



POLICY OF THE CHATHAM COUNTY BOARD OF COMMISSIONERS

**CLOSED SESSIONS AND RELEASE OF CLOSED  
SESSION MINUTES AND OTHER PUBLIC RECORDS**

Adopted by Board of Commissioners: \_\_\_\_\_

1. PURPOSE AND APPLICATION

The citizens of Chatham County have the right to know how their government is operating, and what functions are being conducted with public funds. Providing an “open government” is an important mechanism for engendering confidence among citizens that public business is being conducted fairly and revenues are being used prudently. The Chatham County Board of Commissioners wishes to take all prudent steps to maximize principles of open government in particular by expediting the release of minutes of closed sessions and by facilitating and easing access of Chatham County citizens to the County's public records.

Consequently, the purpose of this Policy is to assist County officials and employees in understanding and complying with the Open Meetings Law (N.C. Gen. Stat. §143-318.9 - 318.18) and the Public Records Law (N.C. Gen Stat. §132-1 - 132-10). This Policy covers (1) conducting closed session meetings; (2) releasing minutes of closed session meetings; (3) release of public records, (4) protecting confidential or protected information contained in certain records and (5) responding to requests for public records inspection, examination and copying. If this Policy does not directly address a specific issue, please contact the County Attorney for advice.

The purpose of this Policy is to provide a guide to the application of these laws. In certain respects, this Policy will provide for easier or quicker access to public records than existing law requires. For example, although North Carolina law does not now specify a minimum time for the response to a public records request, this Policy provides that such requests shall be responded to promptly.

This Policy is designed to provide guidance to the Board of Commissioners and other Chatham County officials and employees regarding the Open Meetings and Public Records laws. It should be noted that two publications, one of the UNC Institute of Government (David M. Lawrence, *Open Meetings and Local Governments in North Carolina* (6<sup>th</sup> ed. 2002)) and the other of the North Carolina Press Foundation (*North Carolina Media Law Handbook*, 2007; Cathy Packer, Hugh Stevens and C. Amanda Martin, eds.) contain useful and much more extensive guidance than can be provided here.

The Board of Commissioners and the Board of Education will have valid legal reasons to hold closed sessions. However, it seems that it will only rarely if at all be proper, necessary and/or useful for an advisory board or commission to hold a closed session. Accordingly, this Policy will refer occasionally to "the Board," by which it has in mind, primarily, the Board of Commissioners.

2. CLOSED SESSIONS, THE RELEASE OF CLOSED SESSION MINUTES AND ACCESS TO PUBLIC RECORDS -- IN A NUTSHELL

A. **Closed Sessions**

- (1) **Avoid closed sessions except where necessary.** As noted above, while the Board of Commissioners will find it necessary and proper to hold closed meetings, it is unlikely that County advisory groups will find it necessary to do so.
- (2) **Commencing a closed session:** must be by motion made in open session adopted by a majority of those present and voting.
- (3) **Content of the motion:** the motion must cite at least one of the nine statutory bases for the holding of a closed session. These are described at length in the statutory §143-318.11(a), which is reproduced in section 6 of this Policy. These full sections merit careful attention. However, in brief, they are:
  - (a) To prevent disclosure of privileged or confidential information;
  - (b) To prevent premature disclosure of an honorary degree or similar award;
  - (c) To consult with an attorney and protect the attorney-client privilege;
  - (d) To discuss industry location or expansion and economic development incentives;
  - (e) To instruct staff regarding price of real estate to be acquired or proposed compensation of a prospective employee;
  - (f) To consider qualifications of a prospective employee or a grievance against a current employee;
  - (g) To hear reports about criminal investigations;
  - (h) School board consideration of plans relating to response to incidents of school violence;
  - (i) To consider plans to protect public safety regarding existing or potential terrorist activity.

- (4) **Additional content required for the motion:** (1) if the motion is based on point (a) above, it must cite the name or citation of the law that makes the information privileged or confidential. (2) If the motion is based on (c) above, it must identify the parties in any existing lawsuit to be discussed in the closed session.
- (5) **Who may attend the closed session:** only the members of the public body have the right to attend but they may invite other persons if their presence would be useful or necessary.
- (6) **What may be discussed in the closed session:** discussion should be strictly limited to the subject (one or more of the nine reasons) identified by the motion made in open session. As noted below, for purposes of producing minutes and general accounts of closed sessions, it is recommended that each closed session deal with only one of the authorized topics.
- (7) **May action be taken in closed session:** generally, although the board may make a tentative decision in closed session, it must take its formal action when it resumes its open session. However, the board may act in closed session if necessary to protect privileged or confidential information or decisions otherwise protected by law.
- (8) **Minutes and a general account:** the Open Meetings Law (§143-318.10(e)) requires that both minutes and a "general account" of closed sessions be kept. However, they may be combined into one document. Minutes are required if action is taken in the closed session but the general account is required even if no action is taken. The general account should describe the subjects discussed but need not state the substance of the discussion.
- (9) **Release of the minutes and the general account:** the Open Meetings Law provides that minutes and the general account of a closed session may be withheld "as long as public inspection would frustrate the purpose of the closed session." The standard is the same both for the minutes and the general account.
- (10) **Procedure for release of minutes and general account:** whenever possible, the board should specify during its closed meeting when the minutes and general account should be released. Alternatively, it could instruct the County Attorney or some other official frequently to review the minutes and general accounts of close sessions and determine whether they can feasibly be released.

## B. **Public Records**

Certain portions of the Public Records Law and other statutes relating to public records are set out in section 7 of this Policy.

- (1) **Definition:** Defined in the statute (N.C.G.S. §132-1(a)) 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."

- (2) **Computer records:** They are covered by this definition and are public records. Persons requesting copies of computer databases may be required to submit such requests in writing. The County is not required to convert paper records to computer databases but, if it agreed to do so, it may negotiate a "reasonable charge" for the service.
- (3) **Official correspondence:** Public records include letters and emails sent or received by a public official in his or her official capacity, but not personal letters mailed to his or her government address.
- (4) **Who may obtain access and how:** Access shall be given to "any person" "at reasonable times and under reasonable supervision." The purpose or motive for the request need not be disclosed. The request need not be in writing unless it is a request for a computer database or copies of a geographical information system. No fee may be charged merely to view the document but a minimal fee reflecting actual cost may be charged for a copy. (Statutes fix fees for copies of certain records.) The County is not required to create a document that does not exist.
- (5) **Destruction:** Destruction of public records is generally prohibited unless the Department of Cultural Resources grants its consent. Such consent may be obtained if the custodian certifies to the Department that the record has no further use or value and the Department certifies to the same effect.
- (6) **Confidential information:** Requests for access to public records may not be denied because they contain legally confidential information. Rather, the confidential information must be deleted from the document so as to permit access.
- (7) **Exceptions:** The Public Records Law exempts certain records from disclosure, including, for example, most information in personnel files of public employees, records of privileged communications with attorneys representing the County in litigation (sealed for three years), records relating to the expansion or location of business or industrial projects, records acquired in a bidding process that contain trade secrets, the names of welfare applicants or recipients, individual state income tax returns, adoption records, SBI investigatory records, juvenile arrest and court records, patient medical records in the possession of doctors and records of certain labor dispute settlements. The NC Media Law Handbook contains detailed discussion of these and other categories of records.

### 3. CALLING A CLOSED SESSION

A closed session may be held for the purpose of discussing one or more of the nine subjects listed in section 2(A)(3) above.

A. **The Motion:** To call for a closed session, there must be a motion and a second in the open meeting. The motion to close a meeting should cite as the basis for the motion one or more of the purposes listed in section 2(A)(3) above.

B. **Certain Motions Should be Made only in General Terms:** If the reason for calling a closed session is to discuss: (i) a personnel issue; (ii) a confidential economic incentive request; (iii) the price of real estate to be acquired or leased; (iv) a report concerning investigations of alleged criminal misconduct; or (v) plans relating to terrorist activity, the motion should only state a general description of the topic. For instance, a motion to hold a closed session to discuss a personnel matter should not mention the name(s) of the personnel to be discussed, and a motion to hold a closed session to hear a report relating to a criminal investigation should refrain from identifying the alleged act or alleged perpetrator.

C. **Closed Session to Discuss Confidential or Privileged Information:** The discussion of such confidential information is the first of the nine bases listed in the Open Meetings Law allowing closed sessions. It is noted at section 2(A)(3)(a) above. The motion for a closed session for this reason must cite this as the reason and must also cite the name or the citation of the law that causes the information in question to be privileged or confidential. For example, a motion calling for a closed session to discuss a matter relating to a person receiving public assistance should cite N.C. General Statute §108A-80, which provides that public assistance records are confidential. David Lawrence's book gives other examples of statutes protecting the confidentiality of different kinds of information. See pp. 16, 19-20.

D. **Closed Session to Discuss Lawsuits/Legal Proceedings:** If the purpose of the closed session is to receive advice from the County Attorney or any attorney representing the County regarding a pending lawsuit, the motion for the closed session must identify the parties in the lawsuit.

E. **Vote on Motion for Closed Session:** The Board may proceed to vote on the motion for a closed session once it has been properly made and seconded, and if it contains the necessary information noted above. A simple majority vote of those present and voting is required for the motion to pass.

F. **Closing the Room:** If the motion to hold a closed session passes, the Board should either instruct the audience to adjourn from the room, or the Board may decide to move to another room for purposes of the closed session. In either event, the Board should ensure that the room selected for the closed meeting is secure.

#### 4. CLOSED SESSION DISCUSSIONS

##### A. **Minutes are Required.**

The Open Meetings Law requires that "full and accurate minutes" and a "general account" be kept of all closed meetings but that they "may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session." N.C. Gen. Stat. §143-318.10(e). Although it may not be necessary to keep minutes if no "action" is taken in the closed session, a "general account" describing the general subject matter of the closed meeting discussion is required in

any event. It appears that the minutes and the general account may be combined in a single document. The minutes and/or the general account may also be in the form of "sound or video and sound recordings."

**B. Limits on Topics Discussed.**

One of the biggest areas of confusion regarding closed session discussions is what may be discussed by the board. The general rule is that routine or general policy matters may not be discussed in a closed session. As noted above, the discussion in the closed session should be strictly limited to the subject identified by the motion that was made in open session. Examples of such subjects include the amount that should be offered in connection with the purchase of real estate, consultation with an attorney representing the County regarding issues arising in a lawsuit to which the County is a party and to consider the qualifications of a prospective employee. If there is any doubt whether the topic involves policy issues, the discussion should be returned to the particular, proper issue at hand.

It would also be advisable for the board to hold separate closed sessions to deal with different topics or, for separate minutes and a separate general account to be prepared for each topic discussed in closed session. The reason for this recommendation is that different topics may create different timings for the release of the minutes and the general account.

**C. Releasing the Closed Session Minutes.** After the closed session business has been completed, the board should vote on when to release the minutes and the general account of the closed session. As noted, the statute provides that the minutes and the general account "may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session". The phrase "frustrating the purpose" of the meeting can be defined as "adversely affecting a future action". Thus, if releasing minutes about an offer to purchase land at \$50,000 would adversely affect the negotiations, then the minutes and the general account should not be released until the negotiations have been completed. In some instances, it would be improper to ever release the minutes. Minutes regarding personnel are a prime example.

With respect to some topics it may be difficult during the closed session for the board to identify the time when the minutes and the general account should be released. While it could always consider this matter in a new, closed session, it might deal with the problem by authorizing the County Attorney to review sealed minutes and general accounts frequently and unseal those that should no longer be withheld from public inspection.

Drafts of minutes and general accounts are also public records subject to the Public Records Act. If a public record request is made for existing drafts, inspection of them must be allowed if it would no longer frustrate the purpose of the closed session.

**D. Returning to Open Session.** Once the closed session is completed and action has been taken regarding the unsealing of the minutes and the general account, a motion should be made to return to open session. The motion, second

and vote to return to open session must be incorporated into the closed session minutes.

5. PUBLIC RECORDS AND RESPONSES TO PUBLIC RECORDS REQUESTS

A. **Responding to a Public Records Request.** The law requires the custodian of public records to permit any person to examine, inspect and request a copy of all public, non-protected records in the custodian's custody. A person requesting a record cannot be required to disclose his/her purpose or motive for the request nor can he/she be required to give his/her name, address, ID, or even to sign for the record.

The Public Records Law does not specify a minimum period for the response to a public records request, stating merely that the custodian shall permit inspection of the record "at reasonable times." However, an important component of this Policy is that public records request should be responded to promptly. If the request relates only to one or a few documents that are readily available, the response should be very prompt. On the other hand, if the request relates to a larger group of documents that must be assembled, more time to respond will be required but the response should be within a reasonable period of time. The custodian should deal cooperatively and openly with the person making the request regarding the amount of time that will be required for the response.

As is noted above, there is no legal requirement that the public records request be in writing unless it is a request for a computer database or copies of a geographical information system. In most circumstances the request is likely to be simple, e.g., a request for the minutes of a particular meeting. However, where the request is more extensive or more complicated, a written request may be helpful to the custodian and may expedite the response to the request. In these circumstances the custodian may suggest that the request be put in writing while making it clear to the requester that a writing is not required. Indeed, custodians who receive frequent records requests may find it useful, in consultation with the County Attorney, to develop a form to be used so that the request can easily be put in written form. Where the request is more complex but the requester does not wish to put the request in written form, the custodian should carefully review with the requester the description of the documents requested and should make appropriate notes regarding the nature and timing of the request.

B. **Request for non-existent document:** There is no requirement that a document that does not exist be created in order to comply with a public records request. Nor is there a requirement that the format of a document be altered so that it can be produced in the format requested. If a document exists but in a different format from the one in which it is requested, the custodian should inform that the documents exists in the different format and that it can be produced for inspection and copying in that format.

C. **Fees:** As noted above, a minimal fee (reflecting the actual cost) may be charged for copies and an additional fee may be charged for a certified copy. In addition, certain statutes set fees for copies of certain additional records. It would

be advisable to assure that the requester understands any fees that may be assessed before the documents are copied and produced.

**D. Confidential or Excepted Information Commingled in the Document:** No record request may be denied merely because confidential or excepted material is commingled with the non-protected part of the record. Rather, in this situation it will be necessary for the custodian to redact the confidential or otherwise excepted material so that the redacted document can be made available.

**E. Redaction Methods:** For existing documents, it is recommended that the material to be redacted be covered with white correction tape and a copy made of this document. (Use of a black marker does not assure proper redaction.) For computer documents, a new computer copy of the document should be created and, on this new copy, the material to be redacted should be deleted while the original size and space of the area deleted is maintained. In either case, the document to be produced for inspection or copying should be prominently labeled "Redacted Version" and the word "Redacted" should appear at the beginning of each paragraph in which a redaction is made.

## 6. **Open Meetings Law: Provisions Pertaining to Closed Sessions**

The Open Meeting Law (N.C. Gen. Stat. §143-318.9 - 18) states that a "public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.

- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.
- (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
- (8) To formulate plans by a local board of education relating to emergency response to incidents of school violence.
- (9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity."

## **7. The Public Records Law: Certain Sections**

### **§ 132-1. "Public records" defined.**

(a) "Public record" or "public records" shall mean 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 county, unit, special district or other political subdivision of government.

(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. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information. (1935, c. 265, s. 1; 1975, c. 787, s. 1; 1995, c. 388, s. 1.)

**§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information.**

(a) Confidential Communications. – Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected.

**§ 132-6. Inspection and examination of records.**

(a) Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law. As used herein, "custodian" does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

(b) No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation.

**§ 132-6.2. Provisions for copies of public records; fees.**

(a) Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy.

(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 or compiling a record that does not exist.

#### **§ 132-9. Access to records.**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

#### **§ 121-5. Public records and archives.**

(a) State Archival Agency Designated. – The Department of Cultural Resources shall be the official archival agency of the State of North Carolina with authority as provided throughout this Chapter and Chapter 132 of the General Statutes of North Carolina in relation to the public records of the State, counties, municipalities, and other subdivisions of government.

(b) Destruction of Records Regulated. – No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Cultural Resources, except as provided in G.S. 130A-99. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined at the discretion of the court.

When the custodian of any official State records certifies to the Department of Cultural Resources that such records have no further use or value for official and administrative purposes and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, municipality, or other subdivision of government certifies to the Department that such records have no further use or value for official business and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be authorized by the governing body of said county, city, municipality, or other subdivision of government to be destroyed or otherwise disposed of by the agency having custody of them. A record of such certification and authorization shall be entered in the minutes of the governing body granting the authority.

The North Carolina Historical Commission is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of this section. When any State, county, municipal, or other governmental records shall have been destroyed or otherwise disposed of in accordance with the procedure authorized in this subsection, any liability that the custodian of such records might incur for such destruction or other disposal shall cease and determine.