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An Introduction to the Public Records Act

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All first line supervisors should have at least a basic familiarity with the Public Records Act and its effect on public access to law enforcement records. Supervisors may be called upon to respond to public records requests in a variety of contexts. As this can be an exceedingly complicated and difficult area of the law, our clients are urged to contact SR&S in cases of uncertainty.

N.C.G.S. 132-1(a) defines the term public record as “all documents, 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, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.” This is a very broad definition and would encompass essentially all records held by any public agency in this state.

As a general rule, all public records are subject to inspection and copying by the public. Pursuant to N.C.G.S.132-6(a) “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.” Therefore, the “default position” is that, unless some exception provides otherwise, essentially all records maintained by any public agency in this state are public records and are subject to inspection by the public. It is important to note here that the term “the public” includes representatives of the media. They enjoy the same right of access to public records as the general public.

There is just such an exception to this “default position” for certain records held by law enforcement agencies. N.C.G.S. 132-1.4(a) provides that “records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not public records as defined by G.S. 132 1.” The term “records of criminal investigations” “means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements.” N.C.G.S. 132-1.4(b)(1). The term “records of criminal intelligence information” “means records or information that pertain to a

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person or group of persons that is compiled by a public law enforcement agency in an effort to anticipate, prevent, or monitor possible violations of the law.” N.C.G.S. 132-1.4(b)(2). These records are therefore not public records and are not subject to inspection or copying by the public or the news media. In short, the public is not entitled to see these records.

This exception is itself subject to a number of exceptions (the exceptions to the exception!) set forth at N.C.G.S. 132-1.4(c). The following items do not fall within the 132-1.4(a) exception, and therefore are a matter of public record:

- (1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.
- (2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.
- (3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.
- (4) The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness.
- (5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.
- (6) The name, sex, age, and address of a complaining witness.

The determination as to whether a given record falls within one of these exceptions can be quite difficult at times, and often requires consideration of provisions other than the text of N.C.G.S. 132-1.4(c) itself (the Juvenile Code for example). As noted above, if our clients have any uncertainty as to the application of these exceptions they should contact SR&S.

Finally, there is an exception to the exception set forth at 132-1.4(c)(6) (that's right, the exception to the exception to the exception!). N.C.G.S. 132-1.4(d) provides in pertinent part that “a public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation.” Note that this statute requires that in the specified circumstances the name and address of the complaining witness shall be temporarily withheld. Therefore, in such a circumstance, the name and address of the complaining witness may not be disclosed.

What's the bottom line for supervisors? The Public Records Act is complicated (often exceedingly so!). Deciphering exactly what is or is not a public record in a given situation can be very difficult, and may require far more than merely reading the text of the Act itself. Supervisors will always have time to consider the appropriate response to a public records request. If you are uncertain as to how to proceed, consult SR&S (or your agency counsel).

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