"It might be…it could be…is it a public record": An Insider's Guide to classifying documents in your workspace

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Agenda

► Public records overview
► What is not a public record (exceptions)
► How to retain and dispose of public records
► Ins and outs of the records retention schedule
► Best practices for records management

What is a public record?

► All documents of any type "regardless of physical form or characteristics…made or received in the connection with the transaction of public business by any agency of North Carolina. (NCGS 132-1(A))

► Note:

  ► UNC Charlotte is considered a state agency
  ► Disposition of records are governed by law: NCGS 121 (Archives & History) & 132 (Public Records Act)

Format and location

- Format ("whatever format")
  - Papers, letters, maps, books, photographs, films, sounds, e-mail, text messages, voice mail messages, tweets, etc.
- Location ("regardless of location")
  - Records on your personal devices (computers, smart phones, iPads, voice mail, etc.)

  - NOTE: The status of a record under the law is determined on its CONTENT, not its location....

What is not considered a public record? Exceptions....

- Students records (Family Educational Rights and Privacy Act [FERPA] restricts information that can be released without consent (20 U.S. Code 1232g; 34 CFR Part 99)
- Personnel file is confidential under State Human Resources Act, EXCEPT items listed under (NCGS § 126-23)
- Information about employees and applicants for employment (NCGS § 126-22)
- Trade Secrets (NCGS § 66-152)
- Certain law enforcement records (i.e. security cameras) (NCGS § 132-1.4(a)(b)(1))
- Certain personally identifiable information (including information from or about an applicant for admission to UNC Charlotte maintained by University) (NCGS § 132-1.1(f))

What is not considered a public record? Exceptions....

- Bids for state contracts BEFORE the award of the contract (NCGS § 143-52)
- Certain written communication by an attorney representing the State agency in the scope of the attorney's duty. (NCGS § 132-1.1(a)).
- Research data, records, and information of a proprietary nature (NCGS § 116-43.17)
  - *Produced or collected by or for the state institution in the conduct of commercial, scientific, or technical research where the data records or information **has not** been patented, published or copyrighted*
- Other records made confidential by law

Who has access to public records?

- ▶ Generally, *ANY PERSON* may inspect OR request public records (NCGS § 132-6(a))
- ▶ Requestor does not have to give any reason for the request and we may not demand the identify of requestor or reason for the request (NCGS § 132-6(b))
- ▶ We must allow for the inspection
- ▶ No written requirement needed
- ▶ We can charge for actual costs of copies and extensive services (over 4 hours for "extraordinary requests")
- ▶ We must respond "as promptly as possible"
- ▶ We do not have to create any document that DOES NOT exist (NCGS § 132-6.2(e))
  - ▶ Provide in whatever format we have
  - ▶ Must redact confidential information

What if you deny public access?

- ▶ Anyone who is denied access to a public record may seek a court action to compel the State agency to turn over the records (NCGS § 132-9(a))

- ▶ Burden is on the State (NCGS § 132-9(b))

- ▶ Presumption is that all State records are open to the public

If we scan and image our records, can we shred the paper version?

- ▶ *Not at this time.* You should not destroy documents until an imaging policy is in place.
- ▶ The University is currently working on an imaging policy to address best practices to image/scan documents that are public records prior to destroying the hard copies.
- ▶ State law requires that we have an imaging policy to address these practices.

What is Records Management?

▶ Methods to efficiently, effectively, and economically create, use, maintain, preserve, and dispose of official records

RECORDS MANAGEMENT

https://www.decodedscience.org/electronic-records-management-cloud-storage/27995

Why do we have Records Management?

▶ To comply with North Carolina law

▶ Preserve certain history records (ongoing administrative or research value)

▶ Space (disposed of records that no longer have administrative value to make room for those of current and continuing value)

▶ Improves efficiency and costs savings (limited record storage facilities for permanent non-historical records)

Definitions

▶ Record copy – an original or official record held by an office that is the official keeper of that record for the University, subject to the retention schedule (correspondence, reports, policy statements, budgets, etc.)

▶ Reference value – a record held by an office for its own reference and not the official record for the University that hold limited value, typically documenting routine operations within the office (templates, instruction manuals, newsletters, etc.)

▶ Record series – a group of records that are related (personnel files, student files, contracts, business correspondence, financial statements, etc.)

▶ Retention period – length of time a record should be kept before disposing (ex.: transfer to university archivist after 5 years)

▶ Disposition – what happens to a record when it is no longer needed for current University business (3 steps: review, archive, destroy)

Life Cycle of a Record

3 stages:
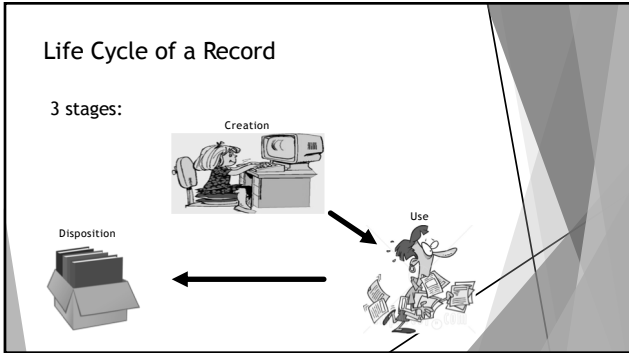
What is the University Records Retention and Disposition Schedule and where can I find it?

► Identifies which records have permanent value and which ones do not

► Provides descriptions or records and when to dispose of them

► Identifies confidential or restricted records

► UNC General Records Retention and Disposition Schedule found here: https://legal.uncc.edu/sites/legal.uncc.edu/files/media/UNCGeneralSchedule.pdf

► Also can be found here: University Policy 605.3, Retention, Disposition, and Security of University Records

www.utahdeaddiva.com

How does the retention schedule look?

UNC General Records Retention and Disposition Schedule

This Schedule applies to records in all media, unless otherwise specified.

Items – a sample listing of items found within a series. Other related records not listed may also be part of a series.
Disposition – all dispositions are minimum requirements and include, where applicable, transfer to the custody of the University Archives for appraisal and final disposition.
Destruction – takes place in the office. Any record with confidential or sensitive information shall be properly destroyed by shredding or by means to ensure that the records cannot be physically recreated.
Original and Reference Copy – original copy (also known as a record copy) is the official authorized copy kept by the office charged with creating or maintaining the record copy. Reference copies (also known as convenience copies) are preserved for the convenience of reference or ease of access.
No destruction of records may take place if litigation or audits are pending or reasonably anticipated or foreseeable.

Refer to prefatory material for additional instructions or contact your university's records officer for clarification.

LIBRARY RECORDS

Series #	Series Title	Series Description	Items	Disposition
GU4	Administrative	Administrative and official operations of an individual office.	reports, memorandums, correspondence, directives	Original: Transfer to University Archives after 5 years. Reference: Destroy in office when reference value ends.
GU5	Administrative Reference	Convenience and reference records of transitory value.	Subject / reference file, memorandums, duplicates, announcements	Destroy in office when reference value ends.
GU6	Agreements, Contracts, and Leases	With consultants, vendors and other firms concerning services, equipment and obligations.	correspondence, memorandums	Original: Destroy in office 5 years after expiration of all rights and obligations. For sealed agreements, destroy in office 10 years after expiration of all rights and obligations. Reference: Destroy in office when reference value ends.

What if there is a legal hold?

- "Litigation holds" are issued and enforced due to certain circumstances, usually when there is a pending or threatened litigation
- You are required to suspend normal and routine destruction of records regardless of the established record retention and disposition schedule
- Upon notice you are required to:
  - Immediately suspend deletion of relevant records
  - Preserve any electronic records generated OR received after receipt
  - Preserve hard copies of documents under your control
  - Receipt MUST acknowledge you have received the document
  - You MUST continue to monitor compliance

Violation of legal holds

- It is against the law to destroy, alter, withhold, or obscure "evidence" once a legal hold has been initiated
- This is "spoliation"

What about my emails?

- EMAILS are PUBLIC RECORDS
- Remember: CONTENT
- Public records are ANY documents *regardless of physical form or characteristics,* made or received in connection with the transaction of public business by any agency of North Carolina..."

How do I know if my email is permanent?

- First look at the Records Retention and Disposition Schedule
- Content determines record series
  - Permanent (lasting historical value such as creation of policy or provide guidance)
  - Long-term (significant value but not permanent in nature)
  - Short-term (junk mail, unsolicited emails, confirmations)
  Note: Author or creator of email is responsible for maintaining the "record" copy UNLESS message was altered by recipient or coming from outside the agency.

What does "administrative value" mean?

- Certain records that possess only brief administrative, fiscal, legal, research or reference value.
- Establishing a minimum retention period for certain records that Cultural Resources has scheduled with the disposition instruction *destroy when administrative value ends".*
  - Example: Reservations, routing slips, facsimile cover sheets, etc.

How long must records be kept?

- When the public record meets its retention requirement under the approved schedule
- Short-term records may be destroyed when their "reference value" ends
- Documents with legal holds must be retained until the Office of Legal Affairs provides written permission to destroy the records

Tips for record keeping

- Organize files by the series listed in the retention schedule
- Records and non-records should not be filed together
- Do not mix record series in the same file
- Confidential files should be kept separate and secure
- Organize by function (record series) and then alphabetically or chronologically
- Consider filing by event date
  - Separate active and inactive files
  - Use the triggering event as a reference point (ex: file personnel files by separation date)
  - Separate record series by color-coded labels for easy visual ID
- Review files annually

Best practices for managing records

- When in doubt, treat it as an original record
- If there are conflicting retention guidelines, **use the longest retention period**
- If a file contains multiple types of records with varying retention guidelines, **use the longest retention period**
- Just because a record is listed on the schedule doesn't mean you have to have it
- Do not keep records "just in case"
- Destroy all records, regardless of format, at the same time when they have met retention requirements. This includes electronic copies.
- Contact University Archives with questions!

Office Management Best Practices

- Identify a responsible person for archiving in your area
- Adopt an internal policy on archiving, if needed
- Set a schedule and inventory documents in your area
- Purge documents accordingly
- Train new employees/attend workshops
- Familiarize yourself with the Retention Guidelines and Schedule (https://guides.library.uncc.edu/ld.php?content_id=34300343)

QUESTIONS?