

---

## Coates' Canons Blog: Are Cell Phone Bills Public Records?

By Frayda Bluestein

Article: <https://canons.sog.unc.edu/are-cell-phone-bills-public-records/>

This entry was posted on October 05, 2011 and is filed under Accounting, Reporting, Auditing, Finance & Tax, Open Government, Public Records (General)

---

Cell phones and other mobile devices have become essential tools for public employees and officials. Governmental agencies may purchase mobile devices and issue them to employees and officials, or may reimburse employees and officials who use their privately-owned devices for work-related purposes. When the government owns and pays for the mobile device, it's clear that the public agency's bill is a public record. But if the employee or official makes personal calls using a government-owned device, are the numbers that were called public records as well? And if the government reimburses private individuals for work-related use of privately-owned device, does that make their private bills and phone records subject to public access? This blog post answers these questions, using the framework for responding to public records requests, which I introduced in [this post](#).

### Government-Owned Devices

Let's assume that the government agency has received a request for copies of cell phone bills for government-owned phones. Applying the framework, the first question is whether there is a record that corresponds to the request. The answer is clearly, "yes." The next question is whether the records are made or received in the transaction of public business. Again, the answer is "yes," as to the phone bill itself. The third question is whether there are any exceptions that apply. Considering the phone bill itself, the answer is no. The financial records of a public agency are generally subject to public access and there is no exception for phone bills. Does that mean that all of the information on the bill is public? Perhaps not.

There are two types of information on a phone bill that a public agency may have the authority to redact before releasing the bill.

*Personal Phone Calls:* Public employees and officials sometimes make personal phone calls or text messages on their government-issued devices. (Local policies typically allow limited personal use of email and phone systems, but this analysis applies, whether or not the use is actually allowed, since either way, the personal number will appear on the record.) Like personal emails, the records of these calls are not made or received in the transaction of public business. So perhaps this information does not meet the definition of a public record and may be redacted. A **1996 letter opinion of the Attorney General** came to this conclusion, relying on the language in G.S. 132-6(c), which requires the agency to bear the cost of separating confidential from nonconfidential information in a record. The opinion also cites for support, a 1991 Court of Appeals opinion, *S.E.T.A. UNC-CH v. Huffines*, (101 N.C. App. 292), which held that the names, addresses, and phone numbers of researchers contained in public university research proposals were confidential.

*Calls That Fall Within An Exception:* Some telephone calls may relate to activities that fall within an exception to the public records law. Consider, for example, a call from a police officer to a confidential informant, or to a witness or suspect in a criminal investigation. The phone numbers reflecting these calls could be redacted under **G.S. 132-1.4**. Similarly, the exception for economic development information (**G.S. 132-6**) might provide grounds for redacting the phone number of a company that is a prospect for an economic development project.

### Privately-Owned Devices

Bills for privately-owned devices do not automatically become public records just because the devices are used for work-related purposes, even if an employee or official is reimbursed with public funds. The status of the bill itself depends on whether the public agency has a copy of it. If the public agency obtains copies of private cell phone records in order to calculate or justify the amount of the reimbursement, then the bill is a public record. Referring back to the hypothetical request discussed above, and applying the framework: the public agency has a record that corresponds to the request,

---

and it was received in the transaction of public business. Under the analysis set out above, however, personal calls, and any calls that relate to matters exempted under the public records law could be redacted. transaction of public business.

If the public agency does not require employees or officials to submit copies of phone bills, then the public agency would not have custody of those records and would not be required to provide them. It seems likely, however, that public information contained in those privately held records – such as the phone numbers reflecting work-related calls – may be subject to public access. Like a **work-related email created on a private email account**, it may be that the content of the record, not its location will determine its status. Indeed, by using a private device for the transaction of public business, the owner of the device has arguably created a public record of those phone calls or text messages that involve public activities and should expect that information to be subject to public access. As noted above, phone numbers reflecting personal calls would remain private, and those covered by an exception, may be redacted.

#### The Phone Number Itself

The phone number of a privately-owned phone would generally not be considered to be a public record. Indeed, such information would typically reside in the personnel file and would remain confidential. If, however, an employee regularly uses a privately-owned device for work-purposes, that number will likely exist in other public records (including public phone bills and contact lists) and will be subject to public access. The phone numbers of government-owned devices are public records.

#### Employer Access to Cell Phone Records

This analysis describes the extent of general public access to cell phone records under the public records law. The public agency as an employer may have access to personal phone call information on public or private phone bills, depending upon the specific policies and circumstances that exist within the jurisdiction. The federal constitution's Fourth Amendment privacy protections limit such access, however, as illustrated in the recent Supreme Court decision in *City of Ontario v. Quon*, **summarized here**.

#### Retention Requirements

Clearly, the government's phone bill records must be retained according to the applicable retention schedule (see **municipal schedule**). This retention requirement would probably also apply to a copy of the private phone bill if the government obtains it in connection with its reimbursement program. These would both constitute financial records of the public agency.

A private phone bill that the government *does not* obtain a copy of is not a finance record of the agency; it remains a private record, but it may contain public information. It is most likely that the phone numbers reflected on a private phone bill would be considered records of short term value, which are not required to be retained. However, if the information on the record is the subject of a public records request, and the bill or bills containing the information exist at the time the request is received, it seems likely that the information would have to be provided, unless an exception to the public records law applies. A further obligation to retain and preserve these records, even if they are in private hands, could arise under the discovery rules if they are relevant to pending or anticipated litigation.

## Links

- [canons.sog.unc.edu/?p=2592](https://canons.sog.unc.edu/?p=2592)
- [canons.sog.unc.edu/wp-content/uploads/2011/10/AG-Opinion-Phone-Records.pdf](https://canons.sog.unc.edu/wp-content/uploads/2011/10/AG-Opinion-Phone-Records.pdf)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.4](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.4)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-6](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-6)
- [canons.sog.unc.edu/?p=1712](https://canons.sog.unc.edu/?p=1712)
- [canons.sog.unc.edu/?p=3241](https://canons.sog.unc.edu/?p=3241)
- [www.records.ncdcr.gov/local/municipal\\_2009.pdf](http://www.records.ncdcr.gov/local/municipal_2009.pdf)