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## Coates' Canons Blog: Is This a Public Record? A Framework For Answering Questions About Public Records Requests

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Responding to requests for public information is an important and time-consuming aspect of the jobs of many local government officials and employees. While some requests are straight-forward, others require analysis and interpretation of the public records law, including its many exceptions. This post provides a basic framework that may be helpful in developing responses to public records requests.

### Framework

The public records law creates a right of access to government records, which must be provided unless an exception applies. The questions in this framework focus on key issues that help determine how a public agency should respond to requests for access to public records.

### Questions

- 1. Does a record exist that corresponds to the request?** *If not, no disclosure is required. If so, continue to question 2.*
- 2. Is the record “made or received in the transaction of public business?”** *If not, no disclosure is required. If so, continue to question 3.*
- 3. Is there an exception that applies?** *If not, the requested access must be provided. If so, continue to question 4.*
- 4. Does the exception apply to the entire record, or only to certain information, and does it prohibit disclosure or does it deny the right of access?** *If a prohibition applies to the entire record, do not disclose; if it applies only to certain information, redact and disclose. If there is no right of access to some or all of the information, but release is not prohibited, determine whether or not to release the entire or a redacted record.*

Issues related to each question are summarized below.

#### 1. Does a record exist that corresponds to the request?

Records can exist in many forms, but there will rarely be an issue about whether a particular record is of a type that is covered by the statute. The definition includes: “documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, and any other documentary material, regardless of physical form.” **G.S. 132-1(a)**.

The more significant aspect of this first question is whether a record actually exists that corresponds to the request. Sometimes public agencies receive requests for information, which may be found in various records, or which is known but not made part of any record. The obligation under the law is to provide access to or copies of records that exist, and the statute specifically says that a public agency is not required to respond to records requests by “creating or compiling a record that does not exist.” **G.S. 132-6.2(e)**.

#### 2. Is the record “made or received in the transaction of public business?”

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Most of the records that a public agency has do relate to the business of the agency. Records that are personal, however, are not related to the work of the agency and are not subject to disclosure under the public records law. This can describe a great many records, including personal emails created by public employees or officials (see my earlier **post on emails as public records**).

### 3. Is there an exception that applies?

There are numerous exceptions to the public records law. The better part of David Lawrence's *Public Records Law For North Carolina Local Governments* book explains the various exceptions, and it is the most complete resource for information on how to interpret them.

### 4. Does the exception apply to the entire record, or only to certain information, and does it prohibit disclosure or does it deny the right of access?

Some exceptions are described as exceptions to the right of access, though they do not prohibit the release of the records. The exceptions for **criminal investigation information** and **economic development projects** are examples of these types of exceptions. In these cases, the public agency is not required to provide the records, but it may if it chooses to. Other exceptions, like those involving **information in the personnel file** and **trade secrets**, actually prohibit disclosure. In addition, there are some exceptions that have exceptions within them – that is – some exceptions identify specific information that would fall within the exception, but that must nonetheless be made public. Both the personnel file (**see G.S. 160A-168(b)**) and criminal investigation information (**see G.S. 132-1.4(c)**) exceptions contain these types of provisions. This part of the analysis requires careful attention to the various types of information that may be contained in a single record, and a determination about whether all or part of the record is subject to public access.

If an exception applies, the public agency may be allowed or even required to deny access to the entire record. In many cases, however, a particular record may contain a mix of public and nonpublic information. Depending upon the wording of the particular exception, the public agency may be required to redact or separate confidential information from other information that is public. Although the **public records law** applies to records, not information, it also provides that a request for access to a record cannot be denied on the grounds that confidential information is commingled with nonconfidential information. Indeed, the law requires the public agency to bear the cost of separating the information in order to comply with the request. (**See G.S. 132-6(c)**) If an exception specifically prohibits disclosure of an entire record, redaction is not required.

## Links

- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_132/GS\\_132-1.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_132/GS\\_132-6.2.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-6.2.html)
- [www.sog.unc.edu/publications/books/public-records-law-north-carolina-local-governments-second-edition](http://www.sog.unc.edu/publications/books/public-records-law-north-carolina-local-governments-second-edition)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_132/GS\\_132-1.4.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.4.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_132/GS\\_132-6.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-6.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-168.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-168.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_132/GS\\_132-1.2.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.2.html)