

Public Records Request Guidance for Districts

Version 2 - December 2020

Disclaimer: Information provided under this Public Records Request Guidance is for informational purposes only and should not be relied upon for legal justification or as legal advice. If you have questions or concerns regarding any public records law, you should consult your county attorney for legal advice. Information contained within this guidance may be subject to change and you should consult with the referenced legal authority.

1. Soil and water conservation districts (districts) should contact the State Archives of North Carolina in determining its *Records Retention and Disposition Schedule*. The schedule determines how long records will need to be maintained under North Carolina law.
2. Districts should consider adopting a *Public Records Request Policy*. The county's public records policy may be a good starting point for districts organized under county departments. However, further review should be conducted to determine if the county's public records policy is appropriate or if revisions are needed. Any public records policy should conform with N.C.G.S. 132-6 regarding inspection and examination of records. **Districts should consult with their legal support (e.g. County Attorney) in the adoption of a district policy.**
3. District files are subject to the North Carolina Public Records Law, N.C.G.S. 132-1, *et seq.* Records subject to disclosure may include meeting minutes, emails, and other correspondence. However, the North Carolina Public Records Law provides exemptions to disclosure of trade secrets and other confidential information, such as social security numbers and other personal identifying information. Also, under N.C.G.S. 139-8.2, all information that is collected by soil and water conservation districts from farm owners, animal owners, agricultural producers or owners of agricultural land that is confidential under federal or State law shall be held confidential by the soil and water conservation districts, except applications for cost-share assistance and associated contract documents that require the approval of the soil and water conservation district or the Soil and Water Conservation Commission. In addition, federal files housed in districts may be protected by Section 1619 of the 2008 Farm Bill—codified under 7 U.S.C. 8791. Districts are encouraged to use filing systems where federal records are filed separately from district records to avoid confusion. Districts should review additional legal authority other than the North Carolina Public Records Law to see if there are other protections that may apply to protect information collected from farm owners and operators. For comparison, N.C.G.S. 106-24.1 prevents the North Carolina Department of Agriculture & Consumer Services (NCDA&CS) from disclosing certain information collected from farm owners and operators.
4. Public records include books, maps, photos, papers, cards, magnetic tapes, computer data and other documentary material made or received pursuant to law or ordinance in connection with the transaction of public business by any government agency, state or local, in North Carolina. It is recommended that all district files containing personal identifying information be kept in locked filing cabinets to help protect the district from liability.
5. Federal records are covered under Freedom of Information Act (FOIA). Districts should consult with the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) regarding the production of records under FOIA.
6. A quick list of common federal records:
 - Conservation plan;
 - Federal program contract information;
 - Job sheets;
 - Documents signed by or under the authority of NRCS;
 - Correspondence on federal letterhead;
 - Federal forms;
 - Information generated on federal system or housed in the federal system.
7. A quick list of information that may be protected under N.C.G.S. 139-8.2 and Section 1619:

- Farm, tract, field, and federal contract numbers;
 - Geospatial information;
 - Resource data;
 - Designs;
 - Assistance notes;
 - Acreage amounts;
 - Information concerning agricultural operation, farming, or conservation practices.
8. Information collected in cooperation with NRCS may be protected from disclosure under the NRCS Conservation Cooperator Acknowledgment. When districts receive requests for information included in district cost share files, districts should consult its Conservation Cooperator Acknowledgement and contact NRCS should they have questions regarding any confidentiality concerns. Districts should also contact NRCS for written waivers for disclosure if desired.
9. A quick list of personal identification information that may need to be redacted prior to disclosure under the North Carolina Public Records Law:
- Social security numbers (including the “last four digits”);
 - Tax or owner’s identification number when such number is identical to social security number or any part of the social security number;
 - Personal financial information, such as bank account number and banking information;
 - Driver’s license number;
 - Personal identification numbers and passwords;
 - Medical information or biometric records, such as finger prints.
10. The following are typically not public records and may be exempt from disclosure under the North Carolina Public Records Law:
- Attorney-client communications;
 - Trial preparation materials;
 - State and local tax information;
 - Trade secrets.
11. Districts may elect to designate one or more employees to serve as the point of contact for public records requests. Districts should train staff so its public records policy is implemented consistently.
12. When a public records request is made, the district should make a note of the request and the date the district received it. The district should contact the requestor to clarify, narrow, or revise the request if the request is ambiguous or overly broad.
13. Be courteous but do not commit to providing information until you are sure it is something the district can release. Explain that the district has obligations to safeguard personal identifying information and other confidential information under Section 1619 of the 2008 Farm Bill, the North Carolina Public Records Law, and the Conservation Cooperator Acknowledgment, and requested materials may need to be reviewed prior to release.
14. The North Carolina Public Records Law provides that districts are required to respond to public records requests “as promptly as possible.” Districts should factor in any time needed to conduct a due diligence review of any responsive records for confidentiality or statutory prohibitions against release when providing estimates of how long a request may take.
15. Consider sharing the request with your county attorney for legal guidance and support.
16. Consider sharing the request with the district board for their information.

17. Consider sharing the request with the landowner for their information.
18. Communicate with NRCS if there are federal items in the file that the district is unsure about.
19. The district could create an *optional* form to be filled out for records requests to make sure that requested information is clear, and to help assure accuracy in the response. Districts cannot require requestors to provide the reason for the request.
20. If a district does not have a specific record that is requested, inform the individual that is making the request. Districts are not required to create records.
21. No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the district shall bear the cost of such separation.
22. The public is entitled to inspect or make copies of public records after protected information is redacted. If the requester is asking to inspect records in person, you should schedule a time to where staff is available to supervise the requester. Alternatively, districts may satisfy the inspection and copying requirement by making public records available online in a format that allows a person to view the public record and print or save the public record to obtain a copy. If the district maintains public records online in a format that allows a person to view and print or save the public records to obtain a copy, the district is not required to provide copies to these public records in any other way.
23. Districts may charge for the actual cost of production. For example, if a requester requests hard copies of records, the district may charge for the actual cost of printing. The district may also charge for the actual cost of CDs, DVDs, and USB flash drives. Districts should establish in their public records policy their billing practices.
24. Districts should notify the requesting party in writing that the request has been received and provide a timetable for a response when possible. Notify the requester of fees, if any, and obtain the requestor's approval prior to filling the request.
25. Communication is a key component when responding to a public records request. Communicate with the requestor so they know you are working on the request and it has not been discarded or neglected.
26. District board meetings are subject to the State's Open Meetings Law, Chapter 143, Article 33C, of the North Carolina General Statutes. Districts should be diligent in protecting information (both in hard-copy and discussion) listed in items 6 and 7 during open sessions. Contract documents may be shared in open session, but protected information (e.g. farm, tract, field numbers, acreage amounts, latitude and longitude) should be redacted, as appropriate. If in-depth discussion or review of the contract file is required, the board is advised to enter closed session to do so; authority for closed session is granted under N.C.G.S. 143-318.11(a)(1).

Soil and Water Conservation District File Request

Note – This form is optional

Name _____

Date _____

Phone number _____

Email address _____

File(s) requested and preferred media format:

Additional information that may be helpful in the retrieval of this information:
