

Public Records Requests - Interim

Version 1

 Print

Policy	REG01.30.02
Title	Public Records Requests
Category	Governance and Administration
Sub-category	University Communications
Authority	Chancellor
History	New; Interim Regulation approved October 29, 2014.
Contact	Office of the University Counsel; (252) 328-6940
Related Policies	UNC Policy Manual Section 502, Chancellors of Constituent Institutions (https://www.northcarolina.edu/apps/policy/doc.php?id=57) POL02.40.01 FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA OR BUCKLEY AMENDMENT) (https://policy.ecu.edu/02/40/01) REG12.60.05 HIPAA PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION (PHI) (https://policy.ecu.edu/12/60/05) REG06.65.01 PERSONNEL RECORDS (https://policy.ecu.edu/06/65/01) REG12.60.24 USE AND DISCLOSURE OF PSYCHOTHERAPY NOTES (https://policy.ecu.edu/12/60/24)
Additional References	North Carolina Attorney General Guide to Open Government and Public Records (https://cdm16062.contentdm.oclc.org/digital/collection/p249901coll22/id/714082) N.C. Gen. Stats. Secs. 126-22 through 126-23 (pdf) (https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_126/Article_7.pdf) N.C. Gen. Stats. Secs. 132-1, et. seq. (pdf) (https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByChapter/Chapter_132.pdf)

1. Introduction

1.1. East Carolina University, as a constituent institution of the University of North Carolina and an agency of the State of North Carolina, is open and responsive to public records requests. This regulation shall be implemented in accordance with the NC Public Records Act, N.C. Gen. Stats. 132-1, et seq., and other applicable federal and state laws.

2. Public Records Defined

2.1. 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, unless an exception applies.

3. Process for Accessing Public Records

3.1. Access to records. Individuals who seek to access public records of the university should direct a written request to the custodian of the records being sought. The custodian of records is the university employee responsible for maintaining a particular type of record. For instance, student record requests should be directed to the registrar, personnel records requests should be directed to the director of human resources, and law enforcement records requests should be directed to the university police department records custodian. If the custodian of a particular record cannot be easily identified, the request may be directed to the Office of University Counsel.

3.2. Responding to Requests for Records. The NC Public Records Act contains several exceptions, and various state and federal laws provide for the confidentiality of certain records. Prior to responding to a request for public records, administrators, faculty, and staff should notify the Office of University Counsel that a request has been received and confer to determine whether exceptions or confidentiality laws apply. In the event of a court hearing to compel disclosure of public records, having sought and followed legal advice from the Office of University Counsel may reduce the amount of penalties, such as payment of attorney's fees, that may be assessed against a public employee.

3.3. Exceptions and Confidentiality Laws. Exceptions that make records confidential are established by federal and state privacy and privilege laws. The most common exceptions, include, but are not limited to, the following:

3.3.1. Medical and Counseling Records. State privilege laws and the Health Insurance Portability & Accountability Act of 1996 (HIPAA) require that medical and counseling records be kept confidential, subject to very few exceptions.

3.3.2. Personnel Records. An employee's personnel records are confidential in accordance with the NC Personnel Records Act, except that the following information is public about every employee:

3.3.2.1. Name;

3.3.2.2. Age;

3.3.2.3. Date of original employment or appointment to State service;

3.3.2.4. Record of any terms of any contract by which the employee is employed;

3.3.2.5. Current position;

3.3.2.6. Title;

3.3.2.7. Current salary;

3.3.2.8. Date and amount of each increase or decrease in salary with ECU;

3.3.2.9. Date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification with ECU;

3.3.2.10. Date and general description of the reasons for each promotion with ECU;

3.3.2.11. Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by ECU, including a copy of the written notice of the final decision of the Chancellor (or designee) setting forth the specific acts or omissions that are the basis of a dismissal; and

3.3.2.12. Office or station to which the employee is currently assigned.

3.3.3. Student Education Records. The Family Educational Rights and Privacy Act (FERPA) restricts the information that may be released about students. The University's FERPA Policy lists what information about a student may generally be released, also known as "directory information." Before releasing even directory information about any student, however, the custodian receiving the request must check with the Registrar's Office to determine whether the student has placed a privacy block on the information.

3.3.4. Additional Types of Confidential Information

- 3.3.4.1. Personally identifiable admissions information;
- 3.3.4.2. Patent applications and other documents that contain trade secrets;
- 3.3.4.3. Certain criminal investigation and law enforcement records;
- 3.3.4.4. Public security plans;
- 3.3.4.5. Detailed drawings of University buildings and infrastructure;
- 3.3.4.6. Certain contract or bid records prior to a final contract;
- 3.3.4.7. Minutes of closed meetings under the NC Open Meetings Act

3.4. Inspection. Subject to the other applicable provisions of this regulation, the custodian of records must permit inspection of the requested records as promptly as possible after receiving the public records request. Access to public records must be made at reasonable times and under reasonable supervision. The custodian must separate any confidential information from otherwise accessible public records.

4. Actual Costs for Copies, Materials, Postage in Excess of \$50.00

4.1. Cost in Excess of \$50.00. If the requestor asks for copies, the university may charge the actual costs to the University of making the copies in the particular office where copies are made, actual costs of any materials used (such as DVDs), actual costs of putting a record into a medium other than the medium in which it is maintained by the university, and actual cost of mailing, if the total actual cost equals fifty dollars (\$50.00) or more. This charge is separate and apart from the special service fee referenced in section 5 below.

5. Extensive Assistance and Special Service Fee for Over 4 Hours of Employee Time

5.1. Special Service Fee. The University will not charge for the time of its employees if responding to a request requires fewer than a total of four (4) hours of employee time. The University, however, considers four (4) or more hours of information technology, clerical or supervisory employee time as constituting extensive assistance. If responding to the request will require extensive assistance, the University will charge a special service fee (based upon the hourly rate of pay of the employee(s) who will respond to the request, rounded to the next whole dollar). The "hourly rate of pay" of salaried employees is arrived at by applying the standard of 2080 work hours in one work year, which is divided into the annual rate of pay for the employee. The special service fee shall be based on the actual hours of labor required to respond to the request above and beyond the first four (4) hours (which remain free). In no case will there be a charge for the time incurred by practicing attorneys of the Office of University Counsel.

5.2. Estimate of Special Service Fee. In order to avoid surprise to the requestor, where it reasonably appears that responding to a request will require four (4) or more hours of information technology, clerical or supervisory employee time, the custodian shall estimate the total cost prior to gathering the requested documents and/or information and provide the estimate to the requestor in writing. If the requestor objects to the estimate the parties may seek by mutual agreement to adjust the estimate, which may include adjustment of the scope of the request. If the requestor raises no objection to the estimate or agrees to an estimate after negotiation, and the University retrieves the requested documents and/or information, but the requestor thereafter refuses to pay the special service fee, then the University may withhold the documents and/or information until payment is received. Multiple requests within a relatively short period of time from the same individual or the same

organization may be considered a single request for purposes of determining whether the four (4) hour threshold has been reached.

East Carolina University

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