



NORTH CAROLINA  
DEPARTMENT OF STATE TREASURER  
STATE AND LOCAL GOVERNMENT FINANCE DIVISION  
AND THE LOCAL GOVERNMENT COMMISSION

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**Memorandum #2014-06**

TO: Local Governments Officials and their Independent Auditors  
FROM: Sharon Edmundson, Director, Fiscal Management  
SUBJECT: Public Records Management  
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**The following material is for informational purposes only and is not intended to substitute for the advice of the local governmental unit's attorney and guidance from the Department of Cultural Resources.**

**A. Introduction**

Local governments and public authorities are required by law to manage their records to ensure public access. G.S. 121-4(2) assigns the records management responsibility to the Department of Cultural Resources ("DCR") and establishes the State Records Center and the records management programs. G.S. 121-5(c) directs DCR to assist local governments and public authorities in the management of their records. DCR does this through consultations, workshops, and preparing retention and disposition schedules. The [Government Records Branch](#) of the DCR provides a wealth of important information at its website. Review and understanding of the information provided at this website is essential for the development of a records management program that complies with State law.

A full range of records management services including consultation regarding the records creation, maintenance, storage and disposition activities, and the responsibilities of local governments with regard to records management as well as destruction and imaging services are provided by the Government Records Branch at the DCR. Contact information for the records analysts assigned to the various counties and municipalities can be found at [www.records.ncdcr.gov/counties.htm](http://www.records.ncdcr.gov/counties.htm).

In addition to assuring compliance with legal requirements, protection of vital records, and preservation of records with enduring value, a records management program provides other benefits. These include controlled records growth requiring fewer copies which may generate cost savings in storage equipment, storage space and supplies. Office efficiency will also improve with reduced searching and faster retrieval times.

**B. Public Records**

G.S. 132-1(a) defines public records 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.” The North Carolina definition of public records is very broad. It is clear that it is the content of a record – not its media or its format – that determines whether it is a public record.

Public Records Law for North Carolina Local Governments (David Lawrence, 2<sup>nd</sup> ed 2009) is available from the School of Government’s [Bookstore](#). It reviews and explains the principal public records statutes applicable to records held by North Carolina local governments and examines the public’s right of access to those records. You may also want to review Frayda Blustein’s posts to the [Coates Canons: NC Local Government Law Blog](#): [Ask, Don’t Compel: Local Government Authority to Establish Rules for Public Records Requests](#), June 15, 2011, [sogweb.sog.unc.edu/blogs/localgovt/?p=4806](#); [Charging for Copies of Public Records](#), April 24, 2013, [canons.sog.unc.edu/?p=7099](#); and [News About Record Retention](#), September 26, 2012, [canons.sog.unc.edu/?p=6855](#). Questions regarding public records should be addressed to the unit’s attorney or the faculty of the School of Government.

### **C. Record Retention and Disposition**

In his popular song, “The Gambler”, Kenny Rogers may have most succinctly described the role of record retention, for as every local government knows, “The secret to survivin', Is knowin' what to throw away, And knowin' what to keep.” (Writer: Schlitz, Don; Copyright: Sony/ATV Music Publishing LLC) Additionally, in North Carolina, G.S. 121-5(b) regulates the destruction of public records by stating that no local government or public authority can destroy records without the consent of DCR. DCR grants its consent through the development and implementation of records retention and disposition schedules – it should be clearly understood that disposition does not always mean destruction. It must be understood that a record retention policy may be more appropriately thought of as a records disposal policy as G.S. 121-5(b) requires that no records be destroyed without consent of DCR and the records retention policy is the source of authorization to dispose of records.

The importance of a comprehensive and carefully considered record retention schedule cannot be over-emphasized. The destruction of unscheduled records – those not included in the record retention schedule – requires the specific approval of the Government Records Branch using the Request for Disposal of Unscheduled Records form available as an online document and also located at the end of DCR’s various [Records Retention and Disposition Schedules](#). Record retention and disposition schedules are included for municipal governments, county departments of social services, county health departments, registers of deeds’ offices, county sheriffs’ offices, alcohol beverage control boards, local education offices and others. The Government Records Branch has staff available to assist local governments and public authorities in the identification, modification and use of the appropriate records retention schedule.

Information regarding local records including links to the assignment of local records analysts and their contact information, record retention and disposition schedules, imaging services available to local governments and public authorities, forms, and schedules of workshops and other training opportunities may be found at the following website: [www.records.ncdcr.gov/local.htm](#). Workshops include a variety of topics including “Disaster Preparedness & Recovery,” “Managing Public Records in North Carolina” and “Managing

Public Records for Local Government Agencies.” Workshops are available at <http://www.records.ncdcr.gov/workshops.htm>.

1. Electronic Records

It is important to remember that records in electronic format are public records and, as such, must be identified in the records retention and disposition schedule. Appropriate procedures must be developed to assure compliance with requirements regarding public access, legal acceptance, security and backups to these records. Electronic records include databases, emails and all other records created and maintained in electronic format by local governments and public authorities. The Government Records Branch provides [guidelines and tutorials](#) related to electronic public records including “Best Practices for Digital Preservation,” “Best Practices for File-Naming” and “E-mail as a Public Record in North Carolina: A Policy for Its Retention and Disposition,” Online tutorials include “Managing Electronic Public Records: Recognizing Perils and Avoiding Pitfalls” and “Managing Your Inbox: E-mail as a Public Record.” It is strongly recommended that these guidelines and tutorials be reviewed. There are also a recent post on [Coates Canons: NC Local Government Law Blog](#) including “Text Messages as Public Records,” Kara Millonzi, April 22, 2013, [canons.sog.unc.edu/?p=7088](http://canons.sog.unc.edu/?p=7088).

2. Permanent Records

G.S. 132-8.2 requires the DCR to “establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights and interests of persons... .” North Carolina’s Office of Archives and History identifies in the record retention schedules certain records that must be permanently retained. Records that document governance or have a significance over a long period of time, such as the minutes of local governing boards and most other local government boards, are among the records that must be maintained permanently in paper or microfilm form. Permanent records should be maintained in the office that created them, forever. In addition, they must have a preservation duplicate. *Only* paper documents and microfilm copies that meet certain high quality standards can be used as permanent records, also called “human-readable preservation duplicates.” The DCR provides microfilming services for the minutes of major decision-making boards and commissions and the State Archives will store the original copy of properly-processed microfilm in a secure facility.

3. Grants Management Common Rule

On March 12, 1987, federal grant making agencies were directed by President Reagan to adopt government-wide terms and conditions for grants to state and local governments. The adopted government-wide terms and conditions are issued in the form of a “Grants Management Common Rule.” The Office of Management and Budget maintains a [Codification of Government-wide Grants Requirements](#) providing the location of each federal departments’ and agencies’ codification of the grants management common rule. Record retention requirements for federal grants are covered in the “Grants Management Common Rule.”

It is important for grantees to carefully review the regulations of their specific federal awarding agencies. Subject to the specific requirements of the granting agency, generally, the financial and statistical records, supporting documents, and all other records pertaining to federal grants must be retained for a period of three years. However, the record retention

schedules from the N.C. Governments Records Branch generally require a five year retention period for documentation related to grants. When there is a conflict between the Grants Management Common Rule and the retention period required by the Grants Management Branch, the longer period should be used. For grant-related records, the retention period starts from the date of the submission of the final expenditure report or, for grants that are renewed annually, from the date of the submission of the annual financial status report. Exceptions are made to this three-year retention period when litigation, claims, or an audit are started before the end of the three-year period; when nonexpendable property is acquired; or when records are transferred to or maintained by the Federal Sponsoring Agency.

Also, OMB Circular A-133 - Audits of States, Local Governments, and Nonprofit Organizations ([www.whitehouse.gov/omb/circulars/default](http://www.whitehouse.gov/omb/circulars/default)) has retention requirements for audits and data collection forms, generally for periods of three years.

#### **D. Financial Records**

Financial records include budget, fiscal and payroll records and are created incident to the managerial control, budgeting, disbursement, collection and accounting activities of local governments and public authorities. Comprehensive provisions for their retention and disposition are included in the schedules developed by the DCR.

It should be noted that a number of financial records require permanent retention or a substantial retention period. In addition to items with historical value such as the budget message, items that require permanent retention include financial audits, bond registers, budget resolution and ordinances. Items of historical value “document significant events, actions, decisions, conditions, relationships, and similar developments. These records have administrative, legal, fiscal, or evidential importance for the government or its citizens.”

Items related to bonds and other debt obligations – including arbitrage rebate calculations and funds rebated, bond closing records including applications, agreements, legal opinions and related debt records – must be retained for a period of time (usually three years) **after all related debts and obligations have been satisfied**. In this regard, it should be recognized that the terms of bonds and other debt instruments can be 30 years or longer and that the retention period begins only when the debt and **all** related obligations have been satisfied.

Personnel-related records that are used for retirement and similar benefits verification should be kept for at least 30 years from the date of separation. In addition, the retention of personnel records should comply with G.S. 162A-6.1 requiring their confidentiality.

Because many of the financial records are on electronic media, local governments and public authorities should be certain that these records are subject to appropriate backup procedures applied on a regular basis and stored in a secure offsite location.

#### **E. Audits, Litigation and Other Official Actions**

Any record has the potential to be the subject of or useful in the resolution of an audit, litigation or other official action. It is the responsibility of the record custodian to be aware of such potential actions, to identify the records that may reasonably be expected to be involved in the matter, and to prevent the destruction of such records.

**F. Personal Identifying Information**

G.S. 132-1.10 addresses the collection, use and disclosure of social security numbers and other personal identifying information. At G.S. 132-1.10(b)(1), the statute provides that a local government may not “collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law.” It is further provided that the social security number must be relevant to the purpose for which collected, that a statement of the purpose for which the number is being collected be provided when collecting the number, and that certain precautions to prevent disclosure be taken when collecting the social security number. Federal privacy laws also have provisions that affect the collection of social security numbers. The local government or public authority must be careful to comply with both the federal and state privacy laws. The Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, 117 Stat. 1952 (Dec. 4, 2003), requires certain creditors to develop and implement a program, known as the Red Flag Rules, to prevent or lessen the effect of identity theft.

State Privacy Act [G.S. 143-64.60] – This statute, passed by the 2001 General Assembly, states that “it is unlawful for any State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.” The statute goes on further, however, to state that it does not apply to any disclosure which is required or permitted by federal statute, nor does it apply to any State or local government agency maintaining a system of records in existence and operating before January 1, 1975, if the information was required under statute or regulation adopted prior to that date to verify the identity of an individual. It is important to note that the statute does not prohibit a unit of government from asking for an individual’s social security number, but only prevents the government from denying services based on an individual’s refusal to disclose the number. When a local government collects a social security number, it should do so in such a manner as to facilitate its removal if the document is made public.

For additional information, one should see Professor Lawrence’s book on public records law discussed above. There are also recent posts on [Coates Canons: NC Local Government Law Blog](#) including “Using Social Security Numbers for Local Tax Administration,” January 5, 2011, [sogweb.sog.unc.edu/blogs/localgovt/?p=3881](http://sogweb.sog.unc.edu/blogs/localgovt/?p=3881) and “Limitations on the Collection and Use of Social Security Numbers by Local Government Utilities,” January 20, 2011, [sogweb.sog.unc.edu/blogs/localgovt/?p=3838](http://sogweb.sog.unc.edu/blogs/localgovt/?p=3838) addressing these issues.