



# City of Asheville Public Records Policy

August 2021

## Public Records Defined

Public Records and public information made or received pursuant to law or ordinance in connection with the transaction of public business by the departments of the City of Asheville (“City”) are the property of the people. The statutes that define the scope of public records are contained in [Chapter 132 of the North Carolina General Statutes](#). The purpose of this Policy is to provide a guide to be followed by the City in managing these requests and in levying charges in accordance with North Carolina law.

## The Public Records Request Process

### Submitting a Public Records Request

Records for records can be submitted via the [Open Record Portal](#) or by emailing [opengov@ashevillenc.gov](mailto:opengov@ashevillenc.gov).

When making a records request, it is recommended the request contain the following information:

1. The date of the request
2. The name of the requester
3. The telephone number or email address of the requester
4. A complete description of the requested record
5. The title and date the record was made or received pursuant to law in connection with the transaction of public business, if known.
6. The location and/or custodian of the requested record, if known.
7. How the requester prefers to receive the requested records, *i.e.* 1) inspect the records in person; 2) obtain a digital copy of the records; 3) pickup a physical record; or (4) receive a physical copy by mail to a provided address.
8. Be specific about what you’re looking for. Include names and dates, if known. You may be asked to clarify your request.

In accordance with N.C. Gen. Stat. § 132-6.2(e), it is the City's policy that it does not, in response to requests for public records, create or compile records that do not exist.

When the requester submits the request form, the Public Records Officer ("PRO") will confirm with a receipt within three days. Records provided in response to a public records request will be public records available for disclosure as of the date of the request.

Delivery methods may have an associated fee depending on size and delivery method. See Duplication and Fees section of this policy for more information.

## **Submitting a Request For Emails**

To assist City Staff in efficiently fulfilling requests for email records, the requester should provide, at a minimum: a time period for the request, keywords or other topic information, the names of the persons, City staff or council members associated with the emails sought, and whether the requester is seeking emails sent by the public, or only emails between staff and/or council members.

Due to the voluminous nature of some email requests, the PRO may ask the requester if they would like to narrow the search to expedite fulfillment.

Emails will be filtered to exclude automatically generated emails such as calendar notifications, out of office replies, external newsletters, publicly disseminated press releases, etc.. Please specify if you would like those materials included.

Exceptionally large or complex requests may be subject to the Special Service Charges as outlined on page 5.

## **What to Expect After a Request is Made**

The PRO will confirm receipt of the request and may ask for clarifying information in order to better direct or fulfill the request.

Depending upon the nature of request, the city may respond initially by:

1. Producing the record after the payment of applicable fees (see [fee schedule](#))
2. Acknowledging the city's receipt of the request
3. Denying the request accompanied and citing the basis for denial
4. Requesting a deposit, or
5. Requesting clarification of the request

Public records requests are not on-going. In the event additional records are created after the date of the requester's original public records request, the requester will need to submit a new request for those records.

If the requester specifies a format in which the records should be disclosed, the City will disclose the records in the requested format if:

1. It is determined that disclosable records exist;
2. The city is capable of providing the records in the format requested;
3. The format requested is reasonable; and
4. The requester pays the applicable fees.

The City's response to the request will be considered complete and final upon:

1. Requester's inspection of the records;
2. Upon notification to the requester that the photocopies requested are available for payment and pick-up;
3. Records are sent electronically; or
4. A denial of the request.

Time to compile records vary based on multiple factors including, but not limited to:

- Number and size of the documents requested
- Whether materials unsuited to release are involved
- Availability of staff and resources
- Complexity to compile requested documents
- If legal review is necessary

Your request will be handled in the order of which it is received and will be made available as promptly as reasonably possible in accordance with state law.

## **Records Delivery Methods**

### Digital Records

The majority of records are provided digitally free of charge. Records are sent in standard file formats via email or made available via a link to a Google file or folder. The requester is able to download any provided records.

### Inspection Of Records

In the event a requester chooses to inspect records, the City will notify the requester once the records are available for inspection. The records will be available for inspection at a date and time mutually agreeable between the requester and the City. The appointment to inspect the

records may need to be broken into intervals over time, so as to not interfere with the daily operations of the city employees.

Records that have been pulled for inspection will be made available to the requester for a period of no more than fourteen (14) calendar days. If the requester fails to contact the City within fourteen (14) calendar days of being notified that the records are available for inspection: (1) the records will be returned to the originating department; and (2) the requester will need to submit a new request for the records and the process will begin anew.

#### Duplication and Transmission Fees

Prior to the release of any public record, the city will collect duplication fees. The City Clerk will update and post duplication fees as appropriate.

The 2022 fiscal year fee structure and charges manual for copies is listed below:

- 8 1/2" X 11" single-sided hardcopy \$0.03
- 8 1/2" X 11" double-sided hardcopy \$0.05
- Compact Disk Read-Only Memory (CD-ROM) \$0.49
- Duplicated site plans, architectural drawings, etc. \$5 per printed sheet
- DVD Duplication of City Council meeting \$3.00

## Denial Of Requests and Appeals

In the event that a request for public records is denied by the Public Records Officer, the requester may appeal the denial in writing to the City Attorney's Office. When contacting the City Attorney's Office please include as much information as possible, including the original request and the denial of access. The legal office will review the appeal and may overturn or confirm the denial of records. Requesters will be notified of the decision by the City Attorney's Office. Appeals may be delivered to the City Attorney's Office by mail or email with the information provided below:

City of Asheville

Attn: Brad Branham, City Attorney's Office, Records Appeal

P.O. Box 7148

Asheville, NC 28802

(828) 259-5542

opengov@ashevillec.gov

## Special Service Charge

In most cases, public records are easily retrievable and provided electronically via email at no cost to the City or requestor. Pursuant to NCGS 132-6.2(b), a special service charge can be applied “if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested ...” The special service charge “shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency” (NCGS 132-6.2(b)). This fee will not apply for any time required to identify and redact confidential information or for other legal review.

The special service charge, if applicable, shall be \$18.00/hour. This rate approximates the hourly rate of pay plus fringe benefits for the position of Administrative Secretary in the city’s pay schedule (effective July 1, 1997).

A special service charge may be triggered when the above requirements have been met and are reasonably estimated to require more than (four) 4 hours of compilation time by the PRO or staff. The PRO supervisor will approve or reject the special service charge. The requester will then be made aware of the charge before the city proceeds with the request. If the requester wishes to continue, then the staff member responsible for compiling the request will log their time spent compiling. The staff member’s time will be reviewed and approved by the department director.

The PRO will provide the requestor with a written estimate and extend the option of the requestor paying the charge. The requestor will be granted the opportunity to narrow the scope of the request to reduce or avoid the service charge.

Before releasing a request with a special service charge, the requester must make the appropriate payment at City Hall. Acceptable payment options are Check, Cash, and Money Order. Checks should be made payable to the City of Asheville. After payment has been received, documents will be released in the desired format of the requester.

A fee of \$1.25 shall be charged for mailing copies of public records to any person, firm or corporation, unless the cost of postage exceeds \$1.00, in which case the fee for mailing shall be the actual postage plus \$1.22. The mailing fee shall be in addition to any other copying fee provided for herein.

## **Payment Of Required Fees**

Payment for duplication and delivery fees will be made prior to the release of public records. When required, the payment of a deposit will be made prior to the duplication of any records (see the Fee Section above). All payments will be made by cash, or check payable to the City of Asheville. Payment can be made in person to the City Clerk's Office on the second floor of City Hall or City Manager Office front desk. A copy of the public records request must be submitted with payment.

## **Failure to Pay Required Fees**

In the event a requester fails to pay a bill for fees incurred within thirty (30) calendar days, the City will require the requester to pay in full the past due amount owed before it will begin processing a new request or a pending request from the delinquent requester.

In addition, the City may require advance payment for any future requests of the full amount of the estimated fees before the agency begins to process a new request or a pending request from that requester.

If the City is unable to collect the duplication fees from the requester, the City may, upon providing thirty (30) calendar days prior written notice to the requester, destroy the duplication set of records made available for the requester in order to avoid storage concerns. Although the records are destroyed, the requester will still be made responsible for the costs the City incurred in duplicating the records originally requested by the requester.

## **Additional Public Records Request Resources**

The City of Asheville is committed to using technology to foster open, transparent and accessible government. The City maintains various data portals to help support informed public engagement and encourage citizen feedback.

### **Public Records Available Online**

- [Asheville Police Department Police to Citizen Portal](#): Events, arrests, and incidents from 2003 to present.
- [Asheville Police Department Policies](#)
- [City of Asheville Open Data Portal](#): Salaries, contracts, planning, use of force, demographics, and more.
- [Development Services Department Portal](#): Permits, planning, services, and other information.

- City Council Meeting Materials [2021-2020](#); [2019-2012](#): Action agendas, meeting minutes, resolutions from meetings, supporting documents when applicable, and a link to the YouTube video of the council meeting from 2012 to present.
- [City Council Meeting Minutes](#): Full-text searching of City Council Minutes from 1984 to present.
- [Simplicity](#): Property owner information, trash pick up, zoning, appraised value, and more.

#### Records Not Held by the City of Asheville

- Birth, Death, or Marriage Records are available through the [North Carolina Department of Health and Human Services Vital Records](#).
- Criminal, Court, or Divorce Records are available through the [Buncombe County Clerk of Superior Court](#).
- Environmental Assessment Records, including above-ground or below-ground storage tanks and/or hazardous material spills, are available through the [North Carolina Department of Environmental Quality Permits and Inspection Branch](#) and the [Hazardous Waste Section](#).
- Real estate and property records are available through the [Buncombe County Register of Deeds](#).
- Property tax information is available through the [Buncombe County Tax Office](#).
- Sewer system records are available through the [Metropolitan Sewerage District of Buncombe County](#).

#### Information that Is Not Public Record

- Personnel information and records other than what is specifically made public under [G.S. § 160A-168](#).
- Personally identifiable information of public utility customers including addresses for water shut offs, sanitation pick up, etc. ([G.S. § 132-1.14](#)).
- Police records that include specific tactics, or specific security or emergency procedures ([G.S. § 132-1.7](#)).
- Criminal investigation and criminal intelligence records except those specifically made public by [G.S. § 132-1.4](#).
- Law Enforcement Recordings, including but not limited to recordings made using body-cameras, per ([G.S. § 132-1.4A](#)).

## Retention of City of Asheville Records

The City of Asheville adheres to the Municipal Records Retention and Disposition Schedule. This document is a tool for the employees of local governments to manage the records in their offices. It lists records commonly found in local governmental offices, and gives an assessment of their value by indicating when (and if) those records should be destroyed.

According to G.S. § 121-5 and G.S. § 132-3, you may only destroy public records with the consent of the Department of Cultural Resources (DCR). This schedule is the primary way the State Archives of North Carolina gives its consent. Public records including electronic records not listed in this schedule are not authorized to be destroyed.

The information contained in this document provides only high-level guidance. Departments should familiarize themselves with how the Municipal Records Retention and Disposition Schedule applies to the records generated by their department.

## **Records on Personal Devices**

Emails, text messages on cell phones and tablets, and social media posts that transact or discuss City business are public records. Please note that whether or not the device is City-issued or personal, the content of the message is what makes the message a public record. In the event that a records request asks for records on a personal device, the PRO will inform the staff or council member to provide these records which will typically take the form of a screenshot.

## **Draft Documents and Personal Notes.**

A draft document that has not been circulated to others for review or comments is likely not a public record. Such documents would not have to be disclosed if there were a public record request. However, once a draft document has been circulated to others, it may become a public record. In most cases, a staff member's personal notes do not qualify as a public record.

## **Temporary/Transitory Records**

Some records are "transitory," and although they are public records, they do not have to be retained after they serve their immediate administrative value. Such records with short-term value may be destroyed or otherwise disposed of when their reference value ends. They include rough drafts once the final document is finished, reservations and confirmations, email messages not related to City business, downloads for the Internet, records that do not contain information necessary to conduct City business, and tape recordings made to assist in the preparation of final minutes.

## **Personal Information**

Emails, text messages or other communications stored on a City-owned phone, computer or other device, that were not created in the course of transacting public business, are not public records, and are not subject to compulsory disclosure under the Public Records Act absent rare, special circumstances. Employees, however, do not have a reasonable expectation of privacy with respect to any content contained on a City-owned device, and any such content is subject



to review by an employee's supervisor or by any other personnel who may be authorized to access said content in the course of their work duties.

## **Appendix A: Protected Records**

Exempted records include, but are not limited to:

- Confidential communications from the attorney to the client within the scope of the attorney-client relationship as defined in NCGS 132-1.1(a).
- Criminal investigation records and records of criminal intelligence information, as provided in NCGS 132-1.4 (active and closed investigations).
- Sensitive public security information, including specific details of public security plans and arrangements, detailed plans and drawings of public buildings and infrastructure facilities, and certain plans to prevent and respond to terrorist activity, as provided in NCGS 132-1.7, and technology security information, as provided in NCGS 132-6.1.
- Records of minors per NCGS 132-1.4, 132-1.12, and 7B-2901.
- All information contained in City employees' personnel files maintained by the City is confidential in accordance with NCGS 160A-168, except information deemed by NCGS 160A-168(b) to be a matter of public record. These rules apply to personnel information for applicants, current employees, and former employees.
- Tax information pertaining to a taxpayer's income or gross receipts may not be disclosed, as provided in NCGS 132-1.1(b).
- Social security numbers and other personal identifying information is confidential and unlawful to disclose to the public. In addition to social security numbers, "personal identifying information" includes: employer taxpayer identification numbers; drivers' license numbers, state identification card numbers, and passport numbers; checking, savings, credit, and debit account numbers; personal identification code (PIN) numbers used to access financial resources; digital signatures; any other numbers or information that can be used to access a person's financial resources; biometric data; fingerprints; and passwords, all as provided in NCGS 132-1.10, NCGS 75-61, and NCGS 14-113.20.
- Trade secrets and electronic payment account numbers are protected as set forth in NCGS 132-1.2. (Note that to protect a "trade secret" detailed requirements must be met.)
- The seal of an architect, engineer, or land surveyor when that seal has been submitted for project approval under Part 5 of Article 19, Chapter 160A (Building Inspections) as set forth in NCGS 132-1.2.
- Certain "trial preparation materials" are protected as provided in NCGS 132-1.9. If records are created for or at the request of an attorney for the City when the City is engaged in litigation or litigation is anticipated, these records are likely protected "trial preparation materials." The Legal Department should be consulted if there is a request for such records.
- Names and addresses of complaining witnesses to crimes must be temporarily withheld if release of the information is reasonably likely to pose certain threats to the witnesses or materially compromise the investigation, as provided in NCGS 132-1.4.

- Certain economic development incentives are temporarily protected, but the City must make certain prior disclosures to applicants, as provided in NCGS 132-1.11 and NCGS 132-6(d).
- Closed session meeting minutes that are deemed protected under NCGS 143-318.10(e).
- Public enterprise billing information, as provided in NCGS 132-1.1(c).
- Records protected by copyright. The City must permit inspection of records protected by copyright, but cannot make copies of copyrighted records, pursuant to 17 U.S.C. § 106(1).