

Sunshine Laws Slide 1

The policy of the state of North Carolina is to allow public access to the business of government.

Open government laws are known as “sunshine laws” because they help shed light on the government’s work.

Government employees and elected officials have a responsibility to obey and respect the law, act ethically and conduct their work in an open manner.

North Carolina’s Public Records and Open Meetings laws ensure that the public can know what government officials and entities do.

Public bodies must conduct business in public.

North Carolina’s Department of Justice’s Open Government Guide provides detailed information - <https://ncdoj.gov/public-protection/open-government/>

Public Records Law Slides 2 & 3

North Carolina Public Records Act is the foundation of our public records laws.

Law makes clear that written materials and other records created or received by state and local government are the property of North Carolinians.

Gives the people a means of enforcing their right to access government records.

All state and local government officials are obligated to:

- Allow inspection by any person of those government records not specifically exempted from disclosure
- Allow the public to obtain copies of records – as promptly as possible upon request and at minimal expense

Applicable North Carolina General Statutes:

North Carolina Public Records Act – North Carolina General Statute 132-1

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/ByChapter/Chapter_132.pdf

- NOTE: Public Records Law provides exemptions to disclosure of trade secrets and other confidential information, such as social security numbers and other personal identifying information (PII)

North Carolina General Statute 139-8.2 - District confidentiality

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_139.html

- All information collected by soil and water conservation districts from farm owners, animal owners, agricultural producers or owners of agricultural land that is confidential under federal or State law shall be held confidential by soil and water conservation districts, except applications for cost-share assistance and associated contract documents that require approval of the soil and water conservation district or the Soil and Water Conservation Commission

Federal records co-located in district offices are covered under:

- Freedom of Information Act (FOIA) covers federal records
- Section 1619 of 2008 Farm Bill (codified under 7 U.S.C. 8791) protects certain information

Public Records Slide 4

Public records are materials (documents – electronic or otherwise) made or received by government agencies in carrying out public business.

Public records include both paper and electronic documents – emails, 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. ***Text messages are considered public records if they're about public business.***

If “drafts” have been created or received by a government agency, in the course of doing public business, they become state property, and as such are generally considered public records. A draft does not have to be submitted to the members of a public body or the head of a public agency for approval to be considered a public record.

Examples of Protected Information Slide 5

- Conservation plans
- Federal program contract information
- Job sheets
- Documents signed by or under the authority of NRCS
- Correspondence on federal letterhead
- Federal forms
- Information generated on federal system or housed in the federal system
- Farm, tract, field, and federal contract numbers
- Geospatial information
- Resource data
- Designs
- Assistance notes
- Acreage amounts
- Information concerning agricultural operation, farming, or conservation practices

Guidance for Districts Regarding Public Records Slide 6

[Microsoft Word - V2 - SWCD response to public records request.docx \(ncagr.gov\)](#)

Districts should have a public records policy in place.

- Districts may designate one or more employees to serve as the point of contact for public records requests
- Districts should train staff so their public records policy is implemented consistently
- When a public records request is made, the district should make a note of the request and the date the district received it
- The district should contact the requestor to clarify, narrow, or revise the request if the request is ambiguous or overly broad
- Be courteous but do not commit to providing information until you are sure it is something the district can release. Explain that the district has obligations to safeguard personal identifying information and other confidential information under Section 1619 of the 2008 Farm Bill, the North Carolina Public Records Law, and the Conservation Cooperator Acknowledgment, and requested materials may need to be reviewed prior to release
- The North Carolina Public Records Law provides that districts are required to respond to public records requests “as promptly as possible”
- Consider sharing the request with your county attorney for legal guidance and support
- Communicate with NRCS if there are federal items in the file that the district is unsure about
- The district could create a form for records requests to make sure that requested information is clear, and to help assure accuracy in the response. Districts cannot require requestors to provide the reason for the request
- If a district does not have a specific record that is requested, inform the individual that is making the request. Districts are not required to create records
- 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 district shall bear the cost of such separation
- The public is entitled to inspect or make copies of public records after protected information is redacted
- Districts may charge for the actual cost of production

Document Retention Slide 7

How long do districts have to keep documents?

- Districts should adopt a *Records Retention and Disposition Schedule*
- This schedule determines how long records will need to be maintained under North Carolina law
- Districts should adopt both schedules published by the NC Department of Natural and Cultural Resources - <https://archives.ncdcr.gov/government/local>:
 - General Records Schedule for Local Government Agencies
 - Soil and Water Conservation Districts Schedule
- The schedules should be adopted by the board at an Open Meeting, signed, and returned to the Records Analysis Unit with the NC Department of Natural and Cultural Resources
- The following is an example of a records retention and disposition schedule regarding cost share programs contracts and designs:

4.	COST SHARE PROGRAMS CONTRACTS AND DESIGNS Includes plans, contracts, contract revisions, correspondence, lifetime cap accounting information, reports, and working papers.	a) Retain designs and plans of ponds and other structures in office permanently. b) Maintain lifetime caps records in office until superseded or obsolete. c) Destroy in office all other records 10 years after the end of the maintenance agreement.	
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Open Meetings Law Slide 8

North Carolina General Statute 143 Article 33C -

https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_143/Article_33C.pdf

District boards are considered “public bodies.”

All official meetings of public bodies are open to the public – thus, if a quorum (3 or more board members) is together to discuss district business, this is an official meeting.

- A social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of the law
- Meeting location considerations are also important; restaurants are not appropriate facilities for Open Meetings

Every public body shall keep full and accurate minutes of official meetings, including closed sessions.

- When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired
- Minutes from closed session may be withheld from public inspection so long as release would frustrate the purpose of the closed session

The law makes provisions for privacy when open sessions might harm public interests or an individual's privacy.

Public bodies can only go into closed sessions for certain purposes – 143-318.11.

Ten purposes by statute – for districts the most common purposes will be certain personnel topics and confidential records:

- Personnel Actions – acceptable to discuss candidates for employment, but not candidates to fill a position on the board
- Confidential records – made confidential by state or federal law, e.g. Section 1619 of the 2008 Farm Bill or General Statute 139-8.2

How to go into Closed Session **Slide 9**

To enter closed session, a motion must be made and seconded from an Open Meeting – every motion shall cite one or more of the permissible purposes; for confidential information, the motion shall state the name or citation that makes the information confidential.

Persons other than the board members may be asked by the board to assist the board by attending the closed session.

FOR EXAMPLE:

*Chairman: “We have a motion and a second to go into closed session pursuant to General Statute **143-318.11(a)(1)** to prevent disclosure of information that is privileged or confidential. The information to be reviewed is protected by Section 1619 of the 2008 Farm Bill and General Statute 139-8.2. All those in favor say “aye”. Motion carries.”*

“This board will now go into closed session. We would like for our district technician and NRCS partner to please remain seated and assist us with this issue.”

District Confidentiality and Closed Sessions **Slide 10**

Districts should be diligent in protecting information in hard-copy and discussion that is confidential.

- Reference materials for how a technician should present materials to the board are available on the Division website: [Microsoft Word - Suggested protocol for district technician to present cost share items to the board-Mar2021.docx \(nc.gov\)](#)

- Information appropriate for closed session and that should be protected includes information concerning agricultural operation, farming, or conservation practices:
 - Conservation plans
 - Federal program contract information
 - Job sheets
 - Documents signed by or under the authority of NRCS
 - Correspondence on federal letterhead
 - Federal forms
 - Information generated on federal system or housed in the federal system
 - Farm, tract, field, and federal contract numbers
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 - Designs
 - Assistance notes
 - Acreage amounts

Closed Sessions: Things to remember Slide 11

Motion must be made and seconded to leave closed session and return to the public meeting.

The board may not adjourn the meeting from closed session.

Minutes of closed session must be kept and may be a “general account” of discussion; the general account may be merged in the open meeting minutes if appropriate.

If in-depth discussion or contract file review is requested, the board should enter closed session.

The Division has sample meeting minutes and sample agendas to share with districts.

It is okay to “seal” closed session minutes if it would frustrate the purpose of the closed session; minutes must be released when need to keep information confidential passes.

Meeting notices requirements Slide 12

In the spirit of transparency, meeting notices must be kept on file with the district clerk and provided to the public.

Regular meetings

- Schedule of regular meetings must be kept on file with the district clerk
- Regular schedule “shall” be posted on the district website; if district employee maintains the meeting website, any meeting must be posted
- Regular meetings must be noticed at least 7 calendar days in advance – notice must show date, time, and location
- Post on the principal bulletin board

- Mailed, emailed, or delivered to each media outlet and persons who have filed a written request for notice
- If notice is posted over a weekend, posting must be visible to the public (exterior door, rather than interior bulletin board)

Special meetings

- Must be noticed at least 48 hours in advance – notice must show purpose, date, time, and location

Emergency meetings

- Called in unexpected circumstances requiring immediate consideration
- Notice must show purpose, date, time and location

Electronic meetings

It is unclear if local governments can meet electronically, but we interpret that it is permissible if needed.

- Take all votes by roll call if any participants are not in-person
- A quorum should be physically present, but remote participation is allowed, supplemental to those present in-person
- Create “Rules of Procedure” in cooperation with county attorney
- See Coates Canons for guidance - <https://canons.sog.unc.edu/>