
To: Faculty Senate
Staff Council

From: Kelvin Jacobs 
General Counsel

Cc: Chancellor
Provost
Chief of Staff

Re: NC "Open Meetings", "Public Bodies" and "Public Records" law

Due to an influx of records request and at the request of the Chancellor, the purpose of this memo is to ensure applicable parties have a clearer understanding of the NC "[Open Meetings](#)", "[Public Bodies](#)" and "[Public Records](#)" law. I recognize the parties here may have varying degrees of knowledge or familiarity with the subject matter, however, I do think an overview is appropriate and timely.

Open Meetings

"Official meetings" of "public bodies" must be open to the public. An "official meeting" occurs when a majority of the public body attends the meeting, and the meeting is for the purposes of conducting hearings, deliberations, voting, or otherwise conducting public business. Official meetings may be conducted via conference calls or other electronic means, however, the notice shall specify the means by which the public can access the remote meeting as that remote meeting occurs. All votes shall be roll call; no vote by secret or written ballots, whether by paper or electronic means or in accordance with G.S. 143-318.13(b), may be taken during the remote meeting.

The public body must post advance notice of official meetings and must keep accurate minutes of its meetings.

"**Regular**" meetings should be posted via a single posting at the first of the year or semester. Revised schedule shall be posted at least seven (7) calendar days before the day of the first meeting.

"**Special**" meetings must be posted at least 48 hours in advance (not including weekends or holidays).

"**Emergency**" meetings are to be limited to true emergencies, which should be "called because of generally unexpected circumstances that require immediate consideration by the public body."

UNCP official meeting notices are posted on the HR bulletin board and UC bulletin board. Upon request, notices are also sent to the local newspaper. Informal gatherings may not be used to evade the law.

Public Bodies

A "public body" at UNCP is any committee or group:

- established by a vice chancellor or higher authority;
- whose membership is not just university administrators;
- that deals with matters on a university-wide basis; and
- that makes findings, decisions, or recommendations on a quasi-legislative, quasi-judicial, policy-making, or administrative action.

(See: [1300.4\[G\]](#) of The UNC Policy Manual; Guidelines on Defining "Public Body" within the Meaning of the Open Meetings Act)

Typically, meetings of the Staff Council or General Faculty are not considered a public body as they do not meet one or more of the criteria outlined above. However, that is not to say there can't be instances where these groups would be considered a public body.

The Faculty Senate is considered a public body as their purpose is to serve as the principal academic policy-making body of the University, subject to review and approval by the Chancellor; to serve as an advisory and consultative council to the Chancellor and other Administrators; and to receive from Senate Committees or University Departments recommendations concerning educational policies of the University which the Senate may deliberate and act.

Public Records

Per NC general statute, "**Public record**" or "**public records**" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

The definition is quite broad and generally not limited by the form of the material in question or by the circumstances under which it was received or created. Notwithstanding statutory exceptions such as personnel files, legal materials, trade secrets, etc..., the public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people.

This would include "chats" as they are specifically identified in [Section 4.31 of Session Law 2020-3](#) wherein it states all "chats, instant messages, texts, or other written communications between members of the public body regarding the transaction of the public business during the remote meeting are deemed a public record."

Summary

The Faculty Senate and its subcommittees are public bodies and subject to the open meetings requirements. Further, any and all records made in conjunction with it, or its subcommittees, may be considered public records regardless of form.

Although generally not considered a public body, the Staff Council's and General Faculty's records & materials may be subject to the public records act.

Official meetings may be conducted remotely subject to a number of restrictions such as: proper notice specifying how the public can access the remote meeting; if member cannot be physically seen they must identify when the roll is taken, prior to participating in the deliberations- making motions- proposing amendments- raising points of order, and prior to voting. All votes shall be roll call.

The Public Bodies/Open Meetings law and the Public Records law are separate and distinct from each other. Though they often intersect, one is not dependent upon the other; that is to say that to be considered a public record it does not need to be generated from a "public body" or "open meeting".