
Coates' Canons Blog: Dealing With Massive Public Records Requests

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It's happening more and more frequently, in large and small jurisdictions across North Carolina. It may come by email, personal delivery, or even in a good old -fashioned letter, signed, sealed and delivered by snail mail. It's the massive public records request. You know the ones: "copies of all emails send to or received by the manager and each member of the board on XYZ issue," or "every email that mentions the name Jane M. Smith," or "all records in whatever form or format, including documents, emails, voicemails and text messages made or received by the mayor during her last term of office [which lasted four years]," or "copies of all closed session minutes for the past ten years," and so on.

What should you do? Where do you start? How long do you have to respond? What can you charge?

The answers to some of these questions are covered in previous blog posts, but for this post, I'll suggest some basic steps that might provide a path through this jungle of questions.

1. Develop an internal process for responding. Even in a small jurisdiction it's probably useful to consider how you would organize the process of responding to a massive records request before you actually receive one and let employees know what that process will be. Although the law provides that requests should be made of the actual custodians of the records, a response can be handled centrally. The unit should determine who will coordinate and which employees will be involved. A policy or protocol can also serve to help employees and officials be aware of the possibility of a request, and to remind them of which types of records are subject to public access and what records must be retained. It can also remind employees and officials of the fact that some records made on their personal devices and accounts may be subject to public access.

2. Talk with the requester to clarify and make sure you understand the request. In sessions I've conducted with public officials, I've learned that a person making large requests sometimes is looking for something specific but is reluctant to say so. Conversations aimed at clarifying exactly what is being sought can help eliminate unnecessary efforts and may allow the agency to respond more quickly. This includes finding out in what medium the records are to be provided and ensuring that the requester is willing to pay whatever the cost will be before making the effort to identify and produce the records.

3. What records must be provided? As a quick review, remember the following broad general rules:

- Only records that relate to the transaction of public business must be provided. Records, including emails, that are personal and don't relate to public business are not subject to general public access even if they were created and exist on public devices or accounts.
- Records that relate to public business must be provided even if they were created and exist on private devices and accounts. Board members and employees may be required to search their personal computers and email accounts for records that fall within the request. As noted above, that doesn't mean they have to provide their personal records; just the ones that relate to public business.
- Determine whether any of the records within the scope of the request are subject to an exception that would either prohibit their release, or authorize (but not compel) the agency to withhold them. The local attorney should be involved early on in this process to advise on what may or must be withheld or redacted.

4. Consider checking in with the requester once you have a sense of how long it will take and how much it will cost. There is no specific time frame for a response in the statute (the requirements is, “as promptly as possible”) and the time it will take depends on the nature and scope of the request, and on the staff resources available in the particular unit.

How much can you charge?

The usual answer to this question under the public records law is that you can charge only for the actual costs of providing copies; that is, only for the cost of the paper or other physical medium in which copies are provided.

For a massive request, however, especially one involving electronic records, there is the possibility of an additional charge. **G.S. 132-6.2** provides:

“[I]f the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency.”

We have no cases interpreting this provision, and it’s a bit unclear exactly what may be charged. But it seems to me that it would certainly allow an agency to charge for the time it takes to search email or other electronic archives for records in response to a public records request. It seems equally clear, however, that this provision does not override the limitation on charging for the time it takes to review records and determine what must be provided and what may or must be withheld. I don’t find anything in the public records statutes that authorizes charging the requester for that part of the process. A more detailed analysis of this provision will be fodder for a future blog post. Meanwhile, I would simply observe that there is increasing interest in putting this provision to use, given the increasing number of massive requests that require significant mining for electronic records.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-6.2