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Comment

***1527 YOU CAN'T ALWAYS GET WHAT YOU WANT: A LOOK AT NORTH CAROLINA'S
PUBLICRECORDS LAW**

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“Every government is run by liars,” I.F. Stone, the iconoclastic journalist, once observed. [\[FN1\]](#) Stone meant that if United States citizens do not keep a close watch on the officials who manage their federal, state and local governments, then all sorts of mischief can occur. In the age of the administrative state -- an era in which unelected bureaucrats make major governmental decisions behind closed doors -- citizens can keep a watchful eye on their governments only if they have access to the records that document such decisions. Thus, the federal government, all fifty states, and the District of Columbia have enacted freedom of information laws. [\[FN2\]](#) Although these laws differ substantially in scope, all provide some access to records of law enforcement agencies, [\[FN3\]](#) government spending matters, [\[FN4\]](#) land transfers, [\[FN5\]](#) tax assessments, [\[FN6\]](#) government economic development activities, [\[FN7\]](#) civil and criminal lawsuits, [\[FN8\]](#) and charges by licensing boards against doctors, lawyers and other professionals. [\[FN9\]](#) All states also provide access to records of births and deaths, [\[FN10\]](#) as well as reports about known health hazards, such as toxic waste sites. [\[FN11\]](#)

***1528** Journalists make the most frequent use of the federal and state open records laws, [\[FN12\]](#) but the laws are often utilized by citizens and citizens' groups interested in keeping government honest, [\[FN13\]](#) politicians looking for information about their opponents, [\[FN14\]](#) and historians detailing the abuses of the administrative state. [\[FN15\]](#) Together, these users help the general public keep abreast of the activities of their federal, state, and local governments.

Legal commentators have labeled North Carolina's **publicrecords** act, [North Carolina General Statutes Section 132-1](#), one of the more liberal in the country. [\[FN16\]](#) Given a cursory reading, this label seems appropriate, as the Act apparently makes available to the public

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. [\[FN17\]](#)

***1529** The North Carolina freedom of information act, however, is not all it seems. North Carolina's legislature [\[FN18\]](#) and appellate courts [\[FN19\]](#) have limited the Act's scope by carving out exceptions for law enforcement, personnel, and professional disciplinary records. In addition, state and local government officials sometimes withhold records from citizens even when a statutory exception does not apply, perhaps because the law does not punish such withholdings. [\[FN20\]](#) They may also delay release of records to a requesting party, again perhaps because North Carolina's statute does not prohibit such behavior. [\[FN21\]](#) This Comment examines the history of

publicrecords laws in America, [FN22] focusing on how other states currently regulate citizens' access to records. [FN23] This Comment then scrutinizes North Carolina's **publicrecords** statute, noting how the state's legislature, [FN24] Department of Justice, [FN25] and appellate courts have shaped its scope. [FN26] This Comment suggests several improvements for North Carolina's law, each of which would allow citizens access to more information about how their state and local governments conduct business. [FN27]

I. A Short History of State **PublicRecords** Laws

On June 24, 1886, attorney Z. B. Newton walked into the Register of Deeds office in Cumberland County, North Carolina, and demanded to inspect and copy the records for all the county's land transactions during the past year. [FN28] Newton wanted the records to help him keep track of debts owed several clients. [FN29] The Register of Deeds refused to hand over the record books because, he argued, Newton lacked sufficient interest to see or copy the records, not all of which pertained to Newton's clients. [FN30] Newton sued for access to the **publicrecords**; he lost his case when the North Carolina *1530 Supreme Court determined that no citizen had a right to copy the records of any public office simply because he desired to do so. [FN31] The court concluded that under North Carolina's common law citizens must have a special interest in the records sought in order to make copies. [FN32] To hold otherwise, the court pointed out, would cause enormous problems for state and local governments, as

the inconvenience, and perhaps intolerable annoyance . . . , the danger and risk which they might incur in possible injury to the records, affecting public and private rights, make it manifest that such right cannot exist. It is not the right of all -- it is not the right of one. [FN33]

During the eighteenth and nineteenth centuries, most states shared North Carolina's common-law rules for **publicrecords**. [FN34] Under the common law, only those records kept as required by law qualified as **publicrecords**. [FN35] States generally denied access to **publicrecords** to non-citizens of the state. [FN36] States usually did not allow an individual to examine or copy **publicrecords** if she lacked a special interest in the records sought. [FN37] The common law rules for access slowly evolved, so that by the early twentieth century, most states allowed some access to internal state and local government records, but only in the context of civil and criminal pretrial discovery procedures. [FN38] While discovery permitted inspection of more than just land, birth, and death records, only those persons with a direct interest in the records -- the litigants -- could inspect or copy them. [FN39] Similarly, the federal government also heavily restricted access to most records, allowing inspection only by persons with a special interest in the records sought. [FN40]*1531 Although such rules appear harsh today, during this early period federal, state, and local governments carried out only limited functions and most decisions were made by elected officials in meetings open to the general public. [FN41]

A few states in the nineteenth century enacted laws stipulating that citizens had access to government records. [FN42] The early statutes in Wisconsin, Massachusetts, California, Montana, New York and Florida, [FN43] went beyond the common law in allowing any citizen to inspect state and local government records. [FN44] Nevertheless, citizen access was only a secondary purpose of these early laws, which were primarily designed to require government officials to preserve records for the benefit of their successors in office. [FN45]

A handful of other states, including North Carolina, adopted **publicrecords** laws in the early twentieth century, [FN46] but most states did not replace their common-law rules until after World War II. [FN47] Federal action, [FN48] along with a legal scholar's pioneering book, [FN49] sparked the states to change their laws. Congress provided for citizen access to a wide array of federal records, initially through the Administrative Procedure Act of 1946, [FN50] and then through the more liberal Freedom of Information Act of 1966. [FN51] Even *1532 those states with existing **publicrecords** statutes revised their laws in the wake of congressional action. [FN52] Few states directly mimicked the federal laws, though they had no other model upon which to draw. [FN53] Instead, states enacting or revising their **publicrecords** laws in the post-war period usually copied their provisions from other state laws, a process that divided state **publicrecord** laws into two classes. [FN54] States either broadly or narrowly

defined what constituted a **publicrecord**, and these classifications continue to apply today. [FN55]

Most states have expansive definitions, granting access to all records made, received, and kept by state agencies or local governments, unless specifically exempted by statute. [FN56] Arkansa's **publicrecords** statute, for example, states that "**publicrecords** means writings, recorded sounds, films, tapes, or data compilations in any form required by law to be kept or otherwise kept" by a state agency or local government. [FN57] However, four states -- Arizona, Missouri, New Jersey, and South Dakota -- have narrower definitions that echo the common law; these states permit public access only to *1533 those records that state agencies and local governments must, by law, make and keep. [FN58]

Regardless of the statute's particular definition, several general characteristics may be identified. Although access to government computer records is permitted either implicitly or expressly by all state **publicrecords** laws, [FN59] most states have not yet wrestled with the unique **publicrecords** questions posed by computerization. [FN60] Indeed, only a few states have tried to prevent the easy, but illegal, access to confidential documents made possible by computers. [FN61] In order to alert citizens to available electronic data, Kansas and Illinois mandate that state agencies and local governments maintain public lists of all computerized records. [FN62] Connecticut, Kentucky, Montana, and several other states allow people to obtain copies of computerized records on computer diskettes; [FN63] Maine permits such access, and also provides that citizens may request that government officials first translate the records into another computer language. [FN64] Colorado and New Mexico specify that their state and local officials must manipulate computerized records to highlight certain information if requested to do so by a citizen. [FN65] Virginia, however, has provided in its **publicrecords** law that this type of manipulation is not required. [FN66] Florida and Alaska have the most comprehensive laws on computer access; their laws encourage state and local officials to allow citizens to access certain computerized records by computer *1534 modem, [FN67] a measure that other states may also adopt as computer technology advances. [FN68]

Though often strikingly different in content, most state **publicrecords** laws are similar in form. [FN69] The majority underscore the importance of citizen access with express provisions stating that a democratic society depends on the public's access to the internal records of government. [FN70] South Carolina's provision is typical: it is "vital in a democratic society that public business be performed in an open and public manner." [FN71] In addition, all state **publicrecords** laws mandate preservation and storage of important **publicrecords**. [FN72] All state laws specify that people can inspect and copy **publicrecords** in the possession of state agencies and local governments during the regular office hours for those governments. [FN73]

State **publicrecords** laws and the federal Freedom of Information Act (FOIA) differ primarily in one respect. [FN74] While the federal law authorizes inspection of records at a federal agency's office, it also provides that individuals can receive federal documents through the mail. [FN75] Only six states -- Indiana, Kentucky, Massachusetts, Michigan, Mississippi, and Washington -- mimic FOIA's requirement that government records be sent through the mail to a requesting party. [FN76]

*1535**Publicrecords** access is expensive, and in all states those seeking access bear at least some of the cost. [FN77] Every state has established copying fees for **publicrecords** requests. [FN78] Most stipulate merely that state agencies and local governments charge reasonable rates for copying. [FN79] A few states also include in the fees personnel time spent on research requests, [FN80] though some states allow a waiver of fees when the requested records will benefit the public generally. [FN81]

States generally allow members of the public to make requests orally or in writing, [FN82] although a few states require a written request. [FN83] Most state **publicrecords** laws do not require a party to state why he wants access to **publicrecords**. [FN84] All state **publicrecords** laws set time periods within which public officials must respond to a request for **publicrecords**. [FN85] About half the states require a response, either allowing or denying a request, within a reasonable amount of time, [FN86] while other states set a firm deadline. [FN87] This period varies widely: from two [FN88] to fifteen working days, [FN89]*1536 though most states with an express deadline fall between

these two extremes. [\[FN90\]](#)

All state **publicrecords** laws allow denial of requests for **publicrecords** when the records requested fall within a statutory exemption. [\[FN91\]](#) Most states, imitating FOIA, [\[FN92\]](#) now list all the exceptions within their **publicrecords** laws. [\[FN93\]](#) A few states, including Hawaii, Michigan, and Mississippi, do not follow this user-friendly practice, but instead scatter the exceptions throughout their statutes. [\[FN94\]](#)

***1537** Although some state **publicrecords** laws contain novel exemptions, [\[FN95\]](#) most states exempt the same sorts of records from public scrutiny, in order to protect the privacy of citizens. [\[FN96\]](#) In all states, the following records cannot be obtained through **publicrecords** laws: medical records, [\[FN97\]](#) adoption records, [\[FN98\]](#) student records, [\[FN99\]](#) state income tax records, [\[FN100\]](#) library user records, [\[FN101\]](#) trade secrets and other commercial information required to be submitted by commercial entities, [\[FN102\]](#) and records pertaining to ongoing litigation against a state agency or local government. [\[FN103\]](#) Most states also exempt from their **publicrecords** laws the names of people receiving public assistance, [\[FN104\]](#) preliminary drafts of government reports, [\[FN105\]](#) and the identities ***1538** of people who anonymously donate gifts to state universities, museums and other entities. [\[FN106\]](#) All states, however, regulate access to government employee personnel records and law enforcement records, though these regulations vary in the extent to which they limit the release of such information. [\[FN107\]](#)

Access to government employees' personnel records is permitted to a limited extent. Most state **publicrecords** laws permit only the release of an individual employee's name, job title, salary, date of last promotion, and dates of service. [\[FN108\]](#) In order to protect the privacy rights of public employees, most states refuse to disclose other information, including performance evaluations or disciplinary actions. [\[FN109\]](#) All states classify the home addresses and telephone numbers of certain government employees, [\[FN110\]](#) and all states also fully classify information in the personnel files of undercover law enforcement agents, including the agents' names. [\[FN111\]](#)

Acknowledging that government workers are employees of the general public, a few states do permit public access to records of disciplinary actions taken against employees. [\[FN112\]](#) Arkansas and Minnesota, for example, specify that such records are always available to the public, [\[FN113\]](#) and Georgia allows the release of any disciplinary action taken against an employee ten days after the conclusion of the internal investigation of that employee. [\[FN114\]](#) West Virginia authorizes the release of information regarding actions taken against government employees only when clearly within the public interest; [\[FN115\]](#) New Mexico permits the release of information regarding disciplinary actions, excluding personnel memoranda that clearly contain matters ***1539** of personal opinion. [\[FN116\]](#) Similarly, Wisconsin's **publicrecords** law mandates that the names of all finalists for government jobs in that state are **publicrecords**. [\[FN117\]](#) Other state statutes are silent on this matter, but a number of courts have construed state **publicrecords** laws to require the release of the names of all finalists for top government administrative positions, such as city and county managers. [\[FN118\]](#)

All states mandate the release of police arrest and incident reports, [\[FN119\]](#) except for arrests involving juveniles. [\[FN120\]](#) A number of states, however, require that law enforcement agencies withhold the names of the complaining witness in arrest records for rape and other sexual assaults, [\[FN121\]](#) in light of the effect these crimes have on the victims. [\[FN122\]](#) Most states do not allow access to internal investigatory records of law enforcement agencies, continuing the historical practice of sealing such records in order to allow police wide ***1540** latitude in fighting crime. [\[FN123\]](#) Mirroring the more liberal access FOIA provides to such records, [\[FN124\]](#) eighteen states and the District of Columbia have amended their **publicrecords** laws to allow the release of police investigatory records once a probe has ended and resulted in either criminal prosecution or dismissal. [\[FN125\]](#) Some states provide for declassification upon the request of any person, while others require a court to order the release. [\[FN126\]](#) Two states leave the decision to make the investigatory records in any particular ***1541** case public up to the law enforcement agency's discretion. [\[FN127\]](#) Like FOIA, however, all nineteen jurisdictions require portions of investigatory records to remain classified. [\[FN128\]](#) Kansas's statute is typical in its requirements, allowing disclosure to the public, provided that it

- (A) is in the public interest;(B) would not interfere with any prospective law enforcement action:
- (C) would not reveal the identity of any confidential source or undercover agent;
- (D) would not reveal confidential investigative techniques or procedures not known to the general public; and
- (E) would not endanger the life or physical safety of any person. [\[FN129\]](#)

To comply with these conditions, law enforcement agencies must delete classified information before making the records public. Although most states practice this type of segregation when complying with **publicrecords** requests, only thirteen states duplicate the provisions of the FOIA by expressly requiring that, when classified and **publicrecords** are mixed together, classified materials must be deleted. [\[FN130\]](#)

Only three states provide a different method of allowing public access to classified records, by stipulating that, after a certain period, classified records automatically become declassified. Oregon, for instance, permits anyone to inspect or copy any state record, with the exception of medical records, twenty-five years or older; [\[FN131\]](#) Kansas allows inspection of classified records at least seventy years old; [\[FN132\]](#) and Utah authorizes public inspection *1542 of any state record after seventy-five years. [\[FN133\]](#) The federal government is expected to adopt regulations in 1994 allowing automatic declassification for federal records after twenty-five years, [\[FN134\]](#) which may prompt other states to adopt similar provisions.

When a state agency or local government denies a **publicrecords** request, the requesting party may appeal the denial. Most state **publicrecords** laws allow the requesting party to file suit immediately in court. [\[FN135\]](#) A few states, as well as the FOIA, [\[FN136\]](#) require the party initially to appeal the denial through administrative channels. [\[FN137\]](#) In addition to the regular judicial appeals process, Delaware, Nebraska, Oregon, Rhode Island, and Texas also permit those denied access to **publicrecords** to petition the state attorney general's office to review their requests and assess the propriety of the denial. [\[FN138\]](#)

Thirty-six states provide for punishment of agencies or officials that have wrongfully withheld **publicrecords**. [\[FN139\]](#) In most of these states such agencies must simply pay the attorney fees and costs for a requesting party who successfully secures judicial review. [\[FN140\]](#) Fifteen states permit their courts to fine or incarcerate public officials who act illegally in destroying, *1543 withholding or releasing **publicrecords**. [\[FN141\]](#) Three states -- Florida, Missouri, and Nebraska -- provide for the impeachment or removal of any government official who illegally denies inspection of a **publicrecord**. [\[FN142\]](#) While a majority of states allow criminal punishment of public officials who violate **publicrecords** laws, only Indiana, Maryland, and Minnesota allow a person who had her confidential records illegally released to sue the responsible government agencies. [\[FN143\]](#) These three states also permit civil liability for officials who violate citizens' privacy rights by willfully and wantonly releasing confidential information. [\[FN144\]](#)

II. North Carolina's **PublicRecords** Law

Nearly a century after Wisconsin first moved away from the common-law framework governing **publicrecords**, [\[FN145\]](#) but more than a decade before most states enacted their own **publicrecords** laws, [\[FN146\]](#) North Carolina instituted its statutory regime for dealing with the problems of public access to government records. [\[FN147\]](#) Rather than limiting access only to interested persons as the common law did, or only to state citizens as some other **publicrecords** statutes provided, North Carolina's original **publicrecords** law allowed any person to inspect **publicrecords** held by a state agency or local government. [\[FN148\]](#) By defining **publicrecords** as "all written or printed books, papers, letters, documents and maps" required to be maintained by law, the state's original law extended beyond the common law. [\[FN149\]](#) In fact, the original *1544 North Carolina law, with detailed provisions on the storage and preservation of records, [\[FN150\]](#) seemed designed more to benefit government officials than the

general public. [FN151] When introduced in the 1935 session, the legislation that later became [North Carolina General Statutes Section 132-1](#) carried the label “A Bill To Safeguard **PublicRecords**.” [FN152] As such, the original **publicrecords** law set neither a time limit for public officials' response to requests, nor provided for the punishment of officials who did not provide requested records. The law, however, did establish fines -- as much as \$500 per violation -- for North Carolina officials who either destroyed or failed to turn over records to their successors in office. [FN153]

In 1975, nine years after Congress adopted the Freedom of Information Act, [FN154] the General Assembly rewrote North Carolina law to allow public access to a wider range of state and local government records. [FN155] North Carolina's revised statute, like the laws in forty-six other states and the District of Columbia, [FN156] specified that **publicrecords** include both state and local government records required to be kept by law, as well as those records received by these governments in conducting their business. [FN157] The *1545 revamped North Carolina **publicrecords** law also provided that **publicrecords** are not limited to those written on paper, but include “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. . . .” [FN158] With this revision, North Carolina became one of the first states in the nation to specify that computer records, which now make up most government records, are **publicrecords**. [FN159] Today, when responding to a request for computerized **publicrecords**, North Carolina officials will provide copies either in paper printout or diskette form, whichever the requesting party prefers. [FN160] However, officials refuse to manipulate computer data to highlight certain information or translate the data into another computer language if requested, because the state's **publicrecords** law does not require them to do so. [FN161]

As it revised the definition of **publicrecords** in 1975, the General Assembly also provided that citizens may sue for access. [FN162] Although the change specified that a court may order disclosure of **publicrecords** wrongfully withheld by government officials, [FN163] these revisions did not allow for the recovery of any attorneys' fees, fines, or criminal sanctions against government officials who willfully disobey the **publicrecords** law. In 1983, the General Assembly provided for assessment of attorneys' fees against government agencies for plaintiffs wrongfully denied access to **public*1546records**. [FN164] The legislature did not include the provision within the **publicrecords** law itself, but instead placed it among the statute sections dealing with general liability for court costs in civil actions. This placement could conceal from some plaintiffs in **publicrecords** cases the knowledge that they can recover attorneys' fees and court costs. [FN165]

Several sections of the **publicrecords** law remained unchanged by the 1975 revision. [FN166] The legislature maintained the provisions regarding long-term preservation and maintenance of records, [FN167] and made only a minor alteration to the provision requiring officials to hand over **publicrecords** to their successors in office, by increasing the penalty for violations. [FN168] The General Assembly, however, chose not to alter the section directing officials *1547 to respond to requests for information. [FN169] Thus, North Carolina General Statutes Section 132 - 6, essentially unchanged since its 1935 enactment, [FN170] still provides that government officials must allow inspection of **publicrecords** during reasonable office hours by any person, [FN171] but leaves it within the government officials' discretion whether to mail out records when requested to do so. [FN172] This provision also specifies that officials may charge fees for copying records, but it does not specify a response time. [FN173] Thus, North Carolina is one of about twenty-five states that do not set a maximum response time. [FN174]

Because it applied to “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,” the 1975 version of [North Carolina General Statutes Section 132-1](#) implied that people could scrutinize all state and local government records. [FN175] The 1975 General Assembly, however, retained several existing exceptions to the **publicrecords** law, and created some new ones, virtually all of which served to protect the privacy of citizens named in government records. [FN176] Previously, existing provisions exempted records containing the names of people applying for or receiving welfare benefits, [FN177] individual state income tax returns, [FN178] adoption records, [FN179] State Bureau of Investigation (SBI) investigatory *1548 records, [FN180] and records of labor

dispute settlements negotiated by the North Carolina Department of Labor. [FN181] The 1975 General Assembly added new provisions exempting most information in the personnel files of state, [FN182] county, [FN183] and municipal employees, [FN184] as well as state and local government records reflecting confidential communications between public officials and their attorneys with respect to government litigation matters. [FN185]

Within the new provisions regarding personnel files, the legislature provided that citizens could learn the names, job titles, work sites, hiring dates, and salaries for any government workers in the state. [FN186] Although some states allow people to learn more information about public employees, including the names of applicants for top administrative posts, [FN187] North Carolina's provision resembles the majority of other states' laws. Under the litigation exemption, the legislature allowed records of these confidential communications to remain sealed from the public for three years. [FN188] This exemption also specified that government agencies may make these communications public earlier if officials so desire. [FN189]

*1549 All of the exceptions in the North Carolina **publicrecords** law resembled those in other state **publicrecords** laws. [FN190] Unlike many states' statutes, however, the revamped North Carolina law did not expressly provide that when exempt materials and non-exempt materials are mixed together in records, government officials must delete the confidential items and release the remaining materials when responding to a records request. [FN191] Although the North Carolina Court of Appeals has required this practice for university scientific research records, [FN192] it is unclear whether this practice extends to other state and local government records. Consequently, North Carolina's **publicrecords** law exemptions may allow government officials to withhold more material than required.

The General Assembly's 1975 decision to scatter the **publicrecords** exemptions throughout the North Carolina General Statutes proved equally problematic. [FN193] While the majority of state **publicrecords** laws list all their exceptions within a single statute, [FN194] the 1975 statute only included an exemption for government communications relating to litigation within the **publicrecords** law itself, but made no reference within the statute to the other exemptions. [FN195] Since 1975, the General Assembly has continued this confusing practice. [FN196] The following records are exempted from disclosure in separate sections of the General Statutes: juvenile arrest and court records; [FN197] patient medical records in the possession of doctors; [FN198] state medical records pertaining to infectious diseases; [FN199] medical and dental peer review records; [FN200] prescription records held by *1550 pharmacists; [FN201] records pertaining to the licensing or disciplining of doctors, dentists, psychologists, and lawyers; [FN202] records containing the names of people receiving, and businesses paying, unemployment compensation; [FN203] and library user records. [FN204] However, the legislature has made no mention within the **publicrecords** law itself that these records are not available to the public. [FN205] In addition, the General Assembly has also enacted numerous local government exemptions to the **publicrecords** law, all without amending the law itself to note any of these local exceptions. [FN206]

To add to the confusion, the legislature has amended the **publicrecords** law four times in the last two decades, specifying that certain other records are exempt. [FN207] In 1987, the General Assembly added provisions stipulating that economic development records concerning the recruiting of a specific industry would not be subject to the law while such recruiting is ongoing. [FN208]*1551 As such, these records are only temporarily protected under North Carolina's law, a measure consistent with the freedom of information laws of many other states. [FN209] In 1989, the North Carolina legislature again amended the law to prohibit state agencies and local governments from releasing records, acquired through a bidding process or other means, that contain trade secrets. [FN210] Another 1989 amendment specified that documents pertaining to legal settlements and similar matters of state agencies and local governments constitute **publicrecords**. [FN211] Most other states allow the release of such records. [FN212]

In 1993, the General Assembly again amended the law to clarify which law enforcement records are available to the public, [FN213] in what may prove to be a very problematic change. North Carolina has long allowed public inspection of arrest records and incident reports, as well as public examination of arrest and search warrants once

filed in court. [FN214] The new statute expressly provides that such documents are **publicrecords**, unless sealed by court order. [FN215] The new statute also codifies the long accepted practice of *1552 excluding internal police records, including detailed witness statements and lists of possible suspects in specific crimes, from the definition of “**publicrecords**.” [FN216] The statute provides for the declassification of such records only upon the order of a North Carolina trial court, thereby rendering the records essentially unavailable except in discovery in civil and criminal lawsuits against law enforcement agencies. [FN217]

[North Carolina General Statutes Section 132-1.4](#) specifies that recordings and contents of citizen calls made to “911” emergency services and conversations over police radios constitute **publicrecords**, subject to limited editing required to protect the identities of complaining witnesses. [FN218] Some North Carolina municipalities and counties had previously contended that these recordings were confidential, and refused the public access to them. [FN219]*1553 Following the enactment of [Section 132-1.4](#), but prior to its effective date, the North Carolina Supreme Court held that such recordings are not protected by other provisions of North Carolina's **publicrecords** law. [FN220] With the enactment of this statute, North Carolina joined the growing number of states that allow public access to police radio and “911” emergency communications recordings. [FN221]

While news gatherers in North Carolina can be expected to make great use of recorded “911” calls, [FN222] the provision dealing with police radio recordings may prove to be of little benefit in the future. Many police and sheriff 's departments in North Carolina use cellular telephones, rather than police radios, to discuss emergency calls, [FN223] preventing reporters and others from monitoring these conversations over legally available scanner radios. [FN224] Although some scanners allow listeners to eavesdrop on cellular telephone calls as well, [FN225] federal law makes listening in on and recording these conversations illegal. [FN226]

In addition to providing for the release of “911” and police radio records, [Section 132-1.4](#) codifies the traditional practice of allowing law enforcement agencies to withhold information identifying crime victims from the public. [FN227] Most police and sheriff 's departments generally have not released names, residential addresses, and other information that might *1554 identify complaining witnesses in rapes and other sexual crimes [FN228] because of the stigma associated with these crimes. [FN229] Most newspapers and television and radio stations in North Carolina had similarly refrained from releasing this information, although the state's **publicrecords** law did not expressly require them to do so. [FN230]

The drafters of [Section 132-1.4](#) originally intended simply to codify the generally accepted practice of granting law enforcement agencies the discretion to withhold the names of prosecuting witnesses prior to trial as they deemed necessary. [FN231] However, the legislature altered the provision slightly to leave no doubt that, in certain cases, particularly sex crimes, police must withhold the names of prosecuting witnesses. [FN232] Although the provision prevents law enforcement agencies from releasing names of sexual assault victims to the media, it is unclear exactly what other responsibilities the law places on these agencies. Some legal authorities have construed the statute to create civil liability for police and sheriff 's departments when a prosecuting witness suffers injury to his or her “mental health, physical health, or personal safety” because the law enforcement agency released a name from its **publicrecords**. [FN233] Therefore, to avoid this liability, some law enforcement agencies have decided to withhold the *1555 names of all citizens who file complaints -- involving both felonies and misdemeanors [FN234] -- while others have chosen to classify only the names of felony complainants. [FN235] Although a handful of states [FN236] expressly allow civil liability when government agencies release clearly classified data, North Carolina appears to be the only state that has done so inadvertently. As such, it may be the only state that permits punishment for the release of material not expressly exempted.

III. Scrutinizing North Carolina's **PublicRecords** Law

Although North Carolina's appellate courts, as well as the state Attorney General's office, have helped shape the scope of North Carolina's **publicrecords** law, [FN237] the North Carolina Supreme Court handled only one common law case involving **publicrecords**. [FN238] In *Newton v. Fisher*, [FN239] the court held that a person

must have a direct interest in a **publicrecord** itself in order to inspect it. [FN240] Between the enactment of North Carolina's **publicrecords** law in 1935 and its revision forty years later, the supreme court did not hear any cases involving the statute. During this period, the Attorney General's office determined the scope of the law. [FN241] In response to inquiries from government officials about the scope of the original **publicrecords** law, the Attorney General's staff opined that the law as originally passed prevented the destruction of local government records without the authorization of state archivists, [FN242] mandated release of arrest records maintained by law enforcement agencies, [FN243] and permitted citizen inspection of local *1556 government spending records. [FN244] The Department of Justice also determined that the original **publicrecords** law compelled state university administrators to furnish textbook lists to private booksellers who wished to compete for student sales, [FN245] and required municipal government officials to allow citizens access to the minutes of meetings held by elected city and town officials. [FN246] However, the Attorney General's office decided that the original **publicrecords** law did not provide for public inspection of active criminal investigatory records compiled by local law enforcement agencies. [FN247] Such access, the Department of Justice asserted, would make North Carolina's criminal discovery laws meaningless, as well as jeopardize an accused criminal's right to a fair trial. [FN248]

The Attorney General's office remained the sole arbiter of North Carolina's **publicrecords** law for six years immediately after the General Assembly's 1975 amendments. [FN249] The most important opinions issued during this period involved law enforcement [FN250] and personnel [FN251] records. The Attorney General's staff determined that neither State Highway Patrol-maintained breathalyzer logs nor documents relating to blood-alcohol tests given to suspected drunk drivers constituted **publicrecords**, [FN252] and reached a similar conclusion about copies of traffic tickets maintained by Highway Patrol officers, in that there would be no need for criminal discovery if these tickets were to be considered **publicrecords**. [FN253] The Attorney General's office also found that only basic information from the records of government employees, such as an employee's name, age and occupation title, could be released pursuant to the revised **publicrecords** law, in accordance with the General Assembly's express exemption for state and local government employees' personnel files. [FN254] A state agency could not disclose whether it was investigating possible wrongdoing by an employee, [FN255] nor could it divulge the reason for disciplinary action against an employee; however, an agency was required to provide reporters with the most recent date of an *1557 employee's suspension or demotion. [FN256] The Attorney General's staff noted that "the General Assembly made a choice between the right of the public to know how public employees are conducting public business and the privacy of public employees," and "the General Assembly chose the latter." [FN257]

Due to the specific exception regarding personnel records and the generally accepted theory that internal police records did not constitute public information, the Attorney General's decisions on these matters generated little controversy. [FN258] However, when a difficult dispute about the scope of the state's revised **publicrecords** statute arose in 1981, it started a twelve year trend in which North Carolina's appellate courts were asked to resolve many difficult **publicrecords** battles. [FN259] In the first case, *Advance Publications, Inc. v. City of Elizabeth City*, [FN260] the court of appeals considered whether a letter written by a consulting engineer retained by Elizabeth City to inspect its water treatment plant constituted a **publicrecord** under North Carolina's **publicrecords** laws. The court held that it did and, therefore, could be inspected by the local newspaper. [FN261]

In its next **publicrecords** case, *News & Observer Publishing Co. v. Wake County Hospital System*, [FN262] the court reached a similar conclusion. It determined that reporters for the *Raleigh News & Observer* could examine expense account records of the board of directors for a public hospital, as well as settlement records related to the termination of ambulance service and other professional contracts. [FN263] The court held that both types of *1558 records fell within the scope of Section 132-1 because the hospital constituted a division of the Wake County government. [FN264]

Two years later, in *News & Observer Publishing Co. v. State ex. rel. Starling*, the court of appeals determined that newspapers could gain access to State Bureau of Investigation criminal investigative records. [FN265] The decision made North Carolina's **publicrecords** law one of the most liberal in the nation [FN266] until the state supreme court reversed the court of appeals in *Starling*, its first case interpreting the **publicrecords** law. [FN267]

The dispute in this case involved SBI records compiled during a probe into the activities of a former Wake County superintendent of schools. [FN268] After reviewing the SBI's report on the matter, the Wake County District Attorney decided not to prosecute. [FN269] Pursuant to a North Carolina statute providing that SBI records can be made public upon the order of a court of competent jurisdiction, [FN270] the News & Observer petitioned for release of the report on the superintendent. [FN271] While the court of appeals had affirmed the order of the trial court mandating the SBI's release of the report to the newspaper, [FN272] the supreme court unanimously rejected this ruling. [FN273] Despite the statute's failure to specify, the court determined that the statute only permits the targets of SBI probes to petition a court for release of the relevant SBI documents. [FN274] According to the court's analysis, this sort of petition can occur only during criminal or civil discovery. [FN275] Since the SBI probe did *1559 not directly involve the News & Observer, the supreme court concluded that the newspaper could not gain access to these records. [FN276] Writing for the court, Justice Mitchell reasoned that

it is clear that if investigatory files were made public subsequent to the termination of enforcement proceedings, the ability of any investigatory body to conduct future investigations would be seriously impaired. Few persons would respond candidly to investigators if they feared that their remarks would become **publicrecord** after the proceedings. Further, the investigative techniques of the investigating body would be disclosed to the general public. An equally important reason for prohibiting access to police and investigative reports arises from recognition of the rights of privacy of individuals mentioned or accused of wrongdoing in unverified or unverifiable hearsay statements of others included in such reports. [FN277] By asserting that courts "almost universally" agree with this position, Justice Mitchell neatly sidestepped the fact that some jurisdictions allow for the release of police investigative records, albeit often in censored form, to protect the privacy rights of the accused and other involved persons. [FN278] Nearly a decade later, the supreme court again grappled with the applicability of North Carolina **publicrecords** law to SBI investigative reports. The court addressed the issue of whether SBI records became **publicrecords** once turned over to a University of North Carolina committee investigating alleged abuses in the North Carolina State University athletic department. [FN279] The court held that the statutory exemption for SBI records no longer applied. [FN280] Writing for the court, Chief Justice Exum explained:

When such reports become part of the records of a public agency subject to the **PublicRecords** Act, they are protected only to the extent that agency's records are protected. When the SBI investigative reports here became Commission records, they, as Commission records, ceased to be protected . . . and became subject to disclosure under the **PublicRecords** Law to the same extent as other Commission records. [FN281] Because the SBI apparently did not have statutory authority to perform investigations for the commission, the News & Observer Publishing Co. v. Poole decision did little to change the supreme court's holding in Starling. [FN282]*1560 Investigative reports by the SBI turned over to district attorneys and local law enforcement agencies are still not subject to release under the state's **publicrecords** law, and such reports constitute the bulk of the SBI's written works. [FN283] Poole's legacy is therefore that the **publicrecords** law mandated the release of draft reports and minutes from closed meetings of state commissions. [FN284] The court noted that "in the absence of a clear statutory exemption or exception, documents falling within the definition of '**publicrecords**' in the **PublicRecords** Law must be made available for public inspection." [FN285] Accordingly, North Carolina's **publicrecords** law is one of the few that mandates the release of government agencies' draft documents to the public. [FN286]

In S.E.T.A. UNC-CH, Inc. v. Huffines, [FN287] the court of appeals determined that the University of North Carolina at Chapel Hill had to release applications for research grants involving animal experiments to a student animal rights group. [FN288] The court, however, ordered the protection of personnel information, including the names and addresses of specific researchers working on the project, in order to protect these individuals' privacy. [FN289] The actual release of the records in S.E.T.A. was fairly predictable, as they involved requests for federal research money and could be examined pursuant to the federal Freedom of Information Act. [FN290] This decision is noteworthy nonetheless because it allowed the release of records that would have been otherwise exempt, a development that could serve as precedent for courts to allow greater access to North Carolina state and local government records.

Two years later, the court of appeals considered whether the public may examine records kept by contractors working for a state agency. In *Durham Herald Co. v. North Carolina Low-Level Radioactive Waste Management* *1561 Authority, [FN291] four newspapers sought contractors' records pertaining to the potential locations of a state dump site for low-level radioactive waste. [FN292] The court held that the **publicrecords** law did not grant a right of inspection to records not actually maintained by a state agency, but an agency would have to provide public access once it received such records. [FN293] Writing for the court, Judge Eagles stated that

the General Assembly did not intend that the consultant-generated papers and items would be **publicrecords** immediately upon creation or collection by consultants or contractors. Instead, . . . we conclude that the General Assembly intended that the papers and items would become **publicrecords** only when they are received by the Authority in the proper exercise of its discretion. [FN294] The court's decision, therefore, did not completely bar public access to such materials, but rather stipulated that the access could occur only after the agency had received these materials. *Durham Herald v. Waste Management* is consistent with most other state court decisions on consultant records, although a few state courts have determined that these records are public -- even when in the hands of the consultant -- since taxpayer funds paid for the work accomplished. [FN295]

The three most recent **publicrecords** cases decided by the supreme court constrict those boundaries established by most jurisdictions, thus providing for less citizen access to government records. [FN296] In *Piedmont Publishing Co. v. City of Winston-Salem* [FN297] the court denied public access to recorded conversations and emergency communications between citizens and police; subsequently, the General Assembly revised the **publicrecords** law, to include these communications in the definition of "**publicrecords**." [FN298] The court in *Piedmont Publishing Co.* determined that such *1562 records were not subject to the **publicrecords** law, indicating that a contrary holding would undermine North Carolina's criminal discovery process. [FN299] The court decided that if the **publicrecords** law allowed access to, for example, recordings of emergency calls from citizens to police, then it also would allow access to other police investigatory materials. [FN300] Justice Webb, writing for the court, concluded that an expansive definition of **publicrecords** would mean that

the files of every district attorney in the state could be subject to release to the public. Among the matters that would have to be released would be the names of confidential informants, the names of undercover agents, and the names of people who had been investigated for the crime but were not charged. [FN301]

In two other cases, *Elkin Tribune v. Yadkin County Board of Commissioners* [FN302] and *Durham Herald Co. v. County of Durham*, [FN303] the court greatly circumscribed the public's right to examine records involving key personnel decisions made by local elected officials. *Elkin Tribune* involved a newspaper's request for a list of applicants for the vacant county manager's position, the top administrative post in the county government. [FN304] The trial court ordered the names of the applicants to be released, finding that the personnel exemption for county employees established by North Carolina statutory provisions did not apply since the applicants had not yet been hired, and thus were not county employees. [FN305] The supreme court reversed, concluding that an employee's personnel file begins with her application for employment. [FN306] Writing for the court, Justice Webb stated that, because the statute specifies that the exemption applies to former county employees, it applies to prospective county employees as well. [FN307] Thus, the supreme court concluded that, under North Carolina's **publicrecords** law, the public is not entitled to know the identities of those who apply for any county manager's post. [FN308] Presumably, the court's *Elkin Tribune* decision also allows cities and towns to keep secret the names of applicants for their other top administrative posts, including managers and *1563 police chiefs. In reaching its conclusion, the North Carolina court did not acknowledge that other state courts wrestling with this matter have concluded that the public has an overwhelming right to know the names of applicants for top government posts. [FN309]

In *Durham Herald Co. v. County of Durham*, the North Carolina Supreme Court held that the public is not entitled to access to the list of applicants from which a county commission chooses to fill the vacant county sheriff's post, normally an elected post. [FN310] The case arose after Durham County's sheriff resigned to take another government job with two years left in his term. [FN311] Pursuant to state law, the Durham County Board of

Commissioners, in an effort to appoint someone to serve the remaining period of the sheriff's term, advertised for applicants for the post. [FN312] The Durham Herald-Sun newspaper asked for a list of the applicants, which the commissioners refused to supply. [FN313] Although the trial court ordered the release of the applicants' names, [FN314] the supreme court reversed, concluding that there was little difference in this situation and the one encountered in Elkin Tribune. [FN315] Writing for the court, Chief Justice Exum stated that North Carolina law provides that county personnel files are confidential records, and thus did not allow for an exception in this case. [FN316] Discussing the court's previous decision in Elkin Tribune, Chief Justice Exum concluded that

while there are certainly differences between the office of sheriff and the position of county manager, which would be material in other contexts, the application of section 153A- 98 of the North Carolina statutes does not turn on such distinctions. The clear purpose of this statute is to provide some confidentiality to those who apply to county boards or their agents for positions which those boards and their agents are authorized to fill. [FN317] Although the supreme court acknowledged that the applications at issue in Durham Herald were for a normally elective position, it did not discuss whether that fact could support an exception to its rule in Elkin Tribune. [FN318] According to the supreme court's decision, when a vacancy occurs in any *1564 normally elective post, elected officials may apparently operate in secret when choosing someone to fill it. [FN319]

Viewed as a whole, the appellate decisions defining North Carolina's **publicrecords** law provide that it guarantees broad access to state and local government records, with two troubling exceptions: SBI criminal investigatory records and personnel records. After the supreme court's decision in Starling, [FN320] North Carolinians cannot examine SBI records to be certain that the agency is not engaging in questionable tactics. [FN321] Consequently, state residents cannot discover whether reporter Jerry Bledsoe correctly charged that the SBI operates covertly in part "to cover ineptitude and inaction and to use its considerable power against political enemies" of high ranking state government officials. [FN322] After both Elkin Tribune [FN323] and Durham Herald, [FN324] North Carolinians also will not be able to track key hiring decisions made by local government. Thus, local officials are free to select whomever they choose for county and municipal administrative positions -- even those that are elective -- free from concern that the public may learn that more qualified people applied for those posts. Together, the court's decisions in Starling, Elkin Tribune, and Durham Herald undermine the very purpose behind the state's **publicrecords** law: the public's right to know how important governmental decisions are made.

IV. Reforming North Carolina's **PublicRecords** Law

North Carolina's regulations regarding **publicrecords** seem clear: a state or local government record is available for public scrutiny unless it is one of the several types legislatively or judicially exempted. [FN325] With such a broad-based law, citizens should have little problem gaining access to most government records. A recent survey by the North Carolina Press Association, however, showed that newspapers and broadcasters, the most frequent beneficiaries of North Carolina's **publicrecords** law, often fail to secure access to records they desire. [FN326] Although some of these denials occur because the records fall within a clear statutory exemption, government officials *1565 often withhold the documents for reasons not sanctioned under the law. [FN327] Reporters surveyed also noted that they frequently experience problems in getting requested records in a timely manner. [FN328] The new Sunshine Office established by North Carolina Attorney General Michael Easley should improve public access to government records and help government officials to realize when they may and may not rightfully withhold records from the public. [FN329] For the office to succeed, however, North Carolina needs to liberalize its **publicrecords** law.

First, North Carolina's law should contain a preamble underscoring that its primary purpose is public access to government records, rather than preservation of them. [FN330] Rhode Island's preamble provides a good model, as it highlights that records should be withheld only when they interfere with citizens' privacy rights:

The public's right to access to records pertaining to the policy-making responsibilities of government and the

individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to governmental records which pertain to the policy-making functions of public bodies and/or are relevant to the public health, safety, and welfare. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy. [FN331] Including a similar provision in North Carolina's law would alert state and local officials, as well as any court hearing a **publicrecords** dispute, that the law does not allow the routine withholding of public documents.

North Carolina's definition of **publicrecords** also needs revision. A rewritten definition should remain broad in scope, but should also specifically *1566 detail all exempt records. [FN332] A complete listing in one location would help eliminate continuing confusion about the scope of the law. [FN333] Thus, the revised law should include the current express exemptions for trade secrets and law enforcement investigatory records, [FN334] as well as the provisions enumerated in other portions of the General Statutes exempting certain records pertaining to the licensing of professionals, individuals' personal medical records, certain government employee records, adoption records, income tax records, juvenile criminal records, library user records, and records pertaining to public assistance and unemployment compensation. [FN335]

When amending the North Carolina law, the General Assembly should abrogate the state supreme court's interpretation of the statutory provisions in Elkin Tribune [FN336] and Durham Herald, [FN337] and the revised law should specify that the names of applicants for certain key government posts, such as town and county managers, as well as unfilled elective positions, are **publicrecords**. [FN338] This would allow citizens to be well-informed about elected officials' actions in filling top government posts. Legislators have contemplated correcting these decisions by amending North Carolina's open meetings law [FN339] to require that local government officials meet in open session to hire county and municipal managers, police chiefs, school superintendents, and other top administrators. [FN340] Although this type of reform is certainly desirable, specifying that the names of all applicants for top government positions are **publicrecords** would better serve the public good. As administrators other than elected officials often hire top administrative personnel, such as police chiefs, an open meetings requirement would not necessarily keep the public fully informed about these decisions. [FN341] Furthermore, even when administrators do not actually hire for *1567 these positions, they often narrow the list of applicants for other top positions, such as city and county managers, before presenting any names to elected officials for a final decision. [FN342] Without access to full lists of applicants, citizens cannot know whether cronyism, racial or sexual discrimination, or other unsavory motivations played a role in their elected officials' hiring decisions. [FN343]

A revised **publicrecords** law should also clarify when law enforcement agencies must withhold the names of complaining witnesses and should specify the sanctions available against noncomplying agencies. Much debate has occurred within the law enforcement community regarding the precise meaning of the current statute's provision [FN344] for the temporary nondisclosure of names of complaining witnesses in certain situations. [FN345] Since the legislators desired mainly to shield sexual assault victims from having their names become public knowledge, [FN346] the revised Section 132-1.4 should specify that the names of complaining witnesses in sexual assault cases are not **publicrecords**, until revealed in open court. This would protect sexual assault victims, [FN347] yet continue North Carolina's long-term practice of identifying in law enforcement arrest records the names of prosecuting witnesses for all other crimes. [FN348]

When making this change, legislators should decide whether they want expressly to create civil liability for those law enforcement agencies that publicly identify a complaining witness in a sexual assault case, as well as for any North Carolina official who reveals confidential information contained in government records. While there are trade-offs, [FN349] a specific declaration either way is preferable to the murky possibility of civil liability contained in the current **publicrecords** law. [FN350]

The revised statute should also specify that the public may examine investigatory records of the SBI and police and sheriff's departments after the investigation has been completed. This would alter the result in Starling that

investigatory records cannot be obtained except through criminal and *1568 civil discovery. [FN351] More liberal criminal discovery laws, requiring mandatory discovery of all investigatory records in a criminal case, would provide greater access in some cases, but North Carolinians should not have to depend on criminal trials alone to monitor the activities of law enforcement agencies. [FN352] Also, the amended law should allow for the release of investigatory records following either the trial or dismissal of charges against the defendant, as do the **publicrecords** laws of a growing number of states. [FN353] North Carolina law enforcement officials successfully blocked such a provision in the past, convincing legislators that opening up such records would prevent them from successfully fighting crime because it would reveal confidential law enforcement techniques. [FN354] However, the legislature could eliminate this problem by mandating that officials delete certain information before declassification: information identifying confidential informants, undercover police officers, the names of suspects not charged, and law enforcement methods not generally known to the public. [FN355] Several states, as well as the federal government, allow for the release of investigatory records under similar conditions. [FN356]

The enactment of similar rules governing the release of records in North Carolina would provide citizens with access to more information about the operation of law enforcement agencies, alerting them if these agencies engage in illegal activities or political harassment. One North Carolina journalist has charged that the SBI infiltrated and monitored left-wing, anti-nuclear groups during the 1970s and 1980s. [FN357] Such questionable tactics could be more easily curtailed if North Carolina's law enforcement agencies were unable to shield their investigatory records from the public.

*1569 North Carolina's current blanket exemption for all law enforcement investigatory records highlights the need for a provision in the **publicrecords** law mandating the release of any government record after the segregation and deletion of confidential materials. [FN358] Some North Carolina state agencies and local governments already practice selected deletion, except when the record has been expressly exempted in its entirety, but other agencies do not. [FN359] A mandatory provision would make the practice uniform, thus allowing for far greater access to government records.

The North Carolina General Assembly should also consider including a provision in the revised **publicrecords** law that automatically declassifies any government record after a set number of years. [FN360] This would give North Carolinians the right to learn about any government action taken by state agencies and local governments, albeit after the passage of a long period of time. The period should be long enough to protect the privacy rights of those mentioned in the records. A provision for automatic declassification might stipulate, as Utah's **publicrecords** law does, that

the classification of a record is not permanent and a record that was not classified public under this act shall become a **publicrecord** when the justification for the original or any subsequent restrictive classification no longer exists. A record shall be presumed to be public 75 years after its creation, except that a record that contains information about an individual 21 years old or younger at the time of the record's creation shall be presumed to be public 100 years after its creation. [FN361]

In addition to new sections allowing for segregation and automatic declassification, North Carolina's **publicrecords** law should provide for a maximum response time to information requests. [FN362] The revised statute should specify that government records be available for inspection during regular government office hours and that government officials must respond to a request for records -- either granting, denying, or requesting additional time for research -- within a set time period. [FN363] These provisions would underscore *1570 the importance of public access, in contrast to the current statute, which leaves it to the discretion of government officials to determine how quickly to respond to records requests, often causing problems for the requesting parties. [FN364] Other states have response periods varying from three to thirty days; [FN365] a middle ground approach of ten working days would provide for quick responses to routine citizen requests while not requiring government officials to neglect other important matters when handling these requests.

The General Assembly should consider requiring government officials to mail records when requested to do so by a citizen. [FN366] This would simplify access for citizens, who currently are often required to go to the government agency in person in order to retrieve documents. Such a change would, however, increase the amount of time and money spent by state and local governments on compliance with the **publicrecords** law, since under such a system, the agency itself becomes responsible for copying the records. One way to limit these costs would be to require mailed responses only when a North Carolina citizen makes the request, and then only in certain circumstances. Kentucky's **publicrecords** statute suggests a way to accomplish this, providing that "the public agency shall mail copies of the **publicrecords** to a person whose residence or principal place of business is outside the county in which the **publicrecords** are located after he precisely describes the **publicrecords** which are readily available within the public agency." [FN367] A similar provision would not mandate mailed responses to out-of-state persons and businesses, and would, thus, curtail the number of responses an agency must send out. [FN368]

The General Assembly should also revise the **publicrecords** law to include provisions for criminal sanctions against government officials who either wrongfully deny access to **publicrecords** or wrongfully disclose confidential records. A provision similar to one contained in Louisiana's **publicrecords** law would accomplish this goal:

Any person having custody or control of a **publicrecord**, who violates any of the provisions of the **publicrecords** chapter . . . shall upon first conviction be fined not less than one hundred *1571 dollars, and not more than one thousand dollars, or shall be imprisoned for not less than one month, nor more than six months. Upon any subsequent conviction he shall be fined not less than two hundred fifty dollars, and not more than two thousand dollars, or imprisoned for not less than two months, nor more than six months, or both. [FN369] In addition to this provision, the **publicrecords** law itself should also expressly validate the North Carolina Department of Justice's new Sunshine Office, in order to alert both citizens and government officials that the Attorney General's staff will enforce and mediate **publicrecords** disputes. [FN370] An amended **publicrecords** law should also reflect the North Carolina provision [FN371] specifying that attorneys' fees are available to prevailing plaintiffs in **publicrecords** actions. [FN372] Placing this provision in the **publicrecords** law itself would alert users to the availability of this remedy, thus encouraging legal action when government officials have acted wrongfully. [FN373] The General Assembly has contemplated this change, [FN374] but has also considered allowing government agencies to receive attorneys' fees when a plaintiff has acted in bad faith or frivolously. [FN375] Although this could prove counterproductive, by chilling citizens' suits out of fear of ultimately bearing the costs of the government's legal fees, it would also deter frivolous suits.

Finally, North Carolina's **publicrecords** statute needs to improve citizen access to computerized records, a recent survey listed this among the biggest problems under the current law. [FN376] Legislators have proposed revising the **publicrecords** law to require that state agencies and local governments maintain publicly-available lists of the types of information they *1572 have stored on computers, [FN377] mirroring provisions found in a handful of other states' **publicrecords** laws. [FN378] This change to North Carolina's law would benefit not only the general public, but government officials as well. According to one observer, because government officials are unaware of which records are computerized, North Carolina's state and local governments have often inadvertently duplicated existing computerized records. [FN379]

The proposed legislation, which also contains a provision specifying that state and local governments cannot acquire computer systems designed to thwart public access to computer records, [FN380] falls short of resolving the problems with computerized records experienced under the current law. [FN381] It does not clarify whether reprogramming a government computer system to provide information in a specific format is required under North Carolina's **publicrecords** law. [FN382] It also does not resolve whether the **publicrecords** law requires government officials to allow citizens to search government databases or whether the law requires officials to provide copies of computerized information pursuant to a citizen request. [FN383] The legislation also does not indicate whether all government computer messages, particularly those sent between elected officials, must be retained as **publicrecords**, an issue that has not arisen in North Carolina, but has in other jurisdictions. [FN384]

*1573**Publicrecords** laws are supposed to provide citizens quick and easy access to most government records. North Carolina's current law does not fulfill this purpose for several reasons. First, it is overly confusing, inviting disputes over whether the law mandates the disclosure of certain records. [FN385] Since the **publicrecords** law does not list the numerous sorts of records exempted from it, citizens often ask for documents that are not subject to release. [FN386] Similarly, officials often wrongfully withhold documents from release because they are not fully aware of the scope of the **publicrecords** law. [FN387] Second, the law allows government officials to withhold more records than necessary, because it does not mandate the deletion of confidential materials. When a record otherwise subject to disclosure under the law contains sections with material clearly exempted by the General Assembly, state and local officials may opt to exempt the entire record from disclosure. Third, North Carolina's **publicrecords** law does not specify a deadline for responding to records requests; in exercising this discretion over the release of materials, officials may keep matters from the public until a controversy has abated. Fourth, the law fails to provide for criminal sanctions against public officials who wrongfully withhold **publicrecords** or wrongfully release records exempted by the General Assembly. Without such punitive measures for malefaction, there is little incentive for government officials faithfully to obey the law. Finally, the **publicrecords** law does not specify all the remedies available to citizens. Because it does not indicate that citizens may request Department of Justice intervention in **publicrecords** disputes, or that plaintiffs suing for the release of records can seek attorneys' fees and court costs, some citizens may not pursue access once state or local officials deny it.

Only after substantial revisions will North Carolina's **publicrecords** law allow citizens to stay informed about what the state and local governments are doing. A clear law, with a firm deadline for compliance and punishment for government officials who disobey it, would encourage quick and easy resolution of access disputes between citizens and officials. In most situations, the plain language of the statute would determine *1574 whether the public has a right to know about the contents of a particular government record.

[FN1]. Robert C. Cottrell, *Izzy: A Biography Of I.F. Stone* 248 (1992).

[FN2]. See [Matthew D. Bunker et al., Access to Government-Held Information in the Computer Age: Applying Legal Doctrine To Emerging Technology](#), 20 Fla. St. U. L. Rev. 543, 555 (1993) (noting that all states have freedom of information laws, varying in scope).

[FN3]. See Burt A. Braverman & Wesley R. Heppler, *A Practical Review of State Open Records Laws*, 49 Geo. Wash. L. Rev. 720, 740 - 41 (1981) (noting that most states allow access to reports of arrests and incidents investigated, but otherwise restrict access to law enforcement records).

[FN4]. See David M. Lawrence , *Interpreting North Carolina's PublicRecords Law* 29 (1987) (noting that with the exception of some tax records, all state financial records are uniformly held to be **publicrecords**).

[FN5]. Harold L. Cross , *The People's Right to Know: Legal Access to PublicRecords and Proceedings* , 25 -30 (1953) (noting that the common law recognized the availability of land records).

[FN6]. Lawrence , *supra* note 4, at 43 (noting that all states allow release of property tax records, but not income tax records).

[FN7]. Braverman & Heppler, *supra* note 3, at 720 (noting that many state freedom of information laws allow access to information about economic development activity, as long as it will not compromise ongoing negotiations between a local government and a prospective new employer).

[FN8]. Cross , *supra* note 5, at 135 -36 (noting that citizens, via the common law, had access to many court records prior to the enactment of freedom of information laws).

[FN9]. *Id.*

[FN10]. *Id.* at 92- 94 (noting that citizens had access to birth and death records under early statutory law).

[FN11]. George S. Hage et al., *New Strategies For Public Affairs Reporting* 83 (2d ed. 1983) (noting that some information compiled by state health departments is available to the public).

[FN12]. Most daily newspapers in the United States regularly contain several stories drawn from **publicrecords**; the most obvious are those stories about criminal acts and arrests based upon police reports. See, e.g., Blake Dickinson, *UNC Defends Efforts for Housekeepers*, *Chapel Hill Herald*, Jan. 13, 1994, at 1A (detailing a University of North Carolina at Chapel Hill administration report on salaries and improvements in benefits given to university housekeepers, who alleged that they were underpaid); Jennifer Brett, *School Administrators Give State 'Report Card' Poor Marks*, *Chapel Hill Herald*, Jan. 13, 1994, at 1A (chronicling Chapel Hill-Carrboro public schools administrator's response to a report on student performance throughout the state); *The Police Log*, *Chapel Hill Herald*, Jan. 13, 1994, at 6A (presenting a summary of police reports on arrests and alleged crimes occurring in the Chapel Hill-Carrboro community on Jan. 12, 1994).

[FN13]. See, e.g., *Press Conference With Ralph Nader, Consumer Advocate, Joan Claybrook, President, Public Citizen, and Lori Wallach, Director, Public Citizen's Trade Program*, *Federal News Service*, Dec. 22, 1993, available in LEXIS, News Library, SCRIPT file (noting that the citizens' group Public Citizen had obtained federal documents showing that members of Congress received favors from President Clinton in return for their votes on the controversial North American Free Trade Agreement).

[FN14]. See Ruth Shalit, *Smearing for Profit*, *New Republic*, Jan. 3, 1994, at 18 (detailing the rise of professional opposition research firms for political campaigns).

[FN15]. See generally David J. Garrow, *The FBI And Martin Luther King, Jr.* (1981) (using Federal Bureau of Investigation documents to expose the Bureau's campaign to intimidate and discredit the civil rights leader).

[FN16]. Braverman & Heppler, *supra* note 3, at 734 n.108 (1981) (noting that North Carolina is among the 36 states that take a liberal approach to what constitutes a **publicrecord** within the scope of the state freedom of information statute); see also Joseph D. Johnson, *Comment, Public Access to Government-Held Records: A Neglected Right in North Carolina*, 55 *N.C. L. Rev.* 1187, 1188 (1977) (asserting that North Carolina's **publicrecords** law appears to grant access to all government records). For a general overview of the materials available under North Carolina's freedom of information act, see Cathy Packer, *Access to State and Local Government Documents*, in *Cathy Packer & Hugh Stevens, North Carolina Media Law Handbook* (1992).

[FN17]. *N.C. Gen. Stat. s 132-1* (1993).

[FN18]. See *infra* notes 176 -236 and accompanying text.

[FN19]. See *infra* notes 237-324 and accompanying text.

[FN20]. Cathy Packer et al., *Access to Government Meetings And Records: A Survey of North Carolina Reporters' Problems*, at 13 (March 1994) (unpublished manuscript, on file with the North Carolina Law Review) (noting that government officials had denied access to 34 of 61 broadcasters and newspapers surveyed for reasons not permitted under North Carolina law).

[FN21]. *Id.* at 20 (noting that the survey found that North Carolina state and local officials often delay responding to reporters' requests for government records).

[FN22]. See *infra* notes 28 -144 and accompanying text.

[FN23]. See *infra* notes 46 -144 and accompanying text.

[FN24]. See *infra* notes 147-236 and accompanying text.

[FN25]. See *infra* notes 241-57 and accompanying text.

[FN26]. See *infra* notes 259 -323 and accompanying text.

[FN27]. See *infra* notes 324 - 87 and accompanying text.

[FN28]. [Newton v. Fisher, 98 N.C. 20, 21, 3 S.E. 822, 823 \(1887\).](#)

[FN29]. *Id.* at 21, 3 S.E. at 823.

[FN30]. *Id.* In the end, the Register of Deeds allowed Newton to inspect the books “out of courtesy.” *Id.*

[FN31]. *Id.* at 23, 3 S.E. at 824.

[FN32]. *Id.*

[FN33]. *Id.* at 24, 3 S.E. at 824.

[FN34]. For a brief history of the common-law rules regarding **publicrecords**, see William R. Henrick, Comment, Public Inspection of State and Municipal Executive Documents: “Everybody, Practically Everything, Anytime, Except” 45 Fordham L. Rev. 1105, 1107-10 (1977).

[FN35]. *Id.* at 1109.

[FN36]. *Id.* at 1108.

[FN37]. *Id.*

[FN38]. Braverman & Heppler, *supra* note 3, at 723 (noting that the common law developed to provide greater access to records in the context of litigation discovery).

[FN39]. *Id.* at 724; see also Henrick, *supra* note 34, at 1108 (noting that the common-law rules regarding access developed largely in the context of discovery). As the Kentucky Supreme Court observed in 1939, “every person is entitled to the inspection, either personally or by his agent, of **publicrecords** ... provided he has an interest therein which is such as would enable him to maintain or defend an action for which the document or record sought can furnish evidence or necessary information.” [Fayette Co. v. Martin, 130 S.W.2d 838, 843 \(Ky. 1939\).](#)

[FN40]. The Constitution required that some federal records be made public; for example, both the Senate and the House of Representatives were required to keep and publish records of their proceedings, although members of the

two houses could keep matters off the record if they deemed that such records required secrecy. [U.S. Const. art. I, s 5, cl. 3](#). Legal authorities of the eighteenth and nineteenth century did not imagine that the First Amendment governed access to federal records; however, during the twentieth century the Supreme Court has hinted that the First Amendment does provide the right to examine government records. See, e.g., [New York Times Co. v. Sullivan, 376 U.S. 254, 265 - 92 \(1964\)](#) (concluding that a free press is vital to provision of public information and an informed public is critical to preventing government misconduct).

[FN41]. R. John Tresolini, *The Development of Administrative Law*, 12 *U. Pitt. L. Rev.* 362, 374 -77 (1951) (noting that federal and state governments in the United States only began heavily regulating industries, land use, and other matters following rapid industrialization in the late 19th century).

[FN42]. See *infra* notes 43 - 47 and accompanying text.

[FN43]. See Henrick, *supra* note 34, at 1107 n.10 (noting that Wisconsin, Massachusetts, California, Montana, Florida, and New York approved **publicrecords** laws in the late nineteenth century).

[FN44]. See Braverman & Heppler, *supra* note 3, at 727 (noting that statutes stipulating any citizen can inspect records eliminated the common-law requirement that the requesting party have a special interest in a record in order to have access to it).

[FN45]. *Id.*

[FN46]. See *infra* notes 147-53 and accompanying text for information about North Carolina's original **publicrecords** law. Besides North Carolina, Alabama, Idaho, Nebraska, Nevada, and South Dakota enacted **publicrecords** statutes between World War I and World War II. Henrick, *supra* note 34, at 1107 n.10.

[FN47]. Henrick, *supra* note 34, at 1107- 08 (noting that 34 of the 48 states had no **publicrecords** statutes until after World War II).

[FN48]. *Id.*

[FN49]. See Harold L. Cross, *The People's Right To Know: Legal Access to PublicRecords and Proceedings* (1953).

[FN50]. [5 U.S.C. s 551 \(1988\)](#).

[FN51]. [5 U.S.C. s 552 \(1988\)](#). Congress approved the Freedom of Information Act (FOIA) in 1966, as a replacement for the problematic records provision in the Administrative Procedures Act which had allowed agencies wide discretion to withhold documents. FOIA provides that all records not specifically exempted must be made promptly available to any person. [5 U.S.C. s 552\(a\)\(3\) \(1988\)](#). Nine categories of records may be exempted from disclosure, although an agency is not required to do so: (1) records relating to national security; (2) records dealing with agency rules and practices; (3) tax returns, census records, and other materials exempted by specific statutes; (4) confidential business information; (5) interagency or intraagency memoranda; (6) personnel, medical, and other materials relating to a living individual's privacy; (7) ongoing law enforcement investigations; (8) banking reports; and (9) information about oil and gas wells. [Id. s 552\(b\)\(1\)-\(9\)](#). FOIA requires federal agencies to state their reasons for withholding records. [Id. s 552\(a\)\(6\)\(A\)\(i\)](#). It also provides that agencies must release records if the portions exempted from disclosure can be segregated from portions not so exempted. [Id. s 552\(a\)\(6\)\(b\) \(1988\)](#). FOIA, however, does not define what constitutes a government record. The Supreme Court, attempting to provide some guidance, has determined that a federal agency must physically possess materials before they are considered government records. [Forsham v. Harris, 445 U.S. 169, 177 \(1980\)](#).

[FN52]. Henrick, *supra* note 34, at 1108 (noting that congressional action granting public access to certain federal records helped focus state attention on the need for improved access to state records).

[FN53]. Only the District of Columbia, California, and New York have **publicrecords** laws based directly upon FOIA. [Cal. Govt. Code s 1-1521](#) (West 1992); D.C. Code Ann. s 1-1521 (1981); N.Y. C.L.S. Pub. O. s 89 (1993). While FOIA is frequently litigated, individual state **publicrecord** provisions are not. Henrick, *supra* note 34, at 1108. The American Bar Association has suggested that a model **publicrecords** law is needed, but newspapers and television stations have kept one from being proposed, arguing that it might shield many currently available documents from public disclosure. Harold L. Nelson & Dwight L. Teeter, Jr., *Law of Mass Communications* 419 (4th ed. 1982).

[FN54]. Braverman & Heppler, *supra* note 3, at 733 -35 (noting that states either broadly or narrowly define what constitutes a **publicrecord**).

[FN55]. *Id.*

[FN56]. See, e.g., Colo. Rev. Stat. s 24 -72-202 (1988 & Supp. 1993) (defining **publicrecords** as “all writings made, maintained or kept by the state” and its political subdivisions).

[FN57]. Ark. Code Ann. s 25 -19 -103(1) (Michie 1987).

[FN58]. See Ariz. Rev. Stat. Ann. s 39 -121.01 (1985); [Mo. Ann. Stat. s 109.180](#) (Vernon 1966); [N.J. Stat. Ann. s 47:1A-2](#) (1989 & Supp. 1994); [S.D. Codified Laws Ann. s 1-27-1](#) (1992). The four states similarly define “**publicrecords**”; for example, Missouri defines the term as “all state, county and municipal records kept pursuant to statute or ordinance.” [Mo. Ann. Stat. s 109.180](#) (Vernon 1966).

[FN59]. Only a few states expressly provide that computer records are **publicrecords**. See, e.g., Ark Code Ann. s 25 -19 -105 (Michie 1987 & Supp. 1993); [Conn. Gen. Stat. s 1-19a](#) (1988 & Supp. 1994); [Fla. Stat. ch. 119.07](#) (1941 and Supp. 1994); [Ill. Rev. Stat. ch. 116, para. 205](#) (1988); Kan. Stat. Ann. s 88 -152 (1993); [Ky. Rev. Stat. Ann. s 61.975](#) (Baldwin 1970 & Supp. 1992); Md. State Gov't Code Ann. s 10 - 611(f) (1984); [Minn. Stat. s 138.17](#) (1946 & Supp. 1994); [Neb. Rev. Stat. s 81-1117.04](#) (1991); S.C. Code Ann. s 30 - 9 -75 (Law Co-op. 1991); Utah Code Ann. s 63 -2-103 (1993); [Wis. Stat. s 19.32](#) (1985 & Supp. 1993).

[FN60]. Bunker et al., *supra* note 2, at 567 (noting that most states have not adopted special measures for computer access).

[FN61]. Missouri, for example, provides that computer access codes for government records are not to be released to the general public. Mo. Rev. Stat. s 610.21 (1966).

[FN62]. Ill. Rev. Stat. ch. 5, para. 140(5) (1988); Kan. Stat. Ann. s 45 -221(a)(16) (1993).

[FN63]. [Conn. Gen. Stat. s 1-19a](#) (1988 & Supp. 1994); [Ky. Rev. Stat. Ann. s 65.030](#) (Michie/Bobbs Merrill 1970); Mont. Code Ann. s 2- 6 - 110 (1993).

[FN64]. [Me. Rev. Stat. Ann. tit. 1 s 408](#) (West 1964).

[FN65]. Colo. Rev. Stat. s 24 -72-205(3) (1988 & Supp. 1993); N.M. Stat. Ann. s 15 -1- 9 (Michie 1977 & Supp. 1993).

[FN66]. Va. Code Ann. s 2.1-342(A)(4) (Michie 1950 & Supp. 1993).

[FN67]. [Alaska Stat. s 09.25.220 \(1993\)](#); [Fla. Stat. Ann. s 119.085 \(West Supp. 1994\)](#).

[FN68]. The Clinton Administration already makes certain federal records available via commercial computer bulletin boards such as America Online, as well as via free federal bulletin boards. See, e.g., OMB, Commerce Introduce Electronic Version of Budget, The White House Press Office, Feb. 7, 1994, available in LEXIS, News Library, CURNWS file.

[FN69]. Nelson & Teeter, *supra* note 53, at 411-18 (noting that no two state **publicrecords** laws are alike in content, but most include similar provisions stating law's purpose, noting exemptions, and providing remedies for citizens wrongfully denied access).

[FN70]. See, e.g., [W. Va. Code s 29B-1-1 \(1993\)](#) (declaring that citizens "do not give their public servants the right to decide what is good for the people to know and what is not good for them to know").

[FN71]. S.C. Code Ann. s 30 - 4 -15 (Law. Co-op. 1991).

[FN72]. See, e.g., [Mo. Rev. Stat. s 610.023 \(1966\)](#) (requiring that each government agency must have a custodian responsible for long-term care of **publicrecords**).

[FN73]. See, e.g., Colo. Rev. Stat. s 24 -72-201 (1988 & Supp. 1993) (mandating that inspection may occur at any reasonable time set by government officials).

[FN74]. [5 U.S.C. s 552\(a\)\(3\) \(1988\)](#).

[FN75]. *Id.* A number of federal agencies, including the Federal Bureau of Investigation, have reading rooms where people can scrutinize already declassified material. Marwick, *supra* note 49, at 16 -17 (1985).

[FN76]. Ind. Code Ann. s 5 -14 -3 - 9 (Burns 1993); [Ky. Rev. Stat. Ann. s 61.872](#) (Michie/Bobbs-Merrill 1970 & Supp. 1992); [Mass. Ann. Laws ch. 66, s 10\(a\)](#) (Law. Co-op. 1932 and Supp. 1994); [Mich. Comp. Laws s 15.234 \(1948\)](#); Miss. Code Ann. 25 - 61-7 (1991); [Wash. Rev. Code s 42.17.290 \(1966 & Supp. 1994\)](#). Presumably, most states have not mandated this requirement because of the high costs involved. The federal government spends in excess of \$67 million annually complying with FOIA, costs that reflect government officials searching records, copying them and mailing them to citizens. Harry A. Hammitt, The High Cost of Free Information, Government Executive, July 1990, available in LEXIS, News Library, MAGS File. The fees charged for FOIA records requests generate about \$5 million annually, covering less than eight percent of the actual costs. *Id.* Even when state law does not require governments to send records by mail, governments still receive such requests, often under the mistaken assumption that FOIA applies to state governments. Interview with Deborah K. Crane, Director of the Office of Public Affairs for the North Carolina Department of Environment, Health and Natural Resources, in Raleigh, N.C. (Jan. 28, 1994). The North Carolina Department of Environment, Health and Natural Resources receives an average of 40 requests for mailed records per month pursuant to FOIA, which does not apply to the North Carolina state agency. *Id.* Most of the requests are from out-of-state attorneys. *Id.*

[FN77]. Braverman & Heppler, *supra* note 3, at 749 -50.

[FN78]. *Id.*

[FN79]. See, e.g., [Del. Code Ann . tit. 29, s 10003\(b\) \(1991\)](#) (allowing agencies to establish reasonable fees for copies of records).

[FN80]. See, e.g., [Alaska Stat . s 09.25.110 \(1993\)](#) (stipulating that requesting party must pay personnel costs for searching and copying records if compliance time exceeds five hours).

[FN81]. See, e.g., [La. Rev. Stat. Ann . s 44:32\(c\)\(1\)\(a\) \(West 1951 & Supp. 1994\)](#) (allowing waiver or reduction of fees for requests made by individuals with lower incomes).

[FN82]. See, e.g., [Mich. Comp. Laws s 15.235\(1\) \(1948\)](#) (providing that **publicrecords** requests may be made orally or in writing).

[FN83]. See, e.g., Ind. Code s 5 -14 -3 -3 (1993) (providing that **publicrecord** requests must be in writing or on a form provided by the agency holding the records sought).

[FN84]. See, e.g., [Alaska Stat . s 09.25.110\(a\) \(1993\)](#) (declaring that individual need only request documents and make payment to obtain access to records). Alabama, however, allows government officials to make citizens state why they wish to explore certain records as a condition of access. [Blankenship v. City of Hoover, 590 So. 2d 245, 251 \(Ala. 1991\)](#).

[FN85]. Braverman & Heppler, *supra* note 3, at 750 -51 (noting that the bulk of state **publicrecords** law set a time period within which an agency must respond to a citizen's written request for records).

[FN86]. See, e.g., [Alaska Stat . s 09.25.110 \(1993\)](#) (providing that government officials must respond to citizen requests within a reasonable period).

[FN87]. See Braverman & Heppler, *supra* note 3, at 751.

[FN88]. [Vt. Stat. Ann . tit. 1 s 318\(a\)\(2\) \(1985\)](#).

[FN89]. S.C. Code Ann . s 30 - 4 -30 (Law. Co-op. 1991).

[FN90]. Mirroring the FOIA's response requirement, the District of Columbia, Massachusetts, Maryland, Rhode Island, and Utah stipulate that their state agencies and local governments must respond to **publicrecords** requests within ten working days. D.C. Code Ann . s 1-1527 (1981); Md. State Gov't. Code. Ann. s 10 - 614(a)(3)(ii) (1984); [Mass. Ann. Laws ch. 66, s 10\(b\) \(1993\)](#); R.I. Gen. Laws s 38 -2-7 (1990); Utah Code Ann. s 63 - 2-204(3)(a) (1993). Maine, New Hampshire, New York, and Virginia require responses within five working days. [Me. Rev. Stat. Ann. tit. 1, s 409](#) (West 1964); [N.H. Rev. Stat. Ann. s 91-A:4 \(1990\)](#); [N.Y. Pub. Off. Law s 89\(3\) \(McKinney 1993\)](#); Va. Code Ann. s 2.1-342(A) (Michie 1950 & Supp. 1993). Arkansas, Georgia, Idaho, Kansas, Kentucky, Louisiana, Missouri, and New Mexico mandate a response within three working days after the submission of a request. Ark. Code Ann. s 25 -19 -105(e) (Michie 1987 & Supp. 1993); Ga. Code Ann. s 50 -18 -70(f) (Michie 1990 & Supp. 1993); Idaho Code s 9 -339 (1990 & Supp. 1993); Kan. Stat. Ann. s 45 - 218(d) (1993); [Ky. Rev. Stat. Ann. s 61.872\(5\)](#) (Michie/Bobbs Merrill 1970 & Supp. 1992); [La. Rev. Stat. Ann. s 44:32\(c\)\(3\) \(West 1951 & Supp. 1994\)](#); [Mo. Rev. Stat. s 610.023\(3\) \(1966\)](#); N.M. Stat. Ann. s 14 -2- 8(D) (Michie Supp. 1993). New Mexico, however, allows additional time for responding when a party requests a voluminous amount of records. N.M. Stat. Ann. s 14 - 2-10 (1993).

[FN91]. See *infra* notes 92-134 and accompanying text. Some states authorize denials for other reasons as well. Kansas and Kentucky, for example, authorize state agencies and local governments to reject broad records requests

if compliance would require staffers to spend an extensive amount of time finding and declassifying the records. See Kan. Stat. Ann. s 45 - 218(e) (1993); [Ky. Rev. Stat. Ann. s 61.872\(6\)](#) (Michie/Bobbs Merrill 1970 & Supp. 1992). Several states, including Arizona, Colorado, Illinois, Kansas, Montana, New Mexico, Rhode Island, South Dakota, and Vermont require denial if the individual intends to use the records for a commercial purpose. See Ariz. Rev. Stat. Ann. s 39 -121.03 (1985); Colo. Rev. Stat. s 24 - 72-305.5 (1988 & Supp. 1993); Ill. Rev. Stat. ch. 5, para. 140 - 7(i) (1999 & Supp. 1994); Kan. Stat. Ann. s 45 -220 (1993); Mont. Code. Ann. 2- 6 -109 (1) (1993); N.M. Stat. Ann. s 14 -2A-1 (Michie Supp. 1993); R.I. Gen. Laws s 38 -2- 6 (1990); [S.D. Codified Laws Ann. s 1-27-1 \(1992\)](#); [Vt. Stat. Ann. tit. 1, s 317\(b\)\(10\) \(1985 & Supp. 1993\)](#). These provisions prevent solicitation of people identified through **publicrecords**, such as attorneys seeking clients via public lists of people charged with motor vehicle offenses, as well as the reselling of **publicrecords** for a premium.

[\[FN92\]. 5 U.S.C. s 552\(b\)\(1\)-\(9\) \(1988\).](#)

[\[FN93\].](#) See, e.g., [Fla. Stat. Ann. s 119.07 \(West 1941 & Supp. 1994\)](#) (enumerating all exceptions to Florida's **publicrecords** law).

[\[FN94\].](#) See [Haw. Rev. Stat. s 92F-11 \(1985\)](#) (stating that certain records are subject to disclosure under Hawaii's **publicrecords** law); [Mich. Comp. Laws s 15.241 \(1948\)](#) (noting that records made confidential in other sections of the Michigan state laws are not subject to disclosure under the **publicrecords** law); Miss. Code Ann. s 25 - 61-11 (1991) (providing that records made confidential by federal or other state laws are not subject to disclosure under Mississippi's **publicrecords** law).

[\[FN95\].](#) Florida, for example, provides that the names of all people participating in state-supported ride sharing programs are not **publicrecords**. [Fla. Stat. Ann. s 119.07\(l\) \(1941 & Supp. 1994\)](#). Virginia keeps private the names of subscribers to Virginia Wildlife Magazine , a state supported publication. Va. Code Ann. s 2.1-342(54) (Michie 1993).

[\[FN96\].](#) See Braverman & Heppler, *supra* note 3, at 737- 47 (noting that states uniformly make some records exempt from disclosure under **publicrecords** laws in order to protect the privacy interests of citizens and private corporations). Government efforts to protect citizens' privacy rights have largely occurred during the last 40 years, prompted in part by the Supreme Court's recognition in [Griswold v. Connecticut, 381 U.S. 479, 481- 86 \(1965\)](#), that citizens have a constitutional right of privacy. Thomas I. Emerson, *The Right Of Privacy And Freedom of the Press*, in Daniel L. Brenner & William L. Rivers, *Free But Regulated* , 94 -114 (1982). Most states now make confidential records concerning the intimate details of people's lives, with criminal records the exception to this rule. *Id.* at 112- 14. However, officials in the Clinton Administration, believing that many states have not done enough to protect citizens' privacy rights, have proposed federal legislation providing that certain state records, such as driver's license records, are not **publicrecords**. Susan Bennett, *Nowhere To Hide*, *Raleigh News & Observer* , Feb. 27, 1994, at 17A. The federal legislation is primarily aimed at protecting people from stalking and other crimes, since it is believed that the easily availability of home addresses and telephone numbers through **publicrecords** encourages such crimes. In early 1994, in an attempt to curb stalking, the federal government instituted a policy providing that change-of-address information filed with the U.S. Postal Service is no longer **publicrecord**. Dawn DecWikiel-Kane, *Stalkers, Abusers Will Get No Assistance From Post Office*, *Greensboro News & Record* , April 3, 1994, at D1.

[\[FN97\].](#) See, e.g., [Alaska Stat. s 09.25.120 \(1993\)](#) (declaring that an individual's medical records are confidential)).

[\[FN98\].](#) See, e.g., [Ohio Rev. Code Ann. s 3107.17](#) (Anderson 1989) (declaring that Ohio adoption records are confidential).

[\[FN99\].](#) See, e.g., [Iowa Code s 22.7\(1\) \(1949\)](#) (providing that Iowa student records are exempt from the state's **publicrecords** law).

[FN100]. See, e.g., Ark. Code Ann. s 25 -19 -105(b)(1) (Michie 1987 & Supp. 1993) (stipulating that individual Arkansas state income tax returns cannot be obtained via state **publicrecords** law).

[FN101]. See, e.g., Md. State Gov't. Code Ann. s 10 - 616 (1994) (stating that library user records are exempt from state **publicrecords** law).

[FN102]. See, e.g., [Cal. Gov't Code s 6250](#) (West 1993) (providing that business records containing trade secrets filed with state agencies are confidential).

[FN103]. See, e.g., [Or. Rev. Stat. s 192.501\(1\) \(1991\)](#) (stipulating that government legal documents pertaining to ongoing litigation against the government are not **publicrecords**).

[FN104]. See, e.g., [Mich. Comp. Laws s 400.64\(4\) \(1948\)](#) (stating that the names of individuals receiving money through Aid to Families with Dependent Children and other federal-state cooperative welfare programs are not **publicrecords**).

[FN105]. See, e.g., [Conn. Gen. Stat. s 1-19\(b\) \(1988 & Supp. 1994\)](#) (providing that preliminary drafts of government memoranda and reports are not **publicrecords**).

[FN106]. See, e.g., Ind. Code s 5 -14 -3 - 4(15) (1993) (stating that the identity of persons making anonymous gifts to Indiana governmental entities shall remain confidential).

[FN107]. See Braverman & Heppler, *supra* note 3, at 740 - 41, 745 (noting that all states restrict access to investigatory records of law enforcement agencies, with many states denying citizen access outright); see also *infra* notes 124 -26 and accompanying text.

[FN108]. See, e.g., [Mo. Rev. Stat. s 610.021\(13\) \(1966\)](#) (specifying that only name, salary, and job title for Missouri government employees are subject to disclosure under state **publicrecords** law).

[FN109]. See, e.g., Idaho Code s 9 -340(36) (1990 & Supp. 1993) (stipulating that evaluations and disciplinary actions for government employees are not **publicrecords**).

[FN110]. See, e.g., [N.Y. Pub. Off. Law s 89\(7\) \(McKinney 1993\)](#) (providing that no state employees' home addresses or telephone numbers shall be released under New York's **publicrecords** law).

[FN111]. See, e.g., Kan. Stat. Ann. s 45 - 221(a)(5) (1993) (specifying that personnel information concerning undercover law enforcement agents is confidential in Kansas).

[FN112]. See *infra* notes 113 -18 and accompanying text.

[FN113]. Ark. Code Ann. s 25 -19 -105(c)(1) (Michie 1987 & Supp. 1993); [Minn. Stat. s 13.43\(2\) \(1993\)](#). Minnesota also allows for the release of complaints filed against public employees and the names of the complainants, except in the case of sexual harassment charges, when the complainant's name is not public information. *Id.*

[FN114]. Ga. Code. Ann. s 50 -18 -72(a)(5) (Michie 1990 & Supp. 1993).

[FN115]. W. Va. Code s 29 -1- 4(2) (1993).

[FN116]. N.M. Stat. Ann. s 14 -21(c) (Michie Supp. 1993).

[FN117]. [Wis. Stat. s 19.36\(7\) \(1985 & Supp. 1993\)](#). Wisconsin requires the release of the top five finalists for a position, allowing an exemption only when there are less than five applicants considered. *Id.* It permits the release of the names of other applicants for a government position, except when those applicants have requested that their names not be made public. *Id.*

[FN118]. See, e.g., [Gannett River States Publishing v. Hasty, 557 So. 2d 1154, 1160 \(La. App. 2d. Cir.\)](#), cert. denied, [561 So. 2d 103 \(La. 1990\)](#) (determining that the names of applicants for city fire chief must be released under Louisiana's **publicrecords** law); [Forum Publishing Co. v. Fargo, 391 N.W.2d 169, 172 \(N.D. 1986\)](#) (holding that the names of applicants for city police chief were not exempt personnel records under North Dakota's **publicrecords** law); [City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316, 1326 \(Alaska 1982\)](#) (finding that Alaska's **publicrecords** law did not permit the classification of names of applicants for a top local government administrative position).

[FN119]. See, e.g., [Or. Rev. Stat. s 181.540 \(1991\)](#) (stipulating that the public can scrutinize law enforcement arrest and incident reports).

[FN120]. See, e.g., [Me. Rev. Stat. Ann. tit. 1, s 402\(3\)\(i\) \(West 1964 & Supp. 1993\)](#) (providing that juvenile arrest records are not subject to public release under Maine's **publicrecords** law). Since the early twentieth century, records and trials involving juvenile defendants have not been considered **publicrecords**, so that juvenile offenses would not be held against the perpetrators in their adult years if they reformed and became respectable members of society. Lawrence M. Friedman, Crime and Punishment In American Society 413 -17 (1993).

[FN121]. See, e.g., [Fla. Stat. Ann. s 119.07\(3\)\(h\) \(West 1941 & Supp. 1994\)](#) (providing that the names of sexual assault victims are not subject to disclosure by law enforcement agencies under Florida's **publicrecords** law).

[FN122]. For a detailed explanation of the reasons most jurisdictions permit law enforcement agencies to withhold the names of complainants in rape and other sexual assault cases, see [Deborah W. Denno, Perspectives On Disclosing Rapes Victims' Names, 61 Fordham L. Rev. 1113 \(1993\)](#). See also Sarah Henderson Hutt, Note, In [Praise of Public Access: Why The Government Should Disclose The Identities of Alleged Crime Victims, 41 Duke L.J. 368 \(1991\)](#) (arguing that government withholding of the names of sexual assault complaints from the media violates the First Amendment). Most newspapers, magazines and television news shows withhold the names of sexual assault complainants, even when they have learned the identity of the person, in order to protect the complainant from being subjected to harmful comments or actions. Rita Ciolli, Editors Debate Use of Woman's Name, *Newsday*, April 18, 1991, at A7 (noting that editors of the Washington Post, Los Angeles Times, and other publications do not print sexual assault victims' names unless the victim no longer wishes to remain anonymous).

[FN123]. See, e.g., [Colo. Rev. Stat. s 24 -72-204\(2\)\(a\)\(1\) \(1988 & Supp. 1993\)](#) (providing that investigatory records are not **publicrecords**).

[FN124]. [5 U.S.C. s 552\(b\)\(7\) \(1988\)](#). This section excludes from release records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security

intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual. Id. However, if such records can be released in censored form, deleting any of the above information, FOIA provides for release. Id. [\[FN125\]](#). See [Alaska Stat. s 09.25.120 \(1993\)](#); D.C. Code Ann. s 1524(3) (1981); [Fla. Stat. Ann. s 119.07\(3\)\(d\) \(West 1941 & Supp. 1994\)](#); Ga. Code Ann. s 50 -18 -72(a)(3), (4) (Michie 1990 & Supp. 1993); Idaho Code 9 - 335(2) (1990 & Supp. 1993); Ill. Rev. Stat. ch. 5, para. 140 -7(l)(v)(i) (1993); Ind. Code s 5 -14 -3 - 4(b)(1) (1993); Kan. Stat. Ann. s 45 -221(a)(10) (1993); Ky. Rev. Stat. Ann. s 17.1750(2) (Michie/Bobbs-Merrill 1970 & Supp. 1992); [Mich. Comp. Laws s 750.520 \(1993\)](#); [Minn. Stat. s 138.17\(1\)\(c\)\(i\) \(1946 & Supp. 1994\)](#); N.J. Rev. Stat. s 47A:1A-3 (1989 & Supp. 1993); N.M. Stat. Ann. s 14 -2-1 (Michie Supp. 1993); [N.Y. Pub. Off. Law s 87\(2\)\(e\) \(1993\)](#); [Ohio Rev. Code Ann. 149.43 \(1989\)](#); [Or. Rev. Stat. s 181.540 \(McKinney 1991\)](#); R.I. Gen. Laws s 38 -2-2 (1990); S.C. Code Ann. s 30 - 4 - 40 (Law. Co-op. 1991); Wyo. Stat. s 16 - 4 -203 (1977). In addition, a few courts have interpreted neutrally worded **publicrecords** laws as impliedly requiring public inspection of law enforcement records. See, e.g., [Little v. Gilkinson, 636 P.2d 663, 665 \(Ariz. 1981\)](#) (determining that Arizona's **publicrecords** law required public release of investigatory records for a murder probe once defendant's trial ended); [Napper v. Georgia Television Co., 356 S.E.2d 640, 652 \(Ga. 1987\)](#) (deciding that Georgia's **publicrecords** law required public disclosure of law enforcement task force's investigatory records upon the conviction of defendant in a series of child murders); [Westchester Rockland Newspapers, Inc. v. Moscyzdowski, 388 N.Y.S.2d 199, 201 \(N.Y. Sup. Ct. 1976\)](#), rev'd on other grounds, [396 N.Y.S.2d 857 \(A.D. 1977\)](#) (holding that New York's **publicrecords** law required public release of police records pertaining to the investigation of the death of a jail inmate once the investigation had concluded); [State ex rel. Ware v. Cleveland, 562 N.E.2d 946, 948 \(Ohio App. 1989\)](#) (holding that under Ohio's old **publicrecords** law the wife of an inmate who committed suicide in jail was entitled to see investigatory records concerning his death).

[\[FN126\]](#). See supra note 125 and accompanying text.

[\[FN127\]](#). Ind. Code . s 5 -14 -3 - 4(b)(1) (1976); Wyo. Stat. s 16 - 4 -203(b)(i) (1977).

[\[FN128\]](#). See supra note 125 and accompanying text.

[\[FN129\]](#). Kan. Stat. Ann . s 45 -221(a)(10) (1993).

[\[FN130\]](#). Idaho Code s 9 -341 (1990 & Supp. 1993); Ind. Code s 5 - 4 -3 - 6 (1976); Kan. Stat. Ann. s 45 -221(d) (1993); [La. Rev. Stat. Ann. s 44:32\(b\) \(West 1951 & Supp. 1994\)](#); [Mass Ann. Laws ch. 66, s 10\(a\)](#) (Law. Co-op 1932 & Supp. 1994); [Mich. Comp. Laws s 15.244\(14\) \(1948\)](#); N.M. Stat. Ann. s 14 -2- 9 (Michie Supp. 1993); [Or. Rev. Stat. s 192.505 \(1991\)](#); S.C. Code Ann. s 30 - 4 - 40(b) (Law. Co-op. 1991); Utah Code Ann. s 63 -2-2- 4(4)(g), (h) (1993); Va. Code Ann. s 2.1-342(A)(3) (Michie 1950 & Supp. 1993); [Wis. Stat. s 19.36\(6\) \(1985 & Supp. 1993\)](#); see also [5 U.S.C. s 552\(b\)\(7\) \(1988\)](#). Michigan's statute is typical:

(1) If a **publicrecord** contains material which is not exempt ... as well as material which is exempt from disclosure ... the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a **publicrecord**, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption. [Mich. Comp. Laws s 15.244\(14\) \(1948\)](#).

[\[FN131\]](#). [Or. Rev. Stat. s 192.495 \(1991\)](#).

[\[FN132\]](#). Kan. Stat. Ann . s 45 -221(f) (1993).

[FN133]. [Utah Code Ann . s 63 -2- 909\(1\) \(1993\)](#).

[FN134]. R. Jeffrey Smith, CIA, Others Opposing White House Move to Bare Decades-Old Secrets, Wash. Post , Mar. 30, 1994, at A14 (noting that Clinton Administration draft order on classification of federal agency records calls for automatic declassification of records at intervals of six, ten or twenty-five years).

[FN135]. See, e.g., Md. State Gov't. Code Ann. s 10 - 623(a) (1932 & Supp. 1994) (providing that the Maryland circuit courts hear appeals to denials for **publicrecords**).

[FN136]. [5 U.S.C. s 552\(a\)\(4\)\(B\) \(1988\)](#).

[FN137]. See, e.g., Ill. Rev. Stat . ch. 5, para. 140 -10(a) (1988 & Supp. 1994) (stating that a person refused access to a **publicrecord** must first appeal to the head of the government agency that made the denial).

[FN138]. [Del. Code Ann . tit. 29, s 10005 \(1991\)](#); [Neb. Rev. Stat. s 84 -712.03 \(1993\)](#); [Or. Rev. Stat. s 192.450\(1\) \(1993\)](#); [R.I. Gen. Laws s 38 -2- 8 \(1993\)](#); [Tex. Rev. Civ. Stat. Ann. art. 6252 s 17\(a\)\(7\)\(a\) \(West 1993\)](#).

[FN139]. See *infra* notes 140 - 44 and accompanying text.

[FN140]. See [Ariz. Rev. Stat. Ann. s 39 -121.02\(b\) \(1985\)](#); [Ark. Code Ann. s 25 -19 -107\(d\) \(Michie 1987\)](#); [Cal. Gov't Code s 6250 \(West 1993\)](#); [Del. Code Ann . tit. 29, s 10005\(d\) \(1991\)](#); [Fla. Stat. Ann. 119.12 \(1941 & Supp. 1994\)](#); [Ga. Code Ann. s 50 -18 -73\(b\) \(Michie 1990 & Supp. 1993\)](#); [Haw. Rev. Stat. s 92F-15\(d\) \(1985\)](#); [Idaho Code s 9 - 344\(2\) \(1990 & Supp. 1993\)](#); [Ind. Code . s 5 -14 -3 - 9\(h\) \(1976\)](#); [Kan. Stat. Ann . s 45 -222\(c\)-\(d\) \(1993\)](#); [Ky. Rev. Stat. Ann. s 61.882\(5\) \(Baldwin 1970\)](#); [Md. State Gov't. Code Ann. s 10 - 623\(f\) \(1984\)](#); [Mich. Comp. Laws s 15.240 \(1948\)](#); [Minn. Stat. s 13.08\(4\) \(1946 & Supp. 1994\)](#); [Neb. Rev. Stat. s 84 -712.07\(1993\)](#); [N.H. Rev. Stat. Ann. s 91-A:8 \(1990\)](#); [N.J. Rev. Stat. s 47A:1A-3 \(1989 & Supp. 1993\)](#); [N.M. Stat. Ann. s 14 -2-1 \(Michie Supp. 1993\)](#); [Ohio Rev. Code Ann. 149.43\(C\) \(Baldwin 1989\)](#); [Or. Rev. Stat. s 192.490\(3\) \(1991\)](#); [S.C. Code Ann. s 30 - 4 -100 \(Law Co-op. 1991\)](#); [Tenn. Code Ann. s 10 -7-505\(g\) \(1993\)](#); [Tex. Rev. Civ. Stat. Ann. art. 6252 s 17\(f\)\(8\)\(b\) \(West 1993\)](#); [Vt. Stat. Ann. tit. 1, s 320\(a\) \(1985\)](#); [Wash. Rev. Code s 42.17.340\(4\) \(1966 & Supp. 1994\)](#); [W. Va. Code s 29B-1-7 \(1993\)](#); [Wis. Stat. s 19.37\(2\) \(1985 & Supp. 1993\)](#).

[FN141]. See [Ark. Code Ann . s 25 -19 -104 \(Michie 1987\)](#); [Colo. Rev. Stat. s 24 -72-702 \(1988 & Supp. 1993\)](#); [Fla. Stat. Ann. 119.10 \(West 1941 & Supp. 1994\)](#); [Idaho Code s 9 -345 \(1990 & Supp. 1993\)](#); [La. Rev. Stat. Ann. s 44:37 \(West 1951 & Supp. 1994\)](#); [Me. Rev. Stat. Ann. tit. 1, s 410 \(1964 & Supp. 1993\)](#); [Md. State Gov't. Code Ann. s 10 - 627 \(1984\)](#); [Miss. Code Ann. s 25 - 61-15 \(1991\)](#); [R.I. Gen. Laws s 38 -2- 9\(c\) \(1990\)](#); [S.C. Code Ann. s 30 - 4 - 40\(b\) \(Law. Co-op. 1991\)](#); [Tex. Rev. Civ. Stat. Ann. art. 6252 s 10\(f\) \(West 1993\)](#); [Va. Code Ann. s 2.1-346.1 \(Michie 1950 & Supp. 1993\)](#); [W. Va. Code s 29B-1- 6 \(1993\)](#); [Wis. Stat. s 19.37\(4\) \(1985 & Supp. 1993\)](#); and [Wyo. Stat. s 16 - 4 - 205 \(1977\)](#).

[FN142]. [Fla. Stat. Ann . s 119.02 \(1941 & Supp. 1994\)](#); [Mo. Ann. Stat. 109.180 \(1966\)](#); [Neb. Rev. Stat. s 84 - 712.09 \(1993\)](#).

[FN143]. See [Ind. Code s 5 -14 -3 -10 \(1976\)](#); [Md. State Gov't. Code Ann. s 10 - 627 \(1984\)](#); [Minn. Stat. s 13.08\(4\) \(1946 & Supp. 1994\)](#).

[FN144]. See *supra* note 143 and accompanying text.

[FN145]. See *supra* note 42 and accompanying text.

[FN146]. See supra notes 43 - 46 and accompanying text.

[FN147]. Act of May 2, 1935, ch. 265, s 1, 1935 N.C. Sess. Laws 288 (codified as [N.C. Gen. Stat. s 132-1 \(1935\)](#)).

[FN148]. Act of May 2, 1935, ch. 265, s 6, 1935 N.C. Sess. Laws 288, 289 (codified as N.C. Gen. Stat. s 132 - 6 (1935)). The statute provided that “every person having custody of **publicrecords** shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law.” N.C. Gen. Stat. s 132 - 6 (1935).

[FN149]. Act of May 2, 1935, ch. 265, s 1, 1935 N.C. Sess. Laws 288 (codified as [N.C. Gen. Stat. s 132-1 \(1935\)](#)).

[FN150]. Act of May 2, 1935, ch. 265, ss 7, 8, 1935 N.C. Sess. Laws 288, 289 (codified as [N.C. Gen. Stat. ss 132-7, 132 - 8 \(1935\)](#)).

[FN151]. See David M. Lawrence, **PublicRecords** After Poole, 41 Loc. Gov't Law Bull., Apr. 1992, at 1. Lawrence, a member of the North Carolina Institute of Government faculty, noted that the primary reason for enactment of the **publicrecords** statute “was a concern for the retention and preservation of public documents -- a concern, that is, that centered on archival and historical interests;” he added that public access constituted a “secondary right to the statute's principal goals.” Id. at 1-2.

[FN152]. Act of May 2, 1935, ch. 265, s 1, 1935 N.C. Sess. Laws 288 (noting the name of the original bill introduced as “A Bill To Safeguard **PublicRecords**”).

[FN153]. Act of May 2, 1935, ch. 265, s 5, 1935 N.C. Sess. Laws 288, 289 (codified at [N.C. Gen. Stat. s 132-5 \(1935\)](#)).

[FN154]. [5 U.S.C. s 551 \(1988\)](#); see also supra note 50 and accompanying text.

[FN155]. Act of June 24, 1975, ch. 787, s 1, 1975 N.C. Sess. Laws 1112 (codified at [N.C. Gen. Stat. s 132-1 \(1993\)](#)); see also Lawrence , supra note 4, at 2 (noting that the 1975 changes expanded the definition of **publicrecords** to include both those made or received, and those actually used and kept in a public office).

[FN156]. See supra notes 54 -58 and accompanying text.

[FN157]. Act of June 24, 1975, ch. 787, s 1, 1975 N.C. Sess. Laws 1112 (codified at [N.C. Gen. Stat. s 132-1 \(1993\)](#)). The statute, which remains in effect, provides that:

“**publicrecord**” or “**publicrecords**” 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. Agency of North Carolina government or its subdivisions shall mean and 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. [N.C. Gen. Stat. s 132-1 \(1993\)](#).

[FN158]. Id.

[FN159]. Bunker et al., supra note 2, at 568 (noting that even in the 1990s less than half the states had expressly provided in their **publicrecords** laws that computer records constitute **publicrecords**).

[FN160]. Interview with Deborah K. Crane, *supra* note 76 (noting that state officials interpret the law as requiring them to provide copies of non-paper records in their original form if so desired by the requesting party).

[FN161]. *Id.* (asserting that state officials view such changes as creating new records, and the law only requires government officials to hand over existing records).

[FN162]. Act of June 24, 1975, ch. 787, s 3, 1975 N.C. Sess. Laws 1112, 1113 (codified as amended at N.C. Gen. Stat. s 132 - 9 (1993)).

[FN163]. *Id.*. As rewritten in 1975, N.C. Gen. Stat. 132 - 9 provided that:

Any person who is denied access to **publicrecords** for purposes of inspection, examination or copying may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders. N.C. Gen. Stat. s 132 - 9 (1975). The General Assembly amended the statute in 1987 to provide instructions for courts in handling requests for **publicrecords** relating to economic development. Act of Aug. 14, 1987, ch. 835, s 2, 1987 N.C. Sess. Laws 2008 (codified at N.C. Gen. Stat. s 132 - 9 (1993)). The statute also provides that: In an action to compel disclosure of **publicrecords** which have been withheld pursuant to the provisions of G.S. 132 - 6 concerning **publicrecords** relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project. N.C. Gen. Stat. s 132 - 9 (1993).

[FN164]. Act of July 22, 1983, ch. 918, s 1, 1983 N.C. Sess. Laws 1266 (codified as amended at N.C. Gen. Stat. s 6 -19.2 (1993)).

[FN165]. *Id.*

[FN166]. See *infra* notes 167-74 and accompanying text.

[FN167]. N.C. Gen. Stat. ss 132-7 to - 8 (1993). In 1951, the legislature made minor changes to s 132-7 to specify what steps officials could take to preserve records in their custody. The statute provides:

Insofar as possible, custodians of **publicrecords** shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All **publicrecords** should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. Act of March 20, 1951, ch. 294, 1951 N.C. Sess. Laws 244 (codified at N.C. Gen. Stat. s 132-7 (1993)). The legislature also made minor changes to s 132 - 8 in 1973, specifying that the Department of Cultural Resources, the successor to the State Department of Archives and History, had responsibility for long-term care of North Carolina records. Act of May 14, 1973, ch. 476, s 48, 1973 N.C. Sess. Laws 590 (codified as amended at N.C. Gen. Stat. s 132 - 8 (1993)).

[FN168]. Act of June 23, 1975, ch. 696, s 1, 1975 N.C. Sess. Laws 925 (codified at N.C. Gen. Stat. s 132-5 (1993)). Following the 1975 revamping, the statute provided that whoever is entitled to the custody of **publicrecords** shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses **publicrecords** shall without just cause refuse or neglect for 10 days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a misdemeanor and upon conviction imprisoned for a

term not exceeding two years or fined not exceeding one thousand dollars (\$1000) or both. [N.C. Gen. Stat. s 132-5 \(1993\)](#). The legislature made another minor adjustment in the statute in 1993, providing that persons convicted under the statute shall be punished under the rules for Class 1 misdemeanors. Act of July 24, 1993, ch. 539, s 968, 1993 N.C. Adv. Legis. Serv. 1666. Class 1 misdemeanors are punishable by a prison sentence of up to two years and/or a fine. N.C. Gen. Stat. s 14 -3 (1993).

[\[FN169\]](#). N.C. Gen. Stat. s 132 - 6 (1993). The statute still provides, as it did in 1935, that every person having custody of **publicrecords** shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law. N.C. Gen. Stat. s 132 - 6 (1993). The legislature amended the statute in 1987 to specify the manner in which government officials should handle requests for records relating to economic development. See *infra* note 210 and accompanying text.

[\[FN170\]](#). N.C. Gen. Stat. s 132 - 6 (1975).

[\[FN171\]](#). *Id.*

[\[FN172\]](#). Most North Carolina state agencies and local governments routinely refuse to search for, copy, and mail out **publicrecords** due to limited staff resources. Interview with Deborah K. Crane, *supra* note 76. For example, a recent study by the North Carolina Department of Environment, Health and Natural Resources, which receives hundreds of records requests monthly, determined that at least six full-time clerical workers would have to be added if the agency enacted a policy providing for mailing of **publicrecords** to people who request such service. *Id.* The agency currently allows people to come in and make their own copies of records, under the supervision of state workers. *Id.*

[\[FN173\]](#). N.C. Gen. Stat. s 132 - 6 (1975).

[\[FN174\]](#). See *supra* notes 85 - 90 and accompanying text.

[\[FN175\]](#). Act of June 24, 1975, ch. 787, s 1, 1975 N.C. Sess. Laws 1112 (codified at [N.C. Gen. Stat. s 132-1 \(1975\)](#)).

[\[FN176\]](#). See *infra* notes 177-236 and accompanying text.

[\[FN177\]](#). Act of March 20, 1937, ch. 288, ss 18, 48, 1937 Sess. Laws 506 (codified as amended at N.C. Gen. Stat. s 108A- 80 (1988)).

[\[FN178\]](#). Act of Mar. 24, 1939, ch. 158, s 928, 1939 N.C. Sess. Laws 176 (codified at N.C. Gen. Stat. s 105 -259 (1989)).

[\[FN179\]](#). Act of Mar. 11, 1949, ch. 300, s 25, 1949 N.C. Sess. Laws 264 (codified at N.C. Gen. Stat. s 48 -25(a) (1984)).

[\[FN180\]](#). Act of Mar. 13, 1947, ch. 280, 1947 N.C. Sess. Laws 328 (codified as amended at N.C. Gen. Stat. s 114 - 115 (1993)).

[\[FN181\]](#). Act of Mar. 30, 1949, ch. 673, s 1, 1949 N.C. Sess. Laws 694 (codified as amended at N.C. Gen. Stat. s 95 -36 (1989)).

[\[FN182\]](#). Act of June 23, 1975, ch. 257, s 1, 1975 N.C. Sess. Laws 249 (codified as N.C. Gen. Stat. s 126 -22 (1993)). The statute provides that the **publicrecords** law does not apply to government personnel files containing

information about an employee's "application, selection or non-selection, promotions, demotions, transfers, leave, salary, suspension, performance evaluation forms, disciplinary actions, and termination of employment." N.C. Gen. Stat. s 126 -22 (1993).

[FN183]. Act of June 23, 1975, ch. 701, s 1, 1975 N.C. Sess. Laws 929 (codified at N.C. Gen. Stat. s 153A- 98 (1993)).

[FN184]. Act of June 23, 1975, ch. 701, s 1, 1975 N.C. Sess. Laws 929 (codified at [N.C. Gen. Stat. s 160A-168 \(1993\)](#)).

[FN185]. Act of June 18, 1975, ch. 662, s 1, 1975 N.C. Sess. Laws 802 (codified at [N.C. Gen. Stat. s 132-1.1 \(1993\)](#)).

[FN186]. Act of June 23, 1975, ch. 257, s 1, 1975 N.C. Sess. Laws 249 (codified at N.C. Gen. Stat. s 126 -23 (1993)). The statute provides in pertinent part that each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee: name, age, date of original employment or appointment to the State service, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. N.C. Gen. Stat. s 126 -23 (1993); see also [N.C. Gen. Stat. s 160A-168 \(1987\)](#) and N.C. Gen. Stat. s 153A- 98 (1991) (detailing the availability of limited information to the public about municipal and county government employees). The statutes dealing with municipal and county workers permits the release of information detailing reasons for an employee's dismissal or disciplining if officials believe that the release is within the public interest. [N.C. Gen. Stat. s 160A-168\(c\)\(7\) \(1987\)](#); N.C. Gen. Stat. s 153A- 98(c)(7) (1991).

[FN187]. See supra notes 117-18 and accompanying text.

[FN188]. [N.C. Gen. Stat. s 132-1.1 \(1993\)](#).

[FN189]. Id.

[FN190]. See supra notes 95 -134 and accompanying text.

[FN191]. See supra note 130 and accompanying text.

[FN192]. [S.E.T.A. UNC-CH, Inc. v. Huffines, 101 N.C. 292, 295, 399 S.E.2d 340, 342 \(1991\)](#) (providing for release of research records to animal rights group after the deletion of names of researchers and other confidential information). For an analysis of this case, see infra notes 288 - 91 and accompanying text.

[FN193]. Compare notes 92- 94 and accompanying text.

[FN194]. See supra notes 92- 94 and accompanying text.

[FN195]. [N.C. Gen. Stat. s 132-1.1 \(1993\)](#). Therefore, an individual examining only the **publicrecords** section itself would have no idea that other exemptions existed.

[FN196]. See infra notes 197-236 and accompanying text.

[FN197]. Act of Jun. 7, 1979, ch. 815, s 1, 1979 N.C. Sess. Laws 966, 997- 99 (codified at N.C. Gen. Stat. s 7A-

675(e) (1989)).

[FN198]. Act of June 8, 1983, ch. 471, 1983 N.C. Sess. Laws 400 (codified at N.C. Gen. Stat. s 8 -53 (1986)).

[FN199]. Act of July 20, 1983, ch. 891, s 2, 1983 N.C. Sess. Laws 1088, 1133 - 46 (codified as amended at [N.C. Gen. Stat. s 130A-143 \(1992\)](#)). Under the law, physicians are required to report known cases of infectious diseases, such as Acquired Immune Deficiency Syndrome, tuberculosis, and venereal diseases, to state or local authorities. [N.C. Gen. Stat. s 130A-143 \(1992\)](#). While public disclosure of a specific patient's name is prohibited by law, the state can reveal statistical information about reported infectious diseases. Id.

[FN200]. Act of June 24, 1980, ch. 1192, s 1, 1979 2d Sess. N.C. Sess. Laws 120, 121 (codified at N.C. Gen. Stat. s 90 - 48.10 (1993)) (providing for confidential dental peer review); Act of July 15, 1983, ch. 775, s 1, 1983 Sess. Laws 895, 922 (codified at N.C. Gen. Stat. s 131E- 95(b) (1992)) (providing for confidential hospital peer review of physicians); Act of Aug. 14, 1987, ch. 859, s 1, 1987 N.C. Sess. Laws 2115, 2119 -20 (codified as amended at N.C. Gen. Stat. s 90 -21.22 (1993)) (providing for confidential medical society peer review).

[FN201]. Act of May 27, 1991 ch. 125, s 3, 1991 N.C. Sess. Laws 231, 232-33 (codified at N.C. Gen. Stat. s 90 - 85.34 (1993)).

[FN202]. Act of June 30, 1977, ch. 838, s 1, 1977 N.C. Sess. Laws 1146 (codified at N.C. Gen. Stat. s 90 -16 (1993)) (dealing with medical licenses); Act of Jun. 26, 1989, ch. 442, s 1, 1989 N.C. Sess. Laws 988, 989 - 90, (codified at N.C. Gen. Stat. s 90 - 41 (1993)) (dealing with dental licenses); Act of June 6, 1991, ch. 239, s 1, 1991 N.C. Sess. Laws 444, 444 -50 (codified as N.C. Gen. Stat. s 90 -270.15 (1993)) (regarding licensing of psychologists); Act of June 4, 1991, ch. 210, s 4, 1991 N.C. Sess. Laws 381, 384 (codified at N.C. Gen. Stat. s 84 - 24 (1993 & Supp. 1993)) (regarding licensing of attorneys). Interestingly, North Carolina does not specify by statute that state licensing and investigatory records of other professionals are exempt from the state's **publicrecords** law. See, e.g., N.C. Gen. Stat. s 90 -210.25 (1993) (dealing with state licensing and disciplining of morticians); [N.C. Gen. Stat. s 89E-14 \(1991\)](#) (expressly providing that state licensing records for geologists are **publicrecords**).

[FN203]. Act of May 17, 1985, ch. 197, s 7, 1985 N.C. Sess. Laws 161, 163 - 65 (codified at N.C. Gen. Stat. s 96 - 4(t) (1993)).

[FN204]. Act of June 27, 1985, ch. 486, s 2, 1985 N.C. Sess. Laws 542, 542- 43 (codified at N.C. Gen. Stat. s 125 - 19 (1991)).

[FN205]. See supra notes 195 -204 and accompanying text.

[FN206]. See, e.g., Act of June 28, 1993, ch. 227, s 1, 1993 N.C. Adv. Legis. Serv. 47, 47-50 (providing that complaints made pursuant to Durham's anti-discrimination law are not **publicrecords**); Act of June 13, 1991, ch. 285, s 1, 1991 N.C. Sess. Laws 529 (providing that Catawba and Lincoln counties and certain cities within those counties may require persons obtaining electronic land records to agree in writing that those records will not be used for commercial purposes as a condition of furnishing those records); Act of July 9, 1990, ch. 874, s 1, 1989 Extra Sess. N.C. Sess. Laws 182, 182-83 (providing that Cary can levy a tax on hotel and motel rooms and that records of revenue paid by each inn under the tax are not subject to disclosure under North Carolina's **publicrecords** law).

[FN207]. See infra notes 208 -36 and accompanying text.

[FN208]. Act of Aug. 14, 1987, ch. 835, s 1, 1987 N.C. Sess. Laws 2008 (codified at N.C. Gen. Stat. s 132 - 6 (1993)). The addition to N.C. Gen. Stat. s 132 - 6 provides that **publicrecords** relating to the proposed expansion or location of specific business or industrial projects in the State

may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such **publicrecords** were created; provided, however, that nothing herein shall be construed to permit the withholding of **publicrecords** relating to general economic development policies or activities. N.C. Gen. Stat. s 132 - 6 (1993). [\[FN209\]](#). Id.

[\[FN210\]](#). Act of June 8, 1989, ch. 269, 1989 N.C. Sess. Laws 681, 681- 82 (codified at [N.C. Gen. Stat. s 132-1.2 \(1990\)](#)). The statute provides that the state's **publicrecords** law does not apply to those records containing private business or technical information, including formulas, patterns, programs, devices, techniques and processes, which derive their value from not being generally known or ascertainable. [N.C. Gen. Stat. s 132-1.2 \(1993\)](#). This restriction comports with all other state **publicrecord** laws. See supra note 102 and accompanying text; see also Braverman & Heppler, supra note 3, at 741- 43 (noting that one-third make confidential commercial information contained in their government records unavailable to the general public).

[\[FN211\]](#). Act of June 15, 1989, ch. 326, s 1, 1989 N.C. Sess. Laws 761 (codified at [N.C. Gen. Stat. s 132-1.3 \(1993\)](#)). The statute, in pertinent part, specifies that **publicrecords**, as defined in [G.S. 132-1](#), shall include all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions, as defined in [G.S. 132-1](#), in connection with or arising out of such agency's official actions, duties or responsibilities, except in an action for medical malpractice against a hospital facility. [N.C. Gen. Stat. s 132-1.3 \(1993\)](#).

[\[FN212\]](#). See Braverman & Heppler, supra note 3, at 746 (noting that many state **publicrecords** laws mandate the release of judicial settlements entered into by state agencies and local governments).

[\[FN213\]](#). Act of July 23, 1993, ch. 461, s 1, 1993 N.C. Adv. Legis. Serv. 976, 976 -79 (codified at [N.C. Gen. Stat. s 132-1.4 \(1993\)](#)).

[\[FN214\]](#). See 41 Op. N.C. Att'y Gen. 407, 408 (1971) (asserting that police arrest and disposition records are **publicrecords**).

[\[FN215\]](#). [N.C. Gen. Stat. s 132-1.4\(c\)\(1\)-\(3\), \(e\) \(1993\)](#). The statute in relevant part provides:
(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be **publicrecords** within the meaning of [G.S. 132-1](#). (1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.

(2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.

(3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.

(e) If a public law enforcement agency believes that release of information that is a **publicrecord** under subdivision (c)(1) through (c)(5) of this section will jeopardize the right of the state to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent the disclosure of the information.... Id.

[\[FN216\]](#). [N.C. Gen. Stat. s 132-1.4\(a\) \(1993\)](#). The statute specifies that records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not **publicrecords** as defined by [G.S. 132-1](#). Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction. Id.

[\[FN217\]](#). Id. The limitation is likely because of the North Carolina Supreme Court's decision that a similar provision for court release of State Bureau of Investigation records could be used only by subjects mentioned in the records pursuant to criminal or civil discovery. [News & Observer Publishing Co. v. State ex rel. Starling, 312 N.C. 276, 282, 322 S.E.2d 133, 138 \(1984\)](#). For an analysis of this case, see infra notes 265 -79 and accompanying text.

[FN218]. [N.C. Gen. Stat. s 132-1.4\(c\)\(4\)-\(5\) \(1993\)](#). The statute provides:

(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be **publicrecords** within the meaning of [G.S. 132-1](#). (5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways. Id.

[FN219]. See [Piedmont Publishing Co., Inc. v. City of Winston-Salem, 334 N.C. 595, 598, 434 S.E.2d 176, 177 \(1993\)](#) (noting that Winston-Salem officials refused to grant news reporters access to tape-recorded police radio and telephone conversations concerning a murder investigation). For an analysis of this case, see *infra* notes 297-301 and accompanying text.

[FN220]. [Piedmont Publishing Co. v. City of Winston-Salem, 334 N.C. 595, 598, 434 S.E.2d 176, 177 \(1993\)](#).

[FN221]. See *supra* note 124 and accompanying text. The difference between North Carolina and these other states is that the other states allow access to written law enforcement investigatory records as well, not just the recordings of citizen and police conversations. Id.

[FN222]. See *infra* notes 326 -28 and accompanying text.

[FN223]. Interview with Ralph Pendergraph, Police Chief, Town of Chapel Hill, N.C., in Chapel Hill, N.C. (Jan. 6, 1994) (noting that he and other Chapel Hill police personnel often use cellular telephones to have conversations with one another in crisis situations).

[FN224]. Id.

[FN225]. See, e.g., Sally Jacobs, Private Lives Go Public on Cellular Phones, *Boston Globe*, Jan. 31, 1993, at Metro/Region 1 (noting the popularity of illegal eavesdropping on cellular telephone conversations).

[FN226]. [18 U.S.C. s 2511 \(1988\)](#).

[FN227]. [N.C. Gen. Stat. s 132-1.4\(d\)](#). The statute provides that a public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132 - 6 as soon as the circumstances that justify withholding it cease to exist. Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information.... Id.

[FN228]. Interview with Ralph Pendergraph, *supra* note 223 (noting that Chapel Hill police had long-standing practice of withholding the names of people who filed sexual assault complaints, but not the names of other complainants).

[FN229]. See *supra* note 121-22 and accompanying text.

[FN230]. Interview with Hugh Stevens, Counsel, North Carolina Press Association, in Chapel Hill, N.C. (Dec. 1, 1993) (noting that most North Carolina newspapers and broadcasters do not identify sexual assault victims, unless the victim requests that they do so). Because the law previously did not expressly allow such withholdings, one major North Carolina newspaper, The Winston-Salem Journal, insisted that police and sheriff 's departments in its coverage area give its reporters the names of alleged victims of rape and other sexual assaults once charges were

actually filed against a defendant. *Id.* The practice, which Journal officials justified on the basis that if the defendant's name is made public, then the accuser's should be, too, made the newspaper unpopular with law enforcement agencies, rape crisis groups, victims and others. *Id.*

[FN231]. As originally drafted, [N.C. Gen. Stat. s 132-1.4\(d\)](#) would have left it clearly within a law enforcement agency's discretion whether to temporarily withhold victim's names from the public; it provided in relevant part that a public law enforcement agency may temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. S.B. 860, 1993 General Assembly, 1st Sess. (1993) (emphasis added).

[FN232]. At the urging of Representative Annie Brown Kennedy, whose district includes Forsyth County, the legislature altered the provision slightly. The word "may" in [s 132-1.4\(d\)](#) became "shall" in an attempt to clarify that law enforcement agencies may not regularly release information identifying certain crime victims. Interview with Hugh Stevens, *supra* note 230, (stating that Rep. Kennedy was behind the alteration of the statute's wording).

[FN233]. Interview with Ralph Pendergraph, *supra* note 223 (noting that law enforcement agencies have not uniformly agreed on how to interpret the withholding provision in the **publicrecords** law).

[FN234]. Interview with Major Don Truelove, Orange County Sheriff 's Department, in Hillsborough, N.C. (Mar. 28, 1994) (noting the Orange County Sheriff 's Department, has chosen to withhold all complainants' names unless the complainant has expressly told officers that it is permissible to make his or her name public).

[FN235]. Chapel Hill police have adopted this policy, but have also allowed complainants in misdemeanor cases to request that their names be withheld. See Chapel Hill Police Chief Ralph Pendergraph, Memorandum To All Police Personnel, Sept. 30, 1993, at 1 (outlining the Chapel Hill Police Department's new policy for withholding victims' names under [N.C. Gen. Stat s 132-1.4 \(1993\)](#)).

[FN236]. See *supra* note 144 and accompanying text.

[FN237]. See *infra* notes 238 -326 and accompanying text.

[FN238]. See *supra* notes 28 -33 and accompanying text.

[FN239]. [98 N.C. 20, 3 S.E. 822 \(1887\)](#).

[FN240]. [Id. at 23 -25, 3 S.E. at 824](#).

[FN241]. The North Carolina Department of Justice issued its first interpretation of the scope of the **publicrecords** law in 1948, finding that it mandated the public inspection of records on local Alcohol Control Board elections. 29 Op. N.C. Att'y Gen. 697 (1948).

[FN242]. 31 Op.N.C. Att'y Gen. 130 (1951).

[FN243]. Opinion of the Attorney General on Warrants In Criminal Cases, 32 Op. N.C. Att'y Gen. 240 (1952). The department of justice issued opinions reiterating its conclusion that arrest records are **publicrecords** in 1963 and 1971. 37 Op. N.C. Att'y Gen. 85 (1963); 41 Op. N.C. Att'y Gen. 407, 408 (1971).

[FN244]. 40 Op. N.C. Att'y Gen. 636 (1969).

[\[FN245\]](#). 41 Op. N.C. Att'y Gen. 199, 200 - 01 (1971).

[\[FN246\]](#). 43 Op. N.C. Att'y Gen. 274, 274 -75 (1973).

[\[FN247\]](#). 44 Op. N.C. Att'y Gen. 340, 341 (1975).

[\[FN248\]](#). Id.

[\[FN249\]](#). See infra notes 252-57 and accompanying text.

[\[FN250\]](#). See supra notes 252-53 and accompanying text.

[\[FN251\]](#). See supra notes 254 -57 and accompanying text.

[\[FN252\]](#). 48 Op. N.C. Att'y Gen. 70, 71-74 (1978).

[\[FN253\]](#). 48 Op. N.C. Att'y Gen. 63, 64 - 67 (1978).

[\[FN254\]](#). 47 Op. N.C. Att'y Gen. 164, 165 -74 (1978) (noting that the date of the most recent disciplinary action against a state employee is a **publicrecord** under N.C. Gen. Stat. s 126 -22 (1993)); 47 OP. N.C. Att'y Gen. 141, 141-45 (1978) (asserting that N.C. Gen. Stat. s 126 -22 declares that information regarding pending disciplinary investigations of state employees is not a matter of **publicrecord**).

[\[FN255\]](#). 47 Op. N.C. Att'y Gen. 141, 141- 45 (1978).

[\[FN256\]](#). 47 Op. N.C. Att'y Gen. 164, 165 - 67 (1978).

[\[FN257\]](#). 47 Op. N.C. Att'y Gen. 141, 143 (1978).

[\[FN258\]](#). None of these disputes ended up in court, as all were resolved through the use of Attorney General opinions. Cf. supra notes 252-57 and accompanying text.

[\[FN259\]](#). See infra notes 260 -324 and accompanying text. Attorney General Michael F. Easley entered the debate in early 1994 by opening a "Sunshine Office." The office, which opened in January 1994 with one full-time attorney, will act to resolve conflicts over the confidentiality of particular records and will also mediate disputes involving North Carolina's open meetings law. Eleanore J. Hajian, Attorney General: "Sunshine Office" to Aid Flow of Public Information, Chapel Hill Herald , Jan. 29, 1994, at A1.

[\[FN260\]](#). [53 N.C. App. 504, 281 S.E.2d 69 \(1981\)](#).

[\[FN261\]](#). [Id. at 505, 281 S.E.2d at 70](#). Writing for the court, then Judge Whichard stated that public policy considerations do not dictate, as defendants contend they do, that this court create an exemption to mandatory disclosure of communications such as this letter. With the sole exception of confidential communications by legal counsel to governmental bodies, the General Assembly engrafted no exemptions on the provisions mandating disclosure of municipal government **publicrecords**. We thus presume it intended only the exemption set forth. [Id. at 506, 281 S.E.2d at 70](#) (footnotes omitted).

[\[FN262\]](#). [55 N.C. App. 1, 13, 284 S.E.2d 542, 549 \(1981\)](#), cert. denied, [305 N.C. 302, 291 S.E.2d 151 \(1982\)](#), cert. denied, [459 U.S. 803 \(1982\)](#).

[FN263]. [News and Observer, 55 N.C. App. at 13, 284 S.E.2d at 549.](#)

[FN264]. [Id.](#)

[FN265]. [News & Observer Publishing Co. v. State ex rel. Starling, 65 N.C. App. 576, 578, 309 S.E.2d 731, 733 \(1983\), rev'd, 312 N.C. 276, 322 S.E.2d 133 \(1984\).](#) Created in 1937, the SBI assists local law enforcement agencies and district attorneys in investigating crimes; the agency's assistance includes providing scientific analysis of evidence gathered at crime scenes. N.C. Gen. Stat. s 114 -12 (1987). Agents are stationed throughout the state, and are empowered to make arrests. [Id.](#) In addition to providing local assistance, the Department of Justice, which oversees the SBI, can request investigations of alleged wrongdoing in any part of the state. N.C. Gen. Stat. s 114 -14 (1993). The General Assembly declared that SBI investigatory records were not routinely subject to public disclosure. See [supra](#) note 180 and accompanying text. It did not make the same specification for local police and sheriff's investigatory records until 1993. See [supra](#) note 220 and accompanying text.

[FN266]. Only a few states in the early 1980s allowed public access to law enforcement investigatory records. [Braverman & Heppler, supra](#) note 3, at 740 - 41. More have done so in the last decade, with nineteen states now providing for such release. See [supra](#) note 126 and accompanying text.

[FN267]. [Starling, 312 N.C. at 285, 322 S.E.2d at 140.](#)

[FN268]. [Id. at 277, 322 S.E.2d at 134.](#)

[FN269]. [Id.](#)

[FN270]. N.C. Gen. Stat. s 114 -15 (1987 & Supp. 1993).

[FN271]. [Starling, 312 N.C. at 277, 322 S.E.2d at 135.](#)

[FN272]. [Starling, 65 N.C. App. 576, 577, 309 S.E.2d 731, 732 \(1983\), rev'd, 312 N.C. 276, 322 S.E.2d 133 \(1984\).](#)

[FN273]. [Starling, 312 N.C. at 284, 322 S.E.2d at 139.](#)

[FN274]. [Id. at 283, 322 S.E.2d at 138.](#)

[FN275]. [Id.](#)

[FN276]. [Id.](#)

[FN277]. [Id. at 282- 83, 322 S.E.2d at 138](#) (citations omitted).

[FN278]. [Id. at 279, 322 S.E.2d at 137;](#) see also [supra](#) notes 125 -26 and accompanying text.

[FN279]. [330 N.C. 465, 486, 412 S.E.2d 7, 19 -20 \(1992\).](#)

[FN280]. [Id. at 473, 412 S.E.2d at 12.](#)

[FN281]. [Id. at 474, 412 S.E.2d at 12.](#)

[FN282]. [News and Observer Publishing Co. v. State ex rel. Starling](#), 312 N.C. 276, 284, 322 S.E.2d 133, 139 (1984).

[FN283]. Interview with Hugh Stevens, *supra* note 230 (noting that Starling remains good law concerning SBI records still maintained by the agency, as well as those within the hands of other law enforcement agencies and district attorney offices).

[FN284]. [News & Observer Publishing Co. v. Poole](#), 330 N.C. 465, 486, 412 S.E.2d 7, 20 (1992).

[FN285]. *Id.*

[FN286]. Many state **publicrecords** laws specify that draft reports and other working papers of government agencies are exempt. See *supra* note 105 and accompanying text.

[FN287]. [101 N.C. App. 292, 295](#), 399 S.E.2d 340, 342 (1991).

[FN288]. *Id.*

[FN289]. *Id.* at 296, 399 S.E.2d at 343. The court found merit in the defendant's contention that release of researchers' names and addresses could subject these people to harassment by animal rights activists who disapproved of their work. *Id.* at 295 - 96, 399 S.E.2d at 342- 43.

[FN290]. *Id.* at 296 - 97, 399 S.E.2d at 342- 43. Indeed, by the time the court of appeals decided S.E.T.A., the plaintiffs had acquired the applications from the federal government via FOIA. *Id.* at 296, 399 S.E.2d at 342.

[FN291]. [Durham Herald Co. v. North Carolina Low-Level Radioactive Waste Management Auth.](#), 110 N.C. App. 607, 430 S.E.2d 441, disc. rev. denied, 334 N.C. 619, 435 S.E.2d 334 (1993).

[FN292]. The News & Observer (Raleigh), the Chapel Hill News and the Chatham Record also joined in filing the suit. *Id.* at 608, 430 S.E.2d at 442.

[FN293]. *Id.* at 613, 430 S.E.2d at 445.

[FN294]. *Id.*

[FN295]. See, e.g., [Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.](#), 379 So. 2d 633, 640 - 41 (Fla. 1980) (holding that records of a consultant pertaining to its work for a public utility constituted **publicrecords** under Florida law); see also Braverman & Heppler, *supra* note 3, at 731-32 (noting that the modern trend of state courts is to find that private firms employed by government agencies are within the scope of **publicrecords** laws).

[FN296]. [Durham Herald Co. v. County of Durham](#), 334 N.C. 677, 679, 435 S.E.2d 317, 319 (1993); [Piedmont Publishing Co., Inc. v. City of Winston-Salem](#), 334 N.C. 595, 598, 434 S.E.2d 176, 177 (1993); [Elkin Tribune v. Yadkin County Bd. of Comm'rs](#), 331 N.C. 735, 738, 417 S.E.2d 465, 467 (1992).

[FN297]. [334 N.C. 595, 598, 434 S.E.2d 176, 177 \(1993\)](#).

[FN298]. See [N.C. Gen. Stat. s 132-1.4 \(1993\)](#); see also *supra* notes 218 - 36 and accompanying text.

[FN299]. [Piedmont Publishing](#), 334 N.C. at 598, 434 S.E.2d at 177.

[FN300]. *Id.*

[FN301]. *Id.*, 434 S.E.2d at 178. Chief Justice Exum, Justice Mitchell, and Justice Frye dissented, arguing that the **PublicRecords** Act as enacted by the General Assembly dictated the release of the documents. [Id. at 598 - 99, 434 S.E.2d at 178](#) (Exum, C.J., dissenting); [id. at 599 - 601, 434 S.E.2d at 178 - 80](#) (Mitchell, J., dissenting).

[FN302]. 331 N.C. 735, 738, 417 S.E.2d 465, 467 (1992).

[FN303]. 334 N.C. 677, 677, 435 S.E.2d 317, 318 (1993).

[FN304]. [Elkin Tribune](#), 331 N.C. at 735, 417 S.E.2d at 466 (1992).

[FN305]. *Id.* (citing N.C. Gen. Stat. s 153A- 98 (1991)).

[FN306]. *Id.* at 735, 417 S.E.2d at 466.

[FN307]. *Id.*

[FN308]. *Id.*

[FN309]. See supra note 118 and accompanying text.

[FN310]. 334 N.C. 677, 679 - 80, 435 S.E.2d 317, 319 (1993).

[FN311]. *Id.* at 677, 435 S.E.2d at 318.

[FN312]. *Id.* at 678, 435 S.E.2d at 319.

[FN313]. *Id.*

[FN314]. *Id.*

[FN315]. *Id.* at 679, 435 S.E.2d at 319.

[FN316]. *Id.* (citing N.C. Gen. Stat. s 153A- 98 (1991)).

[FN317]. *Id.*

[FN318]. In North Carolina, citizens have a state constitutional right to vote for certain officials. [N.C. Const. art. VI, s 5](#). Among the positions that the state constitution mandates the public will fill is the county sheriff. [N.C. Const. art. VII, s 2](#).

[FN319]. [Durham Herald](#), 334 N.C. 677, 679, 435 S.E.2d 317, 319 (1993).

[FN320]. [312 N.C. 276, 282, 322 S.E.2d 133, 138 \(1984\)](#).

[FN321]. See supra notes 265 - 84 and accompanying text.

[FN322]. Jerry Bledsoe , Bitter Blood 424 (1988).

[FN323]. [331 N.C. 735, 417 S.E.2d 465 \(1992\)](#).

[FN324]. [334 N.C. 677, 435 S.E.2d 317 \(1993\)](#).

[FN325]. See supra notes 176 -236 and accompanying text.

[FN326]. Packer et al., supra note 20, at 23 -25. Of those surveyed, 58% reported that they were denied access to records during 1992. Id. at 10 - 11. In addition, the survey found that 81.5% of those responding had experienced difficulty in obtaining documents under the **publicrecords** law in the recent past. Id. Also, 81.4% believed that government officials abuse North Carolina's **publicrecords** law, while 88.1% claimed that local and state officials are not fully aware of the scope of the law. Id. at 19 -20. On the whole, those surveyed reported the greatest difficulty in obtaining documents from law enforcement agencies, public school systems, and county governments. Id. at 12, 23.

[FN327]. Id. at 23 -25. Of those listing reasons why government officials told them they could not obtain records, 24.6% cited confidentiality, 19.7% listed personnel exemptions, and 9.8% said it was not in the government's best interests to comply. Id. at 13. In addition, 6.6% of the respondents noted that government officials claimed the records were lost, while another 6.6% said that government officials told them it was not the proper time to release the materials. Id. Also, 4.9% of those polled noted that government officials claimed that they could not release the records because they constituted working papers, while 3.3% said that government officials claimed that the records mixed exempt and non-exempt materials. Id.

[FN328]. Id. at 20. Of those surveyed, 75.9% reported they had experienced some delay in obtaining records pursuant to North Carolina's law. Id.

[FN329]. See supra note 259.

[FN330]. See [N.C. Gen. Stat. s 132-1 \(1993\)](#).

[FN331]. R.I. Gen. Laws s 38 -[2-1 \(1990\)](#).

[FN332]. [N.C. Gen. Stat. s 132-1 \(1993\)](#). For an analysis of the current statute, see supra notes 182- 89 and accompanying text.

[FN333]. See supra notes 194 -208 and accompanying text.

[FN334]. See supra note 185 and accompanying text; see also supra notes 207-36 and accompanying text.

[FN335]. See supra notes 176 -206 and accompanying text.

[FN336]. [331 N.C. 735, 417 S.E.2d 465 \(1992\)](#); see also supra notes 303 - 10 and accompanying text.

[FN337]. [334 N.C. 677, 435 S.E.2d 317 \(1993\)](#); see also supra notes 311-19 and accompanying text..

[FN338]. See supra notes 313 -29 and accompanying text.

[FN339]. N.C. Gen. Stat. s 143 -318.10 (1993).

[FN340]. Foon Rhee, Meetings Bill Going To House Floor Opens Hiring Process For Top Officials, Charlotte Observer , Mar. 17, 1993, at 2C (noting that proposed legislation would require open session hirings of city and county managers, police chiefs, school superintendents, community college presidents, the University of North Carolina system president and others).

[FN341]. Interview with Hugh Stevens, supra note 230 (noting that in some of North Carolina's larger cities, the city manager hires the police chief and other top administrators).

[FN342]. Id.

[FN343]. Id.

[FN344]. See [N.C. Gen. Stat. s 132-1.4 \(1993\)](#).

[FN345]. See supra notes 237- 40 and accompanying text.

[FN346]. See supra notes 231-32 and accompanying text.

[FN347]. Most states that have wrestled with this issue have decided to place the law enforcement arrest records containing the names and other information identifying sexual assault victims outside the scope of their **publicrecords** laws, given that the names of most crime victims have historically been considered **publicrecords**. See supra notes 121-22 and accompanying text.

[FN348]. See supra notes 232-34 and accompanying text.

[FN349]. Civil liability would ultimately add to taxpayers' costs of operating government, but it could also provide an incentive for officials to refrain from disclosing confidential records.

[FN350]. See supra notes 233 -36 and accompanying text.

[FN351]. [312 N.C. 276, 282, 322 S.E.2d 133, 138 \(1984\)](#).

[FN352]. In [Brady v. Maryland, 373 U.S. 83, 84 - 91 \(1963\)](#), the Supreme Court determined that the Constitution requires that prosecutors provide defense attorneys with any exculpatory evidence in their possession. To comply with this, the General Assembly has mandated that North Carolina prosecutors provide defense attorneys before trial with copies of statements made by the defendant, copies of statements made by any co-defendants, and reports of psychiatric and medical examinations of the defendant. N.C. Gen. Stat. s 15A- 903 (1988). North Carolina prosecutors also must provide defense attorneys with statements made to law enforcement authorities by any of the state's witnesses, but only after these witnesses have actually testified at trial. Id. Some states go beyond the Supreme Court's Brady requirements in order to protect a defendant from wrongful conviction. See, e.g., [Fla. Stat. ch. 119.07 \(1982\)](#) (providing that materials filed in court pursuant to criminal discovery are **publicrecords**).

[FN353]. See supra notes 125 -26 and accompanying text.

[FN354]. Interview with Ralph Pendergraph, *supra* note 223 (noting that law enforcement agencies lobbied to keep the General Assembly from enacting provisions allowing for blanket release of investigatory records for any particular case once the matter has been tried in court or dismissed).

[FN355]. See *supra* notes 128 -29 and accompanying text.

[FN356]. See *supra* notes 128 -29 and accompanying text.

[FN357]. Bledsoe , *supra* note 324, at 424.

[FN358]. See *supra* notes 191- 92 and accompanying text.

[FN359]. Interview with Deborah Crane, *supra* note 76 (noting that the North Carolina Department of Environment, Health and Natural Resources deletes exempt material in order to provide for as much public disclosure of records as possible, but adding that some state agencies and local governments do not follow this practice).

[FN360]. Only a few states have such provisions, but the Clinton Administration is expected in 1994 to adopt an automatic declassification period for federal records. See *supra* notes 131-34 and accompanying text.

[FN361]. Utah Code Ann. s 63 -2- 909 (1993).

[FN362]. See N.C. Gen. Stat. s **132** - 6 (1993) (providing that the public may inspect and copy records, but not limiting government response time).

[FN363]. The current law governing the timing of record requests, s **132** - 6, only requires that records be available for inspection at “all reasonable times,” and has no provision setting a time limit for request responses. See N.C. Gen. Stat. s **132** - 6 (1993).

[FN364]. *Id.*; see also *supra* note 330 and accompanying text.

[FN365]. See *supra* notes 88 - 90 and accompanying text; see also Marwick , *supra* note 49, at 51-52 (noting that the ten-day response period set by the Freedom of Information Act mandates that a federal agency must at least provide an initial response to the request within the ten-day period, except in special situations).

[FN366]. See *supra* notes 75 -76 and accompanying text.

[FN367]. [Ky. Rev. Stat. Ann. s 61.872\(3\)\(b\)](#) (Michie/Bobbs-Merrill 1993).

[FN368]. Interview with Deborah Crane, *supra* note 76 (noting that most requests for mailed records received by the Department of Environment, Health and Natural Resources are from out-of-state persons).

[FN369]. [La. Rev. Stat. Ann. s 44:37](#) (West 1982).

[FN370]. See *supra* note 259 and accompanying text.

[FN371]. See N.C. Gen. Stat. s 6 -19.2 (1986).

[FN372]. See supra notes 164 - 65 and accompanying text.

[FN373]. Thus far, newspapers have filed most of the actions in North Carolina alleging violations of the state's **publicrecords** law; in only one case has the plaintiff not been a newspaper. See supra notes 260 -326 and accompanying text. However, even newspapers are reluctant to sue under the law, given the time and expenses involved in litigation. Packer et al., supra note 20, at 14 (noting that a recent survey of newspapers and broadcasters in North Carolina found that when denied access to government records, most respond with a verbal protest to government officials).

[FN374]. H.B. 121, 1993 General Assembly, 1st Sess. (1993). The bill proposed changing N.C. Gen. Stat. s 132 - 9 to provide that attorney's fees may be taxed against government agencies when officials withheld records without substantial justification. Id. It also provides that state officials may be forced to pay the fees themselves in extreme situations. Id.

[FN375]. Id. This section provides that if the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court may, in its discretion, assess a reasonable attorney's fee against the person or persons instituting the action and award it to the defendants as part of the costs. Id.

[FN376]. Packer et al., supra note 20, at 21. Of those newspapers and broadcasters surveyed, 36.5% reported that they had been denied access to government computer records. Id.

[FN377]. H.B. 121, 1993 General Assembly, 1st Sess. (1993). The legislation would create a new s 132 - 6A, providing in pertinent part that in order to facilitate public access to and copying of **publicrecords** maintained in electronic form, every public agency that maintains records in electronic form shall also maintain a register that describes each computer database in which the agency maintains any information that is a matter of **publicrecord** ... including a list of the data fields; ... information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; and a description of each form in which the database can be copied or reproduced using the public agency's existing computer programs. Id. In January 1994, Governor James B. Hunt, Jr. issued an executive order requiring the North Carolina Departments of Commerce and Transportation to each maintain publicly available lists of all computerized records; other departments were not included because they do not have similar uniform computerized systems. Interview with Deborah K. Crane, supra note 76.

[FN378]. See supra note 62 and accompanying text.

[FN379]. Interview with Hugh Stevens, supra note 230 (asserting that government agencies have haphazardly computerized records, often inadvertently duplicating the process).

[FN380]. H.B. 121, 1993 General Assembly, 1st Sess. (1993) (outlining proposed N.C. Gen. Stat. s 132 - 6A(b)).

[FN381]. See supra notes 160 - 62 and accompanying text.

[FN382]. See supra note 161 and accompanying text.

[FN383]. Interview with Deborah Crane, supra note 76 (noting that state officials interpret the law as requiring them only to provide copies of computer records, not to allow citizens to search computer records themselves).

[FN384]. Although local elected officials throughout the state are linked with their local government's computer system, news gatherers apparently have not tried to use North Carolina's **publicrecords** law to gain access to any communications these officials have had via computer. Interview with Hugh Stevens, supra note 230. Newspapers in Florida, however, have successfully gained access to records of computer messages sent between local elected

officials. 1989 Fla. Att'y Gen. Ann. Rep. 39 (noting that county commissioners could not hold electronic meetings via computer link without violating Florida's open meetings law).

[\[FN385\]](#). See supra notes 146 -329 and accompanying text.

[\[FN386\]](#). See supra notes 333 -34 and accompanying text.

[\[FN387\]](#). Interview with Hugh Stevens, supra note 230 (noting that state and local government officials have withheld records without checking the **publicrecords** law to see if their actions are warranted).

72 N.C. L. Rev. 1527

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