



Subject: Public Information and
Public Records Procedures
Effective Date: 6/4/2019
Department: Public Affairs
Revised Date:

Revision: 2
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Rescinded Date: [Policy Rescinded Date]

A handwritten signature in black ink, appearing to read "Roman Berfield".

City Manager

To All City Employees:

I. Purpose

The purpose of the public records policy is to assist city officials and employees in understanding and complying with the public records law, including: 1) responsibility for records; 2) record retention, 3) how requests for public records are made; and, 4) how to respond to requests for public records.

II. Policy

It is the policy of the City of Durham to comply with all requests for public records requests in accordance with North Carolina State law. Public records are the property of the people.

III. Definitions

- a. **Public Records:** North Carolina General Statute (NCGS) 132-1(a) defines public record(s) as "all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official state or local, (elected or appointed) institution, board commission, bureau,

council, department, authority or other unit of government of the state or of any country, unit special district, or other political subdivision of government.”

Requestors should be aware that the public records policy does not require the City to do research, analyze data or answer written questions. According to NCGS 132-6.2(e) “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 and compiling a record that does not exist.”

- b. **Exempt Records Not Public:** All records maintained by the City of Durham are public unless they are exempt from disclosure under the NC Public Records Law. If a records request is denied, the City will cite the appropriate law that allows the City to withhold the record.

Exempted records include but are not limited to:

- Confidential communications from an attorney to a client within the scope of the attorney-client relationship as defined in NCGS 132-1.1.
- Criminal investigation records and records of criminal intelligence information, as provided in NCGS 132-1.4 (active and closed investigations.)
- Sensitive public security information, including specific details of public security plans and arrangements, detailed plans and drawings of public buildings and infrastructure facilities, and certain plans to prevent and respond to terrorist activity, as provided in NCGs 132-1.7 and technology security information.
- Records of minors per NCGS 132-1-4, 132-1.12 and 7B-2901.
- All information contained in City employees’ personnel files maintained by the City is confidential in accordance with NCGS 160A-168, except information specified to be a matter of public record, such as name, age, dates of employment, current position title, current compensation. These rules apply to personnel information for applicants, current employees and former employees.
- Social security numbers and personal “identifying information” is confidential and unlawful to disclose to the public. In addition to social security numbers, “personal identifying information” includes: employer taxpayer identification numbers; drivers’ license numbers, passport numbers; checking, savings, credit and debit account numbers; personal identification code (PIN) numbers used to access financial resources; digital signatures; and other numbers or

information that can be used to access a person's financial resources; biometric data; fingerprints; and passwords; all as provided in NCGS 132-1.10, NCGS 75-61 and NCGS 14-113.20.

- Trade secrets and electronic payment account numbers are protected as set forth in NCGs 132-1.2. (Note that to protect a "trade secret" detailed requirements must be met.)
- The seal of an architect, engineer or land surveyor when that seal has been submitted for project approval under Part 5 of Article 19, Chapter 160A (Building Inspections) as set forth in NCGS 132-1.2.
- Certain economic development incentives are temporarily protected, but the City must make certain prior disclosures to applicants, as provided in NCGS 132-1.11 and NCGS 132-6(d).
- Closed session meeting minutes that are deemed protected under NCGS 143-318.10(e).
- Water & sewer customer billing information (GS 132-1.1 and GS132.1.2 (2)).

- c. **Draft Documents and Personal Notes.** A draft document that has not been circulated to other for review or comments, it is likely not considered a public record. Such documents would not have to be disclosed if there were a public record request. However, once a draft document has been circulated to others, it may become a public record. In most cases, a staff member's personal notes, taken in their own hand during a meeting, do not qualify as a public record.
- d. **Email Records, Text and Social Media.** Emails, text messages on cell phones and iPads, and social media posts that transact or discuss City business are public records. Please note that whether or not the device is City-issued or personal, the content of the message is what makes the message a public record. Also, there are some retention issues that uniquely apply to emails. See *Retention and Disposition of Public Records Electronic Records*, in section V.
- e. **Temporary/Transitory Records:** Some records are "transitory," and although they are public records, they do not have to be retained after they serve their immediate administrative value. Such records with short-term value may be destroyed or otherwise disposed of when their reference value ends. They include rough drafts once the final document is finished, reservations and

confirmations, email messages not related to City business, downloads for the Internet, records that do not contain information necessary to conduct City business, and tape recordings made to assist in the preparation of final minutes. If there's any doubt, refer to the NC Department of Cultural Resources' Municipal Record Retention and Disposition Schedule at https://files.nc.gov/dncr-archives/documents/files/2019_local_standards.pdf.

IV. Procedure

A. Responsibility for Records

1. City Administration: According to NCGS 132-2, "The public official in charge of an office having public records shall be the custodian thereof." A City department director, for purposes of this policy, is considered the custodian of all records in his or her department, and is responsible for seeing that public record access requirements are complied with for records of that department. Although department directors may be designated as the official custodians, every City official or employee who creates or receives a record in any form is responsible for records management of that record and for purposes of this Policy is the primary record custodian.
2. City Council, Council Appointed Boards, Committees and Commissions: The City Clerk is responsible for ensuring that the public access requirements of Chapter 132 are met for the City Council and Council appointed boards, committees and commissions. For boards, committees and commissions, each member is the primary record custodian of his or her own records.

B. Retention and Disposition of Public Records

1. Retention: The law requires that public records be retained in a manner that allows public access, and specifies periods of time during which the record must be retained and may not be destroyed. Each City official and employee is responsible for retaining and managing the public records they create or receive, including their emails. As to all records, the City follows the information and guidelines provided by the North Carolina Department of

Cultural Resources, including the Department's Municipal Records and Retention and Disposition Schedule. See 2019 "General Records Schedule For Local Government Agencies" at https://files.nc.gov/dncr-archives/documents/files/2019_local_standards.pdf and 2012 "Municipal Records Retention and Disposition Schedule" at https://files.nc.gov/dncr-archives/documents/files/municipal_20120910_0.pdf.

City officials and employees should review the Disposition Schedule and refer to it as necessary. All records should be managed to meet all retention requirements set forth in the Disposition Schedule.

There may be special circumstances in which other legal requirements for retention exist, such as an outstanding record request, court subpoena or court order, or some state or federal law or grant requirement. In these cases, retain the record until the special circumstance no longer exists.

2. Retention of Electronic Records: Any record that is retained electronically, such as emails, text messages, and social media posts, should be maintained in a secure system that controls access, storage, retrieval, alteration and deletion.

The City of Durham Technology Solutions Department has established a system that allows for retention to assure compliance with the law. However, each official and employee must set up their own retention procedures within the system. Social Media accounts should be archived through the City's vendor. *See City of Durham Social Media Policy for Employees (PA-3-3) to ensure compliance. Elected Officials and Boards must comply with the Elected Officials and Appointed Boards, Committees and Commissions Policy maintained by the City Clerk and can be found at <https://durhamnc.gov/DocumentCenter/View/21889/City-Council-Social-Media-Policy-Approved-October-2-2017>.*

3. Disposition: Public records can and should be destroyed after they have been retained for the correct time period as determined by the Disposition Schedule, and in accordance with the guidelines set by the North Carolina Cultural Resources Department, unless there is some other reason that record

should be retained. Having a plan for the destruction of records eliminates obsolete records and saves resources by not indefinitely and unnecessarily storing records beyond appropriate retention periods.

A public record that is not purged remains a public record and must be disclosed upon proper request or upon receipt of a subpoena.

Note that if a department decides to retain records beyond the retention period set forth in the Disposition Schedule, the department must disclose the records upon proper request, even if the department would no longer, by law, be required to have the record. For example, if the Disposition Schedule requires that the department maintain a document for two (2) years and, when the document is aged three (3) years, the department receives a public records request or a court order that includes this document, the department must disclose that record. If litigation is threatened or commenced about a matter to which the record pertains, the department may not destroy the record.

4. Metadata: Retaining emails includes capturing and maintaining the certain metadata about the email records. *Metadata* is “data about the data” and includes information about the creator of the email, the creation date and the names of the recipients. Email records should have all the information necessary to ensure their long-term usefulness and the ability to retrieve them as needed.

However, other metadata should be removed from documents before they are finalized and shared. For example, when a Word document is edited, metadata that does not appear on the face of the document still exists that would allow the prior version of the document to be recreated. It is the final version, after editing and before broad circulation that usually constitutes the public record.

C. Sources for Specific Public Records Requests

1. Police Incident Reports: The Durham Police Department maintains incident reports at the Police Department Headquarters on 602 E. Main Street,

Durham, NC 27701 and records may be inspected there during normal business hours, Monday through Friday 8:30 a.m. to 5 p.m.

2. Requests for Inspection Permits and Notices of Violation may be requested from the Development Services Center at www.dsc.mojohelpdesk.com.
3. Personnel Records may be requested directly from the Human Resources Department by email or in writing at HRConnect@Durhamnc.gov, or phone (919) 560-4214.
4. Requests for City Council, Boards, Committees, and Commission Records should be made through the City Clerk's Office in one of the following ways:
 - a. Through the City of Durham website at <http://durhamnc.gov/3037/Public-Records-Request>
 - b. Via the Durham One Call app, which must be downloaded from the Apple Store
 - c. In writing, addressed to City of Durham, City Clerk's Office, 101 City Hall Plaza, Durham, NC 27701

Once submitted, the City Clerk's Office will respond to the requestor within two business days to confirm that request was received.

5. All other General Public Records Requests should be made through the Office of Public Affairs in one of the following ways:
 - a. Through the City of Durham website at <http://durhamnc.gov/3037/Public-Records-Request>
 - b. Via the Durham One Call app, which must be downloaded from the Apple Store
 - c. In writing, addressed to City of Durham, Office of Public Affairs, 101 City Hall Plaza, Durham, NC 27701

Once submitted, the Office of Public Affairs will respond to the requestor within two business days to confirm that request was received. For tracking and accuracy purposes, requests will not be taken by phone.

6. All requests for public records should contain the following information:

- Date of the request
- Requestors name
- Requestors mailing address – if requested information is to be mailed
- Requestor’s cell or day-time phone number
- A complete description of the record or records requested
- The title and the date of the requested record or records, if known; and,
whether the requestor would prefer to inspect the record or obtain a photocopy or electronic copy via email. (*Charges may apply for photocopies, CDs or flash drives. The requestor will be notified of the cost prior to fulfilment of the request.*)

D. Handling of General Public Records Requests

After acknowledgement of the request, the Public Affairs Office will forward the request to the appropriate department director, or designee, for fulfillment. Every effort will be made to provide the record in a timely manner, acknowledging that the broader and less specific a request is, the more time-consuming it takes to fulfill the request.

If a department asks the requestor for clarification of the request, no further response will be made to the requestor until the clarification is received by the City.

1. Specific Format Requests: If the requestor specifies a preference for a specific format, records will be produced in the requested format if:

- a. it is determined that the records exist and are subject to release;
- b. the City is capable of providing the records in the format requested;

- c. the format requested is consistent with how the record is maintained or is otherwise reasonable; and
 - d. the requestor pays all fees associated with fulfilling the request. The requestor will be notified in advance of any fees that will be charged to provide information in a particular requested format.
2. Inspection of Records: A requestor may ask to inspect City records. The City will notify the requestor once the records are available for inspection, and make them available at a date and time mutually agreed upon by the requestor and the City. The appointment to inspect the record may need to be broken into intervals, as not to interfere with daily operations of a department.
3. Special Charges for Extensive Requests: Most records are provided at no charge. As set forth in GS 132.6.2(b), some requests for public records require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel and higher charges may be associated with these requests.
 - a. Information Technology or Personnel Costs: When a request is likely to result in charges for extensive IT or personnel costs, a City employee shall respond by contacting the requestor to discuss the approximate cost associated with the request, and whether the requestor may choose to narrow their request in order to obtain the records desired.
 - b. Costs for Information Transfer: Costs, such as paper for extensive copying or a new, unused flash drive, may be incurred by the City and passed along to the requestor. The requestor will be notified in writing in advance of any associated cost to fulfill a request. Due to potential transfer of viruses, requests for information to be provided on a flash drive will incur a charge.
4. Denial of Public Records Requests: If a request for public records is denied in whole or in part, the reason for the denial will be provided to the requestor. If

the requestor wishes to appeal the denial, the requestor must appeal in writing to the City Attorney's Office at 101 City Hall Plaza, Durham, NC 27701.

5. A Public Record Request is Not Continuing in Nature: A public records request only applies to public records available at the time of the request. If additional records are created after the date of the requestor's original public records request, the requestor must submit a new request for these public records. Any records or portions of records made available by the City will ordinarily be provided to the requestor in the same format as they are maintained by the City.

E. Web Privacy Policy

Visitors who request services, share information or participate in a survey on the City website or Social Media platforms voluntarily provide this information and create a public record. That information may be shared with other governmental agencies to provide the help requested. The City may also use that information to help assess user needs and analyze trends. See the City's web policy for more information.

F. Other Information Regarding Public Records Requests

1. Redacting Protected Information: If a record subject to a public records request is exempt from the Public Records Act, and is therefore, not a public record, it will not usually be made available, although exceptions may occur under special circumstances. However, a record may contain information that is protected, while the entire record is not protected or exempt. In those cases, the protected information will be deleted in a manner that shows that a deletion was made. It is the custodian's responsibility to see that the protected information is redacted or protected.
2. Personal Emails: There is no expectation of privacy when using a City computer.

V. Other

Questions regarding this policy, contact:

Office of Public Affairs

101 City Hall Plaza

Durham, NC 27701

Phone: (919) 560-4123

PublicAffairs@DurhamNC.gov

City Attorney's Office

101 City Hall Plaza

Durham, NC 27701

Phone: (919) 560-4158

VI. Attachments

[Policy Attachments]