

Electronic Communications

State Owned System Mandates



Presented by:
Eileen Goldgeier



Objective

- To provide you with an informational overview of the recent pronouncements on state policy relative to the care and retention of electronically generated communications.
- To gain a better understanding of what records are subject to a public records request.



Key Points

- NC Public Records Act
- UNCW Responsible Use Policy (Electronic Communications)
- UNC Records Retention Schedule
- Governor Perdue's Executive Order # 18
- Federal Rules of Civil Procedure (E Discovery)

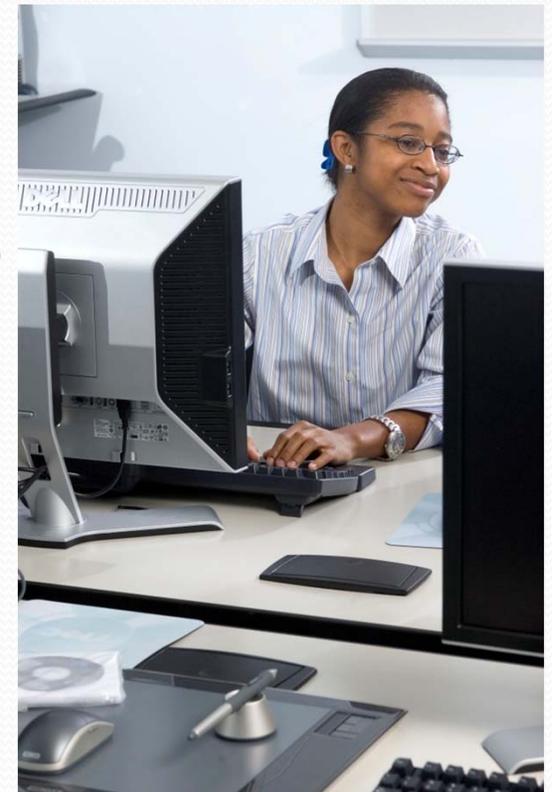


NC Public Records Act

(N.C.G.S. §132-1)

• “Public Record” is any documentary material or artifact:

- Regardless of physical form or characteristics (paper, electronic, video, film, digital, audio, photograph, voicemail, telephone records, PDAs, etc.)
- Made or received in the course of university business
- Including but not limited to computer database indices



Legal Obligation To Retain Public Records

- It is a crime to destroy, sell, loan or otherwise dispose of public records except as allowed by law. (N.C.G.S. §132-3)
- Electronic mail and the like is a public record when sent or received in the course of university business.
- E-mail of a temporary or rapidly diminishing value may be deleted when its reference value has ended, or when the user no longer has a working relationship with the university.
- A Web site to reference is Department of Cultural Resources guidance on the uncw.edu/general_counsel Web page.



Public Records Requests

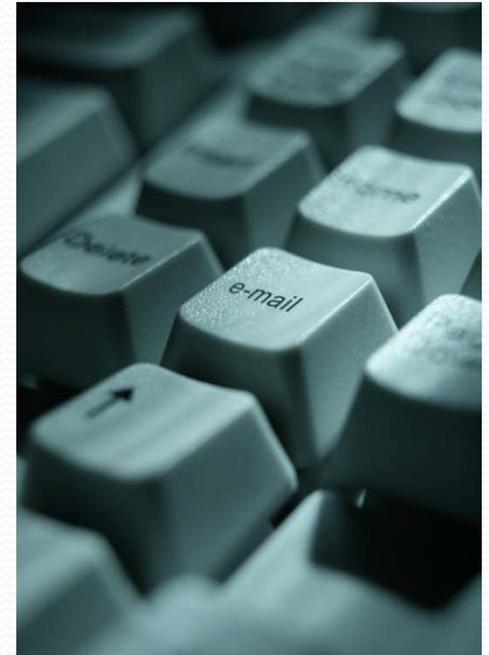
- *Star News* request for e-mails between Coach Brownell and AD Capaccio regarding men's basketball program
- NRDC request for research records from Dr. Ann Pabst's marine mammal stranding along the Outer Banks
- Student request for e-mails regarding his interactions with a service office on campus
- *News & Observer* request for all communications regarding certain personnel matters



UNCW Responsible Use Policy

(Electronic Communications)

- The University of North Carolina Wilmington regards e-mail as an official method of communication with students, staff and faculty.
- While e-mail is an official method of communication, it is not the only official method of communication and does not exclude alternate methods such as written or oral communications, or other electronic methods.
- E-mail and voicemail that are considered to be public record must be retained according to the NC records retention schedule.
- The electronic media provided to you to perform your duties is intended for official use only; however, incidental use of state owned systems is permissible in a limited capacity.



UNC Records Retention Schedule

- The UNC Records Retention Schedule details and provides procedures for the retention and eventual disposal of electronic communications with respect to the nature of the **contents** within the specific modality of delivery (i.e., e-mail or voicemail).
- Retention times vary relative to the nature of the content of the communication.



Governor's Executive Order # 18

- E-mail sent or received via government systems are viewed as public record.
- Correspondence is maintained in compliance with Public Records Law.
- No “reasonable expectation of privacy” exists for communications generated on government owned systems.
- Executive Branch must backup all user e-mails sent and received.
- All Executive Branch e-mails must be maintained for at least 10 years for backups created after issuance of Executive Order 150.
- NCGS 147-33.80 exempts colleges and universities.
- UNC GA recommends that colleges and universities apply standards greater than or equal to the ITS mandate.



UNCW's Response to Executive Order # 18



- Voluntary use of an email footer to notify mail receipts of the possibility of the communications being subject to a public records request.

NOTICE: Emails sent and received in the course of university business are subject to the North Carolina Public Records Act (N.C.G.S. §132-1 et seq.) and may be released to the public unless an exception applies.

Google postini services

- Evaluation of an outsourcing data storage of email messages to accommodate the possibility of an unfunded requirement to meet the 10 year rule.



Federal Rules of Civil Proceedings

(E Discovery)



- Litigation hold of evidence takes priority over any retention schedules.
- Federal rules require parties who have potential or threatened litigation or actual litigation to suspend destruction of electronic information relevant to a lawsuit.
- Information includes but is not limited to e-mail, voicemail, word processing documents, calendars, instant messages, spreadsheets, videos, flash drives, photographs, smart phones, information in PDAs or any other location where data may be stored.



E Discovery Examples

- Senior faculty who vote on RPT
- Fadel v. UNCW (student cheating case)
- Discrimination charges
- Personnel matters
- Serious injury or death of an employee or student on university property or participating in a university program, field trip or other event



Questions?

