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Board of Trustees CARL Committee

North Carolina Public Records: New Guidance and a Refresher



UNC
GREENSBORO
General Counsel

November 27, 2018



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Today's Topics

- Why Are We Doing This?
- New Guidance from the Governor
- UNC Greensboro Requests
- NC Public Records Law Refresher
- Current Case Studies
- Emails Do's and Don'ts
- Questions and Answers



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Why This is Important

- Compliance with legal, ethical, and political requirements and expectations.
- Minimize reputational risk to the university.
- Minimize legal risk to the university.
- University commitment to transparency.



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Governor's New Guidance

- In July 2018, Gov. Cooper issued a new “Guidance for Public Records and Meetings Access for North Carolina State Government”





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Governor's New Guidance : A Few Highlights

Guidance:

- Requesters Identification or Reason Not Necessary.
- Eliminates Prior Notice as a Basis for Delay.
- Requires Immediate Release of Information that Might Be Embarrassing.
- Content Not Medium Determines Status of Record.
- Requires Agencies Track Public Records.
- Requires Agencies Designate a Specific Recipient for All Public Records Requests.



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UNC Greensboro to Update Policy and Practice

- Chancellor designated task force to review current policy and practice.
- OGC educational presentation to Chancellor's Council, Provost's Council, Student Affairs Directors, School of Nursing, University Communications, et al.
- Goal for completion: Spring 2019.



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UNC Greensboro Public Records Statistics

Area	2017	2018
Athletics	13	18
Board of Trustees	2	4
Business Affairs	5	12
Office of the Chancellor	4	0
Office of General Counsel	0	1
Office of the Provost (Academic Affairs)	2	5
Student Affairs	1	4
Total	27	44



44 Total Requests = 63% increase

- 63% increase in the number of public record requests from last year to date.
 - Athletics and Business Affairs have the most requests.
 - We expect the number of requests to continue to increase.



Selected Periodic Requests

- Salaries of Top 100 Highest-Paid Employees
- Coaches Salaries
- Faculty Salaries
- Athletics Contracts for Coaches and Third Parties
- Board of Trustees Closed Session Materials



Circumstantial Requests

- Complete Salary Data for School of Business Faculty from 2014-2018.
- All Purchase Orders since 2010 to present (order date, line item details and quantity, price, vendor name, & delivery address).
- Total number of public records requests.
- Litigation Documents (e.g. police reports, emails, text messages, reports, etc.).



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North Carolina Public Records Law Refresher

“...made or received pursuant to law or ordinance in connection with the transaction of public business.”

“...as promptly as possible.”

- N.C. Gen. Stat. § 132-1 *et. seq.*



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Texts and Social Media Accounts

- **TEXT MESSAGES ARE PUBLIC RECORDS** in NC.
- Departmental Twitter accounts are **PUBLIC RECORDS** in NC.
- All Official Social Media Accounts Must Be Saved.



Creating a Public Record

- Any document created in the course of UNC Greensboro business in any format on any device is a public record. (**Content**)
Even if it's your personal device or account.
- Documents created for internal discussion only or for closed sessions are still public records and subject to disclosure. (**Public Purpose**)
- As soon as the document is created or drafted, it is a public record.
No Exceptions for Drafts



EVERYTHING you write as a UNC Greensboro employee **is PUBLIC RECORD** (unless there is an exception)

Definition of Employee includes members of the BOT

Exceptions:

- Personnel Records
- Criminal Investigation Records
- Medical and Patient Records (HIPAA)
- Student Records (FERPA)



Email Challenges and Consequences

Public Records

- **Rethink** Your Use of Email
- Quote from a NACUA Colleague:

The Best Definition of Email. Ever.-

The “e” in **e**mail does NOT stand for electronic.

It stands for:

Evil

Eternal

Embarrassing

Evidence



Disparaging Comments

“Absolutely most insulting conversation I have ever had with anyone. What an impolite arrogant woman ... blah blah blah.” (John Kelly, White House Chief of Staff)

“Too bad Senate Majority Leader McConnell couldn’t order her to be quiet again!” (Top aide’s reply)





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Email Challenges. . . And Consequences



A mechanical engineering professor at Michigan State University [sent an email to the school's Muslim Student's Association](#) in response to a planned on-campus protest. In his email he said, "Please return to your ancestral homelands and build them up yourselves instead of troubling Americans."

Released Emails Show Path To Phyllis Wise's Resignation. U of Illinois Trustees Reject Wise's \$400,000 Bonus; Wilson Assigned as Interim Chancellor... U of I released hundreds of emails in response to Freedom of Information requests. Many of the emails were sent to and from Wise's personal email accounts and revealed that she also encouraged others to use their private emails, in an effort to skirt FOIA law.



Republican Gov. Bruce Rauner publicly apologized for writing a 2011 email in which he asserted that half of Chicago Public Schools teachers "are virtually illiterate," saying the comment was "inaccurate and intemperate" and he regrets writing it (current candidate for re-election).



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Silent Sam Public Records Criticism

(from NC Policy Watch)

- When the “Silent Sam” Confederate statue was toppled at UNC-Chapel Hill last month, a flurry of text messages and emails began.
- The UNC Board of Governors. UNC-Chapel Hill Chancellor Carol Folt. UNC President Margaret Spellings. The University Police.
- After weeks of requests from media outlets, UNC-Chapel Hill last week released more than 800 pages of documents.





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Silent Sam Text Messages

- You think they're gonna take that thing down?" Assistant Vice Chancellor for Student Affairs Christi Hurt texted her boss, Winston Crisp, at 8:11 p.m. on Aug. 20.
- "One can hope," Crisp, the university's vice chancellor for student affairs, texted back a minute later.
- The media made a public records request for all messages between university officials (text, voice, and email) relating to the protests.
- In October 2018, Winston Crisp announced his retirement.



Winston Crisp



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Daily Tarheel vs UNC-CH Chancellor Folt

All 17 UNC system schools have received the public records request originally requested by the Daily Tarheel. Under review by NC Supreme Court.

Requests includes:

- Names of every person (including students) found responsible for any Title IX violation since 2008.
- Nature of the Violation (Violations range from sexually-based verbal harassment to sexual assault).
- Nature of Sanction (Up to and including expulsion).





Daily Tarheel vs UNC-CH Chancellor Folt

Status of Legal Proceeding:

- Chapel Hill's Student Newspaper sued the University after being denied access to subject matter records.
- Trial Court rules in favor of the University on the basis of FERPA.
- Appellate Court overruled and ordered the University to produce the records.
- NC Supreme Court stays order of Appellate Court and grants a hearing on the matter (unscheduled to date)





Email Dos and Don'ts *Part I*

1. DO make **conscious decisions** when sending email.
2. DON'T hit send until you have considered possible long term **consequences**:
 - *Evidence in Litigation*
 - *News Headlines*
 - *Social Media Posts*
3. DO NOT Use **sarcastic or disparaging language** or repeat **rumor** and **innuendo** or provide unsubstantiated opinions.



Think Before You Act!

Email Dos and Don'ts *Part II*



Justice Requires Sight:
Consider the Consequences!

1. DO be mindful of distinction between what is **confidential** and what is **privileged**.
2. DON'T send messages that **waive the attorney-client privilege**.



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Think Before You Hit Send!



Thank You and Questions?

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