

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS _____

CRAIG MERRILL,

Plaintiff,

v.

BEVERLY BOSWELL, in her official
capacity as North Carolina State
Representative for North Carolina House
District 6,

Defendant.

COMPLAINT

FILED
2018 JAN 25 A 9:39
WAKE COUNTY CLERK
67

Pursuant to Rules 3, 7, 8, and 57 of the North Carolina Rules of Civil Procedure,
the Plaintiff, complaining of the Defendant, alleges and says:

Introduction

This is an action pursuant to the North Carolina Public Records Act, Chapter 132 of the General Statutes and the Uniform Declaratory Judgment Act, N.C. Gen. Stat. § 1-253, *et seq.* As described more specifically in the numbered allegations set out below, the Plaintiff seeks: (1) an order declaring that, pursuant to N.C. Gen. Stat. § 132-1(a), the records requested by the Plaintiff are, in fact, public records; (2) an order compelling the Defendant to disclose for inspection and examination public records pursuant to N.C. Gen. Stat. § 132-9(a); and (3) an order awarding reasonable attorney fees to the Plaintiff pursuant to N.C. Gen. Stat. § 132-9(c).

Parties

1. The Plaintiff, Craig Merrill (Plaintiff), is a resident of Kitty Hawk, North Carolina. Kitty Hawk is located within North Carolina House of Representatives District

6. The Plaintiff is an engaged citizen seeking to understand his elected official's decisions and stances in the North Carolina General Assembly (NCGA).

2. The Defendant Beverly Boswell ("Representative Boswell") represents District 6 in the North Carolina House of Representatives. As such, she is an agent of the North Carolina government as defined by N.C. Gen. Stat. § 132-1(a) and is the custodian of records that are defined as public by this statute. Representative Boswell is being sued in her official capacity.

Standing

3. The Plaintiff has standing to bring this action under the North Carolina Public Records Law, N.C. Gen. Stat. § 132-1.

4. The Plaintiff's ability to effectively engage with and petition his elected state representatives is linked to understanding how those representatives make decisions and arrive at the positions they take in the NCGA.

5. The North Carolina Public Records Law serves to effectuate this engagement central to self-governance by providing a process through which North Carolinians such as the Plaintiff can obtain "public records and public information[,] "the property of the people." N.C. Gen. Stat. § 132-1(b).

6. The Plaintiff is harmed by the Defendant's refusal to fulfill her legal obligation to make the requested records available for inspection and examination.

Jurisdiction and Venue

7. Pursuant to the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. § 1-253 *et. seq.*, and the Public Records Act, N.C. Gen. Stat. § 132-9, the Superior Court has jurisdiction.

8. Pursuant to N.C. Gen. Stat. § 132-9, this Court has the power to issue an order compelling disclosure of public records by the custodian thereof.

9. Pursuant to N.C. Gen. Stat. § 1-253, this Court has the power to “declare rights, status, and other legal relations, whether or not further relief is or could be claimed,” and such declaration shall have the force and effect of a final judgment or decree.

10. An action under the Declaratory Judgment Act is appropriate to clarify what constitutes a public record and to provide relief from the controversy that gives rise to this proceeding.

11. Venue for this action is proper in Wake County pursuant to N.C. Gen. Stat. § 1-77(2), in that the Defendant named herein is sued in her official capacity, she has a legislative office in Wake County, and some part of the cause of action asserted herein arose from official acts of the Defendant and her office in Wake County, where at least some portion of the records the Plaintiff seeks to inspect and examine are located.

The North Carolina Public Records Law

12. The North Carolina Public Records Law ("the Public Records Law") is codified at N.C. Gen. Stat. §§ 132-1 through 132-10. The public policy underlying the Public Records Law is set out in N.C. Gen. Stat. § 132-1(b), which provides:

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.

N.C. Gen. Stat § 132-1(b).

13. The Public Records Law provides, in § 132-1(a), that public records are defined as:

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 § 132-1(a).

14. The Public Records Law further provides that “[n]o public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5 and G.S. 130A-99, without the consent of the Department of Natural and Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).” N.C. Gen. Stat. § 132-3(a).

15. The Public Records Law further provides that “[e]very custodian of public records shall permit any record in the custodian’s custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly

as possible, furnish copies thereof upon payment of any fees as may be prescribed by law.”

N.C. Gen. Stat. § 132-6(a).

16. The Public Records Law further provides that

No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation[.]

N.C. Gen. Stat. § 132-6(c).

17. The Public Records Law provides that

Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records may apply . . . for a[] [court] order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders . . . Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

N.C. Gen. Stat. § 132-9(a).

Factual Background

18. On April 8, 2017, the Plaintiff made a public records request of Representative Boswell via email sent to her official NCGA email account. In pertinent part he wrote as follows:

Under the North Carolina Public Records Law, G.S. section 132-1, I am requesting an opportunity to inspect or obtain copies of public records of official correspondence between your office and the residents and businesses of North Carolina House District 6, which you represent. I specifically seek: 1) phone records, 2) email records, and 3) copies of emails associated with the state-provided phones and email accounts used by you, your staff, and any interns or volunteers who support you with your official duties. If you do a significant portion of your official communication using personal phones and email accounts, I would also like records of those exchanges that are related to your official duties as a House

Representative . . . I request that the phone records include the phone numbers called and received, the date and time of the call, and any record maintained for phone communication. I ask that the email records include the recipients, the subject of the email, and the date and time the emails were sent or received. If possible I would also like the copies of emails to include any attachments.

Exhibit A.

19. The records sought by the Plaintiff in the April 8, 2017, email referenced above (House District 6 Correspondence Records) are public records under N.C. Gen. Stat 132-1(a) as “documents . . . 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.” N.C. Gen. Stat § 132-1(a).

20. On April 17, 2017, the Plaintiff again wrote to the Defendant, reiterating his request for House District 6 Correspondence Records. Ex. B.

21. On April 20, 2017, the Defendant’s Legislative Assistant, Beth Strandberg (Strandberg), responded to the Plaintiff’s public record request stating, in part, that “[a]ll records are not ‘public records’ even though those records may have been created, received or in the custody of a public official.” Ex. C.

22. Strandberg’s April 20, 2017 response further stated “that requests from legislators to legislative staff, and documents prepared by legislative staff upon the request of legislators, are not public records[.]” Ex. C.

23. Strandberg’s April, 2017 response further stated “documents between individual legislators related to legislative matters, and documents from non-legislators concerning legislative matters, are not subject to public records law under legislative immunity.” Ex. C.

24. On April 23, 2017, the Plaintiff responded by email to Strandberg, copying Defendant, stating that he “requested information related to Ms. Boswell’s office communication with the residents and businesses of District 6; not, communications between legislators or legislators and their staff.” In this response, Plaintiff further reiterated his view that “the items I have requested fall within the scope of public records[.]” Ex. D.

25. On April 28, 2017, Bart Goodson (Goodson), General Counsel and Chief of Staff of Speaker Tim Moore’s Office, based on a request from the Defendant for assistance in responding to the Plaintiff’s public records request, wrote to the Plaintiff via email, also asserting that the House District 6 Correspondence Records were not public records. *See* Ex. E.

26. Goodson cited Article 17 of Chapter 120 of the North Carolina General Statutes to support the assertion that the House District 6 Correspondence Records were not public records. *See* Ex. E.

27. The Plaintiff seeks only records that have already become available to a member or members of the public.

28. The Plaintiff’s public records request includes, but is not limited to, records prepared by the Defendant herself.

29. Article 17 of Chapter 120 of the North Carolina General Statutes does not govern the records requested by the Plaintiff.

30. Goodson also cited N.C. Gen. Stat. § 120-9 to support the assertion that the House District 6 Correspondence Records were not public records. *See* Ex. E.

31. The Plaintiff's request does not seek records pertaining to the Defendant's freedom to engage in speech and debate at the NCGA.

32. North Carolina General Statute § 120-9 does not govern the records requested by Plaintiff.

33. The Plaintiff wrote via email to the Defendant, Strandberg and Goodson on April 30, 2017, May 10, 2017, May 16, 2017, May 23, 2017, and May 30, 2017, reiterating his request for House District 6 Correspondence Records. *See* Ex. F-J.

34. On June 1, 2017, the Defendant responded to the Plaintiff by email, stating only that she had forwarded Plaintiff's request to her legal department and that Strandberg had already sent the legal department's response to Plaintiff. *See* Ex. K.

35. On June 7, 2017, the Plaintiff wrote to the Defendant, copying Strandberg and Goodson, again disputing the assertion that the House District 6 Correspondence Records were not public records, including citations to pertinent resources in support of his contention that Defendant was "responsible for complying with [his] request in a timely manner." *See* Ex. M.

36. On June 16, 2017, the undersigned counsel wrote to the Defendant, copying Strandberg and Goodson, explaining the legal obligations and duties assigned to the Defendant by the North Carolina Public Records Law and requesting that the Plaintiff's records request be fulfilled no later than July 17, 2017. *See* Ex. O.

37. On July 11, 2017, more than three months after the initial records request was made, Strandberg responded by email to the Plaintiff saying that the legislative session had ended and the Defendant's office now had "time to send the record request." She asked

for the Plaintiff to “be specific” about his records request, stating “we will look into it for you.” *See* Ex. P.

38. That same day, July 11, 2017, the Plaintiff wrote back to Strandberg reiterating his request for “all official correspondences, including but not limited to texts and emails, between State Representative Beverly Boswell’s office and the residents and businesses of North Carolina House District 6.” Ex. Q.

39. On July 31, 2017, the undersigned counsel again wrote to the Defendant, copying Strandberg and Goodson, to request that she fulfill her legal obligations and disclose the public records requested or, in the alternative, reply with an outline of steps she would take to fulfill said obligation. *See* Ex. R.

40. On August 23, 2017, and on October 2, 2017, the Plaintiff wrote to Strandberg, copying the Defendant, reiterating his request for House District 6 Correspondence Records. *See* Exs. S, T.

41. On October 2, 2017, Strandberg responded to the Plaintiff by email stating, in part, “that electronic communications between [NCGA] members and constituents are not ‘public records[.]’” Ex. U.

42. On October 4, 2017, the Plaintiff wrote back to Strandberg reiterating his request for “all official correspondences, including but not limited to texts and emails, between State Representative Beverly Boswell’s office and the residents and businesses of North Carolina House District 6.” Ex. V.

43. On December 19, 2017, the Plaintiff again wrote to the Defendant, copying Strandberg and Goodson, reiterating his request for House District 6 Correspondence Records. *See* Ex. W.

44. On December 19, 2017, the undersigned counsel again wrote to the Defendant, Strandberg, and Goodson to request that Defendant fulfill her legal obligations and disclose the public records requested by the Plaintiff. *See* Ex. X.

45. It is now over nine months since the Plaintiff's initial request for House District 6 Correspondence Records. *See* Ex. A. Since that initial request, the Plaintiff has requested disclosure of the records fifteen times. *See* Exs. B, D, F-J, L-N, Q, S, T, V, W. The Plaintiff submitted his most recent of these fifteen requests on December 19, 2017. *See* Ex. W.

46. It is now over seven months since the undersigned counsel's initial request to the Defendant that she fulfill her legal obligation and disclose the public records requested by the Plaintiff. *See* Ex. O. Since that initial request, the undersigned counsel has requested disclosure of the records on two additional occasions. *See* Exs. R, X. The undersigned counsel submitted the most recent of these requests on December 19, 2017. *See* Ex. X.

47. The Plaintiff has asked for "all official correspondences, including but not limited to, texts and emails, between State Representative Beverly Boswell's office and the residents and businesses of North Carolina House District 6." *See* Ex. V.

48. The Plaintiff has consistently disputed assertions that the House District 6 Correspondence Records are not public records. *See, e.g.,* Exs. F, I, L, M.

49. The Defendant has not made available to Plaintiff for inspection or examination any correspondence between herself and the residents and businesses of North Carolina House District 6 in response to his records requests, or outlined how she or her office intend to do so.

50. The Defendant has not made available to Plaintiff for inspection or examination any correspondence between her office and the residents and businesses of North Carolina House District 6 in response to his records requests, or outlined how she or her office intend to do so.

Claim for Relief

51. By failing to allow the Plaintiff to inspect and examine the records requested, the Defendant has violated her legal obligation under N.C. Gen. Stat. § 132-6(a).

52. N.C. Gen. Stat. § 132-9(a) provides: “Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying[.]” N.C. Gen. Stat. § 132-9(a).

53. Further, the statute provides for attorneys’ fees for parties bringing actions compelling the disclosure of public records pursuant to N.C. Gen. Stat. 132-9: “the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys’ fees[.]” N.C. Gen. Stat. 132-9(c).

Request for Relief

WHEREFORE, the Plaintiff respectfully prays unto the court:

1. Set the matter down for an immediate hearing pursuant to N.C. Gen. Stat. § 132-9(a);

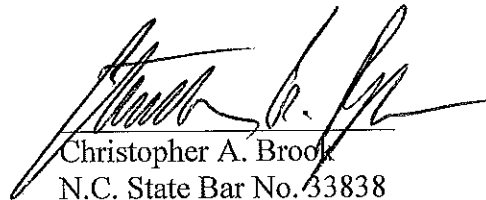
2. Declare that the records at issue are public records as defined in N.C. Gen. Stat. § 132-1(a);

3. Enter an order pursuant to N.C. Gen. Stat. § 132-9(a) compelling the Defendant to disclose for inspection and examination all public records within the Defendant's custody or control that have been requested by the Plaintiff; and

4. Enter an order pursuant to N.C. Gen. Stat. § 132-9(c) awarding the Plaintiff his reasonable attorney fees;

The Plaintiff further prays that the court provide him with such additional relief as the court shall deem to be just, proper, and authorized by law, and that the costs of this action be taxed against the Defendant.

This the 25th day of January, 2018.



Christopher A. Brook
N.C. State Bar No. 33838
cbrook@acluofnc.org
P.O. Box 28004
Raleigh, NC 27611
Counsel for Plaintiff,
American Civil Liberties Union of North Carolina
Legal Foundation

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EXHIBIT A

cfmerrill@outlook.com

From: Craig Merrill
Sent: Saturday, April 8, 2017 5:17 PM
To: 'Beverly.Boswell@ncleg.net'
Subject: Freedom of Information Act (FOIA) Request for Information

Importance: High

Follow Up Flag: Follow up
Due By: Monday, April 17, 2017 6:00 AM
Flag Status: Completed

Categories: 02-Advocacy

Dear Representative Boswell,

Under the North Carolina Public Records Law, G.S. section 132-1, I am requesting an opportunity to inspect or obtain copies of public records of official correspondence between your office and the residents and businesses of North Carolina House District 6, which you represent. I specifically seek: 1) phone records, 2) email records, and 3) copies of emails associated with the state-provided phones and email accounts used by you, your staff, and any interns or volunteers who support you with your official duties. If you do a significant portion of your official communication using personal phones and email accounts, I would also like records of those exchanges that are related to your official duties as a House Representative. I can accept the information in electronic form or hard copy; whichever is easiest. I request that the phone records include the phone numbers called and received, the date and time of the call, and any record maintained for phone communication. I ask that the email records include the recipients, the subject of the email, and the date and time the emails were sent or received. If possible I would also like the copies of emails to include any attachments.

Disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the reasoning behind the bills you support, as well as the reasons for your votes and positions on other official matters before the General Assembly. I am a permanent resident of your district and this information is not being sought for commercial purposes. Additionally, I will freely share it with my fellow constituents as well as the local news media if they have any interest.

Thank you for your time.

Sincerely,
Craig Merrill

4227 Lindbergh Ave.
Kitty Hawk, NC 27949
703-470-8986

EXHIBIT B

cfmerrill@outlook.com

From: Craig Merrill
Sent: Monday, April 17, 2017 6:38 AM
To: 'Beverly.Boswell@ncleg.net'
Subject: RE: Freedom of Information Act (FOIA) Request for Information

Follow Up Flag: Follow up
Due By: Thursday, April 27, 2017 6:00 AM
Flag Status: Completed

Categories: 02-Advocacy

Good morning Ms. Boswell,

I am following up with you because I have not heard back from your office regarding this FOIA request. Do you have an idea of when I can expect a response?

Sincerely,
Craig Merrill

-----Original Message-----

From: Craig Merrill
Sent: Saturday, April 8, 2017 5:17 PM
To: 'Beverly.Boswell@ncleg.net' <Beverly.Boswell@ncleg.net>
Subject: Freedom of Information Act (FOIA) Request for Information
Importance: High

Dear Representative Boswell,

Under the North Carolina Public Records Law, G.S. section 132-1, I am requesting an opportunity to inspect or obtain copies of public records of official correspondence between your office and the residents and businesses of North Carolina House District 6, which you represent. I specifically seek: 1) phone records, 2) email records, and 3) copies of emails associated with the state-provided phones and email accounts used by you, your staff, and any interns or volunteers who support you with your official duties. If you do a significant portion of your official communication using personal phones and email accounts, I would also like records of those exchanges that are related to your official duties as a House Representative. I can accept the information in electronic form or hard copy; whichever is easiest. I request that the phone records include the phone numbers called and received, the date and time of the call, and any record maintained for phone communication. I ask that the email records include the recipients, the subject of the email, and the date and time the emails were sent or received. If possible I would also like the copies of emails to include any attachments.

Disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the reasoning behind the bills you support, as well as the reasons for your votes and positions on other official matters before the General Assembly. I am a permanent resident of your district and this information is not being sought for commercial purposes. Additionally, I will freely share it with my fellow constituents as well as the local news media if they have any interest.

Thank you for your time.

Sincerely,
Craig Merrill

EXHIBIT C

cfmerrill@outlook.com

From: Beth Strandberg (Rep. Beverly Boswell) <Beth.Strandberg@ncleg.net>
Sent: Thursday, April 20, 2017 4:28 PM
To: 'cfmerrill@outlook.com'
Subject: Records request

Categories: 02-Advocacy

All records are not "public records" even though those records may have been created, received, or in the custody of a public official. Specifically, documents in the custody of a legislator are treated uniquely under the law. Article 17 of Chapter 120 of the General Statutes, Confidentiality of Legislative Communications, provides that requests from legislators to legislative staff, and documents prepared by legislative staff upon the requests of legislators, are not public records, and their existence may not be revealed, unless the legislator making the request so instructs. Additionally, documents between individual legislators related to legislative matters, and documents from non-legislators concerning legislative matters, are not subject to the public records law under legislative immunity. See G.S. 120-9.

Beth Strandberg
Legislative Assistant to Rep. Beverly G. Boswell
NC House District 6
300 North Salisbury Street, Room 531
Raleigh, North Carolina 27603
919.733.5906

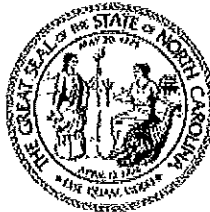


EXHIBIT D

cfmerrill@outlook.com

From: Craig Merrill
Sent: Sunday, April 23, 2017 8:12 PM
To: 'Beth Strandberg (Rep. Beverly Boswell)'
Cc: 'Beverly.Boswell@ncleg.net'
Subject: RE: Records request
Attachments: Freedom of Information Act (FOIA) Request for Information

Categories: 02-Advocacy

Hi Beth,

Thank you for your reply and including the references to the NC General Statutes. However, I do not think the regulations you referenced are related to my request for information. I have attached my original email to Rep. Boswell for reference.

As you can see, I requested information related to Ms. Boswell's office communication with the residents and businesses of District 6; not, communications between legislators or legislators and their staff. As far as I can tell from re-reading G.S. 132-1, the items I have requested fall within the scope of public records for which it is the policy of NC to share with residents.

Regards,
Craig Merrill

From: Beth Strandberg (Rep. Beverly Boswell) [mailto:Beth.Strandberg@ncleg.net]
Sent: Thursday, April 20, 2017 4:28 PM
To: 'cfmerrill@outlook.com' <cfmerrill@outlook.com>
Subject: Records request

All records are not "public records" even though those records may have been created, received, or in the custody of a public official. Specifically, documents in the custody of a legislator are treated uniquely under the law. Article 17 of Chapter 120 of the General Statutes, Confidentiality of Legislative Communications, provides that requests from legislators to legislative staff, and documents prepared by legislative staff upon the requests of legislators, are not public records, and their existence may not be revealed, unless the legislator making the request so instructs. Additionally, documents between individual legislators related to legislative matters, and documents from non-legislators concerning legislative matters, are not subject to the public records law under legislative immunity. See G.S. 120-9.

Beth Strandberg
Legislative Assistant to Rep. Beverly G. Boswell
NC House District 6
300 North Salisbury Street, Room 531
Raleigh, North Carolina 27603
919.733.5906

EXHIBIT E

cfmerrill@outlook.com

From: Bart Goodson (Chief of Staff, Speaker Moore's Office) <Bart.Goodson@ncleg.net>
Sent: Friday, April 28, 2017 9:35 AM
To: 'cfmerrill@outlook.com'
Cc: Beth Strandberg (Rep. Beverly Boswell); Rep. Beverly Boswell
Subject: Public Record Request

Categories: 02-Advocacy

Mr. Merrill,

Representative Boswell has brought your public records request of April 8, 2017, to my attention and has asked for my assistance in responding. I apologize in advance if I restate any information previously provided to you from her office.

As an initial matter and despite a common misconception, all records within the custody of a legislator are not "public records" even though those records may have been created, received, or are in the custody of a public official. Documents, correspondence and other communications in the custody of a legislator are treated uniquely under the law. As I believe Rep. Boswell's office may have previously explained, Article 17 of Chapter 120 of the General Statutes provides that requests from legislators to legislative staff, and documents prepared by legislative staff upon the requests of legislators, are not public records, and their existence may not be revealed, unless the legislator making the request so instructs. Additionally, documents between individual legislators related to legislative matters, and documents from non-legislators concerning legislative matters, are not subject to the public records law under legislative immunity. See G.S. 120-9.

As I believe you noted in your previous correspondence with Rep. Boswell's office, the above analysis does focus primarily, although not entirely, on what one might consider "internal" matters and not the "external" communications that may be sent or received between sitting legislators and constituent individuals or entities. However, documents not otherwise excepted from the public records law under Article 17 of Chapter 120 or G.S. 120-9, as discussed above, are still subject to analysis under Chapter 132 of the General Statutes to determine whether or not they meet the statutory requirements necessary to be considered "public records."

G.S. 132-1(a) defines a "public record" as a document that meets all of the following requirements:

1. Is made or received.
2. Pursuant to law or ordinance.
3. In connection with the transaction of public business.
4. By an agency of the State, including public officials.

If the record wasn't made or received pursuant to law or ordinance, in connection with the transaction of public business, by an agency/public official of the State, then it is not a public record. All of this together means that despite popular misconception the vast majority of records in a legislator's office are not public record. Perhaps more direct to your particular request, it is the long held position of the General Assembly bipartisan central staff that constituent emails do not meet the definition of public record. Such emails are not made or received "pursuant to law or ordinance." The same analysis applies to phone records/logs/communications and such telephonic information is neither kept nor required of our members. Examples of public records in a legislator's office would include committee notices or minutes if the legislator is the chair of the committee and charged with sending out notices and preparing minutes as required by statute.

Finally, if the documents requested are not public, then it is up to the legislator in whose custody any potentially responsive documents might reside to decide if they want to release those documents. If the legislator elects to not release those documents, if any, then the matter is deemed closed.

I hope this helps. Best regards,

BART GOODSON
CHIEF OF STAFF / GENERAL COUNSEL

OFFICE OF SPEAKER TIM MOORE
NORTH CAROLINA HOUSE OF REPRESENTATIVES
2304 LEGISLATIVE BUILDING | 16 WEST JONES STREET | RALEIGH, NC 27601
(919) 733-3451
BART.GOODSON@NCLEG.NET

EXHIBIT F

cfmerrill@outlook.com

From: Craig Merrill
Sent: Sunday, April 30, 2017 6:31 AM
To: 'Bart Goodson (Chief of Staff, Speaker Moore's Office)'
Cc: Beth Strandberg (Rep. Beverly Boswell); Rep. Beverly Boswell
Subject: RE: Public Record Request

Categories: 02-Advocacy

Hello Mr. Goodson,

Thank you for clearly presenting the reasoning behind the General Assembly's interpretation of a public record. As described in a previous email exchange Rep. Boswell's office, my public record request does not include the items described in Article 17 of G.S. 120. Your email to me mentioned additional public record exclusions under G.S. 120-9, but after reading the statute it isn't clear how it applies to this discussion.

After re-reading the public records statute, I believe that the position of the General Assembly central staff on the material described in my request is counter to the intent of the statute. I agree that the four items you highlighted fall under the definition of a public record as outlined in 132-1, but I disagree that they should be interpreted with the predeterminer "all." The purpose of this statute is to make our state government more open and transparent, not define information limitations. Limitations are provided elsewhere, such as 120-9. I did a brief online search for opinions that might clarify this section of the general statute. I did not find anything that countered to my understanding, but I did find a FAQ page at Fayetteville State University that supports my position. The following paragraph is a quote from <http://www.uncfsu.edu/legal-affairs/frequently-asked-legal-questions/public-records-law>:

The [132] statute itself provides the basic definition of a record labeled as "public." These records include "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 [state] agency. . . ." Several points of this definition should be highlighted. Note first that the physical form of the record is not determinative; the purpose for the record drives the definition. Second, in determining what purpose the record serves, the law seems to reach a broad group of records held by state agencies. The "made or received" language reaches not only records held pursuant to legal requirements, it also covers records used and kept in carrying out lawful or official duties. Thus, a public record will include not only budget documents that the General Statutes explicitly mandate; it also will include, for example, the expense records of a state employee working on the agency's budget. (emphasis added)

My request for the information stands; I would like copies of the records I described in my original email to Rep. Boswell.

Sincerely,
Craig Merrill
Kitty Hawk, NC

From: Bart Goodson (Chief of Staff, Speaker Moore's Office) [mailto:Bart.Goodson@ncleg.net]
Sent: Friday, April 28, 2017 9:35 AM
To: 'cfmerrill@outlook.com' <cfmerrill@outlook.com>
Cc: Beth Strandberg (Rep. Beverly Boswell) <Beth.Strandberg@ncleg.net>; Rep. Beverly Boswell <Beverly.Boswell@ncleg.net>
Subject: Public Record Request

Mr. Merrill,

EXHIBIT G

cfmerrill@outlook.com

From: Craig Merrill
Sent: Wednesday, May 10, 2017 4:22 AM
To: Bart Goodson (Chief of Staff, Speaker Moore's Office); Rep. Beverly Boswell
Cc: Beth Strandberg (Rep. Beverly Boswell)
Subject: RE: Public Record Request

Categories: 02-Advocacy

Ms. Boswell and Mr. Goodson,

I am following up on the last email I sent you regarding my request for access to public records. What is the next step in the process?

Regards,
Craig Merrill

From: Craig Merrill
Sent: Sunday, April 30, 2017 6:31 AM
To: 'Bart Goodson (Chief of Staff, Speaker Moore's Office)' <Bart.Goodson@ncleg.net>
Cc: Beth Strandberg (Rep. Beverly Boswell) <Beth.Strandberg@ncleg.net>; Rep. Beverly Boswell <Beverly.Boswell@ncleg.net>
Subject: RE: Public Record Request

Hello Mr. Goodson,

Thank you for clearly presenting the reasoning behind the General Assembly's interpretation of a public record. As described in a previous email exchange Rep. Boswell's office, my public record request does not include the items described in Article 17 of G.S. 120. Your email to me mentioned additional public record exclusions under G.S. 120-9, but after reading the statute it isn't clear how it applies to this discussion.

After re-reading the public records statute, I believe that the position of the General Assembly central staff on the material described in my request is counter to the intent of the statute. I agree that the four items you highlighted fall under the definition of a public record as outlined in 132-1, but I disagree that they should be interpreted with the predeterminer "all." The purpose of this statute is to make our state government more open and transparent, not define information limitations. Limitations are provided elsewhere, such as 120-9. I did a brief online search for opinions that might clarify this section of the general statute. I did not find anything that countered to my understanding, but I did find a FAQ page at Fayetteville State University that supports my position. The following paragraph is a quote from <http://www.uncfsu.edu/legal-affairs/frequently-asked-legal-questions/public-records-law>:

The [132] statute itself provides the basic definition of a record labeled as "public." These records include "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 [state] agency. . . ." Several points of this definition should be highlighted. Note first that the physical form of the record is not determinative; the purpose for the record drives the definition. Second, in determining what purpose the record serves, the law seems to reach a broad group of records held by state agencies. The "made or received" language reaches not only records held pursuant to legal requirements, it also covers records used and kept in carrying out lawful or official duties. Thus, a public record will include not only budget documents that the General Statutes explicitly mandate; it also will include, for example, the expense records of a state employee working on the agency's budget. (emphasis added)

EXHIBIT H

cfmerrill@outlook.com

From: Craig Merrill
Sent: Tuesday, May 16, 2017 6:27 PM
To: Rep. Beverly Boswell
Cc: Beth Strandberg (Rep. Beverly Boswell); Bart Goodson (Chief of Staff, Speaker Moore's Office)
Subject: RE: Public Record Request
Categories: 02-Advocacy

Ms. Boswell,

I am again following up on my request for access to the public records that I sent to you over a month ago. I respectfully request that you provide me with the requested information as soon as possible.

Craig Merrill

From: Craig Merrill
Sent: Wednesday, May 10, 2017 4:22 AM
To: Bart Goodson (Chief of Staff, Speaker Moore's Office) <Bart.Goodson@ncleg.net>; Rep. Beverly Boswell <Beverly.Boswell@ncleg.net>
Cc: Beth Strandberg (Rep. Beverly Boswell) <Beth.Strandberg@ncleg.net>
Subject: RE: Public Record Request

Ms. Boswell and Mr. Goodson,

I am following up on the last email I sent you regarding my request for access to public records. What is the next step in the process?

Regards,
Craig Merrill

From: Craig Merrill
Sent: Sunday, April 30, 2017 6:31 AM
To: 'Bart Goodson (Chief of Staff, Speaker Moore's Office)' <Bart.Goodson@ncleg.net>
Cc: Beth Strandberg (Rep. Beverly Boswell) <Beth.Strandberg@ncleg.net>; Rep. Beverly Boswell <Beverly.Boswell@ncleg.net>
Subject: RE: Public Record Request

Hello Mr. Goodson,

Thank you for clearly presenting the reasoning behind the General Assembly's interpretation of a public record. As described in a previous email exchange Rep. Boswell's office, my public record request does not include the items described in Article 17 of G.S. 120. Your email to me mentioned additional public record exclusions under G.S. 120-9, but after reading the statute it isn't clear how it applies to this discussion.

After re-reading the public records statute, I believe that the position of the General Assembly central staff on the material described in my request is counter to the intent of the statute. I agree that the four items you highlighted fall under the definition of a public record as outlined in 132-1, but I disagree that they should be interpreted with the predeterminer "all." The purpose of this statute is to make our state government more open and transparent, not define

EXHIBIT I

cfmerrill@outlook.com

From: Craig Merrill <cfmerrill@outlook.com>
Sent: Tuesday, May 23, 2017 7:15 AM
To: Rep. Beverly Boswell
Cc: Beth Strandberg (Rep. Beverly Boswell); Bart Goodson (Chief of Staff, Speaker Moore's Office)
Subject: Re: Public Record Request
Categories: 02-Advocacy

Ms. Boswell et al,

I spoke with Chris Brook, ACLU NC Legal Director. Chris confirmed that the information I have ask you for is considered to be part of the public record and referenced a similar case from last year. Dan Bishop initially used the same argument you presented but later acquiesced and provided the information.

http://www.bizjournals.com/charlotte/blog/queen_city_agenda/2016/06/exclusive-inside-hb-2-authors-legislative-emails.html

Regards,
Craig Merrill

From: Craig Merrill
Sent: Tuesday, May 16, 2017 6:27:15 PM
To: Rep. Beverly Boswell
Cc: Beth Strandberg (Rep. Beverly Boswell); Bart Goodson (Chief of Staff, Speaker Moore's Office)
Subject: RE: Public Record Request

Ms. Boswell,

I am again following up on my request for access to the public records that I sent to you over a month ago. I respectfully request that you provide me with the requested information as soon as possible.

Craig Merrill

From: Craig Merrill
Sent: Wednesday, May 10, 2017 4:22 AM
To: Bart Goodson (Chief of Staff, Speaker Moore's Office) <Bart.Goodson@ncleg.net>; Rep. Beverly Boswell <Beverly.Boswell@ncleg.net>
Cc: Beth Strandberg (Rep. Beverly Boswell) <Beth.Strandberg@ncleg.net>
Subject: RE: Public Record Request

Ms. Boswell and Mr. Goodson,

I am following up on the last email I sent you regarding my request for access to public records. What is the next step in the process?

Regards,
Craig Merrill

EXHIBIT J

cfmerrill@outlook.com

From: Craig Merrill
Sent: Tuesday, May 30, 2017 1:35 PM
To: Rep. Beverly Boswell
Cc: Beth Strandberg (Rep. Beverly Boswell); Bart Goodson (Chief of Staff, Speaker Moore's Office)
Subject: RE: Public Record Request
Categories: 02-Advocacy

It would sure be nice if someone would have the courtesy to fulfill their civic duty and respond to my request.

Regards,
Craig

From: Craig Merrill [mailto:cfmerrill@outlook.com]
Sent: Tuesday, May 23, 2017 7:15 AM
To: Rep. Beverly Boswell <beverly.boswell@ncleg.net>
Cc: Beth Strandberg (Rep. Beverly Boswell) <beth.strandberg@ncleg.net>; Bart Goodson (Chief of Staff, Speaker Moore's Office) <bart.goodson@ncleg.net>
Subject: Re: Public Record Request

Ms. Boswell et al,

I spoke with Chris Brook, ACLU NC Legal Director. Chris confirmed that the information I have ask you for is considered to be part of the public record and referenced a similar case from last year. Dan Bishop initially used the same argument you presented but later acquiesced and provided the information.

http://www.bizjournals.com/charlotte/blog/queen_city_agenda/2016/06/exclusive-inside-hb-2-authors-legislative-emails.html

Regards,
Craig Merrill

From: Craig Merrill
Sent: Tuesday, May 16, 2017 6:27:15 PM
To: Rep. Beverly Boswell
Cc: Beth Strandberg (Rep. Beverly Boswell); Bart Goodson (Chief of Staff, Speaker Moore's Office)
Subject: RE: Public Record Request

Ms. Boswell,

I am again following up on my request for access to the public records that I sent to you over a month ago. I respectfully request that you provide me with the requested information as soon as possible.

Craig Merrill

From: Craig Merrill
Sent: Wednesday, May 10, 2017 4:22 AM

EXHIBIT K

cfmerrill@outlook.com

From: Rep. Beverly Boswell <Beverly.Boswell@ncleg.net>
Sent: Thursday, June 1, 2017 6:29 PM
To: cfmerrill@outlook.com
Subject: RE: Public Record Request

Categories: 02-Advocacy

Mr Merrill,
I sent your original request and your subsequent request to the legal department. When I got a response, Beth sent it to you.
Thank you.
Bev

Sent from my Verizon 4G LTE Droid
On 30 May 2017 1:35 pm, Craig Merrill <cfmerrill@outlook.com> wrote:
It would sure be nice if someone would have the courtesy to fulfill their civic duty and respond to my request.

Regards,
Craig

From: Craig Merrill [mailto:cfmerrill@outlook.com]
Sent: Tuesday, May 23, 2017 7:15 AM
To: Rep. Beverly Boswell <beverly.boswell@ncleg.net>
Cc: Beth Strandberg (Rep. Beverly Boswell) <beth.strandberg@ncleg.net>; Bart Goodson (Chief of Staff, Speaker Moore's Office) <bart.goodson@ncleg.net>
Subject: Re: Public Record Request

Ms. Boswell et al,

I spoke with Chris Brook, ACLU NC Legal Director. Chris confirmed that the information I have ask you for is considered to be part of the public record and referenced a similar case from last year. Dan Bishop initially used the same argument you presented but later acquiesced and provided the information.

http://www.bizjournals.com/charlotte/blog/queen_city_agenda/2016/06/exclusive-inside-hb-2-authors-legislative-emails.html

Regards,
Craig Merrill

From: Craig Merrill
Sent: Tuesday, May 16, 2017 6:27:15 PM
To: Rep. Beverly Boswell
Cc: Beth Strandberg (Rep. Beverly Boswell); Bart Goodson (Chief of Staff, Speaker Moore's Office)
Subject: RE: Public Record Request

Ms. Boswell,

EXHIBIT L

cfmerrill@outlook.com

From: Craig Merrill
Sent: Thursday, June 1, 2017 7:07 PM
To: Bart Goodson (Chief of Staff, Speaker Moore's Office)
Cc: 'Rep. Beverly Boswell'; Beth Strandberg (Rep. Beverly Boswell)
Subject: RE: Public Record Request

Categories: 02-Advocacy

Mr. Goodson,

I heard back from Ms. Boswell this evening (see below). She refers to the response I received from Beth Strandberg, which was fairly close to the one I later received from you. Your response was similar to the one that Dan Bishop used a year ago (regarding HB-2), but later relented and shared the requested information. I suspect he did this because he realized the interpretation that all legislator communications are protected from public disclosure is wrong.

Just to reiterate, I requested copies of correspondence between Ms. Boswell's office and the residents and businesses of North Carolina House District 6. Is it your legal opinion that this correspondence is not considered to be public records?

Regards,
Craig

-----Original Message-----

From: Rep. Beverly Boswell [mailto:Beverly.Boswell@ncleg.net]
Sent: Thursday, June 1, 2017 6:29 PM
To: cfmerrill@outlook.com
Subject: RE: Public Record Request

Mr Merrill,
I sent your original request and your subsequent request to the legal department. When I got a response, Beth sent it to you.
Thank you.
Bev

Sent from my Verizon 4G LTE Droid
On 30 May 2017 1:35 pm, Craig Merrill <cfmerrill@outlook.com> wrote:
It would sure be nice if someone would have the courtesy to fulfill their civic duty and respond to my request.

Regards,
Craig

From: Craig Merrill [mailto:cfmerrill@outlook.com]
Sent: Tuesday, May 23, 2017 7:15 AM
To: Rep. Beverly Boswell <beverly.boswell@ncleg.net>
Cc: Beth Strandberg (Rep. Beverly Boswell) <beth.strandberg@ncleg.net>; Bart Goodson (Chief of Staff, Speaker Moore's Office) <bart.goodson@ncleg.net>
Subject: Re: Public Record Request

Ms. Boswell et al,

EXHIBIT M

cfmerrill@outlook.com

From: Craig Merrill
Sent: Wednesday, June 7, 2017 3:56 PM
To: 'Rep. Beverly Boswell'
Cc: Beth Strandberg (Rep. Beverly Boswell); Bart Goodson (Chief of Staff, Speaker Moore's Office)
Subject: RE: Public Record Request
Attachments: public_records_overview.pdf
Importance: High
Categories: 02-Advocacy

Hi Ms. Boswell

I have done more homework on the subject of my request for public records. The result is that I have confirmed two points:

1. The statutes Mr. Goodson and Ms. Strandberg refer to do not apply to my request.
2. You, not the legal department, are the custodian of the records and, as such, are responsible for complying with my request in a timely manner.

Also, I now extend my request "to inspect or obtain copies of public records of official correspondence between State Representative Beverly Boswell's office and the residents and businesses of North Carolina House District 6 . . ." to include text messages and all other correspondence (for example, letters and postcards).

I don't know if legal department gave you the related references that govern this area of the law, so I list them below along with a synopsis of what they cover. I have also attached a nice overview of public records courtesy of UNC. I highlighted the key areas to make it easier for you and Beth to review.

- Public Records; North Carolina State University at Raleigh; Textbook Lists; Right of Inspection, 41 Op. N.C. Attorney General 199 (1971).

The AG has said that the term "in pursuance of law" is not to be narrowly construed to limit access to records.

- News & Observer Publishing Co. V. Wake County Hospital System, 55 N.C. App. 1, 13, 284 S.E.2d 542 549 (1981), cert. denied, 305 N.C. 302, 291 S.E.2d 151, cert denied, 459 U.S. 803, 103 S.Ct. 26 (1982).

Court of Appeals has said that all records "made or received pursuant to law or ordinance in connection with the transaction of public business" means all records kept by law, officials, or agencies are defined as public records.

- News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

NC Supreme Court ruled that public agency records are public unless there is specific statutory exception.

- Public Access to Legislator's Redistricting Communications; Custodians of Records, Op. N.C. Attorney General No. 529 (2002).

Constituent correspondence sent to legislators is public.

- N.C.G.S. Sect. 132-9(a).

If taken to court, the burden is on the person withholding the records to demonstrate why they should not be public.

Regards,
Craig

EXHIBIT N

cfmerrill@outlook.com

From: Craig Merrill
Sent: Tuesday, June 13, 2017 7:57 PM
To: 'Rep. Beverly Boswell'
Cc: 'Beth Strandberg (Rep. Beverly Boswell)'; 'Bart Goodson (Chief of Staff, Speaker Moore's Office)'
Subject: RE: Public Record Request
Categories: 02-Advocacy

Ms. Boswell,

I still seek the data from your office, or at least some kind of response providing a legitimate reason as to why I should not have access to the data.

Regards,
Craig Merrill

-----Original Message-----

From: Craig Merrill
Sent: Wednesday, June 7, 2017 3:56 PM
To: 'Rep. Beverly Boswell' <Beverly.Boswell@ncleg.net>
Cc: Beth Strandberg (Rep. Beverly Boswell) <beth.strandberg@ncleg.net>; Bart Goodson (Chief of Staff, Speaker Moore's Office) <bart.goodson@ncleg.net>
Subject: RE: Public Record Request
Importance: High

Hi Ms. Boswell

I have done more homework on the subject of my request for public records. The result is that I have confirmed two points:

1. The statutes Mr. Goodson and Ms. Strandberg refer to do not apply to my request.
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Also, I now extend my request "to inspect or obtain copies of public records of official correspondence between State Representative Beverly Boswell's office and the residents and businesses of North Carolina House District 6 . . ." to include text messages and all other correspondence (for example, letters and postcards).

I don't know if legal department gave you the related references that govern this area of the law, so I list them below along with a synopsis of what they cover. I have also attached a nice overview of public records courtesy of UNC. I highlighted the key areas to make it easier for you and Beth to review.

-- Public Records; North Carolina State University at Raleigh; Textbook Lists; Right of Inspection, 41 Op. N.C. Attorney General 199 (1971).

The AG has said that the term "in pursuance of law" is not to be narrowly construed to limit access to records.

-- News & Observer Publishing Co. V. Wake County Hospital System, 55 N.C. App. 1, 13, 284 S.E.2d 542 549 (1981), cert. denied, 305 N.C. 302, 291 S.E.2d 151, cert denied, 459 U.S. 803, 103 S.Ct. 26 (1982).

EXHIBIT O

cfmerrill@outlook.com

From: Christopher Brook <cbrook@acluofnc.org>
Sent: Friday, June 16, 2017 11:50 AM
To: beverly.boswell@ncleg.net
Cc: beth.strandberg@ncleg.net; bart.goodson@ncleg.net; Craig Merrill
Subject: Craig Merrill Public Record Request
Attachments: Craig Merrill Public Record Request.pdf

Categories: 02-Advocacy

Representative Boswell,

Please find attached a letter from the American Civil Liberties Union of North Carolina Legal Foundation regarding a recent, as yet unfulfilled, public record request from one of your constituents, Craig Merrill, as well as your legal obligations pursuant to the applicable law. A copy of this letter will follow via US mail.

We look forward to working with you to ensure that Mr. Merrill's public record request is fully responded to no later than July 17, 2017.

Thank you for your attention to this matter and please do not hesitate to be in touch if we can provide further assistance here.

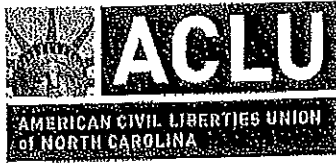
Regards,
Chris

Christopher Brook
Legal Director
ACLU of North Carolina
P. O. Box 28004
Raleigh, NC 27611-8004
Phone: (919) 834-3466
Fax: (866) 511-1344
E-mail: cbrook@acluofnc.org
Website: www.acluofnc.org

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The views and opinions expressed in this communication do not necessarily reflect the official positions of the staff, management and directors of the American Civil Liberties Union, the American Civil Liberties Union Foundation, its affiliates, or its chapters.



P.O. Box 28004 • Raleigh, North Carolina 27611-8004

Phone (919) 834-3466 • Fax (866) 511-1344

www.acluofnc.org

June 16, 2017

VIA ELECTRONIC AND U.S. MAIL

Representative Beverly Boswell
North Carolina House of Representatives
300 N Salisbury Street, Room 531
Raleigh, NC 27603-5925

RE: Craig Merrill Public Records Request Filed April 8, 2017

Dear Representative Boswell,

The American Civil Liberties Union of North Carolina Legal Foundation (ACLU-NCLF) has received a request for assistance from Craig Merrill, who resides in Kitty Hawk, North Carolina. Mr. Merrill submitted a public records request to your office seeking "to inspect or obtain copies of public records of official correspondence between State Representative Beverly Boswell's office and the residents and businesses of North Carolina House District 6." This request, as he explained in subsequent emails, was to include, but not to be limited to, text messages and emails. Bart Goodson, General Counsel and Chief of Staff of Speaker Tim Moore's Office, responded via email twenty days after Merrill filed the initial request, offering his own narrow interpretation of North Carolina public records statutes and a "long held position of the General Assembly bipartisan central staff" to deem correspondences between legislators and their constituents not public record.

Since that time, Mr. Merrill has consistently disputed Mr. Goodson's reasoning and has continued to request access to these records in multiple emails. We understand the need for state representatives to have certain conversations remain private. However, not all records in a legislator's office can be kept from the public. We write to you today to provide you with information regarding you and your office's legal obligations to your constituents, most notably your duties regarding North Carolina public records law.

The North Carolina General Assembly has declared "[t]he public records and public information compiled by the agencies of North Carolina government or its subdivision 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."¹ Further, the General Assembly has stated clearly that "[e]very custodian of public records shall permit any record in the custodian's

¹ N.C. GEN. STAT. § 132-1(b).

custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof.”² The person requesting such documents need not “disclose the purpose or motive for the request.”³ Denying Mr. Merrill access to records to which he is statutorily entitled is a direct violation of North Carolina public records law.

As the Representative of District 6, it is your responsibility—and yours alone—to disclose these records. The custodian of legislative records is “the public official in charge of [the] office.”⁴ Thus, you—not your staff or any attorney—are the custodian of your office’s records, and it is your responsibility to comply with the request. Anyone denied access to public records “may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying.”⁵ A court, therefore, possesses the statutorily granted authority to compel Boswell’s compliance with legally sound public records requests.⁶

Before turning to the courts, we note that a number of arguments Mr. Goodson raised in his emails with Mr. Merrill are neither relevant nor responsive to Mr. Merrill’s public records request. Mr. Goodson cited N.C.G.S. § 120-131, which states:

“[d]ocuments prepared by legislative employees upon the request of legislators are confidential . . . A document prepared by a legislative employee upon 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 . . . (3) Proposed conference committee report; (4) . . . document[s] resulting from a drafting or information request.”⁷

Each of these documents must also be made public to other legislators in committee or on the floor of a house to become public record.⁸ Mr. Merrill’s public records request seeks emails and other messages between you and your constituents. This statute does not contemplate any such

² N.C. GEN. STAT. § 132-6(a).

³ N.C. GEN. STAT. § 132-6(b).

⁴ N.C. GEN. STAT. § 132-2.

⁵ N.C. GEN. STAT. § 132-9(a).

⁶ If an action in court seeking disclosure of public records is successful, “the court shall allow a party seeking disclosure . . . who substantially prevails to recover its reasonable attorneys’ fees.” N.C. GEN. STAT. § 132-9(c). Attorneys’ fees are not recoverable from any party or governmental body unless the denying party acts in official reliance on: “(1) A judgment or an order of a court applicable to the governmental unit or governmental body (2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice (3) A written opinion, decision, or letter of the Attorney General.” *Id.* In all of his correspondences with Mr. Merrill, Mr. Goodson has not cited any of these three sources of authority in denying Mr. Merrill’s request. And, as discussed further below, none of these enumerated sources countenance categorically shielding the requested correspondence, in fact, quite the opposite.

⁷ N.C. GEN. STAT. § 120-132(a)-(b).

⁸ N.C. GEN. STAT. § 120-132(b).

documents. The list of documents provided in N.C.G.S. § 120-131(b) demonstrates this statute's intention to address staff-made documents that legislators utilize in the direct legislative process. Thus, documents containing conversations between constituents do not fit within the text of the statute.

Mr. Goodson also cites N.C.G.S. § 120-9, which states, "the members [of the General Assembly] shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken."⁹ This statute employs language that mirrors the Speech and Debate Clause of the U.S. Constitution.¹⁰ However, invoking the general notion of legislative privilege does not broadly protect representatives from all public records requests. The phrases "in the General Assembly" and "therein spoken" limit the scope of this statute's protection to speech inside the General Assembly. Thus, based on its text alone, the statute does not necessarily—without clear legislative intent suggesting otherwise—protect conversations with constituents *outside* of the General Assembly from public records requests. As N.C.G.S. § 132-1 and North Carolina legal authorities' interpretation of it make clear, such intent does not exist.

Correspondences between you and your constituents clearly meet the statutory definition of "public records," notwithstanding the interpretation of North Carolina's legal authorities. N.C.G.S. § 132-1(a) defines "public record" as "all documents . . . 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."¹¹ Both Mr. Goodson and Mr. Merrill agreed in their correspondences that the documents sought in the records request are "made or received . . . in connection with the transaction of public business by any agency of North Carolina government or its subdivisions."¹² Emails and letters are made and sent to constituents and received from them. Additionally, the interactions between public officials and the public appear sufficiently connected to public business. Finally, "[a]gency of North Carolina government . . . mean[s] and include[s] every public office, public officer or official (State or local, elected or appointed)."¹³ Mr. Goodson agreed that your office satisfies these three criteria of the definition.

The source of contention is the "pursuant to law or ordinance" language in the public record definition.¹⁴ North Carolina courts have interpreted this language—and the public records statutes more generally—to include the records Merrill requested. The North Carolina Court of Appeals held that "records that are kept in carrying out lawful duties" should be considered

⁹ N.C. GEN. STAT. § 120-9 (2016).

¹⁰ U.S. CONST. art. I, § 6, cl. 1 ("[F]or any Speech or Debate in either House[, members of Congress] shall not be questioned in any other Place."). The Speech and Debate Clause does protect members of Congress from producing evidence regarding certain legislative activities. *See Gravel v. U.S.*, 408 U.S. 606, 616 (1972). However, the Middle District of North Carolina Court held recently that "the privilege was qualified," not absolute. *N.C. State Conference of NAACP v. McCrory*, No. 1:13CV658, WL 12683665, at *4 (M.D.N.C. Feb. 4, 2015).

¹¹ N.C. GEN. STAT. § 132-1(a) (2016).

¹² *Id.*

¹³ N.C. GEN. STAT. § 132-1(b).

¹⁴ N.C. GEN. STAT. § 132-1(a).

public records developed "pursuant to law or ordinance."¹⁵ The lawful duties of a North Carolina General Assembly Representative include representing the people of her district and "prepar[ing] bills to be enacted into laws."¹⁶ In representing her district and preparing bills, a representative speaks with and listens to her constituents. Therefore, these correspondences are made and received while carrying out lawful duties as a member of the General Assembly. Furthermore, the Supreme Court of North Carolina held "that in the absence of clear statutory exemption or exception, documents falling within the definition of 'public records' in the Public Records Act must be made available for public inspection."¹⁷ No such statutory exemption exists in the North Carolina General Statutes.

The intent of N.C.G.S. § 132-1(a), as determined by the North Carolina Supreme Court, also supports Mr. Merrill's claim that this is a legally sound request for public records. The Court has rejected narrow interpretations of N.C.G.S. § 132-1(a) because, with the Public Records Act, "the legislature intended to provide that, as a general rule, the public would have liberal access to public records."¹⁸ As Mr. Merrill has already asserted in his email correspondence with Mr. Goodson, the underlying purpose of the statute is to offer broad access to public records.

Finally, the North Carolina Attorney General has issued an advisory opinion on the public nature of correspondences between legislators and constituents. The Attorney General advised, in response to a similar public records request concerning a redistricting plan, that "written and electronic communications between a legislator and a member of the public about redistricting are generally public records, regardless of whether those communications occur

¹⁵ *News & Observer Publ'g Co. v. Wake Cty. Hosp. Sys.*, 55 N.C. App. 1, 13 (N.C. App. 1981). The North Carolina Attorney General issued an advisory opinion that supports this court ruling. "[T]he statutory phrase, 'in pursuance of law' is not to be narrowly construed so as to limit the chapter to only documents specifically prescribed by law to be made of received . . . In the opinion of this office, the phrase is more properly interpreted to mean or describe an act done in one's public employment capacity as opposed to a private act." 41 Op. N.C. Attorney General 199, 201 (1971).

¹⁶ NC CONST. art. 2, § 20.

¹⁷ *News & Observer Publ'g Co. v. Poole*, 330 N.C. 465, 486 (N.C. 1992). See also Frayda Bluestein, *Public Records Overview*, UNC SCH. OF GOV'T 2 (2012), https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/public_records_overview.pdf (discussing the scope of *Wake County Hosp.* and *Poole*).

¹⁸ *News & Observer v. State ex rel. Starling*, 312 N.C. 276, 281 (N.C. 1984). The North Carolina Court of Appeals has also cited strong public policy reasons for such open access to records. "[G]ood public policy is said to require liberality in the right to examine public records' . . . 'While some degree of confidentiality is necessary for government to operate effectively, the general rule in the American political system must be that the affairs of government be subject to public scrutiny.'" *Advance Publ'ns, Inc. v. Elizabeth City*, 53 N.C. App. 504, 506 (1981) (quoting 66 Am.Jur.2d, *Records and Recording Laws*, § 12 at 349 (1973), Comment, *Public Access to Government-Held Records: A Neglected Right in North Carolina*, 55 N.C. L. Rev. 1187, 1188 (1977)).

before or after the enactment of [the legislative proposal].”¹⁹ Such clear language, along with the liberal interpretations by the courts and the lack of any explicit statutory exemption in North Carolina law, demonstrates that the records Mr. Merrill requested are indeed public record.

Regardless of the above statutory interpretations, the Petition Clause of the First Amendment is a law or ordinance under which the documents requested were created. The Petition Clause protects citizens’ rights by forbidding Congress from “abridging the freedom . . . to petition the Government for redress of grievances.”²⁰ The Supreme Court has interpreted this clause broadly. The Petition Clause “prohibit[s] government from limiting the stock of information from which members of the public may draw.”²¹ Further, it found the First Amendment guarantees a right to “receive information and ideas.”²² The Supreme Court has determined that members of the public have a right to petition the government and receive information from their elected officials. Documents containing constituent correspondences, then, are made pursuant to the Petition Clause. Thus, such documents meet the definition of public record in N.C.G.S. § 132-1(a). Furthermore, Mr. Merrill is attempting to receive information, while his stock of information continues to be limited. Therefore, denying these records requests interferes with Merrill’s fundamental constitutional right to petition the government.²³

Though the North Carolina courts have not ruled explicitly on public records requests for messages between legislators and constituents, the Middle District of North Carolina Court held that correspondences between legislators and their constituents were discoverable in civil proceedings.²⁴ In *N.C. State Conference of NAACP v. McCrory*, legislators cited no cases in support of denying discovery, while “several courts have denied State legislators’ requests to extend legislative privilege to communications with third parties, including constituents.”²⁵ In

¹⁹ Public Access to Legislator’s Redistricting Communications; Custodians of Records, Op. N.C. Attorney General No. 529 (2002).

²⁰ U.S. CONST. amend. I. The North Carolina State Constitution possesses a similar clause which gives citizens the right “to apply to the General Assembly for redress of grievances.” N.C. CONST. art. 1, § 12.

²¹ *First Nat’l Bank of Boston v. Bellotti*, 425 U.S. 765, 783 (1978).

²² *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 556 (1980). This statement refers specifically to the right to attend trials, but it demonstrates an expanded view of the First Amendment and the importance of the public’s right to information.

²³ The Supreme Court has provided numerous public policy arguments in favor of making more records available to the public. Though the court was referring to court access, the same arguments support access to legislative records. The Court has cited “educative interest,” the public’s “perception of fairness,” and “significant community therapeutic value” in offering more open, transparent public records. *Richmond*, 448 U.S. at 569–72, 584, 596–97.

²⁴ *N.C. State Conference of NAACP v. McCrory*, No. 1:13CV658, WL 12683665, at *20–23 (M.D.N.C. Feb. 4, 2015)

²⁵ *Id.* at *20.

one such case, the District Court of Nebraska held that documents that "were communicated to or shared with non-legislative members" were discoverable.²⁶

If a court would not allow legislative privilege to protect documents containing conversations between legislators and constituents from the discovery process, then it is even less likely to protect such documents from a public records request. A public records request is quite different than a discovery request in a civil litigation. The relationship between the parties in the former is a citizen asking a public servant for information.²⁷ The latter involves an adversarial relationship.²⁸ Thus, parties in litigation are entitled to more secrecy (beyond minimum amounts of discovery) than a public office subject to laws of public records transparency.²⁹ That correspondences between constituents and legislators are discoverable in civil proceedings, therefore, only makes it more likely a court would honor a public records request for such documents.

We urge you and your office promptly to respond to and fulfill Mr. Merrill's public records request. Like you, Mr. Merrill is seeking to improve his community. He wishes to exercise his right to view public records in order to be a more responsible and informed citizen. Limiting his access not only complicates his efforts to become an engaged member of his community, it creates a policy that excludes the citizens of North Carolina from the democratic political process.

Thank you for your attention to this matter. If you have any questions, would like to discuss this matter in more detail, or believe that any of the above is incorrect, please feel free to call us at 919-834-3466. We look forward to hearing back from you by July 17, 2017 regarding how you and your office will safeguard your constituents' rights.

²⁶ *Doe v. Nebraska*, 788 F. Supp. 2d 975, 987 (D. Neb. 2011), *see also*, *Rodriguez v. Pataki*, 280 F. Supp. 2d 81, 101 (S.D.N.Y. 2003) (holding "a conversation between legislators and knowledgeable outsiders, such as lobbyists, to mark up legislation" could not be subject to legislative privilege), *Favors v. Cuomo*, 285 F.R.D. 187, 212 (E.D.N.Y. 2012) ("The law is clear that a legislator waives his or her legislative privilege when the legislator publicly reveals documents related to internal deliberation."), *Perez v. Perry*, Civ. No. 11-CV-360, 2014 WL 106927, at *2 (W.D. Tex. Jan. 8, 2014) ("To the extent . . . that any legislator, legislative aid, or staff member had conversations or communications with any outsider (e.g. party representatives, non-legislators, or non-legislative staff), any privilege is waived as to the contents of those specific communications.")

²⁷ Jack Greiner & Zoraida Vale, *As Different as Violins and Violas: Why Public Records Requests Are Not the Same as Discovery*, UNIV. CINCINNATI L. REV., (Apr. 8, 2015) <https://uclawreview.org/2015/04/08/as-different-as-violins-and-violas-why-public-records-requests-are-not-the-same-as-discovery/>.

²⁸ *Id.*

²⁹ *Id.*

Sincerely,

A handwritten signature in cursive script, appearing to read "Josh Silver".

Josh Silver for CAB
Christopher A. Brook
Legal Director, ACLU-NCLF

cc: Bart Goodson
Beth Strandberg

EXHIBIT P

cfmerrill@outlook.com

From: Beth Strandberg (Rep. Beverly Boswell) <Beth.Strandberg@ncleg.net>
Sent: Tuesday, July 11, 2017 9:18 AM
To: 'Craig Merrill'
Subject: Public Records Request
Categories: 02-Advocacy

Good Morning Mr. Merrill,
Now that session is over and things have slowed down quite a bit, we have time to send the record request. Could you please be specific about the request that you are seeking and we will look into it for you. Thank you.

Beth Strandberg
Legislative Assistant to Rep. Beverly G. Boswell
NC House District 6
300 North Salisbury Street, Room 531
Raleigh, North Carolina 27603
919.733.5906

EXHIBIT Q

cfmerrill@outlook.com

From: Craig Merrill
Sent: Tuesday, July 11, 2017 2:18 PM
To: Beth Strandberg (Rep. Beverly Boswell)
Subject: RE: Public Records Request

Categories: 02-Advocacy

Hello Beth,

As stated in the email sent by the ACLU on my behalf, I request all official correspondences, including but not limited to texts and emails, between State Representative Beverly Boswell's office and the residents and businesses of North Carolina House District 6.

Thank you,
Craig
Craig Merrill
4227 Lindbergh Ave
Kitty Hawk, NC 27949-4171
(703) 470-8986

From: Beth Strandberg (Rep. Beverly Boswell) [mailto:Beth.Strandberg@ncleg.net]
Sent: Tuesday, July 11, 2017 9:18 AM
To: 'Craig Merrill'
Subject: Public Records Request

Good Morning Mr. Merrill,
Now that session is over and things have slowed down quite a bit, we have time to send the record request. Could you please be specific about the request that you are seeking and we will look into it for you. Thank you.

Beth Strandberg
Legislative Assistant to Rep. Beverly G. Boswell
NC House District 6
300 North Salisbury Street, Room 531
Raleigh, North Carolina 27603
919.733.5906

EXHIBIT R

cfmerrill@outlook.com

From: Christopher Brook <cbrook@acluofnc.org>
Sent: Monday, July 31, 2017 11:09 AM
To: beverly.boswell@ncleg.net
Cc: beth.strandberg@ncleg.net; bart.goodson@ncleg.net; Craig Merrill
Subject: Re: Craig Merrill Public Record Request
Categories: 02-Advocacy

Representative Boswell,

On June 16, 2017, we wrote to you regarding Craig Merrill's April 8, 2017, public record request. That request had by then gone unfulfilled for more than two months, and we sought information from your office about how it would be complying with the law on point by July 17, 2017.

Beth Strandberg emailed Mr. Merrill on July 11, 2017, indicating that "we [now] have time to send the record request" with the long session concluded. Mr. Merrill reiterated his previous request later that day.

It is now nearly four months since Mr. Merrill's original request. It is a month and a half since we reiterated that request. It is nearly three weeks since your office's last correspondence with Mr. Merrill. It is two weeks past when our office sought a response from your office regarding how it would comply with the law on point.

As soon as possible please either fulfill your legal obligation to provide Mr. Merrill with the documents he has sought or outline how you will promptly do so.

Thank you for your attention to this matter and we look forward to your feedback here.

Regards,
Chris

On Fri, Jun 16, 2017 at 11:49 AM, Christopher Brook <cbrook@acluofnc.org> wrote:

> Representative Boswell,

>

> Please find attached a letter from the American Civil Liberties Union
> of North Carolina Legal Foundation regarding a recent, as yet
> unfulfilled, public record request from one of your constituents,
> Craig Merrill, as well as your legal obligations pursuant to the
> applicable law. A copy of this letter will follow via US mail.

>

> We look forward to working with you to ensure that Mr. Merrill's
> public record request is fully responded to no later than July 17, 2017.

>

> Thank you for your attention to this matter and please do not hesitate
> to be in touch if we can provide further assistance here.

>

>

> Regards,

EXHIBIT S

cfmerrill@outlook.com

From: Craig Merrill
Sent: Wednesday, August 23, 2017 8:28 AM
To: 'Beth Strandberg (Rep. Beverly Boswell)'
Cc: Beverly.Boswell@ncleg.net; Christopher Brook
Subject: RE: Public Records Request

Categories: 02-Advocacy

Hi Beth,

Can you give me an update on my public records request? I have not heard anything since your email of July 11.

Regards,
Craig

From: Craig Merrill
Sent: Tuesday, July 11, 2017 2:18 PM
To: Beth Strandberg (Rep. Beverly Boswell)
Subject: RE: Public Records Request

Hello Beth,

As stated in the email sent by the ACLU on my behalf, I request all official correspondences, including but not limited to texts and emails, between State Representative Beverly Boswell's office and the residents and businesses of North Carolina House District 6.

Thank you,
Craig
Craig Merrill
4227 Lindbergh Ave
Kitty Hawk, NC 27949-4171
(703) 470-8986

From: Beth Strandberg (Rep. Beverly Boswell) [<mailto:Beth.Strandberg@ncleg.net>]
Sent: Tuesday, July 11, 2017 9:18 AM
To: 'Craig Merrill'
Subject: Public Records Request

Good Morning Mr. Merrill,
Now that session is over and things have slowed down quite a bit, we have time to send the record request. Could you please be specific about the request that you are seeking and we will look into it for you. Thank you.

Beth Strandberg
Legislative Assistant to Rep. Beverly G. Boswell
NC House District 6
300 North Salisbury Street, Room 531
Raleigh, North Carolina 27603

EXHIBIT T

cfmerrill@outlook.com

From: Craig Merrill
Sent: Monday, October 2, 2017 7:08 AM
To: 'Beth Strandberg (Rep. Beverly Boswell)'
Cc: 'Beverly.Boswell@ncleg.net'; 'Christopher Brook'
Subject: RE: Public Records Request

Categories: 02-Advocacy

Beth,

It has now been over 2 months since you emailed stating you had time to respond to my records request, yet nothing has been forthcoming. Neither you nor Rep. Boswell have responded in any way since that email.

When will I receive the records I requested over 5 months ago?

Craig

*Craig Merrill
4227 Lindbergh Ave
Kitty Hawk, NC 27949-4171
cfmerrill@outlook.com
(703) 470-8986 -or-
(252) 573-3095*

From: Craig Merrill
Sent: Wednesday, August 23, 2017 8:28 AM
To: 'Beth Strandberg (Rep. Beverly Boswell)' <Beth.Strandberg@ncleg.net>
Cc: Beverly.Boswell@ncleg.net; Christopher Brook <cbrook@acluofnc.org>
Subject: RE: Public Records Request

Hi Beth,

Can you give me an update on my public records request? I have not heard anything since your email of July 11.

Regards,
Craig

From: Craig Merrill
Sent: Tuesday, July 11, 2017 2:18 PM
To: Beth Strandberg (Rep. Beverly Boswell)
Subject: RE: Public Records Request

Hello Beth,

As stated in the email sent by the ACLU on my behalf, I request all official correspondences, including but not limited to texts and emails, between State Representative Beverly Boswell's office and the residents and businesses of North Carolina House District 6.

EXHIBIT U

cfmerrill@outlook.com

From: Beth Strandberg (Rep. Beverly Boswell) <Beth.Strandberg@ncleg.net>
Sent: Monday, October 2, 2017 11:02 AM
To: 'Craig Merrill'
Subject: RE: Public Records Request

Mr. Merrill,
Per our correspondence on July 11, I asked you to be specific in the matter that you were requesting to provide guidance to ISD to perform the necessary searches required in an effort to ID any potentially public records therein. You failed to provide me with that information. I would like to remind you that electronic communications between members and constituents are not "public records" as defined by our statutes and further subject to the protections afforded by legislative privilege and legislative confidentiality.

Beth Strandberg
Legislative Assistant to Rep. Beverly G. Boswell
NC House District 6
300 North Salisbury Street, Room 531
Raleigh, North Carolina 27603
919.733.5906

From: Craig Merrill [mailto:cfmerrill@outlook.com]
Sent: Monday, October 02, 2017 7:08 AM
To: Beth Strandberg (Rep. Beverly Boswell)
Cc: Rep. Beverly Boswell; 'Christopher Brook'
Subject: RE: Public Records Request

Beth,

It has now been over 2 months since you emailed stating you had time to respond to my records request, yet nothing has been forthcoming. Neither you nor Rep. Boswell have responded in any way since that email.

When will I receive the records I requested over 5 months ago?

Craig

Craig Merrill
4227 Lindbergh Ave
Kitty Hawk, NC 27949-4171
cfmerrill@outlook.com
(703) 470-8986 -or-
(252) 573-3095

From: Craig Merrill
Sent: Wednesday, August 23, 2017 8:28 AM

EXHIBIT V

cfmerrill@outlook.com

From: Craig Merrill
Sent: Wednesday, October 4, 2017 7:14 AM
To: 'Beth Strandberg (Rep. Beverly Boswell)'
Cc: 'Christopher Brook'
Subject: RE: Public Records Request

Beth,

I was specific in my original request, in the email to Rep. Boswell from the ACLU, and in my reply to your query of July 11. It is included below in this email chain, but I repeat it here for your convenience: "I request all official correspondences, including but not limited to texts and emails, between State Representative Beverly Boswell's office and the residents and businesses of North Carolina House District 6."

Electronic communications between legislators and constituents are not considered public records. This is the first time I've heard this claim from you, Rep. Boswell, or Mr. Goodson; therefore, if you are invoking a statute we have not discussed before, please provide a reference so that I can review it.

Craig Merrill

From: Beth Strandberg (Rep. Beverly Boswell) [mailto:Beth.Strandberg@ncleg.net]
Sent: Monday, October 2, 2017 11:02 AM
To: 'Craig Merrill' <cfmerrill@outlook.com>
Subject: RE: Public Records Request

Mr. Merrill,

Per our correspondence on July 11, I asked you to be specific in the matter that you were requesting to provide guidance to ISD to perform the necessary searches required in an effort to ID any potentially public records therein. You failed to provide me with that information. I would like to remind you that electronic communications between members and constituents are not "public records" as defined by our statutes and further subject to the protections afforded by legislative privilege and legislative confidentiality.

Beth Strandberg
Legislative Assistant to Rep. Beverly G. Boswell
NC House District 6
300 North Salisbury Street, Room 531
Raleigh, North Carolina 27603
919.733.5906

From: Craig Merrill [mailto:cfmerrill@outlook.com]
Sent: Monday, October 02, 2017 7:08 AM
To: Beth Strandberg (Rep. Beverly Boswell)
Cc: Rep. Beverly Boswell; 'Christopher Brook'
Subject: RE: Public Records Request

Beth,

EXHIBIT W

cfmerrill@outlook.com

From: Craig Merrill
Sent: Tuesday, December 19, 2017 4:43 AM
To: 'Beverly.Boswell@ncleg.net'
Cc: Beth Strandberg (Rep. Beverly Boswell); Bart Goodson (Chief of Staff, Speaker Moore's Office); Christopher Brook
Subject: Public Records Request

Representative Boswell,

As I originally requested via an email to you on April 8, 2017, and pursuant to the North Carolina Public Records Law, I am again requesting an opportunity to inspect or obtain copies of public records of correspondence between your office and the residents and businesses of North Carolina House District 6. I specifically seek: 1) phone records, 2) email records, 3) copies of emails, and 4) texts associated with the state-provided phones and email accounts used by you, your staff, and any interns or volunteers who support you with your official duties. If you conduct official business using personal phones or email accounts, I would like records of such exchanges as well.

Thank you for your attention to this matter and I look forward to your feedback on how you will fulfill this long-outstanding public record request.

Regards,
Craig Merrill

*Craig Merrill
4227 Lindbergh Ave
Kitty Hawk, NC 27949-4171
cfmerrill@outlook.com
(703) 470-8986 -or-
(252) 573-3095*

EXHIBIT X

From: Christopher Brook <cbrook@acluofnc.org>
Date: Tue, Dec 19, 2017 at 1:11 PM
Subject: Re: Craig Merrill Public Record Request
To: beverly.boswell@ncleg.net
Cc: beth.strandberg@ncleg.net, bart.goodson@ncleg.net, Craig Merrill <cfmerrill@outlook.com>

Representative Boswell,

On April 8, 2017, Mr. Merrill requested an opportunity to inspect or obtain copies of public records of correspondence between your office and the residents and businesses of North Carolina House District 6. He specifically sought: 1) phone records, 2) email records, 3) copies of emails, and 4) texts associated with the state-provided phones and email accounts used by you, your staff, and any interns or volunteers who support you with your official duties. He further noted that if you conduct official business using personal phones or email accounts, he would like records of those exchanges as well.

On June 16, 2017, and July 31, 2017, we wrote to you highlighting why these documents were public records pursuant to the North Carolina Public Records Law and further asking that you comply with the law by allowing Mr. Merrill to inspect or obtain all such records. [Those emails are below in this thread.] More than eight months after Mr. Merrill's original request, it has not been fulfilled. Today we reiterate this request.

Thank you for your attention to this matter and we look forward to your feedback on how you will fulfill this long-outstanding public record request.

Regards,
Chris