶² N.C. GEN. STAT. §132-1.9(b).

⁶³ N.C. GEN. STAT. §132-1.9(c).

where no legal proceeding has been commenced and all applicable statutes of limitations have expired, the trial preparation material must be made available for public inspection and copying.

64

Audit records. Audit reports issued by the state auditor are public records,⁶⁵ but the underlying work papers are not.⁶⁶ Similarly, audit reports of the Department of Health and Human Services are public records, but the related work papers are not.⁶⁷

Autopsy reports and photographs. According to the Public Records Law, “[T]he text of an official autopsy report, including any findings and interpretations,” is a public record.⁶⁸ Also, photographs or video or audio recordings of official autopsies are available for public inspection, but they generally cannot be copied by members of the media or the public.⁶⁹ An official autopsy is one ordered by a medical examiner, judge or district attorney. (The circumstances in which these officials may or must order an autopsy performed are spelled out in Chapter 130A of the General Statutes.) Except in cases where the cause of death is suspicious, reports of autopsies requested by the deceased person's next-of-kin are considered individual medical records and are not public records.⁷⁰

⁶⁴ N.C. GEN. STAT. §132-1.9(e).

⁶⁵ N.C. GEN. STAT. §147-64.6(c)(14).

⁶⁶ N.C. GEN. STAT. §147-64.6(d).

⁶⁷ N.C. GEN. STAT. §143B-216.51(d).

⁶⁸ N.C. GEN. STAT. §132-1.8.

⁶⁹ N.C. GEN. STAT. §130A-389.1(a).

⁷⁰ N.C. GEN. STAT. §130A-389(d).

Anyone denied a copy of autopsy photographs or recordings may initiate a special judicial proceeding to show good cause why a copy should be made available. Considerations in determining good cause include “whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family’s right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form.”⁷¹

Some North Carolina counties have coroners. In those counties, the coroner is required by law to file reports of inquests and investigations with the county medical examiner and the district attorney.⁷² Therefore the rules above apply to coroners’ reports, too.

Bail bondsmen and runners records. When an insurer terminates the appointment of a bondsman who had been appointed by the insurer to write bail bonds on the insurer’s behalf, the insurer must furnish the commissioner of insurance with a written notice of the termination stating the reasons, if any, for the termination. These notices are not public record.⁷³ Bail bondsmen who hire licensed runners must file similar notices when they terminate the appointment of a runner. Those notices are not public records either.⁷⁴

Bank, savings and loan, and credit union records. Virtually all of these records are closed under a variety of state statutes.

⁷¹ N.C. GEN. STAT. §130A-389.1(d).

⁷² N.C. GEN. STAT. §152-7.

⁷³ N.C. GEN. STAT. §58-71-115

⁷⁴ N.C. GEN. STAT. §58-71-125.

For example, the commissioner of banks is required by state law to keep confidential the following types of information related to savings banks:

- (1) Information obtained or compiled in connection with an examination, audit, or investigation of any savings bank;
 - (2) Information reflecting the specific collateral given by a borrower, the amount of stock owned by a stockholder, stockholder lists and deposit accounts held by a named customer;
 - (3) Information obtained, prepared, or compiled in connection with examination, audit, or investigation of any savings bank by a federal agency, if the records would be confidential under federal law;
 - (4) Other information and reports submitted by savings banks to federal regulatory agencies, if the records or information would be confidential under federal law;
 - (5) Information and records regarding complaints from the public that concern savings banks when the complaint would or could result in an investigation.⁷⁵
- However, the records of the Banking Commission’s “official acts, rulings, and transactions” are public records.⁷⁶

All records compiled by credit unions, including records of audits and examinations, records that disclose the names of borrowers and records of credit union members who lodge

⁷⁵ N.C. GEN. STAT. §54C-60.

⁷⁶ N.C. GEN. STAT. §53-99(a).

complaints with the state administrator of credit unions, are confidential.⁷⁷ Only the information contained in an application for a new credit union is a public record.⁷⁸

The same is true of the records of savings and loan associations.⁷⁹ Nothing is public record except the information in an application to establish a savings and loan association. Even then, the financial statements of the incorporators and any other information deemed by the administrator to be confidential are not public records.⁸⁰ Also, compliance review documents in the custody of a savings and loan association or a government regulatory agency are confidential, not public records.⁸¹

Bids for government contracts. The state’s competitive bidding statute, which sets out the procedures to be followed in awarding state contracts, provides that all bids shall be open for public inspection following the award of a contract. However, “trade secrets, test data and similar proprietary information” submitted in connection with the bid may remain confidential.⁸² (See also Operating records and contracts.)

Clemency records. The N.C. Court of Appeals ruled in 2007 that the Public Records Law does not apply to records compiled by the governor in connection with his or her clemency power.⁸³ The case

⁷⁷ N.C. GEN. STAT. §54-109.105.

⁷⁸ N.C. GEN. STAT. §54-109.105(c).

⁷⁹ N.C. GEN. STAT. §54B-63(a).

⁸⁰ N.C. GEN. STAT. §54B-63(c).

⁸¹ N.C. GEN. STAT. §54B-63.1(b).

⁸² N.C. GEN. STAT. §143-52.

⁸³ News & Observer Publ’g Co. v. Easley, 182 N.C. App. 14, 641 S.E.2d 698, *rev. dismissed, rev. denied*, 361 N.C. 429, 648 S.E.2d 508 (2007).

began when *The News & Observer* submitted a public records request to then-Gov. Michael Easley's office asking for applications for clemency and documents submitted in support of or opposition to those applications. Easley released the applications, the names of those supporting each application, and documents granting clemency. However, he refused to release documents submitted to his office in support of or opposition to clemency applications. The appeals court viewed the dispute as involving the separation of powers between the governor and the legislature. The court said the N.C. Constitution clearly gives the governor the power to grant clemency and the legislature the limited power to enact laws "relative to the manner of applying for pardons."⁸⁴ The legislature's power to enact laws "relative to the manner of applying for pardons" does not include the power to make clemency records public, the court reasoned. Therefore the Public Records Law does not apply to the governor's clemency records.

Community college records. All records of the State Board of Community Colleges, the Community Colleges System office and the local boards of trustees are public records by statute.

⁸⁵ This does not include student education records, however. (See also Education records.)

Competitive health care information. Information concerning the competitive health care activities of public health authorities⁸⁶ and public hospitals⁸⁷ is confidential and not a public record. However, any contract entered into by or on behalf of a public health authority or public hospital is a public record unless exempted by statute.⁸⁸ One state statute says a public hospital or public hospital authority requested to disclose a contract may redact the portions believed to

⁸⁴ N.C. CONST., ART. III, §5(6).

⁸⁵ N.C. GEN. STAT. §115D-78.

⁸⁶ N.C. GEN. STAT. §130A-45.11.

⁸⁷ N.C. GEN. STAT. §131E-97.3(a).

⁸⁸ N.C. GEN. STAT. §§130A-45.11, 131E-97.3(a).

constitute competitive health care information or, if the entire contract constitutes competitive health care information, refuse to disclose the entire contract.⁸⁹ Also, the financial terms and other competitive health care information directly related to the financial terms of a health services contract between a hospital or a medical school and a managed care organization, insurance company, employer or other payer are not public record.⁹⁰

In 2006 the N.C. Court of Appeals ruled that a hospital's written agreement to purchase a private medical practice was a public record, not confidential competitive health care information.⁹¹ The court said state law allows a contract entered into by a public hospital to be exempt from the public records law only if the contract contains competitive health care information. The court said: "[T]he contract here is a contract with a public hospital to purchase a medical practice. There is nothing in the record to suggest that other hospitals or entities were competing for [the] medical practice, and therefore nothing to suggest this contract contained 'financial terms' or health care information directly related to financial terms such that this contract should be kept confidential. . . . We do not think the legislature intended such business dealings – which do not involve trade secret information nor competitive price lists – to be kept confidential."⁹² (See also Trade secrets.)

Controlled substance reporting system records. The Public Records Law exempts from

⁸⁹ N.C. GEN. STAT. §131E-97.3(b).

⁹⁰ N.C. GEN. STAT. §131E-99.

⁹¹ Carter-Hubbard Publ'g Co. v. WRMC Hosp. Operating Corp., 178 N.C. App. 621, 633 S.E.2d 682 (2006), *aff'd*, 361 N.C. 233, 641 S.E.2d 301 (2007).

⁹² *Id.* at 686.

public disclosure information maintained in the state's controlled substance reporting system.⁹³

The system tracks the sale of prescription drugs.

Controlled substance research subject records. The Department of Health and Human Services may authorize the withholding of the names and identifying characteristics of persons who are research subjects for studies of the use and effects of controlled substances.⁹⁴

Controller compliance review records. The state controller may review a state agency's compliance with state accounting system standards. Work papers and other supportive material created as a result of a compliance review conducted by the state controller are not public.

However, any report resulting from a compliance review is a public record.⁹⁵

Corporate information disclosed through interrogatories. The N.C. Business Corporation Act, the Non-Profit Corporation Act and the Limited Liability Company Act, all of which regulate businesses operating in the state, authorize the secretary of state to offer interrogatories to any corporation to determine whether it is subject to one of these acts. Neither the interrogatories nor the answers are public records.⁹⁶

Design professionals' seals. The Public Records Law prohibits any municipality or county in the state from revealing the seal of a licensed design professional when the municipality or county has received the seal on a design project submitted for approval.⁹⁷ This is intended to prevent the fraudulent

⁹³ N.C. GEN. STAT. §132-1.1(e).

⁹⁴ N.C. GEN. STAT. §90-113.3(e).

⁹⁵ N.C. GEN. STAT. §143B-426.39B.

⁹⁶ N.C. GEN. STAT. §§55-1-33, 55A-1-33, 57-1-33.

⁹⁷ N.C. GEN. STAT. §132-1.2(5).

use of the seals. The law says, however, that the government shall allow a copy of the document without the seal to be examined and copied.⁹⁸

DNA records. DNA profiles and samples submitted to the State Bureau of Investigation DNA Database and Databank are not public records.⁹⁹ (See also Law enforcement records.)

Economic development records. The Public Records Law states explicitly that government documents relating to general economic development policies or activities are public records. However, the law also says that records related 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.”

¹⁰⁰ The burden is on the custodian of the document “to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.”¹⁰¹

In 2005 the law was amended to provide the public an opportunity to respond to the specifics of an incentives-based deal before the General Assembly approves the deal. The law now states, “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.”¹⁰² The government then must disclose as

⁹⁸ *Id.*

⁹⁹ N.C. GEN. STAT. §15A-266.12.

¹⁰⁰ N.C. GEN. STAT. §132-6(d).

¹⁰¹ N.C. GEN. STAT. §132-9(b).

¹⁰² N.C. GEN. STAT. §132-6(d).

soon as practicable – and in any event within 25 business days – all requested public records 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 does not require disclosure of local government records relating to the project if the business has not selected a specific location for the project. Once a specific location for the project has been determined, local government records must be disclosed. Local government records include records maintained by the state that relate to a local government’s efforts to attract the project.¹⁰³

The Public Records Law further stipulates that “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 . . . must describe in detail the assumptions and methodologies used in completing the analysis. . . .”¹⁰⁴ That information becomes public record at the same time as other records related to the offering of economic development incentives.

Another state statute also has been amended to require the Department of Revenue to report by May 1 of each year the amount of tax credit dollars claimed by companies as part of their incentives deals, the number of jobs created through those incentives and the percentage of those jobs filled by local residents.¹⁰⁵

Education records. State law clearly says that unless there is a statutory exception, the

¹⁰³ *Id.*

¹⁰⁴ N.C. GEN. STAT. §132-1.11(a).

¹⁰⁵ N.C. GEN. STAT. §105-129.6(b).

state's Public Records Law applies to the records of the state's public school systems.¹⁰⁶ One clear exception is individual student education records, which are permanently retained and permanently kept confidential under state¹⁰⁷ and federal law.¹⁰⁸ The federal law is the Family Educational and Privacy Rights Act of 1974. Sometimes called the Buckley Amendment or FERPA, the law prohibits the disclosure of education records of students to anyone except a student's parent or a student over 18 years of age without the consent of a parent or the adult student. The law applies to all schools that receive federal funds.

Numerous cases challenging the withholding of school records under FERPA have been litigated across the nation, and many of them have centered on the question of what constitutes an education record. In 2011 N.C. Superior Court Judge Howard E. Manning Jr. ruled that records of parking tickets issued to UNC-CH football players and student telephone numbers that might appear on the telephone records related to University-provided telephones used by football coaches and the athletic director were not education records protected from public disclosure by FERPA.¹⁰⁹ The decision resulted from a lawsuit filed by eight media organizations in the state seeking records relating to the NCAA investigation of the UNC-CH football program.

Manning said in his order that education records are defined by federal statute as "those records, files, documents, and other materials that (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for

¹⁰⁶ N.C. GEN. STAT. §115C-3.

¹⁰⁷ N.C. GEN. STAT. §115C-402(a), (e).

¹⁰⁸ 20 U.S.C. §1232g.

¹⁰⁹ News and Observer Publ'g Co. v. Baddour, No. 10 CVS 1941 (N.C. Super. Ct. May 12, 2011).

such agency or institution.”¹¹⁰ Manning also noted that the U.S. Supreme Court has said the word “maintain” means that “FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database. . . .”¹¹¹ Manning concluded, “FERPA does not provide a student with an invisible cloak so that the student can remain hidden from public view while enrolled at UNC-CH.”¹¹²

Manning did, however, rule that records of the names, employment dates and salaries of current students employed as tutors for UNC-CH athletes were protected by FERPA.¹¹³

Personally identifiable information in admissions applications. The Public Records Law was amended in 2007 to exempt from public disclosure personally identifiable information from or about applicants to the state’s public universities and community colleges.¹¹⁴ The amendment to the statute created one exception to that rule. Any letter of recommendation or record containing a communication from an elected official to a school concerning an applicant for admission who has not enrolled as a student is subject to disclosure under the Public Records Law. Also, the amendment states that the change in the law does not “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.”¹¹⁵

¹¹⁰ *Id.* at 3 (quoting 20 U.S.C. §1232g(a)(4)(A)).

¹¹¹ *Id.* (quoting *Owasso Indep. Sch. Dist. No. 1-011 v. Falvo*, 534 U.S. 426, 433 (2002)).

¹¹² *Id.* at 3-4.

¹¹³ *Id.* at 5.

¹¹⁴ N.C. GEN. STAT. §132-1.1(f).

¹¹⁵ *Id.*

Test scores. Also confidential under state law are the identifiable scores of any student on any test taken pursuant to state law, except as permitted under FERPA.¹¹⁶

Textbook lists. The textbook lists for state universities are public, according to an opinion of the state attorney general. The attorney general rejected NCSU's argument that confidential textbook lists were needed to create a monopoly bookstore business in order to earn profits to be used for scholarships.¹¹⁷

University honor court records. The student newspaper at UNC-CH went to court to seek access to the proceedings and records of the University's undergraduate court, commonly known as the honor court. The newspaper wanted to hear the case being brought against two students who allegedly stole approximately 1,500 copies of a student magazine from campus magazine racks in 1996. The N.C. Court of Appeals ruled that the student court was not a true court and therefore was not constitutionally obligated to conduct its business in the open. Instead, the court ruled the honor court was a public body normally obligated to meet in public in compliance with the N.C. Open Meetings Law. However, the court ruled that FERPA mandated closure of the honor court proceedings – and consequently denial of access to the records of those proceedings – to protect the privacy of student education records.¹¹⁸

(Access to school employee records is discussed under Government employee records.)

Access to campus crime reports is discussed under Law enforcement records.)

Election records.

¹¹⁶ N.C. GEN. STAT. §115C-174.13 (citing 20 U.S.C. §1232g).

¹¹⁷ Public Records; State University at Raleigh; Textbook Lists; Right of Inspection, 41 Op. N.C. Att'y Gen. 199 (1971).

¹¹⁸ DTH Publ'g Co. v. Univ. of at Chapel Hill, 128 N.C. App. 534, 496 S.E.2d 8, *rev. denied*, 348 N.C. 496, 510 S.E.2d 381 (1998).

Absentee ballot registry. Each county’s registry of absentee ballot applications, ballots issued and identities of people who actually voted by absentee ballot is a public record and must 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, or at any other time when there is good and sufficient reason for its inspection.¹¹⁹ Also, the chairman of each county board of elections must compile a list of executed absentee ballots, one copy of which must be available for public inspection in the board office, and the chief election judge of each precinct is required to “post one copy of the list immediately in a conspicuous location in the voting place.”¹²⁰ These lists must be retained by the county board of elections for a period of 22 months; then they may be destroyed.¹²¹

Campaign finance reports. All candidates in political campaigns must file campaign finance reports with the State Board of Elections, and they are public records.¹²²

Voter registration records. Voter registration rolls are public records and are available from the State Board of Elections or from county elections boards. State statute says that each “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.”¹²³ County boards also may furnish selective lists according to “party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where

¹¹⁹ N.C. GEN. STAT. §163-228.

¹²⁰ *Id.*

¹²¹ N.C. GEN. STAT. §163-232.

¹²² N.C. GEN. STAT. §§163-278.9, 163-278.22(4).

¹²³ N.C. GEN. STAT. §163-82.10(b).

applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category.”¹²⁴ County elections boards must make this information available in an “electronic or magnetic medium.”¹²⁵

Upon written request, the State Board of Elections may sell a statewide computerized voter registration database or selective lists of registered voters according to county, congressional or legislative district, party affiliation, gender or age but not date of birth, race or date of registration.¹²⁶ Electronically captured images of the signatures of voters, full or partial Social Security numbers, dates of birth and driver’s license numbers that are generated in the voter registration process by either the State Board of Elections or a county board of elections are not public records.¹²⁷

If you are provided a selective list, you must reimburse an elections board for the actual cost of preparing it. Actual cost cannot include the cost of any equipment or overhead expenses. In addition, a county elections board may impose a service charge up to \$25 for a magnetic copy of a voter registration list.¹²⁸

Elevator inspection records. Information obtained by the commissioner of labor in connection with elevator inspections is not a public record if that information contains a trade

¹²⁴ *Id.*

¹²⁵ N.C. GEN. STAT. §163-82.10(b)(1).

¹²⁶ N.C. GEN. STAT. §163-82.13(b).

¹²⁷ N.C. GEN. STAT. §§132-1.1(4), 163-82.10(a).

¹²⁸ N.C. GEN. STAT. §163-82.10(b).

secret.¹²⁹ (See also Trade secrets.)

Email. No state statute explicitly addresses whether government employees' email is a public record. However, email clearly falls within the Public Record Law's definition of public records: "documents, papers, letters . . . regardless of physical form or characteristics, made or received . . . in connection with the transaction of public business."¹³⁰

Emergency response plans. Emergency response plans adopted by a constituent institution of the University of North Carolina, a community college or a public hospital and the records related to the development of those plans are not public records.¹³¹

Employment Security Commission records. A state statute says records obtained from an individual or a company by the Employment Security Commission are not public records.¹³² Also, the agency's records of the employment status of current and former participants in state job training, education and placement programs are not public records.¹³³ However, the agency issues statistical reports that are public records.¹³⁴

Energy records. The Department of Administration has the authority to obtain petroleum supply data for North Carolina from suppliers of petroleum products. Individually identifiable energy information – defined as "any individual record or portion of a record or aggregated data

¹²⁹ N.C. GEN. STAT. §95-110.14.

¹³⁰ N.C. GEN. STAT. §132-1(a).

¹³¹ N.C. GEN. STAT. §132-1.6.

¹³² N.C. GEN. STAT. §96-4(t).

¹³³ N.C. GEN. STAT. §96-32(a).

¹³⁴ N.C. GEN. STAT. §96-4(t)(2).

containing energy information about a person or persons obtained from any source, the disclosure of which could reasonably be expected to reveal information about a specific person” – is not a public record.¹³⁵

Escheated and abandoned property records. The state treasurer has authority to examine the records of insurers, banks and other holders of escheated and abandoned property. (Escheated property is property that has reverted to the state upon the death of an owner who had neither a will nor a legal heir.) Documents and working papers obtained or compiled by the treasurer in the course of such an examination are not public records.¹³⁶

Also, each year the state treasurer must provide each clerk of court a list of escheated and abandoned property. The supporting data and the identities of apparent owners of escheated and abandoned property may be kept confidential for six months after the information is given to the clerks of court. The one exception is that the information may be provided to persons requesting information about their own property.¹³⁷

Ethics Commission records. Some of the records of the new state Ethics Commission, which is charged with ensuring that elected and appointed state agency officials avoid conflicts of interest, are not public records. Specifically, “[c]omplaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an inquiry” are confidential prior to the imposition of public sanctions except when the person being investigated requests in writing that the records and findings be made public.¹³⁸

¹³⁵ N.C. GEN. STAT. §143-345.14(f).

¹³⁶ N.C. GEN. STAT. §116B-72(d).

¹³⁷ N.C. GEN. STAT. §116B-62(f).

¹³⁸ N.C. GEN. STAT. §138A-12(n).

If and when public sanctions are imposed, the complaint, response and commission's report to the employing agency become public records.¹³⁹

Also, requests for advisory opinions and advisory opinions issued by the Ethics Commission are not public records.¹⁴⁰

Eugenics Board records. The Public Records Law says records held by the state concerning the N.C. Eugenics Board program are not public records "to the extent they concern: (i) persons impacted by the program, (ii) persons or their guardians or authorized agents inquiring about the impact of the program on them, (iii) persons or their guardians or authorized agents inquiring about the potential impact of the program on others."¹⁴¹ This does not prevent a person impacted by the program from obtaining his or her own records.

Fire investigation records. Fire incident reports compiled by local fire chiefs and fire marshals are public records.¹⁴² However, fire investigation records are not. For example, fire insurance companies are required by law to report suspicious fires to fire chiefs, fire marshals or the SBI. Government officials then are obligated by law to keep that information confidential.¹⁴³ Another state statute says the fire investigation records of the Office of the Insurance Commissioner are not public records.¹⁴⁴

¹³⁹ *Id.*

¹⁴⁰ N.C. GEN. STAT. §138A-13(e).

¹⁴¹ N.C. GEN. STAT. §132-1.23(a).

¹⁴² N.C. GEN. STAT. §58-79-45(c).

¹⁴³ N.C. GEN. STAT. §58-79-40(d).

¹⁴⁴ N.C. GEN. STAT. §58-2-100.

Fishing industry records. Because the state's fishing industry comprises private businesses, its records generally are not subject to public disclosure under the Public Records Law. Some records can become public, however, when they are submitted to the government.

The Division of Marine Fisheries in the Department of Environment and Natural Resources may require licensed fisheries to keep records of their operations to help the department develop conservation policy. Generally the law holds that those records cannot be disclosed to the public or the media. Also confidential are all records compiled by the department from reports of licensees or from investigations and inspections. The law specifically states that confidential records include those "containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood."¹⁴⁵ Statistical reports that do not identify licensees are public records, however.¹⁴⁶

The Fishery Resource Grant Program (part of the University of North Carolina's Sea Grant Program) works to protect and enhance the state's coastal fishery resources through grants to persons involved in fishing-related industries. Those grants can be used to purchase new equipment, to study water quality or for similar purposes. A state statute stipulates that grant applications are not public records until after the closing date for the submission of applications.

¹⁴⁵ N.C. GEN. STAT. §113-170.3(c).

¹⁴⁶ *Id.*

The same law says the criteria adopted by the program to rank proposals are public.¹⁴⁷

Funeral contracts. A state statute dictates that the names and addresses of the purchasers and beneficiaries of pre-need funeral contracts filed with the N.C. Board of Funeral Service are not public records.¹⁴⁸

General Assembly records. The state's Public Records Law applies to the General Assembly, although there are these exceptions:

- (1) Legislators' requests for legislative employees to draft legislation are confidential by statute. Neither the identity of the legislator making the request nor the existence of the request may be revealed without the consent of the legislator.¹⁴⁹
- (2) An information request made to a legislative employee by a legislator is similarly confidential. Neither the identity of the legislator making the request nor the existence of the request may be revealed without the consent of the legislator. However, the periodic publication by the Fiscal Research Division of the Legislative Services Office of a list of information requests is not prohibited, if the identity of the legislator making the request is not revealed.¹⁵⁰
- (3) Supporting documents submitted or caused to be submitted to a legislative employee by a legislator in connection with a drafting or information request are confidential. Neither the document nor copies of it, nor the identity of the person, firm or association producing it, may be provided to any person who is not a legislative employee without the consent of the legislator.¹⁵¹

¹⁴⁷ N.C. GEN. STAT. §113-200(e).

¹⁴⁸ N.C. GEN. STAT. §90-210.73.

¹⁴⁹ N.C. GEN. STAT. §120-130(a).

¹⁵⁰ N.C. GEN. STAT. §120-130(b).

¹⁵¹ N.C. GEN. STAT. §120-130(c).

- (4) Any document prepared by legislative employees at the request of a legislator is confidential.¹⁵² Such a document becomes available to the press and the public only when a.) it is a bill or resolution that has been introduced; or b.) it is a proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house; or c.) it is a proposed conference committee report and it has been offered at a joint meeting of the conference committees; or d.) it is a bill, resolution, memorandum, written analysis, letter or other document resulting from a drafting or information request and it has been distributed at a public meeting of a legislative commission, a standing committee or a subcommittee or on the floor of a house.¹⁵³
- (5) A request to a state agency employee made by an employee of the General Assembly's Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. All documents prepared by the employee in response to the request also are confidential until the Fiscal Research Division releases a fiscal note based on the documents.¹⁵⁴

Pursuant to a separate state statute, all documents concerning redistricting the General Assembly or the state's congressional districts are public records once the redistricting plan is ratified. Those records include all drafting and information requests to legislative employees and documents prepared by legislative employees.¹⁵⁵

The records of the joint Legislative Ethics Committee are public by statute.¹⁵⁶ However,

¹⁵² N.C. GEN. STAT. §120-131(a).

¹⁵³ N.C. GEN. STAT. §120-131(b).

¹⁵⁴ N.C. GEN. STAT. §120-131.1.

¹⁵⁵ N.C. GEN. STAT. §120-133.

¹⁵⁶ N.C. GEN. STAT. §120-102(3).

if the committee decides to dismiss a complaint against a legislator or issues a “private admonishment,” it must keep those records confidential unless the legislator in question requests the records be made public. If the same legislator is later found guilty of unethical conduct similar to that which resulted in a private admonition, the ethics committee can make the records regarding the initial incident available to the media and the public.¹⁵⁷

The attorney general has opined that correspondence sent to legislators by their constituents is public.¹⁵⁸

Geographical information systems. These complex mapping systems developed by counties are electronically stored. The Public Records Law states that these databases are public. The law also stipulates that a public agency may require that the information not be resold or used for trade or commercial purposes, but those purposes do not include publication by the news media. Also, the government may charge a “reasonable cost” for providing the data.¹⁵⁹

Governor’s records. As a general rule, records of the governor and other executive branch officials are covered by the Public Records Law, and there appear to be no statutes or court decisions that confer any special “executive privilege.” However, in 2007 the N.C. Court of Appeals ruled that a governor’s records compiled in connection with the governor’s clemency power are not subject to disclosure under the Public Records Law.¹⁶⁰ (See also Clemency records.)

¹⁵⁷ N.C. GEN. STAT. §120-103(d1)(3).

¹⁵⁸ Public Access to Legislator’s Redistricting Communications; Custodians of Records, Op. N.C. Att’y Gen. No. 529 (2002).

¹⁵⁹ N.C. GEN. STAT. §132-10.

¹⁶⁰ News & Observer Publ’g Co. v. Easley, 182 N.C. App. 14, 641 S.E.2d 698, *rev. dismissed, rev. denied*, 361 N.C. 429, 648 S.E.2d 508 (2007).

Gun permits. Sheriffs are required by state statute to keep records of all gun permits they issue, including the name, date, place of residence, age, former place of residence, etc., of each permit holder.¹⁶¹ Those records are public under the Public Records Law because there is no statute that dictates otherwise.

Health care facility and service inspection records. Many records related to inspections of government-regulated health care facilities and services are exempt from the Public Records Law. Such facilities and services include mental health facilities,¹⁶² adult care homes,¹⁶³ hospitals,¹⁶⁴ nursing homes,¹⁶⁵ home care agencies,¹⁶⁶ ambulatory surgical facilities,¹⁶⁷ cardiac rehabilitation programs¹⁶⁸ and local confinement facilities (jails or similar detention centers).¹⁶⁹ Typically records concerning individual clients and records identifying individuals who have complained about a facility licensed by the state are not public.¹⁷⁰

Homeland security records. In 2002 the General Assembly added this language to the Public Records Law to prevent the release of information that might compromise public security:
“(a) Public records . . . shall not include information containing specific details of public security

¹⁶¹ N.C. GEN. STAT. §14-405.h

¹⁶² N.C. GEN. STAT. §122C-25(b).

¹⁶³ N.C. GEN. STAT. §131D-2.

¹⁶⁴ N.C. GEN. STAT. §§131E-80(d)-(e).

¹⁶⁵ N.C. GEN. STAT. §131E-105(b).

¹⁶⁶ N.C. GEN. STAT. §131E-141(b).

¹⁶⁷ N.C. GEN. STAT. §131E-150(b).

¹⁶⁸ N.C. GEN. STAT. §131E-170(b).

¹⁶⁹ N.C. GEN. STAT. §153A-222.

¹⁷⁰ *See, e.g.*, N.C. GEN. STAT. §131E-124(c).

plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities. (b) Public records . . . 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.”¹⁷¹ (See also Emergency response plans.)

Hospital administrative records. 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 they 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 assert 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.¹⁷² Among other things, this chapter authorizes local governments to lease, sell or convey public hospitals to

¹⁷¹ N.C. GEN. STAT. §132-1.7.

¹⁷² N.C. GEN. STAT. §131E.

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.¹⁷³

The Court of Appeals has 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. In 1981 in *News & Observer Publishing Co. v. Wake County Hospital System*,¹⁷⁴ the Court of Appeals defined a public agency as “any administrative unit with substantial independent authority in the exercise of specific functions. Administrative entities that perform neither rule-making nor adjudicative duties also may be agencies. ‘The important consideration is whether [the administrative entity] has any authority in law to make decisions.’”¹⁷⁵ The court applied that definition to the Wake County Hospital System, Inc., which was established by Wake County to provide medical care to the general public, including the poor, and found the hospital to be a public agency whose documents are public records. The court acknowledged that the hospital was organized as a private, non-profit corporation and was an independent contractor but concluded that it was so intertwined financially and administratively with the county government as to be a public agency. The county owned the hospital building and leased it to the hospital corporation for \$1 per year, reviewed and approved the hospital’s annual budget, financed the hospital through county bonds, approved the members of the hospital’s

¹⁷³ N.C. GEN. STAT. §131E-13(a).

¹⁷⁴ *News & Observer Publ’g Co. v. Wake Cnty. Hosp. Sys.*, 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 (1982).

¹⁷⁵ 55 N.C. App. at 8, 284 S.E.2d at 547 (quoting *Washington Research Project, Inc. v. Dep’t of Health, Educ. and Welfare*, 504 F.2d 238 (D.C.Cir. 1974), *cert. denied*, 421 U.S. 963, 95 S.Ct. 1951 (1975)).

board of directors, audited its books and was to receive the hospital's assets if the hospital was dissolved. Also, 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 Court of Appeals said 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.

176

Certificate of advantage records. Also, state law permits the state Department of Health and Human Services to issue certificates of advantage to physicians and hospitals that enter into cooperative work agreements. The certificates exempt those agreements from state and federal anti-trust law in the interest of improved health care. If the state attorney general initiates judicial action to cancel a certificate of advantage because he or she believes that the advantages of the agreement are outweighed by the disadvantages of reduced competition in the health care field, the attorney general's records related to the case are not public records.¹⁷⁷

(See also Competitive health care information and Medical records.)

Illegitimate children, information concerning. No district attorney, assistant district

¹⁷⁶ 55 N.C. App. at 11, 284 S.E.2d at 547.

¹⁷⁷ N.C. GEN. STAT. § 90-21.33(d).

attorney, attorney appointed to assist a district attorney or agent or employee of a district attorney's office may disclose any information connected with an illegitimate child or the child's parents except in the performance of the district attorney's duties.¹⁷⁸

Industrial Commission records. The records of the N.C. Industrial Commission, which adjudicates worker compensation claims, are confidential if they refer to accidents, injuries or settlements. The notable exceptions are that the records of awards to workers and records of any commission review of those awards are public records.¹⁷⁹ In 2012, the General Assembly amended the statute to make clear that with respect to policies becoming effective on or after January 1, 2012, the Commission "may release data showing workers compensation insurance policy information that includes only policy effective dates, policy cancellation dates, and policy reinstatement dates. This data shall not be confidential data and shall be a public record as that term is defined in G.S. 132-1."¹⁸⁰

Innocence Inquiry Commission records. In 2006 the Public Records Law was amended to exempt records of investigations conducted by the Innocence Inquiry Commission from the law's general mandate for public access.¹⁸¹

Insurance commissioner's records. A state law says the insurance commissioner's records are public except for those records compiled as part of an investigation of arson, unlawful burning or fraud.¹⁸² However, more than a dozen other state statutes address the status

¹⁷⁸ N.C. GEN. STAT. §15-155-3.

¹⁷⁹ N.C. GEN. STAT. §97-92(b).

¹⁸⁰ N.C. GEN. STAT. §58-36-17.

¹⁸¹ N.C. GEN. STAT. §132-1.4(a).

¹⁸² N.C. GEN. STAT. §58-2-100.

of the commissioner's records and remove many of them from the public realm.

For example, one statute says that patients' medical records are confidential. Patient medical records include personal information that relates to an individual's physical or mental condition, medical history or medical treatment that has been obtained from the individual patient, a health care provider, or from the patient's spouse, parent or legal guardian.¹⁸³

Also, information related to the credentialing of medical professionals that is in the possession of the commissioner's office is confidential and not a public record.¹⁸⁴

Another statute states that when medical malpractice insurance companies must report claims to the insurance commissioner's office, the reports are public — except for the identities of the claimant and the health care provider or medical center against whom the claim has been made, and the dollar amount of the claim.¹⁸⁵

Also, reports concerning the solvency of companies seeking to do insurance business in North Carolina are not public records.¹⁸⁶

(See also Medical records and Investigative (non-law enforcement) records and University of North Carolina liability insurance records.)

Investigative (non-law enforcement) records. Whether government agencies can legally withhold some or all of the information they collect during an investigation often is explicitly dictated by state statute. For example, a state statute prohibits the Utilities Commission staff

¹⁸³ N.C. GEN. STAT. §58-2-105(a).

¹⁸⁴ N.C. GEN. STAT. §58-2-105(c),

¹⁸⁵ N.C. GEN. STAT. §§58-2-170(a), 58-2-170(c),

¹⁸⁶ N.C. GEN. STAT. §58-62-56(c).

from revealing any information gathered in the course of an examination or inspection except as directed by the commission or a court.¹⁸⁷

Another statute provides for the public disclosure of any report of the Department of Insurance's examination of an insurance company once the company has been given 30 days to respond to the report.¹⁸⁸ However, working papers, recorded information and other documents used by the commission to prepare its report are not public.¹⁸⁹

N.C. Department of Labor records regarding investigations and enforcement proceedings conducted pursuant to the state Wage and Hour Act are not public while the investigations and proceedings are pending.¹⁹⁰

(See also Bank, savings and loan, and credit union records.)

Law enforcement records. The Public Records Law clearly states that the following law enforcement agency information is public:

- (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,

¹⁸⁷ N.C. GEN. STAT. §62-316.

¹⁸⁸ N.C. GEN. STAT. §58-2-132(e).

¹⁸⁹ N.C. GEN. STAT. §58-2-132(f).

¹⁹⁰ N.C. GEN. STAT. §95-25.20.

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 natural voice, name, address, telephone number, or other information that may identify the caller, victim or witness. The natural-voice exception was added to the law in 2011. A related change in the law states that the contents of “911” and other emergency telephone calls can be released in the form of a written transcript or altered voice reproduction.¹⁹¹ [The law says that law enforcement agencies are not required to keep tape recordings of “911” or other communications for more than 30 days unless ordered to do so by the court.¹⁹²]
- (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.¹⁹³

The law says that to withhold the information listed above, a law enforcement agency must obtain a court order. The agency bears the burden of demonstrating to the court “by a preponderance of the evidence” that disclosure “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. . . .”¹⁹⁴

Attorney general’s pre-prosecution investigative files. The Court of Appeals has ruled

¹⁹¹ N.C. GEN. STAT. §132-1.4(c)(4).

¹⁹² N.C. GEN. STAT. §132-1.4(i).

¹⁹³ N.C. GEN. STAT. §132-1.4(c).

¹⁹⁴ N.C. GEN. STAT. §132-1.4(e).

that the state attorney general's pre-prosecution investigative files can be withheld from the public to protect the privacy of individuals mentioned in the files.¹⁹⁵ The attorney general has the power to investigate corporations and individuals that may be doing business in North Carolina in violation of the law. During the 1970s, the attorney general investigated the possible misuse of corporate funds by Southern Bell. Southern Bell went to court and obtained a protective order to prohibit the attorney general from releasing his investigative files to the press and the public. The company argued that information in the files that was based on hearsay and other evidence inadmissible in a judicial proceeding might unfairly implicate company employees and invade the privacy of its employees. The Court of Appeals upheld the order.¹⁹⁶

Campus crime records. For many years, some college and university police departments withheld the names of students involved in crimes, claiming that releasing such information would invade students' privacy and thereby violate the federal Family Educational and Privacy Rights Act of 1974 (FERPA or the Buckley Amendment).¹⁹⁷ FERPA says that educational institutions that release students' "education records" without the permission of a student's parent or of a student over the age of 18 may lose their federal funds. However, Congress has amended the law to make clear that "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement" are not education records.¹⁹⁸ Therefore such records are not exempt from disclosure under North Carolina's Public Records Law.

¹⁹⁵ *In re Southern Bell Tel. & Tel. Co.*, 30 N.C. App. 585, 227 S.E.2d 645 (1976).

¹⁹⁶ *Id.*

¹⁹⁷ 20 U.S.C. §1232g.

¹⁹⁸ 20 U.S.C. §1232g(a)(4)(B)(ii).

Prior to 2005, campus police departments on both public and private school campuses were authorized by the Office of Attorney General pursuant to Chapter 74E, which brought them within the ambit of the Public Records Law.¹⁹⁹ However, in 2005, with the passage of the Campus Police Act, campus police departments began being authorized pursuant to Chapter 74G, which resulted in the removal (likely inadvertent) of private campus police departments from the Public Records Law. The Court of Appeals found “the Campus Police Department at Elon University, which is a private university, is not subject to the North Carolina Public Records Act.”²⁰⁰ The Public Records Law still applies to law enforcement agencies at public colleges and universities.

FERPA also makes it clear that the law does not prohibit a college or university from disclosing the final results of any disciplinary proceeding in which a student is found to have violated a university rule or policy in connection with the commission a violent crime or a nonforcible sex offense.²⁰¹ The university may release the name of the student, the violation committed and the punishment imposed. The university may release the name of any other student, such as a victim or witness, only with the written consent of that other student.²⁰²

In 1990 Congress adopted the Crime Awareness and Campus Security Act, which requires public and private colleges and universities that receive federal funds to compile, publish and distribute each September a report on serious crimes that have occurred on their campuses.²⁰³ Subsequently the U.S. Department of Education adopted rules to clarify the

¹⁹⁹ N.C. Gen. Stat. § 132-1.4(a).

²⁰⁰ *Ochsner v. Elon Univ.*, ___ N.C. App. ___, 725 S.E.2d 914, 920 (2012).

²⁰¹ 20 U.S.C. §1232g(b)(6)(B).

²⁰² 20 U.S.C. §1232g(b)(6)(C).

²⁰³ 20 U.S.C. §1092(f).

requirements of the federal law.²⁰⁴ Colleges and universities must report statistics on reports of the following crimes: murder, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, manslaughter and arson. They also must report statistics on arrests for liquor law violations, drug-related violations and weapons possession and statistics on crimes involving bodily injury that manifest evidence of prejudice based on the race, gender, religion, sexual orientation, ethnicity or disability of the victim. These annual reports must include crimes reported to local police as well as to campus police and those that occur in university-controlled property off-campus as well as on campus. (See also Education records.)

Criminal histories. Criminal histories as reflected in the records held by various clerks of courts are public record because the law says records maintained by clerks of court are public records.²⁰⁵ However, criminal history records stored in the computerized Police Information Network (PIN) are not open to public inspection.²⁰⁶ Also, the annual checks of the criminal histories of all foster parents and individuals 18 years old or older who reside in foster homes to determine their fitness to host foster children are confidential by state statute.²⁰⁷

Investigatory and intelligence records. Records of criminal investigations conducted by law enforcement agencies or records of criminal intelligence information compiled by these agencies are not public records, according to the Public Records Law.²⁰⁸ Criminal investigation

²⁰⁴ 34 C.F.R. Part 668.

²⁰⁵ N.C. GEN. STAT. §7A-109(a).

²⁰⁶ N.C. GEN. STAT. §114-10(2).

²⁰⁷ N.C. GEN. STAT. §131D-10.3A(g).

²⁰⁸ N.C. GEN. STAT. §132-1.4.

records are defined as “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.”²⁰⁹ Criminal intelligence information is defined as “records or any information that pertains to a person or group of persons that is compiled . . . in an effort to anticipate, prevent, or monitor possible violations of the law.”²¹⁰ Denying public access to such records, the N.C. Supreme Court has said, is designed to encourage police to enter information in their reports freely, to avoid tipping off the subjects of investigations and to protect confidential investigative techniques.²¹¹

On the other hand, the Public Records Law says that the use of a public record in connection with a criminal investigation does not alter its status as a public record and that a law enforcement agency cannot prevent another agency from disclosing a public record.²¹²

Juvenile records. Neither law enforcement records in juvenile cases²¹³ nor records of juveniles under the protective custody of a department of social services are public records.²¹⁴ State law does, however, mandate the public disclosure of some state agency information involving the fatality or near fatality of a juvenile under the protective custody of a social service

²⁰⁹ N.C. GEN. STAT. §132-1.4(b)(1).

²¹⁰ N.C. GEN. STAT. §132-1.4(b)(2).

²¹¹ News & Observer Publ’g Co. v. Starling, 312 N.C. 276, 322 S.E.2d 133 (1984).

²¹² N.C. GEN. STAT. §132-1.4(f).

²¹³ N.C. GEN. STAT. §7B-3001(b).

²¹⁴ N.C. GEN. STAT. §7B-2901(b).

department due to suspected abuse, neglect or maltreatment.²¹⁵ Once a person is criminally charged in such a case, a county department of social services that had been notified that the child might be in need of protection must disclose a written statement of the dates, outcomes and results of any actions taken or services rendered by the agency.

SBI records. Until 1993, State Bureau of Investigation records were kept confidential by state statute. That statute has since been repealed. Now the Public Records Law applies to SBI records the same way it applies to all other law enforcement records.

Search warrants. The Public Records Law says the following are public records absent a court order sealing them: “arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders.”

²¹⁶ However, in 2009 the N.C. Court of Appeals created an exception to the rule that search warrants are public records. The court denied a press request to unseal three search warrants related to the investigation of the murder of Cary resident Nancy Cooper because the search warrants had been sealed by court order and releasing them would have undermined the ongoing investigation in the case.²¹⁷

Sexual offender and predator registries. North Carolina’s Sex Offender and Public Protection Registration Program and its Sexually Violent Predator Registration Program require those convicted of sexual offenses or of certain other offenses against minors, such as kidnapping, to register with local law enforcement agencies, and most of that registration

²¹⁵ N.C. GEN. STAT. §7B-2902.

²¹⁶ N.C. GEN. STAT. §132-1.4(k). *See also* State v. Underwood, No. 95 CRS 4689 (N.C. Super. Ct. Sept. 26, 1996).

²¹⁷ Investigation into the Death of Nancy Cooper, 200 N.C. App. 180, 683 S.E.2d 418 (2009), rev. denied, 363 N.C. 855, 694 S.E.2d 201 (2010).

information is public record.²¹⁸ State law specifically says that the following information about sexual offenders is public records: 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.²¹⁹ Information regarding the offender’s medical records or treatment for the offender’s mental abnormality or personality disorder is not part of the public record.²²⁰ The law also says, “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. . . .”²²¹

Any person may obtain a copy of an individual sexual offender’s registration form or all or part of the county’s sexual offender registry by submitting a written request to the sheriff. Victims’ identities are not part of the public record.²²²

Certain juvenile sexual offenders may be required to register, but their registration information is not public record.²²³

Victims’ identities. The names of crime victims and complaining witnesses that appear in arrest documents, charges, indictments, applications for search warrants and similar documents are public record.²²⁴ However, the Public Records Law also says, “A public law enforcement

²¹⁸ N.C. GEN. STAT. §14-208.6A.

²¹⁹ N.C. GEN. STAT. §14-208.10(a).

²²⁰ *Id.*

²²¹ *Id.*

²²² N.C. GEN. STAT. §14-208.10(b).

²²³ N.C. GEN. STAT. §14-208.29.

²²⁴ N.C. GEN. STAT. §132-1.4(c)(6).

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.”²²⁵ Such information is to become public “as soon as the circumstances that justify withholding it cease to exist.”²²⁶ Some confusion has arisen from the phrase “shall temporarily withhold.” Many law enforcement agencies have interpreted this to mean either they must withhold the names of complaining witnesses or they must let the complaining witness decide whether his or her name is made public.

In late 1993 then-Attorney General Mike Easley wrote a memorandum to the state’s city and county attorneys and police and sheriffs’ attorneys to clarify the meaning of that provision of the law.²²⁷ First, he said that whether the name and address of a complaining witness are public information is a decision to be made by the law enforcement agency, not the complaining witness. He also said, “While the exceptions [to disclosure of the information] are broadly stated, the agency should be prepared to justify its decision to release or temporarily withhold the information.”²²⁸ He explained, “In a case where the alleged perpetrator has not been apprehended, the agency might conclude that the complaining witness could be in danger and initially withhold the name and address of the witness. However, the agency may also conclude that disclosing details of the crime might bring forward other witnesses, and so the time, date,

²²⁵ N.C. GEN. STAT. §132-1.4(d).

²²⁶ *Id.*

²²⁷ Memorandum from N.C. Att’y Gen. to City and County Attorneys and Police and Sheriffs’ Attorneys re Criminal Investigative Records Law (1993).

²²⁸ *Id.*

and location and nature of the violation is released immediately.”²²⁹ The attorney general further said that decisions about disclosure should be made by weighing the information requester’s evidence that there is no danger to the witness against law enforcement’s evidence that disclosure would jeopardize the right of the defendant or the state to receive a fair trial or would compromise an ongoing investigation. If a law enforcement agency makes a reasoned decision to disclose a name, the attorney general said, the agency is not liable for harm to the individual that might result from that decision. The attorney general’s memorandum does not have the force of law, and law enforcement agencies continue to vary in how they interpret the law.

Also, state statutes protect crime victims this way:

- Law enforcement officials may redact from 911 tapes information that reveals the identity of the caller, victim or witness.²³⁰

- A victim’s request under the Crime Victims’ Rights Act to be notified when matters arise relating to an incarcerated individual is not a matter of public record.²³¹

- Medical information about the mental, physical or emotional condition of a victim, law enforcement information about a victim and any juvenile records held by the Victims Compensation Commission and its director are confidential.²³² Other records of the commission are public.

- The Public Records Law itself exempts from disclosure the addresses and telephone

²²⁹ *Id.*

²³⁰ N.C. GEN. STAT. §132-1.4(c)(4).

²³¹ N.C. GEN. STAT. §15A-832(a).

²³² N.C. GEN. STAT. §15B-8.1.

numbers of persons enrolled in a state program to protect the confidentiality of a relocated victim of domestic violence.²³³

911 and emergency notification databases. Automatic telephone number and location identification information that comprises the name, address and telephone numbers of telephone subscribers contained in a county or municipal 911 database is not a public record if that information is required to be confidential by the agreement with the telephone company from which the information was obtained. Also, the email addresses of subscribers to a county or municipal electronic emergency notification or reverse 911 system that are stored in such a system are not public records if that information is required to be confidential by the agreement with the telephone company from which the information was obtained.²³⁴

(See also Motor vehicle, accident and traffic violation records.)

Lawsuit settlements. The Public Records Law stipulates that when an agent or agency of state or local government settles a lawsuit, administrative proceeding or arbitration, that settlement is a public record.²³⁵ The law applies when a case against a government agency in connection with an agency's official duties is settled. This portion of the Public Records Law prohibits state or local governments or their counsel, insurance company or other representative from entering into any settlement if the settlement provides that its terms are confidential. It further says that a court may seal such a settlement only if the presumption of openness is overcome by an overriding interest and that overriding interest cannot be protected by any means

²³³ N.C. GEN. STAT. §132-1.1(d).

²³⁴ N.C. GEN. STAT. §132-1.5.

²³⁵ N.C. GEN. STAT. §132-1.3.

short of sealing the settlement. The court order sealing the settlement must articulate the overriding interest and include the findings of fact.

Settlement documents are defined as including, but not limited to, correspondence, settlement agreements, consent orders, checks and bank drafts.²³⁶

The Open Meetings Law also has a provision addressing public agency settlements. The law provides that once a public body has approved or considered a lawsuit settlement in closed session, the terms of the settlement must be entered into its minutes “as soon as possible within a reasonable time after the settlement is concluded.”²³⁷

One exception to this law is clearly stated. Settlements of medical malpractice lawsuits against hospitals are not public records.²³⁸

Library records. All library user records — including whether an individual requested or obtained a book or other material or services — are confidential.²³⁹

Lobbyist records. Lobbyists working at the General Assembly must file expense reports with the secretary of state, and those reports are public records.²⁴⁰ The reports detail the date and amount of each expenditure, to whom it was paid and the name of the legislators who benefited from each expenditure. Expenditures that must be reported include payments for transportation, lodging, entertainment, food and direct or indirect financial contributions. Expenditures of less

²³⁶ N.C. GEN. STAT. §132-1.3(c).

²³⁷ N.C. GEN. STAT. §143-318.11(a)(3).

²³⁸ N.C. GEN. STAT. §132-1.3(a).

²³⁹ N.C. GEN. STAT. §125-19.

²⁴⁰ N.C. GEN. STAT. §120-47.6(c).

than \$25 need not be reported. State law also requires a lobbyist's employer to file expense reports with the secretary of state. Those reports, which must include payments to lobbyists, also are public records.²⁴¹

Mailing lists. The Public Records Law says local governments are not required to provide copies of their electronic mailing lists to the public. However, the government must allow public inspection of the mailing lists, either in printed or electronic format.²⁴² These mailing lists are used to notify subscribing individuals of emergencies or for other purposes.

Medical Database Commission records. Databases compiled by the N.C. Medical Database Commission are public records.²⁴³ However, the individual patient information supplied to the commission by hospitals and other medical service providers is not part of the public record.²⁴⁴

Medical records. Individual patient records clearly are not public records — not even when they are in the hands of a government agency. This denial of access is dictated by federal law,²⁴⁵ as well as the state law described here. Nor are communications between a physician and

²⁴¹ N.C. GEN. STAT. §120-47.7(c).

²⁴² N.C. GEN. STAT. §132-1.13(a).

²⁴³ N.C. GEN. STAT. §131E-214.3(b).

²⁴⁴ N.C. GEN. STAT. §131E-214.3(a).

²⁴⁵ The Health Insurance Portability and Accountability Act (HIPPA), Pub. L. No. 104-191 (104th Cong., 2nd Sess.) (codified as amended in scattered sections of 18 U.S.C.; 26 U.S.C.; 29 U.S.C.; 42 U.S.C.), was enacted by Congress in 1996 to ensure and improve the continuity of health insurance coverage for U.S. workers changing jobs. In response to the legislation, the U.S. Department of Health and Human Services adopted standards that regulate how health care providers, health care plans and health

a patient public records.²⁴⁶ Individual patient information may be released with the consent of the patient, however.

Agency records. Dozens of state statutes protect the confidentiality of individual patient records that are in the possession of government agencies, hospitals, other health facilities, doctors and pharmacies. For example, state law says all patient records in the possession of the Department of Health and Human Services or a local health department²⁴⁷ are not public under the Public Records Law. Other statutes protect the confidentiality of individual patient records held by the Center for Health Statistics;²⁴⁸ the N.C. Department of Insurance;²⁴⁹ health maintenance organizations;²⁵⁰ local agencies that treat mental health, developmental disabilities and substance abuse;²⁵¹ and public health authorities.²⁵² In addition to health information, the confidential records generally include charges, accounts, credit histories and other personal financial records compiled in connection with the admission, treatment and discharge of individual patients.²⁵³

care clearinghouses manage individual health care information to protect individual privacy. This Privacy Rule, 45 C.F.R. Parts 160, 162 and 164, went into effect in 2003.

²⁴⁶ N.C. GEN. STAT. §8-53.

²⁴⁷ N.C. GEN. STAT. §§130A-12, 143B-139.6.

²⁴⁸ N.C. GEN. STAT. §130A-374(a).

²⁴⁹ N.C. GEN. STAT. §58-2-105(a).

²⁵⁰ N.C. GEN. STAT. §58-67-180.

²⁵¹ N.C. GEN. STAT. §122C-52.

²⁵² N.C. GEN. STAT. §130A-45.8(a).

²⁵³ See e.g., N.C. GEN. STAT. §§130A-45.8(b), 131E-97(b).

Communicable disease records. Health care providers — physicians, hospital administrators and laboratory directors — are required by state law to report cases of some communicable diseases to the state or local government. For example, cases of venereal disease must be reported to the local health director. However, that information is confidential. Only statistical information based on those reports is public record.²⁵⁴ A similar statute prohibits the state from disseminating individual patient information it has obtained in the process of collecting information about cancer.²⁵⁵

Government employee records. Health care records of teachers and other state employees 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 under the Teachers' and State Employees' Comprehensive Major Medical Plan are not public records.²⁵⁶ This applies to all information concerning individuals, including the fact of coverage or noncoverage, whether a claim has been filed, medical information, whether a claim has been paid and any other information or materials concerning a plan participant.²⁵⁷

Health maintenance organization records. Information pertaining to the diagnosis, treatment or health of any enrollee in or applicant to an HMO must be kept confidential except when disclosure is required by law or is authorized by the enrollee or applicant.²⁵⁸

²⁵⁴ N.C. GEN. STAT. §130A-143. *See also* Act-Up Triangle v. Comm'n for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997).

²⁵⁵ N.C. GEN. STAT. §130A-212.

²⁵⁶ N.C. GEN. STAT. §135-37.

²⁵⁷ *Id.*

²⁵⁸ N.C. GEN. STAT. §58-67-180.

Hospice patient records. State law says that although the Department of Human Resources may review the treatment of hospice patients, it may not disclose confidential information about patients or the name of anyone who has furnished information concerning a hospice without that person's consent.²⁵⁹

Peer review committee records. Personal privacy concerns also arise in connection with the records of medical peer review committees that hear complaints against medical professionals and medical facilities. These records generally are not open to the public — an exception to the Public Records Law designed to improve the quality of health care by encouraging candor in peer review committee proceedings. State statutes provide that the records of hospital,²⁶⁰ medical society²⁶¹ and dental peer review committees²⁶² are confidential. The statute governing dental peer review committees does, however, make public all records concerning the investigation and consideration of Medicare and Medicaid charges or payments.

Prescription records. All prescription orders on file at pharmacies are confidential records.²⁶³

(See also Health care facility and service inspections records, Health maintenance organization records, Competitive health care information, Medical Database Commission records and the discussion of hospital peer review evaluations and the case of *Virmani v. Presbyterian Health Services Corp.* in the chapter on access to the judicial process.)

²⁵⁹ N.C. GEN. STAT. §131E-207(b)-(c).

²⁶⁰ N.C. GEN. STAT. §131E-95(b).

²⁶¹ N.C. GEN. STAT. §90-21.22A(c).

²⁶² N.C. GEN. STAT. §90-48.10.

²⁶³ N.C. GEN. STAT. §90-85.36(a).

Military records. All National Guard records in the Department of Crime Control and Public Safety are confidential.²⁶⁴ N.C. Division of Veterans Affairs records also are confidential.

²⁶⁵

Minutes of government meetings. The state’s Open Meetings Law requires public bodies to keep accurate minutes of both public and closed meetings and to make those minutes available to the public.²⁶⁶ Furthermore, the Open Meetings Law says, “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 . . . provided, however, that minutes or an account of a closed session . . . may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.”²⁶⁷

The Court of Appeals ruled in 2000 that whether disclosure of the minutes of a closed meeting would frustrate the purpose of that meeting should be determined by the trial court after reviewing the minutes *in camera* (out of public view). The court should consider “time and content factors” and “ensure that the exception to the disclosure requirement should extend no further than necessary. . . .”²⁶⁸

²⁶⁴ N.C. GEN. STAT. §127A-17.1.

²⁶⁵ N.C. GEN. STAT. §165-11.1.

²⁶⁶ N.C. GEN. STAT. §143-318.10(e).

²⁶⁷ *Id.*

²⁶⁸ *Multimedia Publ’g of v. Henderson Cnty.*, 136 N.C. App. 567, 525 S.E.2d 786, *rev. denied*, 351 N.C. 474, 543 S.E.2d 492 (2000) (quoting *News & Observer Publ’g Co. v. Poole*, 330 N.C. 465, 480, 412 S.E.2d 7,16 (1992)).

In a 1995 Superior Court case, a judge ruled that the minutes of a meeting need not be approved by the public body to be public records. He said draft minutes are public records. In that case, in which the *Winston-Salem Journal* sought access to minutes of a Surry County Board of Commissioners meeting that had been closed to discuss real property acquisition, the judge ruled that any notes taken by anyone in attendance at the closed meeting were public records.²⁶⁹

Motor vehicle, accident and traffic violation records. As mandated by the federal Driver's Privacy Protection Act (DPPA),²⁷⁰ North Carolina has enacted a law that prohibits the release of personal information regarding driver's licenses and motor vehicle registrations without the written consent of the individual.²⁷¹ Separate state statutes say that Social Security numbers provided to the state to obtain driver's licenses and motor vehicle registrations are not public records either.²⁷²

The DPPA restricts the ability of state motor vehicle departments (DMVs) to sell or disclose personal, identifying information without an individual's consent. There are exceptions for law enforcement, pollution control and other limited purposes – but not for journalistic newsgathering. The law was designed to prevent tragedies like the murder of actress Rebecca Schaeffer by a stalker. The stalker hired a private investigator who obtained Schaeffer's home address from DMV records. One result of the law has been to deny journalists access to many records that traditionally had been public. Previously, all driver license records for the preceding

²⁶⁹ *Piedmont Publ'g Co. v. Surry Cnty. Bd. of Comm'rs*, 24 Media L. Rep. (BNA) 1371 (N.C. Super. Ct. Aug. 4, 1995).

²⁷⁰ 18 U.S.C. §§2721-2725.

²⁷¹ N.C. GEN. STAT. §20-43.1.

²⁷² N.C. GEN. STAT. §§20-7(b2), 20-52(a).

five years were public under North Carolina law.

Neither federal nor state law prohibits the release of information on vehicular accidents, driving violations and driver's status, however. These are public records routinely available from the Division of Motor Vehicles.²⁷³ Also, it is important to note that current North Carolina law, as revised in response to the DPPA, only prohibits disclosures by the DMV, not local police departments and sheriff's departments.²⁷⁴

There are several other driving records that the state attorney general has said are not public.²⁷⁵ They are:

- (1) The form maintained by an arresting officer that is completed when a person refuses to take a blood alcohol test.
- (2) The form maintained by an arresting officer that lists the rights of a person requested to take a chemical test to determine the alcohol content of blood.
- (3) The alcohol influence report maintained by the arresting officer and the copy maintained at state patrol headquarters.
- (4) The departmental copy of the uniform traffic ticket and complaint while it is maintained at the patrol district headquarters before it is transmitted to the Traffic Record Section of the Division of Motor Vehicles.
- (5) The copy of the uniform traffic ticket and complaint that is maintained by the officer issuing the complaint and includes his or her notes and other evidence prior to the trial of the

²⁷³ N.C. GEN. STAT. §20-166.1(i).

²⁷⁴ N.C. GEN. STAT. §20-43.1.

²⁷⁵ Public Records; Uniform Traffic Ticket and Complaint; Right of Public Inspection, 48 Op. N.C. Att'y Gen. 63 (1978).

offense.

- (6) The chemical test operator's log while in possession of the chemical test operator.
- (7) The breathalyzer operational checklist that is completed and maintained by the breathalyzer operator.

Warning tickets issued by law enforcement are not public records.²⁷⁶

Railroad, bus and other public utility accident reports are public records and are available from the N.C. Utilities Commission.²⁷⁷

Operating records and contracts. Government records and papers, such as budgets, bank statements, tax levies, utility accounts and contracts, are public records. Over the years, a significant number of court decisions and state attorney general opinions have reiterated and clarified that point.

For example, in 1981 the Court of Appeals ruled that letters from a consulting engineer hired by the city to inspect construction work on additions and modifications to its water treatment plant to the city manager are public records.²⁷⁸

In 1982 the state attorney general advised that a public hospital's contracts with independent contractors for pathology services, anesthesia services and the like were public records. He said state law dictated that the contractors had to be hired in an open meeting and therefore the terms of the contracts must be revealed.²⁷⁹

²⁷⁶ N.C. GEN. STAT. §20-183(b).

²⁷⁷ N.C. GEN. STAT. §62-41.

²⁷⁸ *Advance Publ'ns v. City of Elizabeth City*, 53 N.C. App. 504, 281 S.E.2d 69 (1981).

²⁷⁹ *Meetings of Public Bodies; Public Records*, 51 Op. N.C. Att'y Gen. 79 (1982).

In 1993 the Court of Appeals held that records created and maintained solely by an independent contractor with a governmental agency are not subject to the provisions of the Public Records Law until they are transferred to the public agency.²⁸⁰

Furthermore, various state statutes dictate that agency records and contracts are public records – and create a few exceptions to that general rule. One statute says diaries kept in connection with construction or repair contracts are public records once the final bills have been paid.²⁸¹ However, analyses generated by the Department of Transportation’s Bid Analysis and Management System, including working papers, bid analyses and other documents, are confidential.²⁸² Records related to discussions of a proposed or existing contract for the construction, ownership or operation of electrical power facilities or the purchase or sale of electric power also are not public unless a government entity is a party to the contract.²⁸³

(See also Bids for government contracts, Minutes of government meetings and Personnel records.)

Park and recreation records. The Public Records Law prohibits public access to identifying information about minors participating in local-government-sponsored park or recreation programs. The following information is confidential: name, address, age, date of birth, telephone number, the name or address of a minor’s parent or legal guardian and any other identifying information on an application to participate in a government-sponsored park or recreation program. The county, municipality and zip code of each

²⁸⁰ Durham Herald Co. v. Low-Level Radioactive Waste Auth., 110 N.C. App. 607, 430 S.E.2d 441 (1993).

²⁸¹ N.C. GEN. STAT. §136-28.5(a).

²⁸² N.C. GEN. STAT. §136-28.5(b).

²⁸³ N.C. GEN. STAT. §159B-38.

participating minor are matters of public record, however.²⁸⁴

Personnel records. There are 10 separate state personnel statutes, including those dealing with the personnel files of municipal,²⁸⁵ county²⁸⁶ and state employees,²⁸⁷ employees of local school boards²⁸⁸ and employees of public hospitals.²⁸⁹ In 2010 those statutes were amended to grant public access to all records of government employee compensation – in whatever form the compensation is awarded. The amendments also give citizens access to information about if and when a public employee is fired, suspended, demoted or transferred and to public employee termination letters. All the statutes make it clear that the following information about those employees is a matter of public record:

- (1) Name.
- (2) Age.
- (3) Date of original employment or appointment to the state service.
- (4) “[T]he terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the [government employer] has the written contract or a record of the oral contract in its possession.”
- (5) Current position.
- (6) Title.

²⁸⁴ N.C. GEN. STAT. §§130-1.12(a) and (b).

²⁸⁵ N.C. GEN. STAT. §160A-168.

²⁸⁶ N.C. GEN. STAT. §153A-98.

²⁸⁷ N.C. GEN. STAT. §§126-22 to -24.

²⁸⁸ N.C. GEN. STAT. §§115C-319 to -321.

²⁸⁹ N.C. GEN. STAT. §131E-257.2.

- (7) Current salary. The personnel statutes now say that “salary” includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.²⁹⁰
- (8) Date and amount of each increase or decrease in salary.
- (9) Date and type of most recent promotion, demotion, transfer, suspension, separation or other change in position classification.
- (10) Date and general description of the reasons for each promotion.
- (11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the government employer setting forth the specific acts or omissions that are the basis of the dismissal. (Note that while you have a right of access to the written notice of the termination of a public employee, the law does stipulate what must be included in that written notice and some agencies have challenged that the statute even creates a mandate that such a notice be given.)
- (12) The office or station to which the employee is currently assigned.²⁹¹

Other information properly included in an employee’s personnel file is confidential by law. This includes information “gathered by the government” relating to the individual’s application, selection or non-selection, promotions, demotions, transfers, leave, salary, suspension, performance, disciplinary actions and termination of employment, wherever those documents are located and in whatever form.

Merely placing information in a personnel file does not automatically exempt it from

²⁹⁰ See, e.g., N.C. GEN. STAT. §160A-168(b1).

²⁹¹ See, e.g., N.C. GEN. STAT. §160A-168(b).

public disclosure.²⁹² To be confidential, the information must have been “gathered” by the employing agency.

In 1992 the N.C. Supreme Court reaffirmed that only employee information gathered by the employing agency is exempt from public disclosure under the state personnel records privacy statute.²⁹³ The court ruled that information about state employees gathered by the SBI and a special government commission appointed to investigate improprieties relating to the men’s basketball team at NCSU was not exempt from the Public Records Law because it had not been gathered by the agency for which the employee worked.

Also, the statutes governing municipal and county employees explicitly state that an employee may sign a written release authorizing the disclosure of his personnel file to anyone.

Criminal background-check records. State statutes deny public or media access to the criminal records checks of public school personnel conducted by the state Department of Justice or the State Board of Education.²⁹⁴

Disciplinary records. As described above in this section, the various state personnel statutes make an employee’s “demotion, transfer, suspension, separation or other change in position classification” a matter of public record, but the reasons for disciplinary actions are public only to the extent that the reasons are explained in an employee’s written termination

²⁹² News Reporter Co., Inc. v. Columbus County, 184 N.C. App. 512, 516, 646 S.E.2d 390, 393 (2007). See also, Associated Press v. Poulton, 16 Media L. Rep. (BNA) 2393 (N.C. Super. Ct. July 28, 1989); Public Records Request; Coaches’ Contracts; G.S. 132-1 *et seq.*, 2003 WL 1154488 (N.C.A.G.).

²⁹³ News & Observer Publ’g Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

²⁹⁴ N.C. GEN. STAT. §§114-19.2(c1), 115C-332(f).

notice.

Furthermore, each personnel statute says that an appropriate supervisor of the employee (a county manager, department head or school superintendent, for example) *may* disclose any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee and the reasons for the action and allow the person's personnel file to be inspected when the government employer determines that the release of such information "is essential to maintaining the integrity of such department or to maintaining the level or quality of services provided by such department."²⁹⁵ Prior to the releasing the information, the employer must prepare a memorandum explaining why the release of information was necessary. The memorandum is a public record.²⁹⁶

Such authority is seldom exercised. However, in 2004 Chief Justice I. Beverly Lake of the N.C. Supreme Court used such a statutory provision to release a memorandum disclosing his reasons for requesting the resignation of John Kennedy as director of the Administrative Office of the Courts. He released a memo describing the circumstances surrounding Kennedy's resignation and a memo explaining why it was important to make that information public.

Former employees' records. The personnel files of former employees who have not been employed by the state for 10 or more years may be opened for public inspection, except for documents relating to demotions and to disciplinary actions that resulted in the employee's dismissal.²⁹⁷

²⁹⁵ See, e.g., N.C. GEN. STAT. §126-24.

²⁹⁶ *Id.*

²⁹⁷ N.C. GEN. STAT. §126-22.

Job applications. The various personnel acts that apply to state, municipal, county and other government workers exempt job applications from disclosure under the Public Records Law. Also, twice in the early 1990s, the N.C. Supreme Court ruled that applications for government jobs are not public records.²⁹⁸ In one case, the court said the names of the applicants also were not public record.²⁹⁹ In both cases the court reasoned that the information was part of the applicant's confidential personnel file.

Retirement records. Information provided by public employees to city, county and state retirement systems is confidential and not a matter of public record. This includes an employee's Social Security number and current name and address.³⁰⁰

Salary information. State statutes clearly state that a public employee's "current salary" and the "date and amount of the most recent increase or decrease in salary" are public records. As noted above in this section, the state's personnel statutes say that "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.³⁰¹

Telephone numbers. In 2011 a N.C. Superior Court judge ruled that the appearance of UNC-CH employees' telephone numbers on the telephone records of another employee's University-issued telephone did not constitute a personnel record exempt from public disclosure.

302

²⁹⁸ *Elkin Tribune, Inc. v. Yadkin Cnty. Bd. of Comm'rs*, 331 N.C. 735, 417 S.E.2d 465 (1992); *Durham Herald Co. v. Durham Cnty.*, 334 N.C. 677, 435 S.E.2d 317 (1993).

²⁹⁹ *Elkin Tribune, Inc. v. Yadkin Cnty. Bd. of Comm'rs*, 331 N.C. 735, 417 S.E.2d 465 (1992).

³⁰⁰ N.C. GEN. STAT. §§128-28(q), 135-6(p).

³⁰¹ *See, e.g.*, N.C. GEN. STAT. §160A-168(b1).

³⁰² *News and Observer Publ'g Co. v. Baddour*, No. 10 CVS 1941 (N.C. Super. Ct. May 12, 2011).

Precious metal dealer records. Local law enforcement agency records that contain copies of sales record book entries from precious metal dealers are not public records.³⁰³

Preliminary reports and work papers. Drafts, preliminary reports and work papers are public records, and a public agency in North Carolina does not have the right to embargo a document until its release is more beneficial to or convenient for the agency. The one major exception is for the work papers of the state auditor.³⁰⁴

In 1987 the Court of Appeals granted the North Carolina Press Association access to written reports and recommendations concerning intercollegiate athletics prepared by the chancellors of the various UNC campuses and delivered to then-UNC President C.D. Spangler Jr. The court rejected the University's argument that the reports the campus chancellors submitted to the president were preliminary studies and internal and interagency memoranda — working papers — and thus exempt from the law.³⁰⁵

In 1992 the N.C. Supreme Court explicitly ruled that there is no “preliminary draft” exception to the Public Records Law. The court held that draft reports prepared by individual members of the Poole Commission, set up to investigate the men's basketball program at NCSU, were public records.³⁰⁶

In 1994 a Superior Court judge in Durham County declared that a public school student assignment plan report that was incomplete and had not yet been given to the school board by the

³⁰³ N.C. GEN. STAT. §66-169.

³⁰⁴ N.C. GEN. STAT. §147-64.6(d).

³⁰⁵ N.C. Press Ass'n v. Spangler, 87 N.C. App. 169, 360 S.E.2d 138 (1987).

³⁰⁶ News & Observer Publ'g Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

school administrator was a public record that could be inspected by the public.³⁰⁷

In 1995, a Surry County Superior Court judge held that draft minutes of a public meeting were public records, even though they had not been transcribed or approved. Furthermore, the court ordered disclosure of the public officials' personal notes from the meeting.³⁰⁸

Prison, parole and probation records. Several North Carolina statutes stipulate that internal prison records – those related to matters such as prisoner behavior, discipline and consideration for work release – are not public records.³⁰⁹ The Court of Appeals has interpreted that to mean such information is available only to law enforcement agencies, courts, and other officials and agencies requiring information about crimes and criminals.³¹⁰

Likewise, records compiled in connection with prison grievance proceedings are confidential. Prisoner grievances are handled by the Grievance Resolution Board, and according to a state statute, “All reports, investigations, and like supporting documents prepared by the Department [of Correction] for purposes of responding to the prisoner’s request for an administrative remedy shall be deemed to be confidential.”³¹¹ Such records are available to the complaining prisoner, however.

All records obtained by a probation officer in connection with his or her official duties

³⁰⁷ Durham Public Schools Bd. of Educ. v. Bussian, No. 94 CVS 484 (N.C. Super. Ct. Feb. 18, 1994).

³⁰⁸ Piedmont Publ’g Co. v. Surry Cnty. Bd. of Comm’rs, 24 Media L. Rep. (BNA) 1371 (N.C. Super. Ct. Aug. 4, 1995).

³⁰⁹ N.C. GEN. STAT. §§148-74 to -76.

³¹⁰ 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).

³¹¹ N.C. GEN. STAT. §148-118.5.

also are confidential.³¹²

Prison records dealing with matters like the length of a prisoner's sentence, the beginning and ending date of the sentence and any transfers are public records. For example, a state statute says 30 days before a prison inmate is transferred to a prison in another state the secretary of correction must notify those involved in the case, including the victim and any other person who has requested notification, and post a notice of the transfer at the local courthouse.³¹³ All subsequent written comments regarding the planned transfer are public records unless the secretary of correction determines that making the information public would jeopardize the safety of persons or property.³¹⁴

Professional licensing board records. Many types of professionals must be licensed in order to work in this state. The extent to which the records of various licensing agencies are public differs from agency to agency.

Attorneys. The State Bar licenses attorneys to practice law in North Carolina. The records of its Board of Law Examiners, the body that actually examines and licenses attorneys, are not public. The relevant statute says, "Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records. . . ." ³¹⁵ Similarly, State Bar records related to the application of a

³¹² N.C. GEN. STAT. §15-207.

³¹³ N.C. GEN. STAT. §148-121(a).

³¹⁴ N.C. GEN. STAT. §§148-121(b)-(c).

³¹⁵ N.C. GEN. STAT. §84-24.

foreign attorney seeking permission to work in North Carolina are not public.³¹⁶

Certified public accountants. A North Carolina statute forbids disclosure of many of the records of the Board of Certified Public Accountant Examiners. The records that may not be disclosed include, for example, those collected in connection with complaints and examinations. However, any notice of a hearing or statement of charges against a certified accountant or applicant is 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.”³¹⁷ The law further states, “If any record, paper, or other document containing information collected and compiled by the Board is admitted into evidence in a hearing held by the Board, it shall then be a public record. . . .”³¹⁸

Dentists. The State Board of Dental Examiners’ investigative records related to licensing or disciplinary actions are not public records.³¹⁹ However, any notice or statement of charges against any licensee or any notice to any licensee of a hearing is a public record, and if any record containing information collected by the board is admitted into evidence in any board hearing, it becomes a public record.³²⁰

Geologists. A state statute says the records of the proceedings of the Geologists Licensing Board and a register of all applications for licensing – including the full identification

³¹⁶ N.C. GEN. STAT. §84A-2(f).

³¹⁷ N.C. GEN. STAT. §93-12.2.

³¹⁸ *Id.*

³¹⁹ N.C. GEN. STAT. §90-41(g).

³²⁰ *Id.*

of the applicant, the applicant’s qualifications and the board’s action on the application – are public records.³²¹ Individual test scores, applications and related materials including letters of reference are not public records.³²²

Pastoral counselors. A state statute controls public access to the records of the N.C. State Board of Examiners of Fee-Based Practicing Pastoral Counselors.³²³ The law says the board of examiners shall, in its records and proceedings, “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.”³²⁴ The statute authorizes the board to close its hearings to the public to receive evidence concerning the delivery of pastoral counseling services to a person who has not consented to public disclosure of that service, and “[a]ll records, papers, and documents containing information collected and compiled by or on behalf of the Board as a result of investigations, inquiries, or interviews conducted in connection with certification or disciplinary matters are not public records. . . .”³²⁵ However, statements of charges, notices of hearings, decisions of the board, and documents collected and compiled by the board and entered into evidence at a hearing are public records except for the identities of clients, which may be deleted.

³²¹ N.C. GEN. STAT. §89E-14(a)-(b).

³²² N.C. GEN. STAT. §89E-14(c).

³²³ N.C. GEN. STAT. § 90-14(c).

³²⁴ *Id.*

³²⁵ *Id.*

Physicians. State Board of Medical Examiners records containing information gathered by the board or its staff in connection with a physician licensing or disciplinary matter are not public records until they are admitted into evidence at a board hearing. Also, the board can withhold from the public the identity of any patient who has not consented to disclosure of his or her treatment by an accused physician. However, statements of charges against a licensed physician and notices of hearings are public records.³²⁶ (See also Medical records/Peer review committee records.)

Psychologists. The N.C. Psychology Board licenses psychologists. Board records containing information gathered by the board or its staff in connection with a licensing or disciplinary matter are not public records until they are admitted into evidence at a board hearing. Also, the board can withhold from the public the identity of any patient who has not consented to disclosure of his or her treatment. However, statements of charges against a licensed psychologist and notices of hearings are public records.³²⁷

Refrigeration contractors. A state statute denies public and media access to the licensing and disciplinary records of the State Board of Refrigeration Examiners.³²⁸

Speech and language pathologists and audiologists. License applications filed with the state by speech and language pathologists and audiologists are public records, according to an

³²⁶ N.C. GEN. STAT. §90-16.

³²⁷ N.C. GEN. STAT. §90-270.15(e).

³²⁸ N.C. GEN. STAT. §87-59(e).

opinion of the state attorney general.³²⁹

(See also Design professionals' seals.)

Public assistance records. State law prohibits the government from revealing the names or other information about people applying for or receiving social services or public assistance.³³⁰ However, the same law also requires each county auditor to make available for public inspection a monthly register of the names of all recipients of Work First Family Assistance and State-County Special Assistance for Adults, their addresses and the amount of money they received.³³¹ The law further states that the information may not be used “for any commercial or political purpose.”³³²

Public enterprise billing information. The Public Records Law itself exempts "public enterprise billing information" from disclosure.³³³ Public enterprise billing information comprises records compiled and maintained with respect to individual customers by a municipality or other public entity that provides utility services such as electricity, water and gas services; public transportation except for airports; parking facilities; and cable television.³³⁴ Disclosure is allowed, however, when “necessary to assist the city, county, State, or public

³²⁹ Public Records; Application for Licensure Received by the Board of Examiners for Speech and Language Pathologists and Audiologists, 45 Op. N.C. Att’y Gen. 188 (1976).

³³⁰ N.C. GEN. STAT. §§108A-80(a), 108A-73, 108A-11.

³³¹ N.C. GEN. STAT. §108A-80(b).

³³² *Id.*

³³³ N.C. GEN. STAT. §132-1.1(c).

³³⁴ N.C. GEN. STAT. §§160A-311, 132-1.1(c).

enterprise to maintain the integrity and quality of services it provides. . . .”³³⁵ (See also Public utility records.)

Public utility records. The business records of public utility companies such as power companies, natural gas distribution companies and telephone companies are not open to public inspection. Most public utilities are organized as private corporations; as such, their books and records enjoy the same degree of confidentiality as those of other private businesses. In 1999 the Court of Appeals clearly ruled that a public utility – in this case a telephone company – was a private person under the law, not a public agency.³³⁶ The court explained that a telephone company’s private status was not invalidated by the Utilities Commission’s authority to regulate the company. The Utilities Commission’s oversight of the company was material but not comprehensive, the court said. It added that the Public Records Law makes no distinction between regulated and unregulated industries, so generally it applies to neither.

The Public Records Law does apply to the Utilities Commission, however. For example, public utilities operating in this state must file annual reports concerning their operations, and those reports are public records. State law also gives the Utilities Commission and its staff authority to inspect the books and records of public utilities, and information gleaned from such inspections frequently is introduced into evidence at commission hearings, whereupon it becomes a matter of public record. State law further provides that the Utilities Commission must maintain a record of its official acts, rulings, orders, decisions and transactions, all of which are

³³⁵ N.C. GEN. STAT. §132-1.1(c)(2).

³³⁶ Utilities Comm’n v. MCI Telecommunications Corp., 132 N.C. App. 625, 514 S.E.2d 276 (1999).

public by law.³³⁷

However, in the telephone company case discussed above, the court ruled that some telephone company reports filed with the Utilities Commission were exempt from disclosure under the Public Records Law because they were trade secrets that were the property of a private person. (See also Trade secrets.) Also, a state statute prohibits Utilities Commission employees from revealing information obtained during the course of any examination or inspection made as part of their official duties.³³⁸

Railroad records. Records relating to the business activities of the state-owned railroad are public records with these two exceptions set out in a state statute: “[I]nformation related to a proposed specific business transaction where inspection, examination, or copying of the records would frustrate the purpose for which the records were created” and “information that is subject to confidentiality obligations of a railroad company.”³³⁹

Real estate appraisals, negotiations. Documents related to the acquisition or disposition of public property are public records with one exception. The Open Meetings Law allows a public body to meet in closed session to discuss “the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.”

³⁴⁰ When that happens, the minutes and other records related to that discussion are public records, but they may be withheld from the public “so long as public inspection would frustrate

³³⁷ N.C. GEN. STAT. §62-19(a).

³³⁸ N.C. GEN. STAT. §62-316.

³³⁹ N.C. GEN. STAT. §124-3(c).

³⁴⁰ N.C. GEN. STAT. §143-318.11(a)(5).

the purpose of the closed session.”³⁴¹ Nothing in state law allows a similar withholding of records related to the disposition of public property.

Retirement system records. A state statute stipulates that records of the proceedings of the board of trustees of the Retirement System for Teachers and State Employees are public records.³⁴² Furthermore, the board must prepare a public annual report on the system’s fiscal transactions for the previous year, the amount of accumulated cash and securities and the last balance sheet showing the financial status of the system. The requirements are the same for county retirement systems.³⁴³

Software. The state attorney general’s office has expressed the opinion that computer software developed by the state is not a record and therefore is not a public record. The attorney general’s office said the N.C. Public Records law distinguishes between software and the records it generates.³⁴⁴

Tax records. The Public Records Law says state and local tax information, including local tax records that contain information about a taxpayer’s income or receipts, may not be disclosed.³⁴⁵ Another state statute clarifies that state employees may not disclose the following information about a taxpayer:

- (1) Information contained on a tax return, a tax report, or an application for a

³⁴¹ N.C. GEN. STAT. §143-318.10(e).

³⁴² N.C. GEN. STAT. §135-6(i).

³⁴³ N.C. GEN. STAT. §128-28(j).

³⁴⁴ Status of State Owned Computer Software Under G.S. 132-1, 1998 WL 459785 (N.C.A.G.).

³⁴⁵ N.C. GEN. STAT. §132-1.1(b).

license for which a tax is imposed.

- (2) Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.
- (3) Information on whether a taxpayer has filed a tax return or a tax report.
- (4) A list or other compilation of the names, addresses, Social Security numbers, or similar information concerning taxpayers.³⁴⁶

That statute says statistical reports that do not reveal tax information about specific individuals are public records.³⁴⁷

Property tax records revealing inventories, statements of assets and liabilities and other information secured by the county assessor to appraise property are not public records.³⁴⁸

However, the assessed and appraised values of property are available for public inspection.

Statistical information that does not identify individual taxpayers also may be released.

City³⁴⁹ and county³⁵⁰ room occupancy tax returns filed monthly with local governments are not public records.

The state's Setoff Debt Collection Act authorizes the secretary of revenue to setoff against any tax refund any debt owed to the state by the refund recipient. Information exchanged by the Revenue Department, the claimant agency and the taxpayer related to the setoff is not

³⁴⁶ N.C. GEN. STAT. §105-259(a)(2).

³⁴⁷ N.C. GEN. STAT. §105-259(a).

³⁴⁸ N.C. GEN. STAT. §105-296(h).

³⁴⁹ N.C. GEN. STAT. §160A-215(d).

³⁵⁰ N.C. GEN. STAT. §153A-155(d).

public record.³⁵¹

Toxic substances. Hazardous substance lists filed with fire chiefs by businesses that store hazardous waste are confidential and can only be released to those government agencies planning emergency response activities.³⁵² The emergency response plans filed with local fire chiefs also are confidential.³⁵³ However, in 1985 the General Assembly passed the Hazardous Chemicals Right to Know Act, which grants citizens the right to obtain some information about the hazardous chemicals being used by North Carolina businesses.³⁵⁴ The act says that you can write to a business and request a list of chemicals used or stored at a facility. You must give your name, address and reason for the request. Then the business has 10 business days within which to provide a list of at least all the chemicals that are on the state's Hazardous Substance List and information about those chemicals. If your request is denied, you can appeal that denial to the commissioner of labor.³⁵⁵

The N.C. Radiation Protection Act directs the Department of Environment and Natural Resources to collect information about sources of radiation in the state and to register those who possess them. The law says the department may refuse to make public information relating to sources of radiation within this state when the department determines that “the disclosure of such information will contravene the stated policy and purposes of this [law] and such disclosure

³⁵¹ N.C. GEN. STAT. §105-259.

³⁵² N.C. GEN. STAT. §95-194(f).

³⁵³ *Id.*

³⁵⁴ N.C. GEN. STAT. §95-208(a).

³⁵⁵ N.C. GEN. STAT. §95-208(b).

would be against the health, welfare and safety of the public.”³⁵⁶

Trade secrets. The state’s Public Records Law provides that a public agency cannot disclose information that is (1) a trade secret that is (2) the property of a private person and (3) that is disclosed 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 the law and (4) is “designated . . . as ‘confidential’ or as a ‘trade secret’ at the time of its initial disclosure to the public agency.”³⁵⁷ Note that all four criteria must be met for a document to be withheld lawfully.

Trade secrets are defined in state law as business or technical information “including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process” that derives its commercial value from not being generally known or ascertainable and that is the subject of efforts to maintain its secrecy.³⁵⁸

- In 1997 the Court of Appeals elaborated on the definition of trade secrets in a case in which the *Wilmington Morning Star* sought access to a price list that was part of a contract between a hospital and a managed health care organization (HMO).³⁵⁹ The price list specified the costs and reimbursement rates at which certain hospital services would be provided to participating HMO customers. To help determine whether the price list was a trade secret, the court considered a list of factors it said have been applied in other jurisdictions. Those factors

³⁵⁶ N.C. GEN. STAT. §104E-9(a)(4).

³⁵⁷ N.C. GEN. STAT. §132-1.2.

³⁵⁸ N.C. GEN. STAT. §66-152(3).

³⁵⁹ *Wilmington Star-News, Inc. v. New Hanover Reg’l Med. Ctr.*, 125 N.C. App. 174, 480 S.E.2d 53 (1997).

are:

- (1) The extent to which information is known outside the business.
- (2) The extent to which it is known to employees and others involved in the business.
- (3) The extent of measures taken to guard secrecy of the information.
- (4) The value of information to business and its competitors.
- (5) The amount of effort or money expended in developing the information.
- (6) The ease or difficulty with which the information could properly be acquired or duplicated by others.

In the Wilmington hospital case, the court considered the legal definition of a trade secret and the factors listed above and concluded that the price list was a public record. The court reasoned that although the price list was a trade secret, it was not the property of a private person as required by law for it to be exempt from disclosure under the Public Records Law. The HMO was a private person as defined by state statute,³⁶⁰ but it shared ownership of the price list with the hospital, which was clearly a public agency. (The year following the *Wilmington Morning Star* case, the General Assembly passed a law that provided “information relating to competitive health care activities by or on behalf of [public] hospitals shall be confidential and not a public record. . . .”³⁶¹ The law made clear that the contracts “entered into by or on behalf of a public hospital . . . shall be a public record unless otherwise exempted by law.”³⁶² (See also Competitive health care information.)

³⁶⁰ N.C. GEN. STAT. §66-152(2).

³⁶¹ N.C. GEN. STAT. §131E-97.3(a).

³⁶² N.C. GEN. STAT. §§130A-45.11, 131E-97.3(a).

In 1999 the Court of Appeals applied the same definitions and considered the same factors and concluded that telephone company reports filed with the state Utilities Commission that revealed numbers of customers served, plans for expansion and other information were not public records.³⁶³ The court reasoned that the reports contained trade secrets and were the property of private persons — the telephone companies. The court said that although the telephone companies were classified as public utilities under state law and were regulated by the Utilities Commission, that governmental control did not overshadow the independent authority of the businesses.

Also, other state statutes prohibit state and local governments from disclosing a variety of specific trade secrets. Frequently these statutes apply to situations in which the government requires a business to submit information about its operations in order to obtain a license or permit. One statute, for example, says that the formula for antifreeze submitted to the commissioner of agriculture by a company or individual seeking a permit to sell antifreeze is confidential information.³⁶⁴ It can only be released to physicians to prepare an antidote in an emergency. Also, some information provided to the state Board of Agriculture by commercial livestock feed manufacturers or sellers complying with the N.C. Commercial Feed Law is confidential. The law says that “any method, records, formulations, or processes which as a trade secret is entitled to protection” is confidential.³⁶⁵ State statutes also make confidential government-held trade secrets about uranium exploration,³⁶⁶ the sources of precious metals

³⁶³ Utilities Comm’n v. MCI Telecomms. Corp., 132 N.C. App. 625, 514 S.E.2d 276 (1999).

³⁶⁴ N.C. GEN. STAT. §106-579.11.

³⁶⁵ N.C. GEN. STAT. §106-284.44(f).

³⁶⁶ N.C. GEN. STAT. §74-88.

purchased by licensed dealers of such materials,³⁶⁷ elevators,³⁶⁸ amusement devices³⁶⁹ and forest products.³⁷⁰

State laws also protect some trade secrets revealed to the government in the course of government inspections,³⁷¹ including Occupational Safety and Health Administration Inspections,³⁷² or in the course of bidding for a state contract.³⁷³

University of North Carolina liability insurance records. Records pertaining to the University's liability insurance program are not public records.³⁷⁴

Uranium exploration records. If a person engaged in uranium exploration demonstrates to the Department of Natural Resources and Community Development that logs, surveys plats and reports filed with the department "are of a proprietary nature relating to his competitive rights," that information will not be a public record for four years after the department receives the information. Upon written request of any such person and a showing of a continued proprietary interest affecting competitive rights, the department shall hold the material confidential for additional two-year periods.³⁷⁵

³⁶⁷ N.C. GEN. STAT. §66-169.

³⁶⁸ N.C. GEN. STAT. §95-110.14.

³⁶⁹ N.C. GEN. STAT. §95-111.17.

³⁷⁰ N.C. GEN. STAT. §113A-195(f).

³⁷¹ N.C. GEN. STAT. §95-194.

³⁷² N.C. GEN. STAT. §95-152.

³⁷³ N.C. GEN. STAT. §143-52.

³⁷⁴ N.C. GEN. STAT. §116-222.

³⁷⁵ N.C. GEN. STAT. §74-88.

Vital statistics. Copies of birth, death³⁷⁶ and marriage³⁷⁷ certificates maintained by county registers of deeds are public records available for public inspection and copying, but some information in those records can be redacted if the records are posted online. A register of deeds (or clerk of court) may remove a person’s Social Security or driver’s license number from any official record placed on a publicly available website created or used by a register of deeds or clerk of court.³⁷⁸ A related provision in the law allows an individual to request that a register of deeds or clerk of court remove the individual’s personal information from public records posted online by those government officials. An individual can request removal of his or her Social Security number, employer taxpayer identification, driver’s 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.³⁷⁹

Certified copies of birth, death and marriage records are available only to the categories of persons listed in the relevant state statute.³⁸⁰

Original birth certificates of adopted children are sealed,³⁸¹ health and medical information contained on birth certificates is confidential except when it is to be used for “research purposes,”³⁸² and birth certificates for persons in the federal witness protection

³⁷⁶ N.C. GEN. STAT. §130A-99(a).

³⁷⁷ N.C. GEN. STAT. §130A-110(d).

³⁷⁸ N.C. GEN. STAT. §130-1.10(f1).

³⁷⁹ N.C. GEN. STAT. §130-1.10(f).

³⁸⁰ N.C. GEN. STAT. §130A-93.

³⁸¹ N.C. GEN. STAT. §48-9-107(c).

³⁸² N.C. GEN. STAT. §§130A-93(e), 130A-102.

program are not available to the public.³⁸³

The state registrar maintains a registry of each divorce and annulment granted in North Carolina, and that registry is a public record.

A schedule of fees for copies of vital records and searches of vital records is set out in a state statute.³⁸⁴

What can you do if you are denied access?

You can take your records dispute to mediation, or you can take it to court. Or both. The N.C. General Assembly recently added mediation to the remedies available to those who are denied access to or copies of public records.³⁸⁵ Mediation can be voluntary on the part of the parties to a records dispute, but you must request mediation before you can pursue a civil lawsuit seeking an order compelling disclosure or copying.

Voluntary mediation can occur at any time before a lawsuit is filed. To begin the procedure, you must file a request for mediation with the clerk of Superior Court in the county in which a lawsuit would be filed.

If you file a lawsuit under the Public Records Law, you also must file a request for mediation with the clerk of Superior Court in the county in which the lawsuit is filed. This request must be filed no later than 30 days from the filing of the defendant's written response to the lawsuit. The clerk of court will provide a list of mediators certified by the N.C. Dispute

³⁸³ N.C. GEN. STAT. §130A-93(f).

³⁸⁴ N.C. GEN. STAT. §130A-93.1(a).

³⁸⁵ N.C. GEN. STAT. §7A-38.3E.

Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk appoints that mediator. If the parties do not agree on a mediator, a mediator is appointed by the senior resident Superior Court judge. Nothing in the law prevents the access seeker from seeking injunctive or other relief prior to any scheduled mediation.

If the parties to a public records case agree, they can waive mediation.

Public records cases to be litigated in court are to receive immediate court hearings and be given priority by trial and appellate courts.³⁸⁶ However, there often is a several-month delay.

If you win, no civil penalties or fines or other criminal sanctions are imposed on the individual or agency that originally denied you access to the record. The court may award you your attorney's fees. State law says that when a party successfully compels the disclosure of public records "the court shall allow a party . . . to recover its reasonable attorneys' fees. . . ."³⁸⁷ However, the court may not assess attorney fees against the government if the court finds that the governmental body or governmental unit acted "in reasonable reliance" on any of the following:

- (1) A judgment or order of a court.
- (2) The published opinion of an appellate court, an order of the N.C. Business Court or the final order of a trial court.
- (3) A written opinion, decision or letter from the attorney general.³⁸⁸

Also, a court may not assess attorney fees against a public hospital if the court finds the lawsuit was brought by a competing health care provider to gain a competitive advantage.³⁸⁹

If the court finds that an individual public employee or public official has "knowingly or

³⁸⁶ N.C. GEN. STAT. §132-9(a).

³⁸⁷ N.C. GEN. STAT. §132-9(c).

³⁸⁸ *Id.*

³⁸⁹ N.C. GEN. STAT. §132-9(e).

intentionally committed, caused, permitted, suborned, or participated in a violation” of the Public Records Law, the court may order that individual — rather than the agency — to pay all or part of the attorney fees.³⁹⁰ However, the public employee or official cannot be ordered to pay your attorney’s fees if the public employee or official received and followed the advice of an attorney.³⁹¹

The rules regarding the payment of attorney fees work both ways. If the court finds your access suit was filed in bad faith or was frivolous, the court may make you pay the government attorney’s fees.

³⁹²

You should be aware that an access case can take years to litigate. By the time you obtain access to a document, it may no longer be newsworthy. So, you see, in most cases there really are no better access tools than well-developed sources and enough knowledge of access law to enable you to present a convincing argument to a resistant record keeper. Legal advice is available from the North Carolina Press Association Hotline, 919-833-3833, and from the North Carolina Association of Broadcasters Line, 919-821-7300. Also, you can urge the government agency to seek an interpretation of the law from the state attorney general.

³⁹⁰ N.C. GEN. STAT. §132-9(c).

³⁹¹ N.C. GEN. STAT. §132-9(c).

³⁹² N.C. GEN. STAT. §132-9(d).