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## Coates' Canons Blog: Public Records Law and the Tax Office

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The basic concept behind North Carolina public records law is simple: all government records are “property of the people.” As such, they must be made available upon request for free or minimal cost unless a statute specifically exempts a particular type of record from disclosure. But many local tax offices are learning that putting this simple concept into practice can be complicated.

Consider this request submitted to a number of counties in recent months: “Please produce a list of all foreclosure actions in which the foreclosure sale produced surplus funds that were then submitted to the clerk of court for distribution.” Clearly, somebody out there thinks there is money to be made alerting taxpayers of possible unclaimed surplus funds being held by the courts. Are tax offices required to assist with this somewhat questionable entrepreneurial effort?

Before we can answer that question, we need to remember four key public records principles.

First, remember that government officials are prohibited from requiring a public records requestor to reveal the purpose or motive behind a public records request. See G.S. 132-6(b). If you think a requestor is up to no good, of course you can share your concerns with local law enforcement. But you cannot refuse to produce public records simply because you question the requestor’s intent.

Second, know that the term “record” is very broadly defined and includes any type of information-retention vehicle you could imagine: paper documents, computer files, photographs, sound recordings, you name it. G.S. 132-1. Essentially all local tax records are public and subject to disclosure without any redaction unless they fall into one of two categories:

1. Records that contain income information (G.S. 153A-148.1 and G.S. 160A-208.1); or
2. Records that contain Social Security numbers or other “personal identifying information” such as bank account numbers, credit card numbers and the like (G.S. 312-1.10).

Records that fall into category one (income information) are confidential and need not be disclosed. The tax office *may* disclose these records, but if they do so they must first redact (in other words, cross-out/obscure/delete) the income information. For example, applications for the elderly/ disabled homestead inclusion are confidential and not subject to mandatory disclosure because they contain information concerning taxpayers’ annual income.

Records that fall into category two (Social Security numbers and the like) *must* be disclosed after redacting the personal identifying information, assuming they do not also contain income information. If a document contains *both* Social Security numbers and income information (such as the exclusion application mentioned above), then the document should be treated as a category one document and would not be subject to mandatory disclosure. But if a document contains only Social Security numbers or other personal identifying information and no income information, then the tax office *must* redact and disclose the document. Take a look at this post for more details about the use of Social Security numbers by local tax offices.

Third, keep in mind that local governments are not required to create records that they don’t already maintain. If I ask Carolina County for a list of all property owned by taxpayers who are registered Democrats, the county can refuse my request because that is a record that the county does not maintain. (Or at least I hope your county doesn’t; if so, you’ve got problems that go beyond public record laws.)

Fourth, recall that local governments normally may charge a requestor only for the “actual cost” of making the requested copies, which would *not* include any labor costs. G.S. 132-6.2(b). For hard copies, the actual cost would be the cost of the

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paper and ink used to make the copy, plus per-copy depreciation of a copy machine owned by the tax office owns it or a per-copy portion of the cost of a leased copy machine. Seems to me that a reasonable per-copy charge for public records would likely fall into the ten- to twenty-cents range. For records being produced in digital format and emailed to the requestor, the actual cost will likely be zero.

Now, back to the request for a list of foreclosures that produced surplus funds. While the tax office certainly has foreclosure records that contain information about surplus funds, it likely does not maintain a list that summarizes that information. My colleague Frayda Bluestein expertly analyzes this records-versus-information conundrum here.

The simplest response would be to deny the request because the tax office does not maintain the specific list requested, and to offer no alternatives. If the tax office chooses this approach, I imagine the ensuing dialogue would sound something like this:

Tax Office: *Sorry, sir, but we don't maintain any such record.*

Requestor: *You mean you don't have **any** foreclosure records?*

Tax Office: *Oh, of course we have foreclosure records. We just don't have the list you requested.*

Requestor: *But those records would show whether the foreclosure sales produced surplus proceeds, right?*

Tax Office: *Um, yes, they would, I guess.*

Requestor: *So you do have records that would satisfy my request.*

Tax Office: *Well, sort of. I mean, we don't have a list, but we do have foreclosure records.*

Requestor: *What's your name again? I need to let the county commissioners know that you guys are playing games down here.*

To avoid this unpleasant exchange, the tax office might wish to consider other options.

The tax office could volunteer to create the list for a reasonable charge, which likely would include labor as well as material costs. G.S. 132-6.2(e).

If the tax office doesn't wish to create the list or if the requestor doesn't agree to the proposed charge, the tax office has two more options.

It can make available to the taxpayer all of the records that contain the information requested (after removing/redacting records that fall into one of two confidential categories discussed above) and allow the requestor to pick through the records and indicate which ones he/she would like copied. While attractive because it places most of the research burden on the requestor, this option may not be possible if the records exist only in digital format. For obvious reasons, tax offices cannot offer requestors carte blanche access to their computer systems.

Alternatively, the tax office can choose to identify and copy the relevant records itself, after alerting the requestor that the request may involve a substantial amount of copy costs and may take some time to complete. This might be relatively easy if the information is contained in an easily searchable database. If so, the tax office almost certainly has the obligation to run the query necessary to produce the requested information.

Assuming that no such easily searchable digital data base exists, may the tax office charge additional fees if it chooses to identify and copy the relevant documents themselves? Possibly.



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G.S. 132-6.2(b) allows for local governments to require payment of a “special service charge” for requests that “require extensive use of information technology resources or extensive clerical or supervisory assistance.” In his excellent treatise on public record law, my colleague David Lawrence concludes that “this provision seems to allow charging for equipment use when it takes extraordinary use to make the cop[ies] or charging for employee time when that time is also quite out of the ordinary.”

Problem is, we have no court decisions that explain exactly how many copies are needed to justify a special service charge. The decision would also depend on the impact of responding to the request on the tax office's other operations (the smaller the office, the larger the impact).

For more guidance on this topic, check out Frayda Bluestein's helpful framework for responding to public records requests here.

## Links

- [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)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-148.1](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-148.1)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-208.1](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-208.1)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.10](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.10)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-6.2](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-6.2)
- [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)