

May 28th, 2024

Dear Jonathan White, Marcie Dishman, and Central Carolina Community College,

Based on advice from the Duke First Amendment Clinic, we believe North Carolina Public Records Law does not require requesters to appear in person to retrieve public records. In fact, it explicitly requires entities to furnish copies of records if requested. Public records are “considered to be the property of the people” and copies shall be provided for free or at a minimal cost. North Carolina Dept. Of Admin., Public Records Frequently Asked Questions, <https://www.doa.nc.gov/contact-us/public-records#Whatisapublicrecord-6974>. Furthermore, courts have consistently found that “it is clear that the legislature intended to provide that, as a general rule, the public would have liberal access to public records.” *News & Observer Pub. Co. v. State ex Rel. Starling*, 312 N.C. 276, 281 (N.C. 1984).

Under N.C. Gen. Stat. § 132-6 (2023), “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.” The word “and” in this statute clearly creates a responsibility to *both* allow the records to be examined *and* to promptly furnish copies to the requester. This does not require requesters to appear in person to pick up the copies.

Attorney General Josh Stein published the North Carolina Open Government Guide, which explicitly addressed North Carolina Public Records Law and the methods of acquiring public records. This is an authoritative interpretation of N.C. Gen. Stat. § 132-6 (2023). He says to requesters that they can “determine whether you want to ask to inspect the documents or instead have copies made and sent to you. You may choose both.” Josh Stein, North Carolina Open Government Guide, 7 (2019). This option to choose the medium means that requesters can choose to have copies made and sent to them. Furthermore, Attorney General Stein’s reference that requesters can choose to have the copies “made and sent to you” means that requesters are *not* required to pick up the copies in person. These records also should be sent via e-mail if available. This is consistent with N.C. Gen. Stat § 132-6.2(a) (2023), which says that requesters “may elect to obtain them in any and all the media available” and agencies “may not refuse to

provide copies in a particular medium because it has made, or prefers to make, copies available in another medium.” *Id.* Attorney General Stein, interprets this without ambiguity, saying that “because the law permits a requester to ask for records in any and all media in which the public agency is capable of providing them, a requester can ask to have records emailed.” *Id.*

Because North Carolina Public Records Law explicitly requires entities to both furnish copies to requesters and to allow requesters to view documents, we reiterate our request for copies of the documents via e-mail. If the records exist electronically or can be scanned, we ask that these be directly sent to us via e-mail.

Sincerely,

Sunshine Request

With respect to community colleges, N.C. Gen. Stat. § 115D-28 says “every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours.” This does not require that those persons must appear in person to retrieve records. Rather, this is merely consistent with N.C. Gen. Stat. § 132- 6 (2023), which notes that “Agencies are not required to provide access for inspection or copies outside normal business hours.” This statute, enacted after N.C. Gen. Stat. § 132-6, merely clarifies that if one chooses to inspect the records in person, agencies do not have to provide access outside business hours. It does not eliminate the choice that N.C. Gen. Stat. § 132-6 provides to either view the records or have the agency furnish copies.