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INTERPRETING NORTH CAROLINA'S PUBLIC RECORDS LAW

Joseph D. Johnson and David M. Lawrence

This Local Government Law Bulletin seeks to help city and county attorneys deal with questions that arise under North Carolina's Public Records Statute (G.S. Chapter 132). Though it was enacted in 1935, that statute has never been the subject of an appellate court opinion. Therefore, our research method has been to read each public record case from the rest of the country, starting with the late nineteenth century, to see what light those cases might shed on North Carolina's statute. We found the light to be helpful, and this Bulletin is the result.

The Bulletin is divided into three parts. Part I discusses several aspects of public record law--the definition of public record, possible exceptions implicit in the statute, possible restrictions on access--that emerge from the case law but might not be suggested from the statute itself. Part II lists the other North Carolina statutes we found that, with regard to local government records, either reinforce or make exceptions to the broad language of G.S. Chapter 132. Part III indexes the cases from other states by the type of record involved, showing whether that type of record is generally considered public.

PART I.
ASPECTS OF THE PUBLIC RECORDS LAW

A. DEFINING "PUBLIC RECORDS"

The original North Carolina statute recognizing the right of any person to inspect public records was enacted in 1935, and the section defining the term "public record" was rewritten and broadened in 1975. Public records are now defined as all public "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"; this phraseology indicates that no record is excluded merely because of its physical form. The definition applies to the records of "any agency of North Carolina government or its subdivisions," and the term "agency" is defined to include "every public office, public officer or official (state or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government." Finally, the definition requires that the record be one that was "made or received pursuant to law or ordinance in connection with the transaction of public business."

Common Law Background

Although North Carolina's current definition of public records is statutory, an examination of common law definitions and classifications of records will help in understanding the scope of the statute. Before 1935, any right of inspection in North Carolina was based on the common law. The North Carolina appellate courts were never called upon to provide a common law definition of public records, but the decisions of other state courts are instructive.

Although the various common law definitions of public records have many minor differences, they fall into two major groups. The first and narrower definition is limited to records that are required by law to be made or received, including records that are intended to serve as notice to the public.[1] (Records of land transfers, deeds of trust, and mortgages are examples of records intended to serve as notice.)

The broader common law definition of public records included not only records required by law to be made or received, but also records that are "necessary to be kept in the discharge of a duty imposed by law,"[2] or even records that are simply used and kept in a public office.[3] The modern trend, in both statutes and court decisions, has been toward the broader definition.

Although certain ambiguities can be found in attempting to fit North Carolina's definition into one of the common law classifications, the statute appears to embrace the broader definition of public records. The statutory definition includes those records "made or received pursuant to law or ordinance in connection with the transaction of public business." Focusing on the word "pursuant," the definition appears to include not only records required by law, but also records simply kept in carrying out lawful duties.

The changes made in the definition by the 1975 amendment support this conclusion. The 1935 statute referred only to records "made and received in pursuance of law." The phrase "in connection with the transaction of

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1. Linder v. Eckard, 261 Iowa 216, 152 N.W.2d 833 (1967); Lefebvre v. Somersworth Shoe Co., 93 N.H. 354, 41 A.2d 924 (1945).

2. Robison v. Fishback, 175 Ind. 132, 137, 93 N.E. 666, 669 (1911).

3. Burton v. Tuite, 78 Mich. 363, 44 N.W. 282 (1889), enforced, 80 Mich. 218, 45 N.W. 88 (1890).

public business" was added in 1975, and that phrase appears to include not only records required by law to be made or received but also those actually used and kept in a public office.

Context of the Statute

The North Carolina statute not only grants access to public records but also provides for their preservation and destruction. Some courts, confronted with a definition that applies to both inspection and preservation, have expressed fears that a broad reading of the definition would impose substantial administrative record-keeping requirements upon a large number of relatively unimportant records.[4] However, these fears have not been universal, and other courts have held that a broad definition for inspection purposes would not impose unreasonable record-keeping requirements upon public officials.[5]

In any event, the North Carolina definition, for preservation purposes, has been made administratively more specific. North Carolina's statute does not itself regulate the preservation and destruction of public records; rather, it delegates that authority to the Department of Cultural Resources.[6] Pursuant to the delegation, The County Records Manual was published in 1970 and The Municipal Records Manual in 1971.[7] Although these manuals do not require any records to be made, they identify a large number of public records and regulate their retention and disposal. Any record listed in the manuals should certainly be considered a public record for preservation purposes and probably also for purposes of public inspection, although such a listing ought not to be conclusive. Historical reasons might demand retention of a record, but a particular statute or consideration of policy such as those discussed below might close it, for the present, to public inspection. Moreover, the fact that a record does not appear in the manuals does not necessarily mean that the record is not public. That kind of record simply might not have come to the attention of those who prepared the manuals.

Judicial Use of the Term "Public Record"

In reading cases that apply the definition of public record to a given situation, it is important to recognize that the term "public record" is used in a number of different contexts, and the definition may vary depending on the context. The status of a record is important for such diverse purposes as evidence, constructive notice, judicial notice, destruction, preservation, and public inspection. Although different underlying issues are raised

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4. Town Crier, Inc. v. Chief of Police, 361 Mass. 682, 282 N.E.2d 379 (1972); Kottschade v. Lundberg, 280 Minn. 501, 160 N.W.2d 135 (1968).

5. Citizens for Better Educ. v. Board of Educ., 124 N.J. Super. 523, 308 A.2d 35 (App. Div. 1973). Accord, Menge v. City of Manchester, 113 N.H. 533, 311 A.2d 166 (1973).

6. N.C. Gen. Stat. §121-5; N.C. Gen. Stat. §§ 132-3, -8.1.

7. The manuals were published by the State Department of Archives and History, which is now contained within the Department of Cultural Resources.

in each context, many courts have attempted to apply the same definition of public record to each situation without explicitly identifying the considerations distinguishing one application from another. However, context, whether explicitly recognized or not, has often had an impact on the result of cases, and a sensitivity to context can sometimes resolve apparent conflicts in the cases.[8]

A final point on context. Courts often state that a record not open to inspection is not a public record,[9] but such a record is nevertheless a public record in that it is public property,[10] and penalties for destroying or removing the record still apply.

B. RECORDS EXEMPT FROM PUBLIC INSPECTION

Despite broad statutory definitions of public records, courts have held that certain records need not be made available for public inspection. Some records may be exempt from inspection because of a specific statute, others because the courts find that confidentiality is required as a matter of public policy or because the information contained in the records is privileged. This section reviews such exemptions.

Exemptions Based Upon Statutory Interpretation

The only exemption mentioned in the North Carolina public records statute itself provides a limited attorney-client privilege,[11] but a number of other statutes declare various records to be either open to inspection or confidential.[12] The policies underlying a particular statute, whether obvious or subtle, sometimes lead courts to find exemptions for records not specifically mentioned in the statute. For example, no statute refers specifically to the status of juvenile arrest records. However, the North Carolina courts could be expected to find that juvenile arrest records must be withheld from public inspection by virtue of the requirement in G.S. 7A-287 that all juvenile court records be withheld from public inspection. Although a police record of a juvenile arrest is not a juvenile court record, the policies of the Juvenile Court Act and of G.S. 7A-287 would be frustrated were police agencies required to make public the names of arrested juveniles.[13] In a more obvious case, one court held that if a statute required proceedings of a grand jury to be secret, the record of those proceedings must also be secret.[14]

8. See MacEwan v. Holm, 226 Or. 27, 359 P.2d 413 (1960).

9. E.g., State ex rel. Spencer v. Freedy, 198 Wis. 388, 223, N.W. 861 (1929).

10. People v. Pearson, 111 Cal. App. 2d 9, 244 P.2d 35 (1952).

11. N.C. Gen. Stat. § 132-1.1.

12. See Part II of this Bulletin for a list of such statutes.

13. See 44 N.C.A.G. 305 (1975). See also Patterson v. Tribune Co., 146 So.2d 623 (Fla. App. 1962), cert. denied, 153 So.2d 306 (Fla. 1963).

14. Hewitt v. Webster, 118 So.2d 688 (La. App. 1960).

Statutes regulating access to public records may also require interpretation to ascertain who may inspect the records. For example, G.S. 148-76 requires prisoners' files to be made available to certain named parties. The Court of Appeals has held that the list of parties in the statute is exclusive, and therefore a prisoner had no right to inspect his prison records.[15]

Public Policy Exemptions

Regardless of the definition given to the term "public record," courts have consistently found that public policy requires some records to be secret. If the right of inspection arises solely from common law, clearly the courts may create exemptions. However, even in states with statutes permitting public inspection of a broad class of records, courts have continued to rely on common law principles to create exemptions where none are provided in the statute.[16]

In one of the oldest exemptions, courts have concluded that the public interest requires that certain police records be withheld from public view. This exemption does not extend to every record maintained by the police, but it clearly includes files and other records relating to criminal investigations. The policy reasons for this exemption are to encourage police to enter information in their reports freely, to avoid tipping off the subjects of investigation, and to protect confidential investigative techniques.[17]

Courts have also created exemptions to protect the government's sources of information, not only in the areas of criminal law enforcement and corrections but also in other administrative areas. Private parties may often resist providing information to the government unless confidentiality is assured. However, public officials should be cautious in promising confidentiality to private parties, because courts seem to honor such promises only when the court itself decides that confidentiality is necessary.[18]

In cases in which persons have sought inspection of land appraisals made before government agencies have purchased or condemned the land, some courts have created exemptions if the land transactions were not completed.[19] These cases suggest that courts are sometimes willing to create exemptions if disclosure would harm the government's financial interests, giving unfair competitive advantages to persons who do business with the government. However, one court has specifically rejected this exemption, holding that potential

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15. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd 281 N.C. 307, 188 S.E.2d 347 (1972).

16. International Union, UAW v. Gooding, 251 Wis. 362, 29 N.W.2d 730 (1947).

17. See Part III, Accident Reports and Law Enforcement Records.

18. See Part III, Consultant Reports and Private-Citizen Information in Government Files.

19. See Part III, Land Records: Governmental Transactions.

harm to the government's financial interests during negotiations for land acquisition is an irrelevant consideration.[20]

Finally, as a result of the proliferation of government-held information on private citizens, some courts have begun to recognize legitimate privacy interests, creating exemptions where disclosure would result in an unjustified invasion of personal privacy.[21] The North Carolina courts have not yet faced this issue under the public records statute, but the Court of Appeals recently recognized that the fundamental right to personal privacy justified a superior court order prohibiting public disclosure of information submitted to the attorney general in connection with a criminal investigation.[22]

Privilege

In the absence of specific statutory exemptions denying public access to privileged records, courts have still generally permitted privileged records to be withheld from public inspection. Such exemptions may be based on the privilege statute itself if the privilege is construed to apply not only to the giving of testimony but also to all information growing out of the privileged relationship.[23] The more common approach, however, is for courts to use the policies underlying the privilege statutes as support for the conclusion that the public interest requires privileged records to be exempt from the disclosure requirements of a public records statute.[24] Whatever the justification, documents arising within privileged relationships such as attorney-client or doctor-patient[25] have generally been held exempt from public inspection.

The North Carolina statute specifically provides a three-year privilege for certain confidential communications made by legal counsel to a public

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20. Gannett Co. v. Goldtrap, 302 So.2d 174 (Fla. App. 1974).

21. Wisher v. News-Press Publishing Co., 310 So.2d 345 (Fla. App. 1975); Minneapolis Star & Tribune Co. v. State, 282 Minn. 86, 163 N.W.2d 46 (1968). See Industrial Foundation v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976). See also Part III, Private-Citizen Information in Government Files.

22. In re Investigation by Attorney General, 30 N.C. App. 585, 227 S.E.2d 645 (1976).

23. Massachusetts Mut. Life Ins. Co. v. Board of Trustees, 178 Mich. 193, 144 N.W. 538 (1913).

24. See Jessup v. Superior Court, 151 Cal. App. 2d 102, 311 P.2d 177 (1957); Minneapolis Star & Tribune Co. v. State, 282 Minn. 86, 163 N.W.2d 46 (1968).

25. Pyramid Life Ins. Co. v. Masonic Hosp. Ass'n, 191 F. Supp. 51 (W.D. Okla. 1961).

board or agency but does not cover the reverse situation of communications made by the agency to counsel.[26] Despite this failure, it seems likely that the North Carolina courts would permit such communications to remain confidential if they were within the scope of the traditional attorney-client privilege. The major policy justification for the attorney-client privilege is to protect communications made by the client to the attorney rather than vice versa, and the legislature may have assumed that an explicit statutory provision was needed only to protect communications made by an attorney to the governmental client. At any rate, the existence of the testimonial attorney-client privilege would seem to indicate that public policy requires that the confidentiality of attorney-client communications be maintained, even if the client is a government officer or agency.

Of course, inspection must be permitted if the privilege has been waived.[27] Courts generally view privilege claims narrowly, looking for inapplicability or waiver of the privilege. If the privilege exists for the benefit of the agency or board, disclosure to a member of the public is sufficient to constitute waiver.[28] However, the doctor-patient privilege exists for the patient's benefit, and disclosure of hospital or medical records would require the patient's permission.[29]

The Effects of Exemptions

If a public record is not exempt from inspection, the law requires that it be made available to anyone who asks to see it. On the other hand, it is possible that public officials might want to disclose to the public a record that fits within one of the exemptions. In a few situations, confidentiality is required, and the custodian has no authority to permit public inspection. A privilege like the doctor-patient privilege may not be waived by the public agency; statutory language sometimes indicates that public inspection of a particular record must not be permitted; and one court indicated that confidentiality is mandatory if disclosure would violate anyone's constitutional right of privacy.[30] With these exceptions, the exemptions provided by statute or the common law do not require the records to be withheld, and the agency may, in its discretion, permit public inspection.[31]

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26. N.C. Gen. Stat. § 132-1.1.

27. People ex rel. Brownell v. Higgins, 96 Misc. 485, 160 N.Y.S. 721 (Sup. Ct. 1916).

28. Coldwell v. Board of Pub. Works, 187 Cal. 510, 202 P. 879 (1921).

29. Pyramid Life Ins. Co. v. Masonic Hosp. Ass'n, 191 F. Supp. 51 (W.D. Okla. 1961).

30. People ex rel. Better Braodcasting Council, Inc. v. Keane, 17 Ill. App. 3d 1090, 309 N.E.2d 362 (1973).

31. Black Panther Party v. Kehoe, 42 Cal. App. 3d 645, 117 Cal. Rptr. 106 (1974).

Of course, the equal protection clause of the United States Constitution generally prohibits discrimination in granting access to public records. Once the custodian has permitted a particular record to be inspected by a member of the public, he may not later claim that the record is exempt from public inspection unless he can show a rational basis for permitting selective disclosure. For example, it may be permissible for a public agency that maintains records on individuals to permit the subject, and no one else, to inspect his records. But it is clear that equal rights of inspection must be granted to all persons similarly situated.[32]

C. ACCESS TO PUBLIC RECORDS

Who May Inspect Public Records?

At common law, a person was entitled to inspect a particular public record only if he had a legal interest in the document.[33] The interest, however, did not have to be private--it was enough if inspection could enhance or promote some legitimate public interest. The application of such an interest requirement often became confusing and even meaningless because almost any person who was a citizen and taxpayer could usually assert some legitimate public interest to justify an inspection.[34] At least one court finally concluded that the interest requirement was an unwarranted impediment to a common law right of inspection.[35]

However, the North Carolina statute eliminates the difficulties caused by the common law interest requirement. In North Carolina, the right of inspection granted by the statute may be exercised by "any person," and comparable language in other states has been taken to indicate clearly that the interest requirement has been eliminated.[36]

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32. Quad-City Community News Serv., Inc. v. Jebens, 334 F. Supp. 8 (S.D. Iowa 1971). See also Black Panther Party v. Kehoe, 42 Cal. App. 3d 645, 117 Cal. Rptr. 106 (1974).

33. Brewer v. Watson, 71 Ala. 299 (1882); State ex rel. Ferry v. Williams, 41 N.J.L. 332 (1879); State v. Harrison, 130 W. Va. 246, 43 S.E.2d 214 (1947). See also Newton v. Fisher, 98 N.C. 20, 3 S.E. 822 (1887).

34. See, e.g., Holcombe v. State ex rel. Chandler, 240 Ala. 590, 200 So. 739 (1941); Excise Comm'n v. State ex rel. Skinner, 179 Ala. 654, 60 So. 812 (1912); Courier-Journal & Louisville Times Co. v. Curtis, 335 S.W.2d 934 (Ky. 1959); State ex rel. Charleston Mail Ass'n v. Kelly, 149 W. Va. 766, 143 S.E.2d 136 (1965).

35. City of St. Matthews v. Voice of St. Matthews, Inc. 519 S.W.2d 811 (Ky. 1974).

36. Direct Mail Serv., Inc. v. Registrar of Motor Vehicles, 296 Mass. 353, 5 N.E.2d 545 (1937); Orange County Publications Div. of Ottaway Newspapers-Radio, Inc. v. White, 55 Misc. 2d 42, 284 N.Y.S.2d 293 (Sup. Ct. 1967); Hanson v. Eichstaedt, 69 Wis. 538, 35 N.W. 30 (1887).

The Basic Elements of the Right of Access

The North Carolina statute provides that "[e]very person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person." This duty of the custodian of public records[37] to permit inspection is as important as other official duties, and he should comply with any request for inspection sufficiently definite to enable the records to be located.

Courts have identified certain positive elements that are necessary to provide an effective right of inspection. Adequate space must be provided for inspection, and the custodian must permit public records to be inspected during all office hours. Members of the public must be allowed personally to examine the originals of public records, and the right to inspect includes the right to make copies.

Although courts often state that the right to inspect public records is an absolute right, a number of practical necessities require that certain limitations be placed upon that right. The safety of the records must be assured, and undue interference with the custodian's official duties should be avoided. Requests for inspection must be reasonable, and costs must sometimes be borne by the person inspecting the records.

Establishing reasonable regulations regarding access to public records is a discretionary matter that depends upon the characteristics of the public offices involved. However, when regulations are made on an ad hoc basis, the chances for arbitrary and unreasonable limitations on the right of access are increased. Therefore regulations should be promulgated in advance, either by the governing board or by the custodian pursuant to policies established by the governing board, and the people who seek access should be informed of the regulations.

Protection of Public Records

The general rule requires that members of the public be allowed to inspect personally originals of public records in the location where the records are normally kept. This right to inspect originals exists even if the facts contained in the record have been published and made available to the public. However, the custodian's statutory duty to care for the public records in his office and to supervise public inspection indicates that certain necessary precautions can serve as a limitation upon this general rule. For example, should substantial problems threaten the security of a particular record, the custodian can restrict public access to copies of the record, rather than the original.[38] Another case upheld a rule that required a person desiring access to certain files to choose the files he wanted from a list of all the files in the office, permitting only the custodian or his employees to withdraw and replace

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37. N.C. Gen. Stat. § 132-2 defines the custodian as "[t]he public official in charge of an office having public records."

38. Florence Morning News, Inc. v. Building Comm'n, 265 S.C. 389, 218 S.E.2d 881 (1975).

the files. This denial of personal access to the entire group of records was upheld as a proper method of protecting files easily lost or misplaced.[39]

In rare situations, concern for the safety of records has justified a total denial of access. For example, one court found that although the ballots cast in an election appeared to fit the definition of public records, inspection by members of the public would endanger the safety of the ballots and perhaps make them inadmissible in an election contest. Therefore a complete denial of access was proper, at least until after the time allowed for challenges had passed.[40] Another court held that a person could not tie in to a computer to gain access to information stored there if that use of the computer could effectively break down the system.[41]

The custodian is also required, under the case law, to provide adequate space for inspection of public records. The amount of space that will be adequate depends on the size of the office and the number of requests for inspection. In a large office that receives many requests for inspection, it may be necessary to provide a special area devoted exclusively to inspection of public records. On the other hand, in an office that receives few, if any, such requests, it should be enought to find an unoccupied chair along with a table or desk when the need arises.

In providing space for inspection, the custodian must remain aware of his duty to supervise the inspection. The custodian may feel that it is necessary to exercise only a negligible amount of supervision, but that choice should be made only if the safety of the records can be assured. Although a particular situation might justify removing the records to another office for inspection purposes, adequate supervision is normally facilitated by requiring that inspection be conducted in the office or area where the records are normally kept.

Minimizing Disruption of Public Offices

In addition to the concern for protecting public records, a number of administrative considerations may properly affect the right of access. The general rule is that access should be allowed during all business hours. However, in one office that was open from 8 a.m. until 5 p.m., the reviewing court found no substantial denial of access when the records were made available only between the hours of 8:30 a.m. and 4:30 p.m.[42] Obviously it should also be

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39. Gorton v. Dow, 54 Misc. 2d 509, 282 N.Y.S.2d 841 (Sup. Ct. 1967).

40. State ex rel. Roussel v. St. John the Baptist Parish School Bd., 135 So.2d 665 (La. App. 1961).

41. Texas Indus. Accident Bd. v. Industrial Foundation of the South, 526 S.W.2d 211 (Tex. Civ. App. 1975).

42. Bruce v. Gregory, 65 Cal. 2d 666, 423 P.2d 193, 56 Cal. Rptr. 265 (1967).

proper to deny access during hours in which the sole custodian of the records must be out of the office.

Access may be limited whenever necessary to prevent undue interference with agency functioning. It is not permissible to deny access totally because of mere inconvenience or because the custodian has too much work to do,[43] but problems with agency functioning may arise when records are needed by agency employees or when public demand for inspection is substantial. While it is impossible to suggest specific rules that will be appropriate in every case, one court has clearly stated the conditions that must exist before access may be limited. The court permitted inspection to be denied or restricted only if: (1) the records are needed by officials or employees in the course of their work; (2) the adequate office space provided for public inspection is in use by other members of the public at that time; (3) there is valid reason to fear defacement or other damage to the records, and supervision is, at that moment, impossible; or (4) the person inspecting the records is monopolizing them to the detriment of other members of the public.[44]

The extent to which access may be limited requires a knowledge of factors unique to each office and each group of records. For example, in one case substantial problems arose when 700 to 800 daily requests were made for information contained in an eleven-volume record. The custodian established rules providing that any individual's inspection was limited to one hour per day, that inspection was limited to those matters in which the individual had an interest, and that a general personal inspection was denied. Those rules were upheld because they were shown to be necessary in view of the limited facilities and the number of requests for inspection.[45]

Unless the purpose of an agency is primarily to maintain records for public inspection, a custodian should not be required to spend an unreasonable amount of time locating specific records. For example, one court held that in the absence of a central index in a large school system, the board of education did not have to search the records of over 800 schools to locate the addresses of two students.[46] Similarly, a custodian should not be expected to analyze the records under his control in order to provide information not directly available; the public's right is simply one of access.

Making Copies of Public Records

In considering the scope of the right of inspection, the right to make copies of public records must also be recognized. North Carolina's access statute, G.S. 132-6, does not mention copying by the public, but the remedies

43. Weinstein v. Rosenbloom, 59 Ill. 2d 475, 322 N.E.2d 20 (1974); State ex rel. Research Institute v. Nix, 195 Okla. 176, 155 P.2d 983 (1944).

44. Bruce v. Gregory, 65 Cal. 2d 666, 423 P.2d 193, 56 Cal. Rptr. 265 (1967).

45. In re Lord, 167 N.Y. 398, 60 N.E. 748 (1901).

46. Marquesano v. Board of Educ., 19 Misc. 2d 136, 191 N.Y.S.2d 713 (Sup. Ct. 1959).

section, G.S. 132-9, provides a remedy if a person has been denied access to public records for the purpose of "inspection, examination, or copying." Even in the absence of specific language permitting copying, it has uniformly been held that the right of inspection and examination includes, as a necessary complement, the right to make copies.[47]

At one time, members of the public had to make all their copies by hand or on a typewriter. Modern cases have held that photography and photocopying are also proper methods of making copies. Indeed when public records are stored in computers, the right of inspection has been held to include the right to have copies of computer tapes.[48]

However, concern for the safety of public records has led to certain limitations upon the right to make copies. In making photocopies, members of the public have no absolute right to use their own machines; the custodian has the option of making the copies on his machine. Members of the public also have no right to make their own copies of magnetic tapes, whether they are computer tapes or voice recordings. Although the custodian is generally obligated to provide copies of magnetic tapes upon request, particularly when duplicate copies are kept available to replace lost or damaged originals, one court held that if transcripts of a magnetic voice recording had already been made available to the public, the possibility of damage to the original justified a refusal to allow it to be duplicated.[49]

Courts have also concluded that requests for copies must be reasonable. For example, one court upheld an agency's refusal to comply with a request for copies of documents amounting to over 80,000 pages, noting that the public records statute was not intended to put state agencies into the printing business.[50]

Fees for Inspection

A number of principles have been developed regarding costs that may be imposed for inspection and copying. Considering first the question of fees for inspection, some cases in the late 1800s approved the practice of charging fees for inspection of public records, particularly when persons were making abstracts of records relating to land. Those decisions were reached because the custodian's pay consisted solely of the fees that he collected. Therefore

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47. E.g., Fuller v. State ex rel. O'Donnell, 154 Fla. 368, 17 So. 2d 607 (1944); Marsh v. Sanders, 110 La. 726, 34 So. 752 (1903).

48. Menge v. City of Manchester, 113 N.H. 533, 311 A.2d 116 (1973).

49. Guarriello v. Benson, 90 N.J. Super. 233, 217 A.2d 22 (L. Div. 1966).

50. Rosenthal v. Hansen, 34 Cal. App. 3d 754, 110 Cal. Rptr. 257 (1973).

when the custodian's position became salaried, he was no longer allowed to charge a fee for inspection of the records. Other courts have always refused to allow fees to be charged for inspection, even when the custodian depended upon fees for his pay.

The modern rule is that no fee for inspection can be charged when the custodian performs no services beyond locating and retrieving the records. This principle applies even though the information acquired from the records may be sold for private gain.

Some courts have made exceptions to this rule when extraordinary services are rendered. For example, a rule requiring examiners to pay guards a fee for supervising extensive examination of public records was approved.[51] On the other hand, courts have disagreed as to whether a fee may be imposed for continuous use of office space in conducting examinations. However, the initial decision to charge fees for exceptional services is within the discretion of the governing board.

Fees for Copies of Public Records

While free access to public records must normally be allowed, fees can often be charged for making copies of public records. However, fees may be imposed only when the custodian makes the copies. When members of the public make their own copies, whether by hand, with their typewriter, or with their own copying machines, no fee for copies may be imposed.

When the custodian furnishes certified copies of public records, G.S. 132-6 provides for the payment of legally prescribed fees; however, no statute of general applicability sets fees for certified copies. Using the fee schedule of registers of deeds as a guide, $1 is probably a legitimate amount to charge for most certified copies.[52]

A fee may also be charged when the custodian furnishes uncertified copies of public records, whether the record is a simple document or a computer tape. Using again the fee schedule of registers of deeds as a guide, the fee should "bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying equipment."[53] This standard allows recovery of the actual costs of reproduction. However, the standard refers only to the equipment costs and the quality of copies, and probably there should be no recovery of the cost of labor incurred in making the copies.

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51. State ex rel. Higgins v. Lockwood, 74 N.J.L. 158, 64 A. 184 (1906).

52. N.C. Gen. Stat. § 161-10(9).

53. N.C. Gen. Stat. § 161-10(11).

PART II.

NORTH CAROLINA STATUTES THAT DETERMINE THE STATUS OF VARIOUS LOCAL GOVERNMENT RECORDS

This Part contains those North Carolina statutes we could find that specifically regulate access to local government records. Such statutes are often difficult to locate merely by using the index to the General Statutes, and as a result, this listing is not necessarily complete. Therefore if the status of a local government record not covered in this Part is in doubt, any legislation relating to that record should be carefully examined before relying wholly on the provisions of Chapter 132.

Autopsy Reports

The reports of certain autopsies performed upon exhumed bodies or remains shall be furnished, upon court order, to any interested person who can demonstrate need for the report. The statute further provides that other autopsy reports must be furnished to the district attorney, the superior court judge, and the party who requested the autopsy, but it neither specifically permits nor prohibits public inspection of these other autopsy reports. G.S. 130-200.

Election Records

1. Ballots. Ballot boxes must be locked and sealed after an election, and they must not be opened "except upon the written order of the county board of elections or upon a proper order of court." G.S. 163-171.

2. Registration records. Upon the request of any person, the county board of elections shall furnish a list of the persons registered to vote in the county or in any of its precincts, and it may, upon request, "furnish selective lists according to party affiliation, sex, race, date of registration, or any other reasonable category." The full costs of making the lists must be borne by the person who receives the list. However, registrars are not permitted to furnish such lists or to permit the registration books to be copied. G.S. 163-66.

Jury Lists

The jury list, consisting of a set of cards containing the names and addresses of all persons qualified to be jurors, shall be kept available for public inspection in the office of the register of deeds. G.S. 9-4.

Personnel Records

1. Records of city employees. Personnel files maintained by a city must not be opened for general public inspection, except that the following information with respect to each city employee is a matter of public record: name, age,

date of original employment, current position title, current salary, date and amount of the most recent change in salary, date of the most recent change in position classification, and the office to which the employee is currently assigned. The statute authorizes the city council to adopt rules and regulations for the safekeeping of these records. G.S. 160A-168.

2. Records of county employees. Personnel files maintained by a county must not be opened for general public inspection, except that the following information with respect to each county employee is a matter of public record: name, age, date of original employment, current position title, current salary, date and amount of the most recent change in salary, date of the most recent change in position classification, and the office to which the employee is currently assigned. The statute authorizes the board of county commissioners to adopt rules and regulations for the safekeeping of these records. G.S. 153A-98.

Social Services Records

1. Records of public assistance applicants and recipients. A copy of the monthly recipient check register is a public record, but the information obtained from the register may not be used for commercial or political purposes. No other records pertaining to mandated public assistance applicants or recipients are open to public inspection. G.S. 108-16, -45.

2. Records of aid to the needy blind. Records concerning persons applying for or receiving aid to the needy blind are not open for public inspection. G.S. 111-28.

Tax Records

1. Tax records of the Department of Revenue. No tax or revenue officials, except in accordance with a proper judicial order, are permitted to divulge information concerning the amount of income, the amount of tax, information from which the amount of tax is determined, or any personal information, including lists of names, addresses, or social security numbers, of any taxpayer. G.S. 105-259.

2. Records furnished to local tax authorities by the Department of Revenue. Information furnished by the Department of Revenue for the purpose of assisting local tax authorities in the listing, appraisal, and taxation of property is not open for public inspection. G.S. 105-289(e).

3. Business records used for appraisal of property. Inventories, statements of assets and liabilities, and other information secured by the tax supervisor, but not expressly required to be shown on the abstract itself, are not open to public inspection. G.S. 105-296(h).

Vital Statistics

Birth and death certificates. Copies of birth and death certificates maintained by the register of deeds are open for public inspection. G.S. 130-64.

PART III.
STATUS OF VARIOUS LOCAL GOVERNMENT RECORDS: PUBLIC OR NONPUBLIC?

This Part organizes a large number of cases from other states that have considered whether particular sorts of documents held by local governments were "public records." By public records in this Part, we mean a record that the court holds is open to public inspection. Although the statutes differ from state to state, we have been impressed with the consistency of results regarding each sort of record, despite the differences in statutory language. It would seem that when the statutes are unclear, the courts pay less attention to the actual language of the statute than to their own notions of public policy.

This Part groups the various types of records into a series of categories--some fairly broad, others fairly narrow--and sets them out in alphabetical order. If the court has held a record to be open to public access, it is characterized in this Part as public. If public access is denied by the court, the record is characterized as not public. In each case the decision is the court's; the statute did not deal specifically with that type of record. While the listing does not include every sort of record that a local government might keep, we are satisfied that it includes every sort that has been the subject of appellate litigation in other states.

Accident Reports

Accident reports considered in the cases have fallen into three distinct categories: (1) reports by police agencies investigating accidents; (2) reports made to or by administrative agencies; (3) reports made by a local government concerning accidents involving its facilities or personnel and from which it is potentially liable.

1. Reports made by police agencies. In the single case in this area, the court held that accident reports made by the police for internal purposes (such as, for use in possible prosecutions) are not public records.

Blandford v. McClellan, 173 Misc. 15, 16 N.Y.S.2d 919 (Sup. Ct. 1940).

2. Reports made by or to administrative agencies. Statutes, and sometimes ordinances, require that motor vehicle accidents, industrial accidents, and other "private" accidents be reported to one or more governmental agencies. Sometimes these agencies will investigate such accidents themselves. The majority position seems to be that such reports are public records. [In North Carolina some of the sorts of reports mentioned in the cases from other states are the subject of particular statutory direction. See, for example, G.S. 20-166.1(i) for motor vehicle accident reports.]

Bzozowski v. Pennsylvania-Reading Seashore Lines, 107 N.J. Super. 467, 259 A.2d 231 (L. Div. 1969)--report of investigation by Board of Public Utility Commissioners concerning accident; held, public.

People ex rel. Stenstrom v. Harnett, 224 App. Div. 127, 230 N.Y.S. 28 (1928)--motor vehicle accident report to commissioner of motor vehicles; held, public.

Zuppa v. Maltbie, 190 Misc. 778, 76 N.Y.S.2d 577 (Sup. Ct. 1947)--industrial accident report to Public Service Commission; held, public.

Contra, Gerry v. Worcester Consol. St. Ry. Co., 248 Mass. 559, 143 N.E. 694 (1924)--report of employer regarding industrial accident to Industrial Accident Board; held, not public.

3. Reports on governmental accidents. The three cases involving such reports split. The first involved a report on a municipal swimming pool accident, made to the city manager and attorney; it was held not public. The second involved a report of a fire department investigation of a fire that might have involved city liability; it was held to be public. The third involved an engineering report on a burst water main; it too was held public. The only significant difference between the cases was that the first was prepared, in part, expressly to help in litigation, and the court used this fact to bring the report within the attorney-client privilege. The three cases:

Jessup v. Superior Court, 151 Cal. App. 2d 102, 311 P.2d 177 (1957).

In re Dwyer, 85 Misc. 2d 104, 378 N.Y.S.2d 894 (Sup. Ct. 1975).

In re Ihrig, 181 App. Div. 865, 169 N.Y.S. 273 (1918).

Applications for Licenses and Permits

Several cases have discussed whether the information included in applications for various sorts of licenses or permits is public. The clear majority position is that such information, including supporting documentation, is public; the single exception noted involved financial information about the applicant.

State v. Mayo, 4 Conn. Cir. Ct. 511, 236 A.2d 342 (1967)--application for building permit, including supporting plans, specifications, etc.; held, public.

Edgar H. Wood Associates, Inc. v. Skene, 347 Mass. 351, 197 N.E.2d 886 (1964)--building permit, including architectural plans; held, public.

C. Van Duesen, Inc. v. New York State Liquor Auth., 47 Misc. 2d 1094, 263 N.Y.S.2d 984 (Sup. Ct. 1965)--application for liquor license; held public.

Alberghini v. Tizes, 68 Misc. 2d 587, 328 N.Y.S.2d 272 (Sup. Ct. 1972)--application for migrant labor camp permit; held, public.

State v. Keller, 143 Or. 589, 21 P.2d 807 (1933)--Blue Sky application; held, public.

Contra, People ex rel. Better Broadcasting Council, Inc. v. Keane, 17 Ill. App. 3d 1090, 309 N.E.2d 362 (1973)--financial information submitted as part of CATV franchise application; held, not public.

Appraisals

For appraisals done before property is bought or sold, see Land Records: Governmental Transactions. For appraisals done for property tax purposes, see Tax Records.

Attorney Communications

G.S. 132-1.1 provides a partial exception to the public records law for communications from an attorney to a governmental client. The possibility of an implied exception, built upon the attorney-client privilege, for communications to an attorney from a governmental client is discussed above, pages 6-7. One case has addressed this point:

Jessup v. Superior Court, 151 Cal. App.2d 102, 311 P.2d 177 (1957)--report to attorney on accident, held protected by privilege.

Audits - See Financial Records.

Autopsies

The single case on this sort of record held it to be a public record.

Denver Publishing Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Budgetary Information - See Financial Records.

Civil Service Records - See Personnel Records.

Consultant Reports

The one case that has directly addressed whether a report from a consultant is a public record held that it was, even though there was an alleged promise to the consultant that the report would be kept confidential.

Papadopoulos v. State Bd. of Higher Educ., 8 Or. App. 445, 494 P.2d 260 (1972).

A second case held that the general files of a consultant, in the consultant's office, were not public.

State ex rel. Tindel v. Sharp, 300 So. 2d 750 (Fla. App. 1974) (per curiam).

Contracts

Contracts entered into by a local government are clearly public records. At least one court has also held that supporting documents relating to a contract, such as engineering reports, are also public. However, the one court to consider contract offers that have not yet been accepted held that they are not public.

1. Contracts.

Anderson School Township v. Thompson, 92 Ind. 556 (1883) - school construction contract; held, public.

Curran v. Board of Park Comm'rs, 22 Ohio Misc. 197, 259 N.E.2d 757 (C.P. 1970) - contract to purchase land; held, public.

Segre v. Ring, 102 N.H. 556, 163 A.2d 4 (1960)--lease; held, public.

2. Documents relating to contracts.

Egan v. Board of Water Supply, 205 N.Y. 147, 98 N.E. 467 (1912)--engineering reports relating to construction contract; held public.

3. Contract offers.

Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971)--contract (salary) offers not yet accepted; held, not public.

Election Records

Ballots are of course secret, but the courts have generally held that other election records are public records. We will examine, in turn, registration records, poll books and other voting records, and petitions.

Registration records. The cases are uniform in holding that registration records are public records.

State ex rel. Thomas v. Hoblitzelle, 85 Mo. 620 (1885).

State ex rel. Higgins v. Lockwood, 74 N.J.L. 158, 64 A. 184 (1906).

Casey v. MacPhail, 2 N.J. Super. 619, 65 A.2d 657 (1949).

Ortiz v. Jaramillo, 82 N.M. 445, 483 P.2d 500 (1971).

Voting records. The cases are also uniform in holding that poll books and other voting records (other than the ballots themselves) are public records.

In re Coleman, 208 F. Supp. 199 (S.D. Miss. 1962).

People ex rel. Sherman v. Slater, 355 N.E.2d 735 (Ill App. 1976).

State ex rel. Thomas v. Hoblitzelle, 85 Mo. 620 (1885).

Petitions. The cases have split on whether voter petitions are public records, but they can be reconciled. Two have held that petitions seeking referenda are public records. A third case held that a petition to place a third-party candidate on the general election ballot was not public, but did so by analogizing such a petition to a primary election vote (petition signers could not vote in party primaries) and pointing out that such votes are also not public records. At the least, then, referendum petitions should be considered public records under these cases. The three cases are:

Volusia County v. Eubank, 151 So. 2d 37 (Fla. App. 1963)--referendum petition; held, public.

State ex rel. Halloran v. McGrath, 104 Mont. 490, 67 P.2d 838 (1937)--referendum petition; held, public.

State ex rel. Daily Gazette Co. v. Bailey, 152 W. Va. 521, 164 S.E.2d 414 (1968)--third-party candidate petition; held, not public.

Financial Records .

Uniformly, financial records, except for some tax records, have been held to be public records. Tax records will be discussed separately (see Tax Records); in this section other types of financial records will be examined.

Financial records generally. Four cases have considered financial records in general, and each has held that they are public records.

State ex rel. Hansen v. Schall, 126 Conn. 536, 12 A.2d 767 (1940)--books, papers, and documents of the town's board of finance.

Moore v. Board of Chosen Freeholders, 76 N.J. Super. 396, 184 A.2d 748 (App. Div.), modified, 39 N.J. 26, 186 A.2d 276 (1962)--bookkeeping cards, original bills, vouchers, checks, and other business and financial records.

Chambers v. Kent, 201 N.Y.S.2d 439 (Sup. Ct. 1960)--cash book, ledger, bank statements, duplicate copies of checks, payrolls, current claims, general journal, and federal income tax forms.

State ex rel. Wellford v. Williams, 110 Tenn. 549, 75 S.W. 948 (1903)--the city's books.

Audits. The two cases involving audits held the audit results to be public records.

Collins v. State, 200 Ark. 1027, 143 S.W.2d 1 (1940)--tax collection audit of sheriff and deputies.

Fidelity & Casualty Co. of New York v. Finch, 3 Misc. 2d 574, 158 N.Y.S.2d 628 (Sup. Ct. 1956), modified, 3 App. Div. 2d 141, 159 N.Y.S.2d 391 (1957)--audit of office of county clerk.

Budgetary documents. Two cases have held that budgetary documents of an administrative nature are public records.

City of Gainesville v. State ex rel. Int.'l Ass'n of Fire Fighters, Local No. 2157, 298 So.2d 478 (Fla. App. 1974)--budget proposal.

Bartels v. Rousell, 303 So.2d 833 (La. App. 1974)--departmental requests.

Cash records. Two cases have held depository records to be public records.

Republican Party v. State ex rel. Hall, 240 Ark. 545, 400 S.W.2d 660 (1966).

State ex rel. Charleston Mail Ass'n v. Kelly, 149 W. Va. 766, 143 S.E.2d 136 (1965).

Expenditure records. The purposes and amounts of expenditures are also public records.

Nowack v. Fuller, 243 Mich. 200, 219 N.W. 749 (1928)--records of expenditures for governors' conference.

Winston v. Mangan, 72 Misc. 2d 280, 338 N.Y.S.2d 654 (Sup. Ct. 1972) (mem.)--salary, expense, and time vouchers of park district commissioners.

State ex rel. Research Institute v. Nix, 195 Okla. 176, 155 P.2d 983 (1944)--expenditure records of welfare board.

Moberly v. Herboldsheimer, 276 Md. 211, 345 A.2d 855 (1975)--amounts paid in fees to lawyers.

Purchasing records. One case has dealt with purchasing records; it held them to be public.

Welt v. Board of Educ., 68 Misc. 2d 1061, 328 N.Y.S.2d 930 (Sup. Ct. 1972)--purchase records of desks, chairs, and replacement parts.

Receipt records. One case has indicated that records of receipts are public.

State ex rel. Griggs v. Meeker, 19 Neb. 106, 26 N.W. 620 (1886)--fee book of clerk of court.

Retirement and pension records. One case has held that the records of a pension system are public.

Disabled Police Veterans Club v. Long, 279 S.W.2d 220 (Mo. App. 1955)--names and addresses of pensioners.

Special Assessment records. The one case involving these records indicates that they are public.

Robison v. Fishback, 175 Ind. 132, 93 N.E. 666 (1911)--index to assessment rolls.

Utility records. The two cases to deal with these records indicate that they are public.

Water Works Bd. v. White, 281 Ala. 357, 202 So. 2d 721 (1967)--all records of water works board.

Mushet v. Department of Public Service, 35 Cal. App. 630, 170 P. 653 (1917)--financial records of city electric system.

Hospital Records - See Medical Records.

Internal Communications

Internal communications refers to staff reports to decision-makers and various sorts of memoranda from one employee of an agency to another. The case law on this sort of document is mixed and cannot be reconciled; in some states it is considered public, in others not public. The cases are as follows:

Egan v. Board of Water Supply, 205 N.Y. 147, 98 N.E. 467 (1912)--engineer's report relating to award of contract for tunnel construction; held, public

In re Ihrig, 181 App. Div. 865, 169 N.Y.S. 273, aff'd sub nom. Ihrig v. Williams, 223 N.Y. 670, 119 N.E. 1050 (1918) (per curiam) - engineer's report, transferred to law department, regarding burst water main; held, public.

Jessup v. Superior Court, 151 Cal. App.2d 102, 311 P.2d 177 (1957) --report to city manager and city attorney regarding swimming pool accident; held, not public.

Thaler v. Murphy, 42 Misc. 2d 1, 247 N.Y.S.2d 816 (Sup. Ct. 1964) - communications between employees and between employees and superior of single agency; held, not public.

Commonwealth v. Commonwealth Public Util. Comm'n, 17 Pa. Commw. Ct. 351, 331 A.2d 598 (1975)--technical staff reports to quasi-judicial agency; held, not public.

Investigations

Two types of investigations are examined in this section: first, internal investigations by a government of itself, a department, or an individual; and second, investigations that are a normal part of an agency's responsibilities, such as, of an accident, a fire, or an alleged violation of a statute or ordinance. Criminal investigations by a law enforcement agency are examined in the section on Law Enforcement Records.

1. Internal investigations. The three cases involving this sort of investigation split; two held the investigation records to be not public, the third held them to be public.

City Council v. Superior Court, 204 Cal. App. 2d 68, 21 Cal. Rptr. 896 (1962) (per curiam)--private investigator's report on fitness of police chief; held, not public.

Stack v. Borelli, 3 N.J. Super. 546, 66 A.2d 904 (L. Div. 1949) - special counsel's investigative report into police department; held, not public.

Contra, State ex rel. Youmans v. Owens, 28 Wis. 2d 672, 137 N.W.2d 470 (1965), modified, 28 Wis. 2d 672, 139 N.W.2d 241 (1966) (per curiam) - city attorney's materials from his investigation into police department; held, public.

2. Investigations undertaken as part of regular responsibility. Here the cases indicate that the reports and materials growing out of this sort of investigation are public records. The one exception involved an investigation on which the agency was attempting to reach a settlement, and the court thought publicity would hamper that work. The cases:

Citizens for Better Care v. Reizen, 51 Mich. App. 454, 215 N.W.2d 576 (1974)--reports of investigations and inspections of nursing homes; held, public.

Bzozowski v. Pennsylvania-Reading Seashore Lines, 107 N.J. Super. 467, 259 A.2d 231 (L. Div. 1969)--documents relating to investigation of grade crossing accident by state public utilities commission; held, public.

In re Dwyer, 85 Misc.2d 104, 378 N.Y.S.2d 894 (Sup. Ct. 1975) - report of investigation by fire department into causes of fire; held, public.

Martinez v. Libous, 85 Misc.2d 186, 378 N.Y.S.2d 917 (Sup. Ct. 1975)--materials from an investigation of housing code violations; held, public.

Contra, Atchison, Topeka & Santa Fe Ry. Co. v. Kansas Comm'n on Civil Rights, 215 Kan. 911, 529 P.2d 666 (1974)--files on investigation of alleged civil rights violation; held, not public.

Jail Records -- See Law Enforcement Records.

Land Records: Private Transactions

The records of private transactions in land, largely kept in the office of the register of deeds, are clearly public. Publicity is, of course, a primary reason for keeping the records in the first place. Three cases illustrate the many cases that hold these records to be public.

Miller v. Murphy, 78 Cal. App. 751, 248 P. 934 (1926)–subdivision map.

State ex rel. Cole v. Rachac, 37 Minn. 372, 35 N.W. 7 (1887)–land records.

Rock County v. Weirick, 143 Wis. 500, 128 N.W. 94 (1910)–abstract books.

Land Records: Governmental Transactions

This section examines appraisals and title reports received by a government with regard to property that it wishes to acquire or convey.

1. Appraisal reports. Four cases have dealt with whether a land appraisal received by a government is a public record, and they have gone three separate ways. Two cases held it was not, even though in one case the related land transaction may have already occurred. A third also held that it was not, but relied on the circumstance that the land had not yet been acquired. A fourth held that it was a public record, even though the land had not yet been acquired. The four cases:

Curran v. Board of Park Comm'rs, 22 Ohio Misc. 197, 259 N.E.2d 757 (C.P. 1970)--land appraisals for property apparently already acquired; held, not public.

Sorley v. Lister, 33 Misc.2d 471, 218 N.Y.S.2d 215 (Sup. Ct. 1961)--land appraisals; held, not public.

Linder v. Eckard, 261 Iowa 216, 152 N.W.2d 833 (1967)--land appraisal for urban renewal project, with land not yet acquired; held, not public.

Gannett Co. v. Goldtrap, 302 So.2d 174, (Fla. App. 1974)--land appraisal for proposed acquisition of landfill site; held, public.

2. Title reports. The single case on a title report held the report to be public, because the conveyance had already occurred.

People ex rel. Hamer v. Board of Educ., 130 Ill. App.2d 592, 264 N.E.2d 420 (1970).

Law Enforcement Records

The courts have been unwilling, despite the language of public records statutes, to permit public access to the records of law enforcement agencies. This section presents cases dealing with police records generally, with police internal procedures, with investigation records, with officer field notes, with arrest records, with jail records, and with records of complaints against officers.

Police records generally. The four cases that have dealt with police records of a rather nonspecific character have all held that they are not public records.

People v. Wilkins, 135 Cal. App.2d 371, 287 P.2d 555 (1955)--cards in police department showing records of specific persons.

Lee v. Beach Publishing Co., 127 Fla. 600, 173 So. 440 (1937)--"some" police records.

Sapienza v. Paul, 42 Haw. 14 (1957)--"records of convictions of crime and/or the police records . . . of every . . . adult male and female" in the county.

Whittle v. Munshower, 221 Md. 258, 155 A.2d 670 (1959)--police reports to superiors and investigation files.

Police department internal procedures. The two cases dealing with records in this area have split.

United States v. Mackey, 36 F.R.D. 431 (D.D.C. 1965) - "records relating to [police] internal operations"; held, not public.

Contra, Cook v. Craig, 55 Cal. App.3d 773, 127 Cal. Rptr. 712 (1976) - procedures regarding investigation and disposition of citizens' complaints of police misconduct: held, public.

Investigation records. The cases to consider the matter have each held that police investigation records are not public.

People v. Pearson, 111 Cal. App.2d 9, 244 P.2d 35 (1952).

Glow v. State, 319 So.2d 47 (Fla. App. 1975).

Blandford v. McClellan, 173 Misc. 15, 16 N.Y.S.2d 919 (Sup. Ct. 1940).

Officer field notes. One case considered whether an officer's memo book, containing his on-site notes regarding an accident, was public; the court held it was not.

Andrews v. Police Dep't, 50 Misc.2d 343, 270 N.Y.S.2d 240 (Sup. Ct. 1966).

Arrest records. One case dealing directly with daily arrest records held that they are public; another held that they are not. The latter case, however, was strongly influenced by the circumstance that holding a record public for access purposes would also establish requirements regarding the paper and ink used in maintaining records and regarding preservation of the records. Without that added burden, the court might well have held the arrest records public. A third case held that the police copies of traffic citations are public records.

Town Crier, Inc. v. Chief of Police, 361 Mass. 682, 282 N.E.2d 379 (1972)--arrest records; held, not public.

Dayton Newspapers, Inc. v. City of Dayton, 45 Ohio St.2d 107, 341 N.E.2d 576 (1976)--arrest records; held, public.

Beckon v. Emery, 36 Wis.2d 510, 153 N.W.2d 501 (1967)--traffic citations; held, public.

Jail records. The cases involving jail records have split, partly on the basis of the specific type of record sought. Those records showing who was admitted and discharged have been held public, while records concerning internal administration have not.

Rhodes v. Meyer, 225 F. Supp. 80 (D. Neb. 1963)--"prison record, record entry in admission book, . . . receipt for personal property, personal pictures, and . . . print card"; held, not public.

In re Harrell, 2 Cal.3d 675, 470 P.2d 640, 87 Cal. Rptr. 504 (1970)--prison disciplinary records; held, not public.

Florence Morning News, Inc. v. Building Comm'n, 265 S.C. 389, 218 S.E.2d 881 (1975)--jail book and log; held, public.

Citizen complaints against officers. The single case to consider this sort of record held it to be public.

People v. Coleman, 75 Misc.2d 1090, 349 N.Y.S.2d 298 (County Ct. 1973).

Leases - See Contracts.

License Applications - See Applications for Licenses and Permits.

Medical Records

The possibility of an implied exception for medical records, at least to all but the patient, growing out of the doctor-patient privilege is discussed above, pages 6-7. Three cases are relevant.

Massachusetts Mut. Life Ins. Co. v. Board of Trustees, 178 Mich. 193, 144 N.W. 538 (1913)--medical records of mental hospital protected by privilege.

Pyramid Life Ins. Co. v. Masonic Hosp. Ass'n, 191 F. Supp. 51 (W.D. Okla. 1961)--patient may waive privilege and thereby open records to inspection.

Sosa v. Lincoln Hosp., 190 Misc. 448, 74 N.Y.S.2d 184 (Sup Ct. 1947), aff'd, 273 App. Div. 852, 77 N.Y.S.2d 138 (1948)--patient records open to patient.

Minutes

Several cases have examined various aspects of minutes of board proceedings. First, the official minutes of a board are generally a public record. Second, two courts have indicated that if the meeting itself was properly closed to the public, the minutes may also be closed. Third, the notes of the clerk to the board need not be made public. Fourth, the minutes themselves become public upon transcription; it is not necessary that the board have approved them. And fifth, one court held that a tape recording of a meeting, made by the clerk for his own assistance, was a public record but need not be made available for re-recording. The cases:

First Nat'l Bank v. Van Buren School Trustees, 47 Ind. App. 79, 93 N.E. 863 (1911)--minutes of township advisory board; held, public.

Cline v. Board of Trustees, 76 Misc.2d 536, 351 N.Y.S.2d 81 (Sup. Ct. 1973)--minutes of community college trustees; held, public.

Gabriel v. Turner, 50 App. Div.2d 889, 377 N.Y.S.2d 527 (1975) (mem.)--minutes of executive sessions need not be made public.

Florence Morning News, Inc. v. Building Comm'n, 265 S.C. 389, 218 S.E.2d 881 (1975)--minutes of meeting at which this lawsuit discussed need not be made public.

Conover v. Board of Educ., 1 Utah 2d 375, 267 P.2d 768 (1954)--clerk's rough notes are not public, but minutes become public upon transcription and need not await board approval.

Guarriello v. Benson, 90 N.J. Super. 233, 217 A.2d 22 (L. Div. 1966)--although tape recording of meeting is a public record, clerk need not permit re-recording when typed transcript available.

Pension Records - See Financial Records.

Permit Applications - See Applications for Licenses and Permits.

Personnel Records

The public record character of most personnel records in North Carolina local government is established by specific statute: G.S. 153A-98 for counties and G.S. 160A-168 for cities. The case law from other states should be relevant, however, for two types of personnel-related records: civil service records and records relating to general matters such as position classification plans.

Civil service records. Two cases involving particular civil service records have held them to be public records.

Friedman v. Fumo, 9 Pa. Commw. Ct. 609, 309 A.2d 75 (1973)--list of persons taking CPA examination; held, public (relevant to civil service examination lists by analogy).

Deputy Sheriffs Mut. Aid Ass'n v. Salt Lake County Deputy Sheriffs Merit System Comm'n, 24 Utah 2d 110, 466 P.2d 836 (1970) - eligibles register and promotional register; held, public.

Records on general personnel policies. The single case found in this area held that a report, including companion field notes, regarding changes in position classifications was public.

Tingling v. Lang, 39 Misc. 2d 338, 240 N.Y.S.2d 633 (Sup. Ct. 1963).

Petitions - See Election Records.

Planning Records

The single case in this area held that a city's "master plan" is a public record; the case also indicated, however, that planning documents in the earlier stages of preparation had not yet ripened to public-record status.

Smith v. Elliott, 61 Misc. 2d 163, 305 N.Y.S.2d 94 (Sup. Ct. 1969).

Preliminary Materials

Records custodians sometimes seek to deny access on the ground that the records involved are in some sense preliminary, not yet final. The basic transaction may not yet have occurred, or the final document may not yet have been issued. With one general exception, the courts have not accepted this argument; that general exception would sanction denial of access to materials relating to land transactions until negotiations are complete. Several of the land transaction cases are collected in the section on Land Records: Governmental Transactions. Two cases illustrating the more general rule that preliminary records are public are collected under the Budgetary Documents heading in the section on Financial Records. Additional cases are listed below:

Gold v. McDermott, 32 Conn. Supp. 583, 347 A.2d 643 (App. Session 1975)--property tax appraisal records, including field record cards, when revaluation not yet completed; held, public.

Smith v. Elliott, 61 Misc. 2d 163, 305 N.Y.S.2d 94 (Sup. Ct. 1969)--master plan for city, not yet issued but in almost final form; held, public.

Contra, Sorley v. Clerk of Rockville Centre, 30 App. Div. 2d 822, 292 N.Y.S.2d 575 (1968) (mem.)--correspondence, data, and valuations concerning urban renewal transactions that are not yet final; held, not public.

Private-Citizen Information in Government Files

Governments frequently have occasion to collect detailed information about specific private citizens or businesses. This section will examine two categories of such information: information relating to the private citizen's finances and information that arguably could not be obtained without a promise of confidentiality. Reference should also be made to the section on Applications for Licenses and Permits.

Financial information. The status of financial and business information on property tax records is covered by statute in North Carolina, especially G.S. 105-296. The one case on other sorts of financial information held that detailed financial information on a CATV franchise application was not public.

People ex rel. Better Broadcasting Council, Inc. v. Keane, 17 Ill. App. 3d 1090, 309 N.E.2d 362 (1973).

Information obtained on a promise or understanding of confidentiality. Records custodians in several cases have sought to avoid public inspection by arguing that the information in the records could not have been obtained without a promise or understanding that it would remain confidential. Each court has accepted the basic force of the argument, and the cases have been decided on the basis of whether the court itself thought that confidentiality was in fact required to obtain the information.

Runyon v. Board of Prison Terms & Paroles, 26 Cal. App. 2d 183, 79 P.2d 101 (1938)--letters to parole board concerning prisoners eligible for parole; held, confidentiality is required and therefore not public.

City & County of San Francisco v. Superior Court, 38 Cal. 2d 156, 238 P.2d 581 (1951)--wage information from private employers used as basis for city-county wages; held, confidentiality is required and therefore not public.

City Council v. Superior Court, 204 Cal. App. 2d 68, 21 Cal. Rptr. 896 (1962) (per curiam)--information in report of investigation of police chief obtained from various persons; held, confidentiality is required and therefore not public.

Gerry v. Worcester Consol. St. Ry. Co., 248 Mass. 559, 143 N.E. 694 (1924)--accident reports by employers to Industrial Accident Board; held, confidentiality is required and therefore not public.

Contra, Uribe v. Howie, 19 Cal. App.3d 194, 96 Cal. Rptr. 493 (1971) - reports submitted to county agricultural commissioners on each application of pesticides by commercial applicators; held, confidentiality is not required and therefore public.

Sears, Roebuck & Co. v. Hoyt, 202 Misc. 43, 107 N.Y.S.2d 756 (Sup Ct. 1951)--real property assessment cards, showing inter alia, price paid for property and amount of mortgage; held, confidentiality not required and therefore public.

Papadopoulos v. State Bd. of Higher Educ., 8 Or. App. 445, 494 P.2d 260 (1972)--consultant's report on university's School of Science; held, confidentiality not required and therefore public.

Public Works and Engineering Records

Engineering reports and other sorts of orders, plans, and documents concerning public works projects have been uniformly held to be public records.

Coldwell v. Board of Pub. Works, 187 Cal. 510, 202 P. 879 (1921)-- engineering documents concerning construction of city water system.

District of Columbia v. Bakersmith, 18 App. D.C. 574 (1901) -- orders, plans, and documents relating to construction and repair of a culvert.

Egan v. Board of Water Supply, 205 N.Y. 147, 98 N.E. 467 (1912)-- engineering report regarding a construction contract.

In re Ihrig, 181 App. Div. 865, 169 N.Y.S. 273, aff'd sub nom. Ihrig v. Williams, 223 N.Y. 670, 119 N.E. 1050 (1918) (per curiam)--engineering report on burst water main.

Purchasing Records - See Financial Records.

Raw Data - See Working Papers.

Reports

Several other sections of this index have dealt with reports of various kinds. Rather than repeat those listings, this section will cross-reference the reader to other sections dealing with various kinds of reports.

Accident reports - See Accident Reports.

Appraisal reports - See Land Records: Governmental Transactions.

Audit reports - See Financial Records.

Consultant reports - See Consultant Reports.

Engineering reports - See Public Works and Engineering Records.

Investigation reports - See Investigations.

Staff reports - See Internal Communications.

Title reports - See Land Records: Governmental Transactions.

Social Service Records

G.S. 108-45 provides for the confidentiality of certain social service records, those dealing with recipients of public assistance. Although this sort of statute is common to all of the states, two sorts of questions do arise with regard to social service records; are public assistance records open to the recipients, and are other sorts of social services records public?

Access to recipients. Working within the context of a statute much like North Carolina's, the Oregon courts, in two cases, have held that public assistance records are open to inspection by the recipients.

Stivahtis v. Juras, 13 Or. App. 519, 511 P.2d 421 (1973).

Triplett v. Board of Social Protection, 19 Or. App. 408, 528 P.2d 563 (1974).

Other records. North Carolina's statute applies only to those programs of public assistance specified in state law. The one case to deal with other, locally established social service programs held that the records of those programs are public.

Hurley v. Board of Pub. Welfare, 310 Mass. 285, 37 N.E.2d 993 (1941)--local general assistance records.

Special Assessment Records - See Financial Records.

Tax Records

Several cases have dealt with various records relating to taxes, particularly the property tax, and these are considered in this section. The different types of records involved can be grouped into these categories: records dealing with the performance of the tax collector; basic collection records; records concerning delinquent taxes; and records concerning the

appraisal of property for taxation. [G.S. 105-259, -289(e), and 296 (h) provide for the confidentiality of certain kinds of financial information on tax returns and abstracts.] In general, tax records have been held to be public. The single major exception, on which the cases split, is field records of property tax appraisals.

1. Tax Collector performance. The two cases in this category have held that an audit of the tax collector's office and the records surrounding the tax collector's settlement are public records.

Brewer v. Watson, 71 Ala. 299 (1882)--accounts relating to settlement of collector.

Collins v. State, 200 Ark. 1027, 143 S.W.2d 1 (1940)--audit of tax collector and deputies.

2. Collection records. The two cases in this category are not consistent. The first holds that the tax ledger is not a public record in the hands of the tax collector, although it would be public in the hands of the assessor, from whom the collector received it. The second holds that records relating to tax abatements are public. The second would seem the more controlling in North Carolina.

Hardman v. Collector of Taxes, 317 Mass. 439, 58 N.E.2d 845 (1945)--tax ledger; held, not public.

McCoy v. Providence Journal Co., 190 F.2d 760 (1st Cir.), cert. denied, 342 U.S. 894 (1951)--tax abatement resolution of city council and list of abatements; held, public.

3. Delinquent tax records. Two cases deal with various sorts of records of delinquent taxes, and both hold the records to be public.

Bruce v. Gregory, 65 Cal.2d 666, 423 P.2d 193, 56 Cal. Rptr. 265 (1967)--delinquent tax abstracts.

Burton v. Tuite, 78 Mich. 363, 44 N.W. 282 (1889), enforced, 80 Mich 218, 45 N.W. 88 (1890)--tax sale records.

4. Appraisal records.

Field record cards. Five cases, four of them in the last eight years, have considered whether record cards prepared in the field by assessors are public records. Generally these cards contain information concerning the land and neighborhood, construction details, the age and condition of any structures, type of occupancy, and valuation computations. The cases split on this type of field record, three holding it to be public, two holding it not to be public.

Menge v. City of Manchester, 113 N.H. 533, 311 A.2d 116 (1973)--held public.

DeLia v. Kiernan, 119 N.J. Super. 581, 293 A.2d 197 (App. Div. 1972)--held, public.

Sears, Roebuck & Co v. Hoyt, 202 Misc. 43, 107 N.Y.S.2d 756 (Sup. Ct. 1951)--held, public.

Contra, Dunn v. Board of Assessors, 361 Mass. 692, 282 N.E.2d 385 (1972)--held, not public.

Kottschade v. Lundberg, 280 Minn. 501, 160 N.W.2d 135 (1968)--held, not public.

Building record. One case considered a basic record card that contained much the same information as the field record cards considered above but was maintained as a permanent card rather than used to gather information. The card was held to be public.

Westmoreland County Bd. of Assessment Appeals v. Montgomery, 14 Pa. Commw. Ct. 50, 321 A.2d 660 (1974).

Timing. One case considered whether revaluation information became a public record when gathered or only when the governing board approved the valuation. The court held that public-record character attached when the records were established and did not need to await governing board approval.

Gold v. McDermott, 32 Conn. Supp. 583, 347 A.2d 643 (App. Session 1975).

Applications for changes in assessment. The two cases involving this sort of record have each held that the applications, along with supporting documents, are public records.

Sears, Roebuck & Co. v. Hoyt, 202 Misc. 43, 107 N.Y.S.2d 756 (Sup. Ct. 1951).

William Kaufman Associates v. Levy, 74 Misc. 2d 209, 345 N.Y.S.2d 836 (Sup. Ct. 1973).

Transportation System Records

The single case in this area considered plans for development of a particular street and traffic counts taken on that street. The records were held to be public.

County of Suffolk v. Weidemann, 38 App. Div.2d 753, 330 N.Y.S.2d 30 (1972) (mem.).

Utility Records

The single case considering the matter held that all records of a public water works board were public.

Water Works Bd. v. White. 281 Ala. 357, 202 So. 2d 721 (1967).

Vital Statistics

G.S. 130-64 provides that birth certificates and death certificates are public records. Registers of deeds also keep records of marriage licenses, and the case law indicates that these too are public.

Kalamazoo Gazette Co. v. Vosburg, 148 Mich. 460, 111 N.W. 1070 (1907).

Working Papers or Raw Data

Records custodians sometimes seek to bar access to materials that are used as the basis of published reports and other admittedly public records. These materials might be generally characterized as working papers and would include field notes, experimental data, and the like. The reception of this sort of defense has been mixed--accepted in some courts, rejected in others. Two categories of such materials are discussed above: land appraisals are considered in the section on Land Records: Governmental Transactions; and property tax field appraisal cards are considered in the section on Tax Records. Three other cases are listed here.

Andrews v. Police Dep't, 50 Misc. 2d 343, 270 N.Y.S.2d 240 (Sup. Ct. 1966)--Patrolman's memo book, used to record details at the scene of an accident; held, not public.

Wiley v. Woods, 393 Pa. 341, 141 A.2d 844 (1958)--field investigation notes of survey of property sought to be rezoned; held, not public.

Contra, MacEwan v. Holm, 226 Or. 27, 359 P.2d 413 (1960)--raw data of study of amount of radioactive substance in air and rain water; held, public.