
Coates' Canons Blog: Form, Format, and Medium: How Must Electronic Records Be Provided?

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The town's governing board wants to be more transparent. They direct the clerk to post all agendas, attachments, minutes, and budgets on the town's website. The IT director, who manages the website, suggests that these documents should be converted to PDF format, and password-protected in order to prevent members of the public from modifying them. After several weeks of posting this information, a citizen requests a copy of a power point presentation that was shown at a recent meeting. The request is for an electronic copy of the presentation "in native format". The town board has concerns that the requester may want to modify the presentation, so the IT director recommends releasing it in PDF format only, or if it must be in native format, perhaps make it password protected. This would allow viewing but not modification. What are the town's legal obligations? Is it legal to convert the documents to PDF for posting? May the town alter the document before releasing it to protect against unauthorized modifications?

Format for Posting

The town can post its documents in any format it deems appropriate. The decision to make records available on the unit's website is a voluntary act and the public records law doesn't really kick in. Of course, there are probably some requirements under other laws – formatting for optimal viewing by people with disabilities might be one – but those are beyond the scope of this post. In terms of public records law compliance, if a unit of government is being proactive and providing access without receiving a specific request, it has complete discretion in deciding what records to post, in what format, and for how long. And if the board or a future board changes its collective (or majority) view on whether this transparency approach is a good idea, it can discontinue or alter the process, as it sees fit.

Format for Requested Records

When the town receives a public records request, the public records law dictates what must be provided. Or at least, you might think it does.

Here's what the law says. If there is a record that corresponds to the request, and no exception allows the public agency to deny access, the agency must allow inspection and, if requested, must provide a copy.

What is a copy?

That used to be a question with a simple answer. You took the paper to the copy machine and made a paper copy. The prevalence of electronic records has changed "copying" in numerous ways. First, there is the option of making electronic copies of paper records by scanning. Next, there are myriad questions about how to copy electronic records. Is a paper copy of an electronic document sufficient under the law? If an electronic copy is provided, how much metadata must be preserved? Is it permissible for an electronic copy to be provided in a different format? And who gets to decide what form and format will be provided?

The public records law answers only a few of these questions directly. G.S. 132-6.2(a) says: "Persons requesting copies of public records may elect to 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. The public agency may assess different fees for different media as prescribed by law."

Medium vs. Format

What does “medium” mean in this context? Dictionary definitions don't shed much light on the question. Medium: “A specific type of artistic technique or means of expression as determined by the materials used...” (American Heritage Dictionary). As used in the statute, I think medium refers to the form in which the copy is provided: paper or electronic, and perhaps in some cases, tape recording or video. Under this reading, if the request is for a record in electronic form, the PDF would meet the request. But what if the requester demands an electronic record in a specific format? For example, let's say the document exists only as a word file, and the request is to convert it to an excel spreadsheet. Must the unit provide the record in that format if it is capable of doing so?

This is an open question. It seems to me that there is a difference between medium and format. Back to the dictionary. Format: “A plan for the layout and arrangement of a specified production... [In computer science] The arrangement of data for storage or display; A method for achieving such an arrangement.” So while *medium* is a broad category describing the materials, *format* describes the way the information is organized or presented on the record. It might be hard to make an argument for legislative intent here, since the types and formats of electronic records were much simpler when the law was enacted. But perhaps it can be argued that the unit has no obligation to alter an existing record in order to provide it in a format requested if it is not already in that format. This interpretation is consistent with the statement in that law that, “Nothing in this section shall be construed to require a public agency to respond to requests by creating or compiling a record that does not exist.” G.S. 132-6.2(e). In the electronic records context, a reformatted record is a separate, new record, which the statute does not require the public agency to create by request, although it is free to do so.

What about the opposite situation, posed in the original question above. The public agency wants to provide a different version of the record in order to protect its integrity, for example, by providing it in PDF or password-protected format. If the original record as it was made or received by the public agency is already in that format, then the agency may provide it in that format. I know of no authority, however, for a public agency to modify a record for its own purposes and require a person requesting the record to accept it in the modified format.

Although there is no North Carolina case dealing with this question, a Louisiana case rejected the “risk of alteration” argument. In *Johnson v. City Pineville*, 9 So. 3d 313 (La. App. 2009) the city refused to provide electronic copies of emails because of the risk that they might be altered. The court rejected the city's argument and made the following observation: “Given that the public has had access to copies of public records for years, which copies have always been at risk of alteration, we find no merit in Pineville's contention that the risk of alteration outside of the custodian's care is a valid reason for denying a record's reproduction...”

A limitation on a requester's use of the record also seems inconsistent with the North Carolina public records act, which include this statement: “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.” G.S. 132-6(b). If a person's purpose for asking for the record is off limits, it seems to me that how a person actually uses it would be as well. Instead, it seems to me that the obligation of the public agency is to provide the record requested, in the format and medium in which it exists, unless the requester prefers a different medium (not format) that the public agency can provide.

To recap:

A public agency can voluntarily make records available in any medium and format it desires.

A requester may request a record in any medium and format in which it exists.

A public agency must provide a record in a different medium, if requested to do so and if it is capable of doing so.

A public agency is probably not required to produce a record in a different format from the one in which the record exists.



A public agency is probably not allowed to alter the format of a record before releasing it in order to prevent the requester from modifying it.

There are additional issues about the formatting of public records, including metadata in electronic records and requirements for archiving electronic records. To learn more about these and other important public records topics, sign up for our upcoming five-part webinar series on public records.

Go here to learn more: [Public Records Law Webinar Series](#)

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-6.2
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-6
- www.sog.unc.edu/courses/webinar-series/public-records-law-series-webinar-demand