Policy 105.6

1 Introduction

1.1 Appalachian State University, as a constituent institution of the University of North Carolina and instrumentality of the State of North Carolina, is open and responsive to information requests from the public and the news media. The university is committed to a policy of openness, honesty and cooperation with members of the public and the news media. This policy will be implemented in accordance with the North Carolina Public Records Act, N.C.G.S. Chapter 132, and other applicable state and federal laws.

1.2 Compilation of records that have been requested requires the expenditure of resources. This policy is established in an effort to fairly recover the non-appropriated cost of responding to public records requests.

2 Scope

2.1 This policy applies to all requests for public records and all university employees who, in the course of their employment duties, have access to public records.

3 Definitions

3.1 Custodian

means the person in charge of an office having public records.

3.2 Public record, public records, and public information

means 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 the university.

4 Policy and Procedure Statements

4.1 Public Records Requests and Release of Information to the News Media

4.1.1 University Communications is the principal liaison with the news media. The news media should direct its requests for information to University Communications (828.262.6156).

4.1.2 Any request received directly from the news media by another unit on campus should be forwarded immediately to University Communications for preparation of a response. University Communications is delegated the authority to determine whether the request for records is from a representative of the news media or from an individual or organization other than a news media organization.

4.1.3 To assure coordination of media relations, only two offices at the university are authorized to issue news releases or to hold news conferences on behalf of the university. Those offices are University Communications for university-wide activities, and Sports Information for athletic activities. All news releases and news conferences should be coordinated through one of those offices. Faculty and staff are encouraged to utilize the resources of these offices, which work together to gain broad recognition of the university's areas of excellence.

4.2 Public Records Requests From Individuals

4.2.1 In order to facilitate an accurate and timely response by the university, an individual who seeks public records of the university for the individual, or on behalf of an organization other than a news media organization, shall submit the request in writing or through the university’s web portal established for that purpose. An individual who is not able to submit the request in writing or through the web portal may contact the record custodian or the Office of General Counsel for assistance. If the requestor cannot or will not reduce an oral request to writing, then the custodian or other recipient of the request will reduce the request to writing and seek the requestor's confirmation that the writing accurately reflects the request before proceeding further.
4.2.2 The public records request shall be submitted to (or will be forwarded electronically to) the custodian of the records in the university unit (e.g., division, department or office) from which the particular records are being sought, if known. For example, student record requests should be directed to the University Registrar. Requests for public information from personnel records should be directed to the Office of Human Resources. Law enforcement records requests should be directed to the Police Department. Requests for information with regard to intercollegiate athletics should be directed to the Athletics Department. If the custodian is not known to the requestor, the requestor may submit a request to the Office of General Counsel, PO Box 32126, Boone, NC 28608. The General Counsel or that official’s designee will determine the unit that holds the requested records and assist the custodian in responding to the requestor.

4.2.3 An employee who receives a request directly from an individual should forward a copy of this policy or a link to its location in the Policy Manual to the requestor and forward the request to the Office of General Counsel.

4.2.4 Certain information is confidential under state or federal law and not subject to disclosure. The custodian must separate out or redact any confidential information from otherwise accessible public records prior to inspection and distribution of requested records. Any questions regarding the confidentiality of records or portions of records must be directed to the Office of General Counsel prior to disclosure of such records. The most common exceptions to disclosure include, but are not limited to, the following types of information:

1. Personnel records – Most information in an individual's personnel record is confidential under the State Human Resources Act, N.C.G.S. Chapter 126, but certain information about each employee is open to public inspection under N.C.G.S. 126-23. The Office of Human Resources maintains separate records containing public information and provides that information upon request.

2. Students' academic, medical and counseling records – State law mandates that medical and counseling records are confidential. The Family Educational Rights and Privacy Act (FERPA), as amended, restricts disclosure of a student's education records, but allows the release of directory information unless the student files a request that it not be released (“privacy block”). Please see the Policy Statement on the Family Educational Rights and Privacy Act of 1974, as Amended for the definition of directory information. Before releasing directory information about any student, the employee receiving the request must consult with the University Registrar to determine whether a student has placed a privacy block on the student's directory information. FERPA provides other exceptions for disclosure, including disclosure with the written consent of the student.

3. Library user records – State law N.C.G.S. 125-19 prohibits a library from disclosing “any library record that identifies a person as having requested or obtained specific materials, information, or services, or as otherwise having used the library, except … (1) when necessary for the reasonable operation of the library; (2) upon written consent of the user; or (3) pursuant to subpoena, court order or where otherwise required by law.”

4. Patent applications and other documents that contain trade secrets as defined in state law

5. Certain contract or bid records prior to a final contract

6. Attorney-client communications and trial preparation materials

7. Certain criminal investigation and law enforcement records

8. Crisis/emergency infrastructure and information

9. Minutes of closed sessions of public bodies

The university has established an Emergency Management Program to guide administrators, faculty and staff in the event of a crisis or emergency affecting the campus. Individuals who become aware of a potential crisis situation are urged to refer the matter to the Emergency Management Program and to notify University Communications or the appropriate department head, and to make themselves available to assist in gathering facts. University Communications, coordinating with the appropriate administrative officials identified in the Emergency Management Program, will release factual information through news releases, briefings or an official spokesperson.

4.2.5 The custodian of records for each university unit must permit inspection of the requested records as promptly as reasonably possible after receiving the public records request. The custodian may also make copies of the requested documents, subject to the provisions on copying fees and special charges below. Access to public records may be limited to reasonable times during regular business hours and under reasonable supervision.

4.2.6 Nothing in this policy shall be construed to require the university to respond to a public records request by creating or compiling a record that does not exist. If the university, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester.

4.3 Copying Fees
4.3.1 If the requestor asks for copies of documents, the university may charge the actual costs of the copies. Generally, the university will not charge for the costs of paper copies unless the number of pages exceeds twenty-five (25) pages. Thereafter, the charge will be ten (10) cents per page for each page copied in black and white, and capable of reproduction in-house. If a request requires special handling (e.g., color copies, out-sourcing of the copying function, etc.), the actual cost of such handling shall be calculated and charged on a case-by-case basis.

4.3.2 If the requestor asks for documents in some other medium (e.g., disk or flash drive), the university may charge the actual cost of the media provided.

4.3.3 If the requestor requests transmission of the documents via email or other electronic means, the university will charge only for the special service charge described in 4.4, if applicable.

4.3.4 The person responding on behalf of the university shall provide an estimate of the copying cost to the requestor prior to making the copies, and allow the requestor the option of either agreeing to pay the charge or revising the request. Multiple requests within a short period of time (up to 90 days) from the same individual or organization will be considered a single request for purposes of determining whether to charge under this section.

4.4 Special Service Charge for Extraordinary Public Records Requests

4.4.1 If the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance, or if producing the records in the medium requested results in an excessive use of information technology resources, then the university may charge, in addition to the copying fee, a special service charge. The special service charge will be reasonable and no greater than the actual costs incurred. The university considers more than four (4) hours of labor to constitute extensive use of personnel.

4.4.2 If preparation of the response to the request exceeds four (4) hours of labor, the university will charge a presumed rate of $18.00 per hour for the additional time. The custodian or General Counsel will provide an estimate of the costs for an extraordinary request prior to making the records available for inspection or providing copies and allow the requestor the option of either agreeing to pay the charge or revising the request to narrow its nature or scope. Upon receipt of the agreed service charge, the custodian shall promptly begin retrieval of requested records to the extent permitted by law. If the agreed upon estimate proves to be higher than the actual labor, delivery, materials and copying costs, the university shall thereafter reduce the charge to the requestor to the actual costs and promptly refund the difference to the requestor. If, during the document retrieval process, it becomes evident to the custodian that the original estimate was too low, the records custodian will suspend the process and ask the requestor whether the process should continue at a new and higher agreed estimated total cost or whether the process should cease, in which case the requestor will pay for and receive only the documents and/or information that have been retrieved to that point. Multiple requests within a short period of time (up to 90 days) from the same individual or organization will be considered a single request for purposes of determining whether to charge under this section.

4.4.3 The actual cost of redacting legally privileged and/or confidential information may not be included in calculating this special service charge. However, the time spent reviewing for and redacting privileged and/or confidential information should be estimated and recorded as described in section 4.5.

4.5 Accounting For The Time Spent Handling Public Records Requests

4.5.1 All employees assigned to make public records available for inspection and copying, or to provide copies of public records, shall maintain a reasonable approximation of the time spent on that task to the nearest half hour. The approximation of time spent shall be maintained regardless of whether or not the employee’s time is used to calculate a copying fee or service charge as described hereinabove.

4.6 Enforcement

4.6.1 Any violation of this policy by employees may be considered ”misconduct” under EHRA policies (Faculty and EHRA Non-faculty) and "unacceptable personal conduct" under SHRA policies, including any appeal rights stated therein. Violations of law may also be referred for criminal or civil prosecution.

5 Additional References

Appalachian Policy 105.3 Policy Statement on the Family Educational Rights and Privacy Act of 1974, as Amended
Emergency Management Program
6 Authority

The UNC Policy Manual, The Code, Section 502
N.C.G.S. Chapter 132

7 Contact Information

Athletics Department Sports Information (828.262.2845)
Office of General Counsel (828.262.2751)
Office of Human Resources (828.262.3186)
University Communications (828.262.6156)
University Police Department (828.262.2150)
University Registrar (828.262.2050)

8 Original Effective Date

December 5, 2013

9 Revision Dates

June 21, 2017