



# Howling Counsel

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## LEGAL SPOTLIGHT

### On The Record: What You Should Know About Creating, Maintaining and Destroying Documents

Public Records. Documents, files, data networked or kept in the “cloud”... all are potentially subject to public records law. With a few specific exceptions, nearly all of the information NC State employees produce, send or receive are available for public inspection. The implications of this are significant – anyone (and everyone) may ask to look at (and copy) your public records. Because of this, effectively maintaining such information is important not only for public record compliance, but for administrative efficiency. In other words, maintaining public records in a legal and efficient manner means protecting them from unreasonable risk of destruction in a way that allows the university to produce them when needed or upon request. Though paper records can be safely maintained in any office setting, extra precautions may be needed for computer data to safeguard against unintended access or deletion.

Records Retention. Second, it is important to know that employees are not permitted to destroy or dispose of public records at will. The retention and destruc-

tion of public records are regulated. NC State employees must follow the university’s **records retention schedule** to determine how long public records must be kept. For example, university bank statements may be destroyed after three closed fiscal years and when released from all audits. The records retention schedule is a comprehensive document and should be consulted whenever records are being considered for disposal (e.g. cleaning out an office). Only a few prescribed destruction methods may be used, ranging from the simple and preferred (shredding or recycling) to the slightly more macabre (dissolving in acid vats).

Personnel Records. Third, personnel file information is an important exception to public records access under our state’s public records law. Other than **basic employment data** such as salary and dates of service, personnel file information is confidential and can only be accessed by the **employee, supervisors and other specified persons** under specific circumstances. State regulations require that in order

to insure security and confidentiality, there should be administrative, technical and physical controls to protect confidential personnel information from unauthorized access or disclosure. (And did you know that it is a Class 3 misdemeanor to permit an unauthorized person to access a confidential personnel file? It is also a Class 3 misdemeanor to examine, remove or copy any portion of a confidential personnel file unless you are authorized to do so!) If you have a question as to whether you are “authorized” to have such access, contact the Office of General Counsel. Like other documents, records retention and destruction rules apply to personnel files, so special care should be taken when storing, transferring or destroying them to ensure that confidentiality is preserved.

For more information on public or personnel information law, please refer to the Office of General Counsel legal topic **‘Records’** or **contact** an attorney or staff member for assistance.



**QUESTIONS OF THE MONTH**

***“What do I do if I receive a notice that a company or individual has filed for bankruptcy?”***

Should your department ever receive bankruptcy documents, forward the documents to the Office of General Counsel. Often the company or individual filing for bankruptcy will be an entity or person for which the department provided services or purchased goods from in the past, but the department currently does not owe any money or is not owed any money from the company or individual. If the filer *does* owe your department money, please send an itemized statement verifying the debt amount to the OGC along with the bankruptcy documents. If needed, OGC will file the proof of claim and monitor the case.

***“Are employees at NC State who are foreign nationals allowed to engage in consulting or other external professional activities for pay?”***

No. Foreign national employees at NC State on H-1B, E-3 O-1 or TN visas are not allowed to work for any entity other than the petitioning employer (NC State) or to perform any professional services for compensation – unless such activity was included in the immigration petition to the government. If you are a foreign national employee and have questions about whether your immigration status allows you to engage in certain activity such as consulting, contact NC State’s International Employment Manager at 515-4518.

**Important Message on Hosting Webinars**

Technological advances have made it easier than ever for “webinars” to be created and offered on a variety of topics. Webinars can be a cost-effective means for units to stay current on relevant topics, and the OGC sponsors many opportunities for clients to join us for relevant programming throughout the year.

The involvement of outside attorneys in webinars and other educational programs raises special concerns. Many of these attorneys are not licensed in North Carolina and lack famili-

arity with the laws and policies that NC State must comply with. Please contact the OGC, the office responsible for providing legal advice and representation to NC State clients, whenever your department is considering participating in any program featuring presentations by outside attorneys. We can help evaluate the quality of the program, may be able to offer more appropriate programming and resources, and will be happy to partner in any worthwhile program with you and your colleagues.

NC State employees should always seek legal advice and guidance from the OGC, and should not rely on information presented by outside attorneys or other professionals discussing legal topics in webinars, programs, white papers, etc., without first reviewing it with an appropriate attorney in the Office of General Counsel. Call the OGC at 919-515-3071 for advice or additional information.

**Higher Education Legal Managers Conference Recap**

NC State’s OGC hosted the Higher Education Legal Managers (HELM) annual conference for the first time September 25-27, 2013 at the James B. Hunt Library. The conference was attended by 27 legal managers from higher education institutions across the nation from UCLA to Harvard. Institutions represented included Baylor, Penn State, Cornell, NYU, Brigham Young, Emory, Princeton, University of Delaware, Duke, UNC Charlotte, UNC General Administration, Arizona State University, Columbia, University of New Mexico, University of North Florida, University of Illinois, and the University of Pennsylvania, to name a few. The agenda was a day packed full of trending issues of importance for legal managers in higher education such as

“minors on campus,” “eDiscovery, litigation hold and forensics software and best practices,” “managing social media best practices,” “document management” and the “involving roles of legal managers.” The OGC’s own Deborah Harvey gave a presentation on “Marketing the Higher Education Legal Office.” Other presenters included Kevin Rice, Training & Organizational Development, Josh Heimowitz from the Redwoods Group, Charlie Beckenhauer, General Counsel at Baylor University, Donna Payne, ECU General Counsel, and John Scherer, Associate General Counsel at UNC Wilmington. Vendors in attendance were Access Data, Heckman Consulting, Worldox, Westlaw, and National Digital Forensics, Inc. The conference

also included tours of the Hunt Library, the Alumni Center, as well as Centennial and main campus (led by Dr. Thomas Stafford). Suggested topics for future presentations included crisis management, strategic planning, risk management, business process improvement, and successor training. All attendees were impressed with NC State’s beautiful campus, facilities and research endeavors. Overall feedback on the conference was “excellent venue, food, and presenters,” and “this was the best conference ever!” The next HELM conference will be hosted by Harvard University in late September 2014.

**Policy Updates**

Several important policy revisions were approved at the September meeting of the Board of Trustees. Policies that have been updated include: **Appointment, Reappointment, Promotion and Permanent Tenure** (POL 05.20.01); **Equal**

**Opportunity and Non-Discrimination Policy** (POL 04.25.05); **Interpersonal Relationships Policy** (POL 04.20.06) and the **Code of Student Conduct** (POL 11.35.01). Please click on the hyperlinks to view the recent changes. Other up-

dates to regulations and rules can be viewed anytime on the “**What’s New**” webpage.