

July 24, 2025

Sheriff Clarence F. Birkhead  
510 South Dillard Street  
Durham, NC 27701  
sheriffbirkhead@durhamsheriff.org

*Sent via email*

Dear Sheriff Birkhead:



This letter is from organizations and individuals who advocate for civil rights, government transparency, and the well-being of incarcerated people in North Carolina. We write to express deep concern with the position you have taken regarding access to public records in a case pending in Durham County Superior Court, *EmancipateNC v. Birkhead*, 24CVS747-310.

In that case, pursuant to the North Carolina Public Records Act (“PRA”), a nonprofit requested copies of written policies that govern the lives of people detained in the Durham County Detention Facility (“the Jail”). The subject matter of the requested policies includes the use of restraints, solitary confinement, disciplinary procedures, nutrition, visitation, and sanitation. You provided only heavily redacted copies of those policies. In the litigation that followed, you have argued through your attorney that you “had no obligation to release any of” the policies requested. (Def. MTD Br. at 12).

You appear to contend that the Jail—where the government has assumed enormous responsibility for the health and safety of more than 700 people in Durham County—is a black hole when it comes to accessing public records. As explained in this letter, your position is incorrect considering the purpose and text of the PRA. That statute must be construed broadly in favor of public access. All exceptions must be construed narrowly. And this case concerns written *policies*, but the text of the exemption you rely on omits any such term.

Your position also conflicts with your public commitments to transparency and accountability.<sup>1</sup> Those values are particularly important in the context of a jail.

Accordingly, we respectfully urge you to reconsider your position.

## I. Background

In 2023, EmancipateNC submitted a public records request seeking copies of the Jail's written policies. EmancipateNC was particularly concerned with the use of solitary confinement and restraint chairs.<sup>2</sup> The records request also sought policies concerning educational programming, out-of-cell time, showers, recreation, access to the outdoors, meals, mail use, telephone access, video visitation, in-person visitation, gang affiliation, compliance with the Prison Rape Elimination Act, strip searches, handling of contraband, handling of transgender individuals, grievances, and disciplinary procedures. Access to these policies is fundamental to the public's understanding of local jail operations.

Over the following six months, your office responded by providing heavily redacted copies of the Jail's policies known as Detention Services General Orders (DGOs). Some of these policies even had their titles redacted. EmancipateNC then sued in Durham County Superior Court to compel disclosure of the policies. You moved to



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<sup>1</sup> See Durham County NC, *Building Trust between Law Enforcement & Community Sheriff Birkhead Launches Community Advisory Board* (Aug. 16, 2019), <https://www.dconc.gov/Home/Components/News/News/6214/132?npage=13> ("During my campaign to become Sheriff, I promised our office would follow a model of transparency, engagement and accountability[.]").

<sup>2</sup> See Charlotte Kramon, *Legal Nonprofit Emancipate NC Sues Durham Sheriff's Office Over Redacted Jail Policies*, INDYWeek (Jan. 24, 2024), <https://indyweek.com/news/durham/legal-nonprofit-emancipate-nc-sues-durham-sheriffs-office-over-redacted-jail-policies/>.

dismiss the suit, arguing that the Jail's policies are completely exempt from public disclosure under the PRA. That motion is currently pending with the court.

## **II. Hiding government policies from the public conflicts with the text and purpose of the Public Records Act**

"The cardinal principle of statutory construction is that the intent of the legislature is controlling. In ascertaining the legislative intent courts should consider the language of the statute, the spirit of the statute, and what it seeks to accomplish." *State ex rel. Util. Comm'n v. Public Staff*, 309 N.C. 195, 210 (1983) (citations omitted).



When examining a statute, courts look "first to the plain meaning of the words of the statute itself[.]" *State v. Ward*, 364 N.C. 157, 160 (2010). Courts will also presume that the General Assembly "carefully chose each word used." *N.C. Dep't of Correction v. N.C. Med. Bd.*, 363 N.C. 189, 201 (2009). In addition to the statutory text, the omission of certain terms can clarify legislative intent. *See, e.g., Dickson v. Rucho*, 366 N.C. 332, 344 (2013).

The Supreme Court of North Carolina has explained that the PRA "is intended to be liberally construed to ensure that governmental records be open and made available to the public, subject only to a few limited exceptions." *DTH Media Corp. v. Folt*, 374 N.C. 292, 300 (2020). Courts will not recognize exceptions to the PRA unless "specifically provided by law," N.C.G.S. § 132-1, and any such exceptions must be construed "narrowly." *DTH Media Corp.*, 374 at 301 (quotation marks omitted).

You have argued that all of the Jail's policies are not public records because N.C.G.S. § 132-7(a)(3) exempts "[s]pecific security information or detailed plans, patterns, or practices associated with prison or local confinement facilities operations." Under this theory, because EmancipateNC "seeks information detailing the [Jail's] operations, it seems plain that the request is for either 'specific security information' or most clearly 'detailed plans, patterns, or practices' of the [Jail]." (Def. MTD Br. at 9). This argument fails for two reasons.



First, completely cutting off prison and jail policies from public inspection would undermine the most basic purpose of the PRA: “fostering transparency and accountability in government through . . . broad access to public records.” *Gray Media Grp., Inc. v. City of Charlotte through City Council*, 290 N.C. App. 384, 386 (2023). There are more than 32,000 people in North Carolina prisons,<sup>3</sup> and thousands more in local jails. The people of this state pay billions of dollars to house, feed, clothe, and provide medical care for all of them. Prison and jail policies govern those operations. It is simply implausible that the General Assembly intended to shield all such policies from public view.<sup>4</sup>

The text of N.C.G.S. § 132-1.7(a)(3) bears this out. This section exempts certain information from public disclosure, but doesn’t mention prison or jail *policies*. A policy is a “standard course of action that has been officially established[.]” POLICY, Black’s Law Dictionary (12th ed. 2024). State law requires that jails adopt certain policies concerning the conditions of confinement for detainees, including those sought by EmancipateNC. *See* 10A NCAC 14J.

The General Assembly was aware of this when enacting § 132-1.7(a)(3) and could have chosen to exempt jail policies from public inspection. But it didn’t. And state courts will not read new excep-

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<sup>3</sup> NC Department of Adult Correction, *Publications, Data and Research*, <https://www.dac.nc.gov/information-and-services/publications-data-and-research> (last visited July 21, 2025).

<sup>4</sup> As noted by a leader in the American Correctional Association, prisons and jails should “be transparent and open to public scrutiny . . . Secrecy in corrections can be deadly.” Standards and Accreditation for the Safe Operation of Correctional Facilities: Hearing Before Commission on Safety & Abuse in America’s Prisons, Statement of Jeffrey Washington, Deputy Exec. Dir., American Correctional Association (Nov. 2, 2005).



tions into the PRA, especially if it would have far-reaching consequences for the public's access to records concerning basic government operations. *See, e.g., Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council*, 181 N.C. App. 1, 14 (2007) (declining to adopt exception to PRA that would allow government actors to "shield [records] from public scrutiny").

Notably, the N.C. Department of Adult Correction and other county jails make many, if not all, of their generally applicable policies available online. These policies include disciplinary procedures, solitary confinement (also called "restrictive housing"), dietary information, and virtually everything else that EmancipateNC sought in its public records request.<sup>5</sup>

Perhaps there are portions of the Jail's policies that contain information exempted by the PRA. To make that determination, however, a court must first inspect those provisions *in camera*. *See Wallace Farm, Inc. v. City of Charlotte*, 203 N.C. App. 144, 145 (2010). And your opposing counsel should have the opportunity to review the unredacted policies pursuant to a protective order and present their arguments to the court.

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We recognize the difficult task of maintaining safety in jail facilities. Our concern here is not with access to operational details that may pose legitimate safety risks, but access to generally applicable policies that govern basic living conditions for people in your custody. State law does not permit hiding those policies from the public. For these reasons, we respectfully urge you to reconsider your position.

Please feel free to contact me if you would like to discuss the matter further.

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<sup>5</sup> *See* NC Department of Adult Correction, <https://public.powersdms.com/NCDAC/tree>.

Sincerely,



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