



NC General Assembly Program Evaluation Division Confidentiality of Requests, Work Papers, & Drafts

Documents prepared by and for the Program Evaluation Division staff including consultants are confidential and are not public record, unless and until they are offered at a meeting of the Joint Legislative Program Evaluation Oversight Committee or another legislative committee.

Requests

When Program Evaluation Division staff request information from a government employee in preparation of an evaluation report, the request and any accompanying documents are confidential and are not public records. N.C.G.S. 120-131.1(a1).

When government employees prepare documents in response to requests by Program Evaluation Division staff, the documents are confidential and are not public records. N.C.G.S. 120-131.1(a1). According to N.C.G.S. 120-36.13, these documents become available to the public if they are offered at a joint meeting of a conference committee or they have been distributed at a legislative commission, standing committee, or subcommittee meeting not held in executive session, closed session, or on the floor of a house. N.C.G.S. 120-131(b).

Work Papers

According to N.C.G.S. 120-36.13, any documents prepared by Program Evaluation Division staff pursuant to the Division work plan become available to the public only if they are offered at a joint meeting of a conference committee or they have been distributed at a legislative commission, standing committee, or subcommittee meeting not held in executive session, closed session, or on the floor of a house. N.C.G.S. 120-131(b).

The Program Evaluation Division will only turn over its work papers if they are subpoenaed by a duly authorized court or court official (based on N.C.G.S. 147-64.6(d)) or the Director of the Program Evaluation Division determines another state or federal employee needs them for an official matter, such as a criminal investigation (based on N.C.G.S. 130A-304(b)).

Draft Reports

When Program Evaluation Division staff request an agency review a preliminary draft report prepared by Program Evaluation Division staff, the preliminary draft report in the hands of the agency is confidential and is not a public record. N.C.G.S. 120-131.1(a1).

When an agency prepares a technical and formal response to a preliminary draft report prepared by Program Evaluation Division staff, the agency's responses are confidential and are not public record. N.C.G.S. 120-131.1(a1). According to N.C.G.S. 120-36.13, the agency's formal response becomes available to the public only when the report is offered to the Joint Legislative Program Evaluation Oversight Committee or another legislative committee. N.C.G.S. 120-131(b).

Relevant Laws

§ 120-36.13. Work plan and requests for program evaluation.

- (a) Plan. – The Joint Legislative Program Evaluation Oversight Committee, in consultation with the Director of the Program Evaluation Division, must establish an annual work plan for the Division. The Division must adhere to this annual plan, unless the Joint Legislative Program Evaluation Oversight Committee changes the annual plan to add a new evaluation or remove a planned evaluation. Any enacted legislation that directs the Program Evaluation Division to conduct a study or an evaluation is included in the annual work plan by operation of law.

The annual work plan constitutes an information request and a drafting request made by the Committee cochairs to legislative employees under Article 17 of Chapter 120 of the General Statutes. Any document prepared by a legislative employee pursuant to the annual work plan becomes available to the public only as provided in G.S. 120-131. Any document prepared by an agency employee pursuant to a request under G.S. 120-131.1(a1) becomes available to the public only as provided in G.S. 120-131.

- (b) Request. – A request to the Program Evaluation Division for an evaluation of a program or an activity of a State agency must be submitted by a member of the General Assembly. The Director of the Division must review each request in accordance with the following criteria and make a recommendation to the Joint Legislative Program Evaluation Oversight Committee on whether to amend the Division's work plan to include the requested evaluation:
- (1) The work required to conduct the requested evaluation.
 - (2) The effect that conducting the requested evaluation will have on the Division's ability to complete its work plan.
 - (3) The significance of the requested evaluation compared to the evaluations to be conducted under the work plan.
 - (4) Any overlap between the requested evaluation and other evaluations previously conducted by the Division or another agency. (2007-78, s. 3; 2008-196, s. 1.)

§ 120-131. Documents produced by legislative employees.

- (a) Documents prepared by legislative employees upon the request of legislators are confidential. Except as provided in subsection (b) of this section, the existence of the document may not be revealed nor may a copy of the document be provided to any person who is not a legislative employee without the consent of the legislator.
- (b) A document prepared by a legislative employee upon the request of a legislator becomes available to the public when the document is a:
- (1) Bill or resolution and it has been introduced;
 - (2) Proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house;
 - (3) Proposed conference committee report and it has been offered at a joint meeting of the conference committees; or
 - (4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing committee or subcommittee meeting not held in executive session, closed session, or on the floor of a house.

A document prepared by a legislative employee upon the request of any legislator, that pursuant to this Article does not become available to the public, is not a "public record," as defined by G.S. 132-1.

- (c) This section does not prohibit the dissemination of information or language contained in any document which has been prepared by a legislative employee in response to a substantially similar request from another legislator, provided that the identity of the requesting legislator and the fact that he had made such a request not be divulged. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 4; 1993 (Reg. Sess., 1994), c. 570, s. 9.)

§ 120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes and evaluation reports.

- (a) A request, including any accompanying documents, made to an agency employee by a legislative employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee of his or her agency shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor and to the Office of State Budget and Management. All documents prepared by the agency employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.
- (a1) A request, and any accompanying documents, made to an agency employee by a legislative employee of the Program Evaluation Division for assistance in the preparation of an evaluation report is confidential. The request and any accompanying documents are not 'public records' as defined by G.S. 132-1. An agency employee who receives a request under this subsection or who learns of such a request made to another agency employee of his or her agency may reveal the existence of the request to other agency employees to the extent that it is necessary to respond to the request and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee of the Program Evaluation Division are confidential, shall be kept confidential in the same manner as the original request, and are not 'public records' as defined in G.S. 132-1.
- (b) As used in this section, 'agency employee' means an employee or officer of every agency of North Carolina government or its subdivisions, including 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.
- (c) Violation of this section may be grounds for disciplinary action. (1995, c. 324, s. 8.1(a); c. 507, s. 8.2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2008-196, s. 1.)

§ 132-1. "Public records" defined.

- (a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. 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.
- (b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information. (1935, c. 265, s. 1; 1975, c. 787, s. 1; 1995, c. 388, s. 1.)