

Walk the Line: Navigating Public Records in the Age of Email, Internet, and Social Media

Erica Solosky, Interim Deputy General Counsel and Assistant Vice
Chancellor for Ethics, Policy, and Compliance
Tina Dadio, Public Records Officer/Legal Specialist

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Agenda

Policies/Practices:

- Public Records Overview and Basics
- Personal Use of Email and the Internet
- Electronic Signature Standards Overview
- Freedom of Speech, Institutional Neutrality Basic Overview
- Political Activities
- Social Media Guidelines and Best Practices



What are “Public Records”?

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)).

Disposition of records are governed by NCGS §121 (Archives & History) and (Public Records Act)



Note: UNC Charlotte is considered a state agency



How do I know if I have any “public records”?

- Yes, almost all University records are public property and constitute a record of public acts.
 - ✓ Nearly all positions generate, receive or use records.
 - ✓ Computer files, including drafts and emails, are public records.
 - ✓ Not all records have historical, legal or fiscal value – regardless all records **MUST** be destroyed or archived in accordance with our records retention schedule and provisions of NCGS 121-5(b).
- NOTE: *The Public Records Act identifies **public records** as the “property of the people.” NCGS §132*



What about Personal Devices?

“Whatever format....regardless of LOCATION”



FORMAT = any



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



Types of Records



Correspondence



Maps



Sound Records



Photographs



What about records on my computer at home? Are they public?

Yes...remember “regardless of physical form or format”. Any record generated in the conduct of university business is considered a public record.



**What
about my
emails?**

Dance like no one is
watching; email like it may
one day be read aloud in a
deposition.



So...what about electronic records

- **What is an electronic record?**

- ✓ Documents that require computer hardware and software to interpret and present
- ✓ Rely on technology to be accessible

- **Examples**

- ☐ Texts
- ☐ Spreadsheets
- ☐ Emails
- ☐ Websites
- ☐ Databases
- ☐ PowerPoint presentations
- ☐ Digital imaging



Electronic Records: So, are they public?

- Yes, but remember...**CONTENT**...
 - ✓ If made or received in connection with the transaction of public business
 - ✓ As a state employee you are required to maintain public records and provide access to them upon request
 - ✓ *Electronic records are records, too!*



Personal Use of Email & Internet

- University Policy 304, Electronic Communication Systems and ITS Standard for Responsible Use:
 - No exception of privacy
 - Email is official means of communication
 - “Incidental” personal use
 - Don’t do illegal things (users must act *efficiently, ethically, lawfully*)
 - ❑ IP infringement (software/music/video), discrimination, harassment, threats, defamation, pornography, commercial gain or personal profit
 - Don’t do irresponsible things
 - ❑ Confidential info, imply endorsement, click links with spam (viruses), job applications



Managing your Inbox: Email as a Public Record



Email can be public

Content = public or not



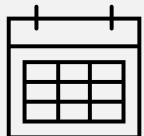
Emails that are considered public

Retained according to University Policy 605.3,
*Retention, Disposition, and Security of
University Records*



Personal emails – not a public record

Example: An email from your child's daycare



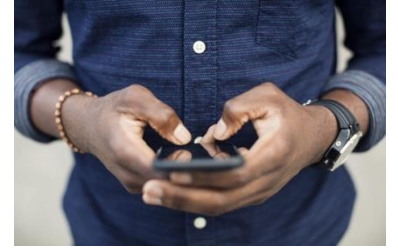
Purely Administrative emails

Example: appointment confirmation, junk
email, outdated office manual replaced with
new versions



What about Text/G-Chat Messaging?

It's convenient and quick!



- ☐ Text and G-Chat messaging has increased in the workplace due to the efficient and accessible access to texting/chatting vs. other means of communication
- ☐ Be mindful and professional in your communication
- ☐ Don't mix personal with business-related content including:
 - Political purposes
 - Personal business activities
 - Private commercial transactions
- ☐ Remember CONTENT
 - If the text/chat involves public business, pay close attention to your responsibility for maintaining/retention of public records



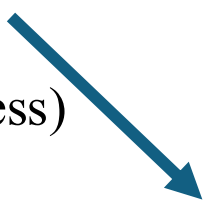
What about Confidential University Records?

- Not all records are open for inspection
- University must protect confidential and sensitive information from:
 - Accidental or unauthorized access, modifications, disclosures or destruction
- Types of confidential and secured records:
 - Personnel records (University Policy 311)
 - Student records (University Policy 402)
 - Data and Information Security (University Policy 311)
 - Privacy and Confidential of Individually Identifiable Health Care Information under HIPAA (University Policy 605.2)



Electronic Signature Standards Overview

- Ensure professional, consistent branding in all electronic communications:
 - Signatures must appear in **all emails** (original – shorter version must include name + contact)
 - Format and Content Standards:
 - First and last name (optional: middle initial, professional designation)
 - Job title and organization (UNC Charlotte)
 - Department or office (optional)
 - Mailing address (if off campus, YOUR mailing address)
 - Email address (optional; recipients can hit reply)
 - University Web Address
 - At least one contact method (phone, fax, mobile)
 - Preferred pronouns (optional)
- Use Sans Serif font, black or blue, 8-12 point size
- Separate items with bold pipes (|)
- Include horizontal bars at beginning and end
- Standardized legal disclaimer after signature
- **Managers ensure department compliance**



Norm Niner | University Mascot

UNC Charlotte | University Communications

9201 University City Blvd. | Charlotte, NC 28223

Norm.Niner@charlotte.edu | 704-687-8622 | charlotte.edu

Pronouns: he, him, his



Freedom of Speech, Institutional Neutrality

- First Amendment Protection
 - Protects your right to free expression.
 - Categories of Unprotected Speech
 - Incitement to imminent lawless action (e.g., urging a crowd to riot)
 - True threats
 - Fighting words
 - Obscenity
 - Defamation
 - Fraud or false advertising
 - Speech integral to illegal conduct (e.g., planning a robbery)
 - Child pornography
 - Does not protect against professional, reputational or social consequences
- Institutional Neutrality law
 - Requires the University to remain neutral on political and social controversies.
 - If your posts are perceived as representing UNC Charlotte, even unintentionally, they may put the institution at risk.



Academic Freedom

- The UNC Code, Chapter VI, Academic Freedom and Tenure
- Allows faculty in higher education to:
 - Teach, research, publish freely and express ideas without fear of censorship or retaliation
- Limits and Legal Framework
 - First Amendment (i.e. protects most speech – university can impose reasonable “time, place, and manner” restrictions)
 - Faculty should maintain accuracy, respect for others’ opinions and uphold professional standards (i.e., not speak on behalf of university without authorization)
 - Students have the right to learn in an environment that encourages diverse viewpoints.



Political Activities - Resources

- What does this mean to you?
 - UNC Charlotte vehicles = NO
 - UNC Charlotte Office Mailings = NO
 - UNC Charlotte Printers/Scanners/Copiers = NO
 - UNC Charlotte Email = NO

- Use of university websites or social media for political messaging:
 - Prohibited under both the Equality Policy and NCGS §126-13.
 - These are considered official platforms.



Permissible Political Activities

- Employees are permitted to:
 - Vote
 - Express opinions
 - Join political organizations
 - Campaign
 - Donate
- ✓ *Provided they do not imply university endorsement or use university resources*



Social Media Guidelines

- ❑ 1. Everything is public
- ❑ 2. Everything lasts forever



Common Social Media Platforms



FACEBOOK



INSTAGRAM



SNAPCHAT



X (FORMERLY
KNOWN AS
TWITTER)



TIKTOK
(PERSONAL
USE)



YOUTUBE



LINKEDIN



BLOGS

Special Characteristics of Social Media

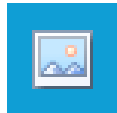


Instant

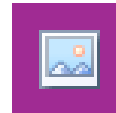


Broad-reaching

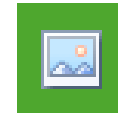
Information can go viral



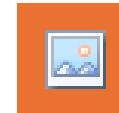
Easy access



Private accounts



Anonymity



Effects on public
relations and
perception



Special Media Guidelines



First Amendment principles apply



N.C.Gen.Stat. §126-13 prohibits state employees from using their position or state resources to support or oppose any candidate, party, or issue in an election. Violations can justify termination.



Courts apply the *Pickering balancing test* for public employees:

Does the speech involve a matter of public concern, and does the employer's interest in workplace efficiency outweigh the employee's speech rights?

Lindke v. Freed, Sixth Circuit (2022)

- Facts:
 - City manager deleted comments from an angry citizen and eventually blocked the citizen from his page
 - City manager's Facebook page:
 - Designated as a "public figure"
 - Profile photo in a suit with a city lapel pin
 - "About" section: City Manager, Chief Administrative Officer for the citizens of Port Huron, MI
 - Listed the city's website and city hall's address
 - Posts were prolifically (and primarily) about his personal life



Lindke v. Freed, U.S. Supreme Court (2024)

- The Supreme Court's decision established a two-part test for determining whether a public official's social media activity constitutes state action under 42 U.S.C. §1983, which is necessary for a First Amendment claim:
 - 1. **Actual Authority:** must have actual authority to speak on behalf of the government on the subject matter of the post (i.e., statute, ordinance, regulation, or established custom).
 - 2. **Purported Exercise of Authority:** must have represented that they exercised that authority in the social media posts at issue (i.e., posts made in furtherance of official duties, not merely personal commentary).



Lindke v. Freed, U.S. Supreme Court (2024) (*cont.*)

- If both prongs are satisfied:
- **Deleting** comments or blocking users could be considered **government action**, and viewpoint-based restrictions would violate the First Amendment.
- **Note:** If the page was purely personal or mixed but not used to exercise official authority, it would not be considered attributable to the State.



Hypothetical

- Dr. Jane Smith is the Vice Chancellor for Student Affairs at a state university. She maintains a personal X (Twitter) account she has used for years, primarily to share family photos, hobbies, and personal opinions. After assuming her VP role, she updates her bio to include: “*Vice President for Student Affairs at State University. Views are my own.*”
- Overtime, Dr. Smith begins posting about university matters, such as campus safety updates, student housing policies, and mental health resources. She also responds to student questions in her comments and occasionally retweets official university announcements.
- A student, John Doe, replies critically to several of Dr. Smith’s posts about housing policy, accusing administration of neglecting student needs. Dr. Smith deletes John’s comments and blocks him from her account.
- John Doe sues under **42 U.S.C. §1983**, claiming his First Amendment rights were violated because Dr. Smith’s account functioned as a public forum.



Hypothetical (cont).

The Supreme Court's **two-part** test applies?

1. Did Dr. Smith possess actual authority to speak on behalf of the university on housing policy?

Answer: Likely yes. As VP for Student Affairs, housing policy falls under her official duties.

2. Did she purport to exercise that authority in the relevant posts?

Answer : Yes, because she posted about housing policy and responded to student questions in a way that appeared official, even though her account was labeled “views are my own.” The substance of her posts suggests she was acting in her official capacity.

Result: Blocking student could be considered **state action**, making her subject to First Amendment constraints. If the court finds her account functioned as a public forum for official communication, deleting comments based on viewpoint would likely violate the student's rights.



Social media posts that may result in termination or suspension

For speech to be constitutionally protected, **it must:**

- Be as a private citizen, not part of job duties.
- Address a matter of public concern (something of interest to the general public, like government corruption or policy issues).
- Complaining about your boss is considered a personal workplace grievance, NOT a matter of public concern.
- It does not receive First Amendment protection.

Note: LinkedIn is a professional platform tied to your employment identify. Negative comments about your supervisor can be seen as unprofessional conduct and harm institutional reputation.



Social media posts – Best Practices

Think Before You Link:

- If you include UNC Charlotte in your bio or username, add a disclaimer: **“Opinions are my own.”** *“Note: Disclaimers **do not fully prevent** association with the University.”*
- Consider setting privacy on your social media accounts
- Role Sensitivity:
 - *The higher your position, the more likely your words will be seen as University opinions. Senior leaders’ personal views are often interpreted as official – with or without disclaimers.*



Social Media Professional Impact

1

Even on personal accounts:

2

Posts can affect your ability to do your job if they erode trust with students, colleagues or community and business partners, or disrupt or interfere with the University's operations.

3

Posts can be re-posted or screenshotted



Social Media Safety and Security

- Keep in mind - *even if unintentional*:
 - Personal choices made online by faculty and staff can have far-reaching effects for the entire University community.
 - University's obligation is to safeguard the campus and advance its mission, not to shield individuals from the fallout of their personal commentary.



Social Media Safety and Security (cont.)

- If personal posts create disruption, the University will remain focused on institutional needs and community safety.
- Will connect you with appropriate resources where necessary.
- Cannot guarantee protection or remediation from the personal or professional consequences of what you choose to post.



In other words...

If you don't want to read it on the front page of the local newspaper...

DON'T WRITE IT OR EMAIL IT



Questions?

