

Public Records Law

FOR NORTH CAROLINA LOCAL GOVERNMENTS

2009

David M. Lawrence



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Preface

Governments constantly generate records. Accounting records track the financial position of the government. Leases, insurance policies, and other contracts evidence and govern a wide variety of business relationships. Personnel files reflect the qualifications, performance, and evaluations of public employees. Employees and consultants produce reports on a myriad of matters of interest to government officials and often develop large banks of raw data in the process of doing so. Employees write memoranda to each other. Clerks prepare minutes of meetings. Law enforcement agencies and regulatory agencies compile extensive investigatory files in the process of doing their work. In generating all these forms of records, governments are no different than large private organizations. Business needs require records. But because these records are generated by public organizations, the law has, since at least the nineteenth century, imposed a special burden on *public* records. They are, in general, open to the public for both inspection and for copying. This book is about the contours of the public's right of access to public records held by North Carolina local governments. (A short chapter also summarizes the law on managing and disposing of public records.)

This is the second edition of a book first published in 1997 and twice supplemented since then. This edition expands upon the original in two ways. First, the passage of a dozen years has brought many new issues to the fore, and therefore the book addresses a goodly number of issues not covered in the first edition. Second, the General Assembly has continued to add exceptions to the right of access, and therefore the book addresses those new statutes as well.

Like the earlier version, the book is in two parts. The first part discusses public records in general and seeks to understand what records are public, what agencies are subject to the public records law, and what the right of public access means in detail. There are also short chapters on the impact of federal law on access to public records and on the special qualities of electronic records. The second part of the book begins with a general discussion of exceptions to the right of public access and then proceeds to look at a number of the statutes that exempt, or that might exempt, categories of records from the right of public access. For each such statute, the book summarizes the exemption and then discusses a variety of legal issues pertinent to each statute. I have not attempted to discuss every statute that creates an exemption, but I have covered those of the broadest application within local government. (The book is directed at *local* government, but much of it will also be of use to officials in *state* government in North Carolina.)

The North Carolina appellate courts have had only a few occasions to address public records issues in the seventy-five years since the current public records statute was first enacted. North Carolina's statute, however, shares many characteristics with the statutes of other states, and I have not hesitated to turn to cases decided in other states to help

understand and answer questions about our statutes. These out-of-state cases have been one source of the issues that I address in the book. The other sources have been my own reading of the statutes and the countless questions that have been addressed to me by state and local government officials, and by reporters and citizens, in the thirty-plus years I have been working on public records issues. I hope these sources will, in combination, lead to a book that will be of significant practical use to local government officials and their attorneys and to the state's news media and the public at large.

A number of my colleagues at the School of Government have helped with the book by reading one or more chapters involving their areas of work: Mark Botts, Bob Joyce, Diane Juffras, Tyler Mulligan, and Aimee Wall. The book is much better for their help. In addition, I owe an enormous debt to Kathy Burke, who did a detailed cite check of each of the chapters. Kathy's work saved me from far more errors than I care to admit. I thank them all.

I am finishing this book with just a few months to go before I retire, after more than forty-one years at the Institute and now the School of Government. It has been a wonderful place to work, especially because of the wonderful people with whom I have worked. In recognition of the friendship and gratitude I have to all of them, I dedicate this book to all who have worked at the Institute and School since I arrived in the summer of 1968.

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