
Coates' Canons Blog: Requests For Public Records Under FOIA: How Should Local Governments Respond?

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North Carolina local governments occasionally receive requests for records under the wrong law. Here's an example:

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the following records... Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities... If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act.

Does FOIA apply to local governments? No. Is the local government obligated to respond? Perhaps not. *Should* a local government respond? I think so. Even if the requester cites the wrong law, the local government should recognize and respond to the request if it is within the scope of North Carolina's public records law. This blog post provides information about FOIA, and provides a sample response that local governments can use should they decide to honor the request.

What is FOIA?

FOIA stands for Freedom of Information Act, and usually refers to the federal law that provides access to records of federal executive agencies. (To learn more about federal FOIA, go here.) People sometimes use the FOIA acronym to refer to public records laws generically, and it may also refer to a state public records law that is styled as a FOIA law. As it happens, North Carolina's law is not styled that way. It is generally referred to as the Public Records Act.

Federal FOIA Applies Only to Records of Federal Agencies

The federal FOIA requires federal agencies to provide access to certain types of records, subject to exceptions as set out in the statute. 5 U.S.C. § 552 (2)(A)-(E). It applies only to federal agencies as defined in the statute, and does not apply to state agencies or local governments. See 5 U.S.C. § 552 (f)(1), and *St. Michael's Convalescent Hosp. v. State of Cal.*, 643 F.2d 1369, 1373 (9th Cir. 1981).

What about records relating to federally funded programs administered at the state or local level? Does federal FOIA provide access to those records held by state or local agencies? Apparently not. As one court has noted: "Although state and local governmental units and private grantees may be regulated and completely funded by the federal government, it does not necessarily follow that these bodies fall within the definition of [federal] 'agency'... Extensive, detailed and virtually day-to-day supervision by the federal government is needed before [federal] 'agency' status could be said to attach." *Lakewood Residents Ass'n, Inc. v. Twp. of Lakewood*, 294 N.J. Super. 207, 215, 682 A.2d 1232, 1236 (Ch. Div. 1994), *aff'd sub nom. Lakewood Residents Ass'n, Inc. v. Lakewood Hous. Auth.*, 294 N.J. Super. 146, 682 A.2d 1201 (App. Div. 1996) (citations omitted).

A Reasonable Response



I suppose it would be legal for a local government to simply reject a request for records under FOIA, but really what's the point? Such a response would likely be followed by another request under state law. So my suggestion is that North Carolina public agencies should respond by noting that the requester cited to the wrong law, but that the unit is prepared to provide the requested records under North Carolina law.

Depending upon the wording of the request, however, the response may need to note some differences between the federal law and the state law. For example, as reflected in the FOIA request set out above, FOIA provides that an agency must waive or reduce fees for requests that involve information that is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." FOIA also has special fee provisions for media requests. See 5 U.S.C. 522(a)(4)(A)(ii) and (iii). The North Carolina public records law does not have any such provisions. So it will be important in the response to make sure the requester wishes to proceed with the request and agrees to pay any fees that may be charged under the state law.

Here is a sample response:

Dear [requester of public records]:

This is in response to your request for records under FOIA. The federal FOIA statute applies only to federal agencies and does not apply to a North Carolina state or local government agency. North Carolina public agencies are required to provide access to records under the state Public Records Act (Chapter 132 of the North Carolina General Statutes). We can respond to your request under the North Carolina law, but please note that the state law does not require any waiver or reduction of fees for media requests or for requests that are "in the public interest," nor does the law require a justification for any deletions or denials.

Please reply to this response and let us know whether you wish to receive the requested records under the North Carolina Public Records Act and if so, please confirm that you agree to pay any fees for copies as authorized under G.S. 132-6.2.

Links

- www.law.cornell.edu/uscode/text/5/552
- www.foia.gov
- www.ncga.state.nc.us/enactedlegislation/statutes/html/bychapter/chapter_132.html