Coates' Canons Blog: Query That! Public Records Requirements Regarding Database Queries

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Looking to drum up new business, Tony Gazzo makes a public records request to the Rockyham County property tax office for a report listing the names, addresses, and amounts owed for all real property owners who are delinquent on their property taxes as of March 15, 2012. The property tax office maintains a database which includes all of this information. It periodically produces a report from the database that includes this information to aid the county in its collection efforts. It does not have a current report as of the date requested by Mr. Gazzo, though. In order to produce the report the county tax collector, Adrian Pennino, would have to run a query in the property tax database. Adrian recently participated in a School of Government workshop on public records and she remembers something about not having to create a record that does not already exist. In fact, she finds a reference to G.S. 132-6.2(e) in her notes, which states that "nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist." Based on this statutory provision, Adrian refuses to create and produce the requested report. Mr. Gazzo is not that familiar with the state's public records laws. (Although he is very interested in the School's upcoming webinar series addressing common public records issues! More on that below.) He presses Adrian on her interpretation of the statute, though. In his opinion, because all of the information exists in the county's database, Adrian would not be creating a new record. Rather she would be accessing existing records from the database by running a simple query.

What do you think? Does Adrian have to run the query to produce the report or does this fall outside the scope of what is required under the public records law in North Carolina?

I believe that, at least under these facts, Adrian likely has to run the query to produce the requested report.

No Requirement to Create a New Record Pursuant to Public Records Request

A public agency does not have to create a record that does not already exist pursuant to a public records request. **G.S. 132-6.2(e).** The public records laws are intended to provide public access to records that are created and maintained for government purposes. They generally do not impose an obligation on a public agency to generate records that do not already exist. For example, as Frayda Bluestein discussed in a previous **post**, a local government likely is not required to *compile* a list of all building permits issued to governing board members or their relatives. The unit could comply with a request for this information by producing the separate records related to each board member and relative. (The government certainly could choose to compile the list but it could not be so compelled.) That post also notes that the personnel privacy statutes specifically require public agencies to provide specified information about public employees, so that category of public records is a bit of an exception to this general rule.

Database Query May Not Constitute New Record

Arguably, running a database query to compile certain information into a single report creates a new record. If that is true then a unit should not have to run a query to create a report or compilation pursuant to a public records request. Although

no North Carolina court has addressed this issue, courts in other states with similar public records requirements to North Carolina's have treated database queries differently, though. (At least database queries that can be accomplished with minimal programming effort.)

For example, in *Tennesean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998), a newspaper sought a compiled list of names, addresses, and telephone numbers of the customers of a city electric utility. The utility refused the request on the ground that it did not possess a "record" containing the specific information sought. Instead, it maintained the information on a Master Tape. (The Tennessee law's definition of a public record is similar North Carolina's, and it also specifies that a public agency need not create a new record to respond to a public records request.) The newspaper sued the utility to compel production of the requested list. The Tennessee Court of Appeals held in favor of the utility on this issue, concluding that the "natural and ordinary meaning of record meant information gathered or organized on a particular subject and in a particular format." (internal quotations omitted). Because the utility did not possess a list containing the requested information, the court held that it was not compelled to create a new record to satisfy the request. The Tennessee Supreme Court reversed, holding that the utility was required to disclose the information. The court found the court of appeal's "emphasis on the physical format of a record inconsistent with the language in the Public Records Act and its policy of full disclosure." A record, according to the court, "does not consist of a particular physical format or form." The court further opined that

> once information is entered into a computer, a distinction between information and record becomes to a large degree impractical. In our view, it makes little sense to implement computer systems that are faster and have massive capacity for storage, yet limit access to and dissemination of the material by emphasizing the physical format of a record.

Id. at 304.

Similarly, in *Locator Services Group, Ltd. v. Suffolk County Comptroller*, 40 A.D.3d 760 (N.Y. App. Div. 2007), an individual requested certain vendor payment information from the county. The information was contained in a database. In order to access the information, the county would have to perform queries within its database. The county denied the request claiming that under the relevant public records laws it was not required to create a new record. The New York Supreme Court, Appellate Division, disagreed, holding that the county was not creating a new record when it simply performed a query within its database, utilizing an existing program.

Under North Carolina law, a public agency is prohibited from using any "electronic data-processing system . . . [unless] it will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records." **G.S. 132-6.1**. Given this statutory directive, I think it is likely that a North Carolina court would hold that performing a database query to compile information into a report does not constitute the creation of a new record.

It is important to note, however, that in each of the cases cited above the courts emphasized that the nature of the database queries did not involve extensive programming or cost to the public agencies. Many database software applications allow for such queries to be made with minimum end-user effort. The result may very well be different if a unit had to perform more complicated programming efforts to extract and compile the requested information. *See Generally* Schulten, Ward & Turner, LLP v. Fulton-DeKalb Hospital Authority, 535 S.E.2d 243 (Ga. 2000) (concluding that where public agency did not have automated or batch program to routinely compile and print out records, agency was not required to develop a computer program or otherwise have a computer technician search its database to create a new record).

Protected Database Information

Even if an individual has a right to demand access to the information within a database (by requiring the unit to perform simple queries), there is no right of access to the database itself. **G.S. 132-6.1(c)** specifies that a public agency need not disclose the "security features of its electronic data processing systems . . . including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes."

Furthermore, there is no right of public access to exempted public records or information, such as personal identifying information, personnel records, or criminal investigation or intelligence information that are maintained in a database. In response to a public records request, an agency must either run a query to produce the requested record, excluding the

protected information, or it must redact that information from the record resulting from the query.

Finally note that **G.S. 132-1.5** prohibits general public access to automatic number identification and automatic location identification information contained in a county or municipal 911 database or telephonic or electronic emergency notification or reverse 911 system. Additionally, **G.S.132-1.3** limits access to email subscription lists (which might be maintained as a database) by specifying that a local governments is not required to provide a copy of such lists.

School of Government Public Records Webinar Series

Do you want to learn more about this and other common public records issues? Join your colleagues across the state in a virtual classroom for a series of webinars on public records requirements in North Carolina. The first webinar provides an overview of public records laws and highlights key exceptions to the right of access. It will be held this **Thursday, March 29, 2012, from 1pm-3pm**. To learn more about the webinar series and to register for one or more of the sessions, click **here**.

Links

- canons.sog.unc.edu/query-that-public-records-requirements-regarding-database-queries/rocky-2nd-jpeg/
- www.imdb.com/character/ch0002260/
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-6.2.html
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