

DST POLICIES AND PROCEDURES

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| DST Reference: | OST-POL-2002-ALL |
| Title: | Public Records Act (PRA) Request Policy |
| Chapter: | Communications |
| Current Effective Date: | July 7, 2022 |
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Applies to: N.C. Department of State Treasurer – All Divisions

Keywords: public records requests, document requests, e-mail requests, Public Records Act, sunshine laws, FOIA, Freedom of Information Act, Department correspondence, fees, special service charge, protected health information

Purpose

The N.C. Department of State Treasurer (DST or Department) is committed to transparency, ethics and accountability in State government. This document identifies the Department’s policy on public records requests, provides guidance to Department staff and third parties, and establishes procedures that will be used to respond to requests made under the North Carolina Public Records Act. OST-POL-2002-ALL is the governing policy regarding any public records requests made to any division of DST.

Definitions

Pre-Approved Records: Records that do not have to go through legal review or through OST-Communications for release in response to a public records request. Pre-Approved Records are limited to those that:

- i. contain information that is always considered a public record,
- ii. contain no information that is exempt from disclosure,
- iii. do not require redaction of non-public information, and
- iv. have been pre-approved for release by OST-Communications and division counsel.

All documents posted to the external DST website are considered Pre-Approved Records.

A list of all other Pre-Approved Records for each division, not posted to the external DST website, is located in Appendix B. [Requests for Pre-Approved Records for matters involving ongoing or potential investigation, ongoing or potential litigation, or from the media should always be directed to publicrecords@nctreasurer.com.](mailto:publicrecords@nctreasurer.com)

All other terms used in this policy will have the meanings defined in the N.C.G.S. Chapter 132 where applicable.

Roles and Responsibilities

- A. **Public Records Request Coordinator (PRRC):** a member of the Office of State Treasurer (OST)-Communications staff within DST who is responsible for facilitating and providing the Department’s response to public records requests.

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- B. Legal Counsel: attorney(s) within the division the request is related to who are responsible for identifying those records that are exempt from the Public Records Act and ensuring that any information that is confidential or otherwise exempt from public disclosure under state or federal law has been redacted.
- C. PRA Liaison: a person designated by their division director who assists the Public Records Request Coordinator in processing PRA requests including confirming that responses from that division are complete and appropriate before they are sent to Legal Counsel for review (if needed) and to the Public Records Request Coordinator for distribution to the Requester.
- D. Custodian of Records: according to N.C.G.S. § 132-2 the public official in charge of an office having public records shall be the custodian thereof. The DST Custodian of Records is the State Treasurer. The State Treasurer has designated responsibility for public records requests pursuant to this policy.
- E. All other staff: responsible for responding to the Public Records Request Coordinator’s and/or the PRA Liaison’s requests for documents or information needed to fill a public records request.
- F. Requester: Person, group, or entity who has submitted a public records request to the Department.

Implementation

The North Carolina Public Records Act, N.C.G.S. §§ 132-1 et seq., expresses the policy of the State of North Carolina with respect to public records as set forth in § 132-1(b):

“The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law.”

Any record created or received in the course of the Department’s business is a public record unless an exception applies. State law defines a “record” as any document, regardless of form, including but not limited to paper, films, audio tapes, pictures, photographs, computer files, and email communications and is also interpreted to include text messages. See N.C.G.S. § 132-1(a).

Any record created or received while conducting Department business is considered public regardless of where it is stored, including records that are stored on personal devices that are not issued by the State. Personal devices may be accessed for retrieval of public records in the course of fulfilling a public records request.

The North Carolina Public Records Act does not require “creating or compiling a record that does not exist.” See G.S. § 132-6.2(e).

Procedure for Making a Public Records Request

Public records requests should be directed in writing to OST’s Public Records Request Coordinator at publicrecords@nctreasurer.com or by mail to the Department’s physical address. If a request cannot be submitted in writing, the Requester may submit it over the phone by calling 919-814-3820. No person

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requesting access, review or copying of public information or records shall be required to disclose the purpose or motive for the request.

Most public records requests will be managed by the OST Public Records Request Coordinator and should not be directed to Department staff. In most instances, any staff member who receives a public records request will immediately refer it to publicrecords@nctreasurer.com for processing. Divisions may have a list of Pre-Approved Records that can be released directly to the Requester while providing a copy to the Public Records Request Coordinator; these Pre-Approved Records are discussed further below and listed in Appendix B.

Public records requests should clearly state the:

- Date of the request;
- The specific information requested, including keywords if the request requires a search of Department email;
- Preferred method of production;
- Contact information for the Requester, or if the Requester declines to provide contact information, a means of providing the records.

If a request is made verbally, the Public Records Request Coordinator will ask the Requester for the information above and will note that the request was made verbally. If any of the above information is missing from a request or if clarification of the request is needed, the PRRC will contact the Requester for the information. The intent of this policy is for OST-Communications staff to be the primary contact for Requesters of most DST public records requests unless the request is for Pre-Approved Records.

For requests related to the State Health Plan, the Public Records Request Coordinator will provide notice of the public records request to the Plan's Legal Counsel.

Procedure for Fulfilling a Public Records Request

1. Within two business days of receipt of a public records request, the Public Records Request Coordinator will acknowledge to the Requester receipt of the request and log the request in the Public Request Log.
2. The PRRC will forward the request to the PRA Liaison who will assist and coordinate with division staff with the most knowledge or possession of, the documents necessary to fulfill the request.
3. Legal Counsel for the division will be responsible for reviewing documents that may contain confidential information and if identified, redact the information in accordance with state and federal law prior to releasing the documents to the public. If a public records request cannot be filled because the record is exempt from release by law, then Legal Counsel will notify the PRRC.
 - If the responsive documents are Pre-Approved Records, legal review is not required.
4. Once the documents have been gathered and approved by Legal Counsel, the documents will be sent to the Public Records Request Coordinator for review and distribution to the Requester.
 - If the documents are Pre-Approved Records the division can provide the documents directly to the Requester. When providing Pre-Approved Records to a Requester, the division must provide a

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copy of the original request and responsive documents to OST-Communications via email to publicrecords@nctreasurer.com or by providing hard copies.

5. Denials for public records requests will be communicated to the Requester by the Public Records Request Coordinator after consultation with Legal Counsel. Legal Counsel will provide language to the Public Records Request Coordinator explaining why the records are exempt from production.
6. Legal Counsel may assemble an ad hoc Public Records Response Team to assist when necessary.
7. Department staff should follow the division-specific desktop guides cross-referenced in this policy for step-by-step procedures.

Appendix A contains a flowchart illustrating the public records request process.

Release of Pre-Approved Records by Divisions

Divisions may identify specific types of records that do not have to go through legal review or through OST-Communications for release. Such records are considered Pre-Approved Records. Pre-Approved records are limited to those that:

- i. contain information that is always considered a public record,
- ii. contain no information that is exempt from disclosure,
- iii. do not require redaction of non-public information, and
- iv. have been pre-approved for release by OST-Communications and the division counsel.

When a division receives a request for public records that may be satisfied by providing Pre-Approved Records, the division shall:

1. provide those Pre-Approved Records directly to the Requester, and
2. provide a copy of the request and the responsive documents to OST-Communications via email to publicrecords@nctreasurer.com or by providing hard copies for logging and records retention. Copying the public records inbox will serve as the division's log of steps taken to fulfill a request.

At any time, a division may choose to have its division counsel and OST-Communications review and provide the response to the request, even if the records involve Pre-Approved Records. Requests for Pre-Approved Records for matters involving ongoing or potential investigation, ongoing or potential litigation, or from the media should always be directed to publicrecords@nctreasurer.com.

Only records listed on Appendix B are considered Pre-Approved Records. Both OST-Communications and division legal counsel must approve all records as being pre-approved before inclusion on Appendix B.

Maintaining a Public Records Request Log

The Public Records Request Coordinator shall facilitate the production of the requested information and maintain a Public Records Request Log that includes:

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- Name of the Requester, if given;
- Records requested;
- Date request is received;
- Date request is acknowledged;
- Date of production (or dates, if provided on a rolling basis);
- How the records were produced;
- In what format the records were produced.

Retention of Public Records

Public records may not be destroyed except in accordance with the Department’s Records Retention Policy [OST-POL-5008-ALL] and records retention schedules as issued by the N.C. Department of Natural and Cultural Resources.

The Public Records Request Coordinator will be responsible for retaining the records produced in response to fulfilled requests, including requests received and fulfilled by divisions who provide Pre-Approved Records. The documentation related to public records requests, including the request submitted, records related to searching for and preparing responsive records and the documents that are responsive to the request must be retained for a period of two years after the request is complete (see Functional Schedule for Public Relations 1527.2). However, if litigation, a claim, an audit or other official action involving the records has been initiated the records may only be destroyed after completion of the action and resolution of all issues involved if retention standards have otherwise been met.

Production

Public records may be provided without explanation. Denials will be accompanied by an explanation.

Inspection: the Department will make documents available for inspection at the Department’s physical address during regular business hours. Records that are to be inspected must be inspected in the presence of the Designated Divisional Approver or their designee and viewing of public records may be done only during normal business hours.

Copies: copies of public records are available upon request. Copies may be picked up in person at the Department’s physical location or may be mailed at the expense of the Requester. If the Department mails copies, it may charge postage costs, the cost of any electronic media, and the cost of mailing materials.

Format: documents will ordinarily be produced in electronic format. They will generally be sent to the Requester via e-mail or mailed to the Requester on a storage device such as a CD-ROM or flash drive.

Documents should be produced in the format in which those files are kept on the Department’s computer system. See N.C.G.S. § 132- 6.2(a). A request for documents to be produced in another format may delay the date for production and may cause the Department to charge a special service charge if “producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested.” See N.C.G.S. § 132- 6.2(b). The “Fees” section of this policy discusses this potential service charge in further detail.

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Requests to inspect, examine, or obtain copies of public records will not be denied on the grounds that confidential information is comingled with the requested non-confidential information. The Department will bear the costs of separating confidential from non-confidential information in order to permit the inspection, examination or copying of the public records.

Time Frame: documents will be made available as promptly as possible. In general, the Department will seek to process public records requests on a first-in, first-out basis, but this time frame may be adjusted by the amount of time and difficulty involved in processing any particular request. Specifically, public records requests that require searches of email or of all records in the Department, rather than searches of the files of particular individuals, require a substantially longer time to complete. If the Department receives multiple requests within a short period of time from the same Requester, it may, in its discretion, consider those as a single request. Records may be provided on a rolling basis to allow Requesters to receive information while additional production and review is ongoing.

Assessing Fees

The Public Records Act at N.C.G.S. § 132-6.2(b) provides requesting parties with guidance as to the fees the Department may charge. It is important to note that the Public Records Act, not this policy, is the document that authorizes the charging of fees.

Section 132-6.2(b) of the North Carolina General Statutes allows public agencies to “charge a fee for an uncertified copy of a public record.” Except for extraordinary requests, discussed below, the agency may not charge a fee that “exceeds the actual cost to the public agency of making the copy,” as determined by generally accepted accounting principles. N.C.G.S. § 132-6.2(b).

For ordinary copies produced in paper format, the Department may charge \$0.10 per page after the first 20 pages for printing and copying. Double-sided originals may be charged at \$0.10 per side of the page copied.

For records produced in PDF format, DST may charge \$15 per CD-ROM or flash drive produced to the requesting party. This cost reflects the cost of the electronic media and the cost of printing and scanning the documents produced on the CD-ROM or flash drive. The Department may charge a fee less than \$15 per CD-ROM or flash drive if, in its judgment, this fee would be greater than the actual cost of preparing the production.

Special Service Charge for Extraordinary Requests: Section 132-6.2(b) of the North Carolina General Statutes authorizes, “in addition to the actual cost of duplication,” the agency to charge a “special service charge” in any of the following circumstances:

- “if the request is such as to require extensive use of information technology resources or”
- “extensive clerical or supervisory assistance by personnel of the agency involved, or if”
- “producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested...”

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N.C.G.S. § 132-6.2(b) (emphasis added). In such circumstances, the Department may charge a special service charge.

The special service charge must be “reasonable” under the circumstances (N.C.G.S. § 132-6.2(b)). The charge also must not be greater than the “actual cost incurred” for either the “extensive use of information technology resources or the labor costs of the personnel providing the services” (G.S. § 132-6.2(b)). In computing a special service charge, the Department generally will charge a presumed rate of \$18.00 per hour for department employees who spend more than four hours fulfilling a request and whose primary duties do not include fulfilling public records requests. The Department will charge for outside contractors’ time at their actual rate and for actual hours spent fulfilling the request.

If the request is likely to necessitate the charging of fees, the PRRC or his or her designee will provide the Requester with an estimate of any special service charge before processing the request. The Requester will be given the option of either agreeing to pay the charge or revising the request to narrow its nature or scope. Multiple requests within a short period of time from the same individual will be considered a single request for purposes of determining whether to charge a special service charge under this section.

In order to centralize the process and ensure consistency in assessing fees, OST communications staff will be solely responsible for determining if fees should be assessed in processing a records request submitted to the Department. Even if the records are Pre-Approved Records, the division shall consult with OST-Communications staff who will determine the assessment of any fees. Any fees associated with fulfilling public records requests will be processed by the department’s Financial Operations Division pursuant to the [Accounts Receivable Accounting Procedure](#) [FOD-PRO-5270-ALL].

Waiver of Charges

DST may waive these charges, in its discretion, if extraordinary circumstances exist, if the production is necessary to carry out the Department’s ordinary business, or if the costs of collecting the fee (including postage and the value of the time taken by state personnel to pursue collection of fees) would exceed the fee charged.

Enforcement

The Deputy Treasurer for Communications/Government Affairs shall have authority to interpret and apply this policy. This policy may be modified or amended at any time. Failure to comply with this policy could result in disciplinary action up to and including dismissal.

Related Statutes, Rules and Policies

- The North Carolina Public Records Act is established by N.C.G.S. § 132-1 and identifies what are considered to be public records, as well as some exemptions. Certain information contained in state personnel records is protected from disclosure pursuant to N.C.G.S. § 126-23 and § 126-24.
- Exceptions to the North Carolina PRA include certain personnel, trade secret, attorney-client or work product privileged information, technology & security information, and personally identifying information.

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- Certain individual member information held by the State Health Plan (SHP) is exempt from the Public Records Act pursuant to N.C.G.S. § 135-48.10(a) and federal law.
- The Retirement Systems Division (RSD) and the public nature of the records the division maintains are governed by N.C.G.S. §§ 128-33.1 & 135-6.1, which specifies what member information is available upon request and what information is designated as private and not eligible for release.
- The Unclaimed Property Division (UPD) will fulfill requests for the UPD Owner Database in accordance with N.C.G.S. § 14-113.20, Chapters 116B and 132.
- N.C.G.S. § 132-6.1(c) provides that an agency is not required to release information regarding the security features of its electronic data processing systems, information technology systems, telecommunications networks or electronic security systems.
- Pursuant to an advisory opinion from the North Carolina Office of the Attorney General dated June 6, 2006, portfolio company information about Retirement Systems investments may be exempt from disclosure because it meets the definition of a trade secret under N.C.G.S § 66-152(3).

Accounts Receivable Accounting Procedure [FOD-PRO-5270-ALL]

Records Retention Policy [OST-POL-5008-ALL]

Revision/Review History

| Version | Date Approved | Description of Changes |
|---------|---------------|---|
| 1.0 | 7/31/13 | First version |
| 1.1 | 4/28/15 | Technical Changes |
| 2.0 | 7/9/2019 | Requires most PRA requests to be directed to and come from OST communications instead of from individual divisions; permits divisions to develop a list of Pre-Approved Documents that may be released without OST-Comm and Legal review; determination whether to assess fees is made solely by OST communications; creation of roles and responsibilities in processing requests; other updates to internal process; updated title. |
| 2.1 | 1/31/2021 | Punctuation corrections during 4 th Quarter 2020 annual review. |
| 2.2 | 7/22/2022 | Tech changes to remove Nature of the Policy paragraph, updated name of ACFR, other minor revisions |

Appendices

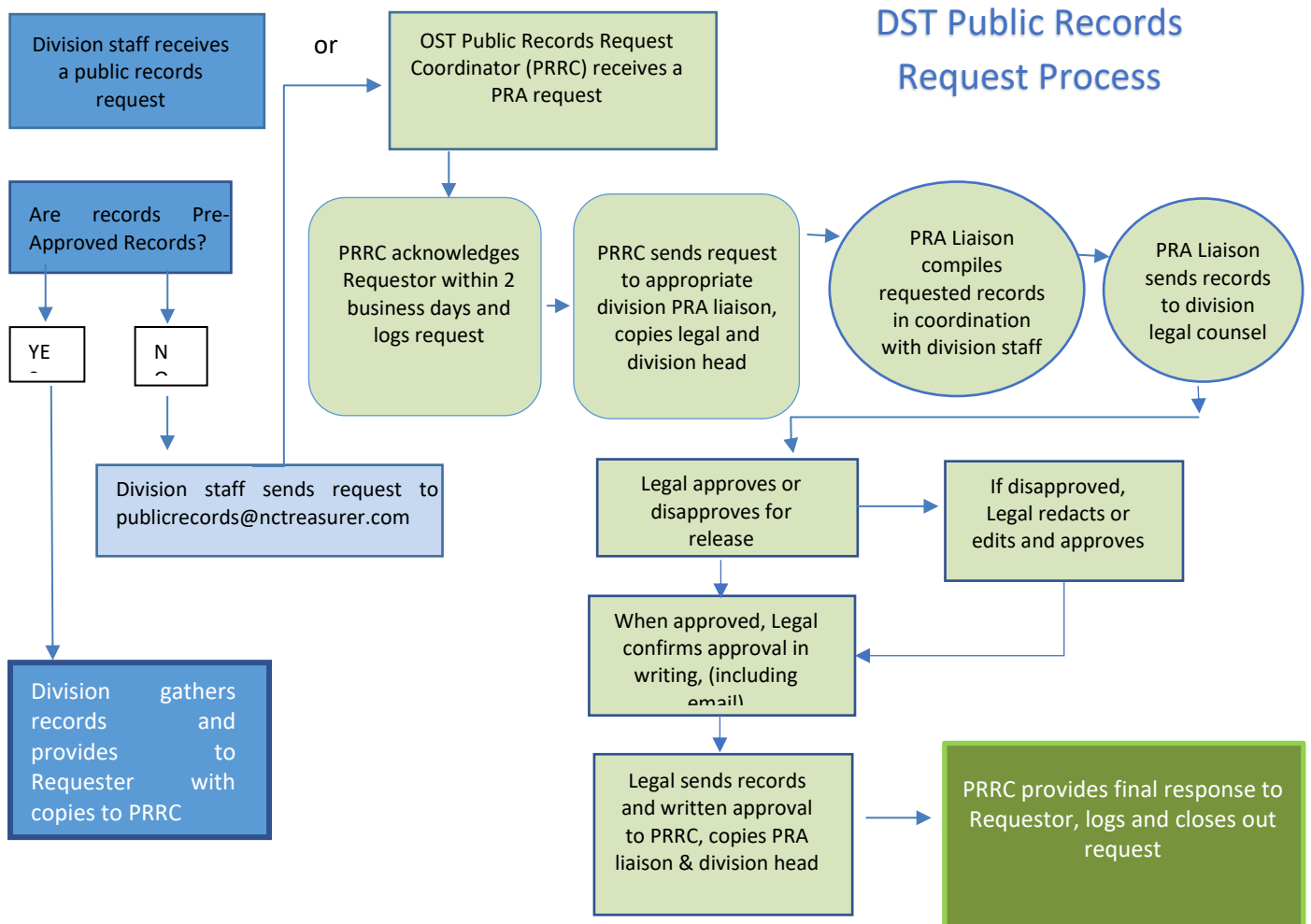
Appendix A – DST Public Records Request Process

Appendix B – List of Pre-Approved Records by division

For questions or clarification on any of the information contained in this policy, please contact the policy owner or designated point of contact at: publicrecords@nctreasurer.com. For general questions about department-wide policies and procedures, contact the [DST Policy Coordinator](#).

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APPENDIX A – Public Records Request Process



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APPENDIX B – List of Pre-Approved Records by Division

State and Local Government Finance Division

- Official letters (those that are in final status and have been formally issued to/from a unit) between the LGC or LGC staff and a unit and local government units, including unit letters, unit letter responses, special unit letters, unit visit letters, white letters
- Annual Financial Information Reports (AFIRs)
- Annual Comprehensive Financial Reports (ACFRs)
- Audit contracts
- Audit invoices
- Unit Assistance List
- Audit reports that have completed the review process (those on which a second reviewer has signed off)
- Work developed as part of a collaborative project with an inter-governmental agency

Requests for Pre-Approved Records for units under ongoing or potential investigation, ongoing or potential litigation, or from the media should always be directed to publicrecords@nctreasurer.com.