

Alamance County

OFFICE OF THE COUNTY ATTORNEY
124 West Elm Street
Graham, North Carolina 27253
Tel. (336) 228-1312
FAX (336) 570-6788

Clyde B. Albright
County Attorney

Robin R. Smith
Tax Foreclosure Paralegal
Assistant County Clerk

Benjamin C. Pierce
Deputy County Attorney

December 15, 2014

Angela Hight
Policy Analyst
John W. Pope Civitas Institute
100 S. Harrington St, Raleigh, NC 27603

Re: Public Records Request

Dear Ms. Hight,

Your email dated December 12, 2014 requesting public records from the Alamance County Board of Elections has been referred to me for response.

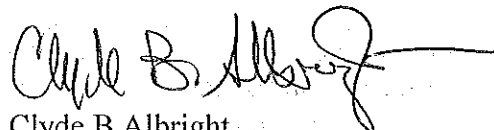
Due to the large volume of records, I invite you to come to Alamance County on an agreed date and time to have access to and inspect any records we may have that are public records not falling under any exception such as records that constitute a record of criminal investigation, a personnel record, or a record of training, plans or tactics used to respond to terrorist activity. We will allow you to have access to such records in accordance with N.C. Gen. Stat. §132 – 6(a), to the extent that: (1) we actually have any such public records in writing; (2) any such public records are already compiled; and (3) any such public records are not otherwise protected from disclosure pursuant to applicable state or federal law.

The law does not require the records custodian to create lists or compile records.

After you have inspected any records that may exist at the Board of Elections office, and upon your request, we will be glad to provide copies of any public records that you are permitted by law to copy at the cost of 10 cents per page subject to the provisions set forth herein above.

Please contact me if you wish to schedule a date to review those records responsive to your request.

Sincerely,



Clyde B Albright
Alamance County Attorney

Cc: Elections Director



CIVITAS INSTITUTE

100 S. Harrington St.
Raleigh, NC 27603

web: nccivitas.org
phone: 919.834.2099
fax: 919.834.2350

Feb. 23, 2015

Clyde B. Albright
County Attorney
Office of the County Attorney
Alamance County
124 West Elm Street
Graham, North Carolina 27253

Re: Public Records Request

Dear Mr. Albright,

On December 12, 2014, Angela Hight of the Civitas Institute submitted an official public records request to the Director of the Alamance County Board of Elections ("the Board") seeking a number of written and electronic documents that the Board received or created during the November 2014 election. This request is typical of those that the Civitas Institute sends to all 100 North Carolina counties following each election. I write regarding your letter dated December 15, 2014, responding to Ms. Hight's request.

In your letter, you invite Ms. Hight to visit Alamance County to inspect records, and then state that "The law does not require the records custodian to create lists or compile records."

You are correct that the records custodian is not responsible for the compilation of records. Rather, it is the duty of the public records custodian to "provide access to public records." See *Cline v. Hoke*, (N.C. App. 2014, NO. COA14-28 at p. 8 (discussing the distinction between the custodian's duty to provide access to records and the state employee's duty to preserve records).¹ But this fact does not absolve state employees of their duty to preserve records, nor does it reduce the right of inspection to a required physical visit to a state agency's office by a requester of public records.

N.C.G.S. Chapter 132, North Carolina's public records law, applies to every agency of state or local government in North Carolina, including Alamance County, its Board of Elections, and the Office of the County Attorney. N.C.G.S. § 132-8.1 then states as follows:

"It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government...to establish and maintain an active, continuing program for the economical

¹ <http://appellate.nccourts.org/opinions/?c=2&pdf=32048>

and efficient management of the records of said agency, county, municipality, or other subdivision of government.”

Note that this statute is not referring to the records custodian who provides access, but rather to the head of the agency, a state employee, whose duty it is to manage public records.

The right of access to records contains four key components. First, it opens records relating to public business to any member of the public. G.S. 132-1. Second, it prohibits destruction of public records except under certain circumstances. G.S. 132-3(a) Third, it requires “custodians” to provide access as follows – “Each 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.**” G.S. 132-6(a) Fourth, the law provides a civil suit as a remedy for denial of a public records request.² G.S. 132-9.

N.C.G.S. Chapter 132, North Carolina’s public records law, applies to every agency of state or local government in North Carolina, including Alamance County, its Board of Elections, and the Office of the County Attorney. N.C.G.S. § 132-8.1 then states as follows:

“It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government...to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government.”

Note that this statute is not referring to the records custodian who provides access, but rather to the head of the agency, a state employee, whose duty it is to manage public records.

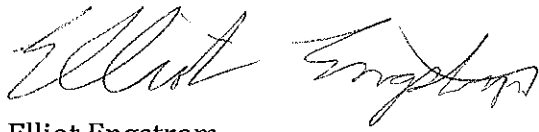
Therefore, the Alamance County Board of Elections has both the responsibility to maintain records of election complaints and the legal duty to provide access to those records by providing copies “as promptly as possible.”

Finally, I would note that we historically have no trouble receiving these types of records electronically from counties throughout North Carolina, even including similar records from Alamance County as recently as the May 2014 election.

I look forward to resolving this issue as efficiently and amicably as possible.

Sincerely,

² Synopsis adapted from <http://canons.sog.unc.edu/?p=7945>

Handwritten signature of Elliot Engstrom in cursive script.

Elliot Engstrom
Attorney
Civitas Institute

Alamance County

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February 27, 2015

Elliot Engstrom, Esq.
100 South Harrington Street
Raleigh, NC 27603

Re: Your Letter dated February 23, 2015

Dear Mr. Engstrom:

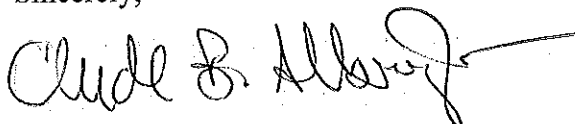
Your letter regarding public records has been received and in response let me begin by saying that we have offered to make the records available for inspection and examination in full compliance with the law a portion of which is set forth as follows:

§ 132-6. Inspection and examination of records.

- (a) Every 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.

We have not denied your public records request. We have offered to make the records available at a mutually convenient time and will furnish any copies upon payment of copying fees. We have found this to be the most efficient and economical way to manage records requests and avoid the expense of making copies of records that the requestor ultimately does not want.

Sincerely,



Clyde B. Albright
Alamance County Attorney



CIVITAS
INSTITUTE

100 S. Harrington St.
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phone: 919.834.2099
fax: 919.834.2350

March 3, 2015

Clyde B. Albright
County Attorney
Office of the County Attorney
Alamance County
124 West Elm Street
Graham, North Carolina 27253

Re: Your letter dated February 27, 2015

Dear Mr. Albright,

Thank you for your response to my letter dated February 23 of this year. In your Feb. 27th letter, you state that you have not denied our public records request, but have instead "offered to make the records available at a mutually convenient time and will furnish any copies upon payment of copying fees." Unfortunately, I must insist that this course of conduct does not fulfill your duties under North Carolina public records law, and will be taken as a denial if not remedied.

N.C. Gen. Stat. § 132-6 does indeed provide that records can be inspected and examined at reasonable times and under reasonable supervision. But this is separate and distinct from the duty of a state agency to "as promptly as possible...furnish copies thereof upon payment of any fees as may be prescribed by law." The statute does not require a requesting party to physically review records before requesting copies.

Further, N.C. Gen. Stat. § 132-6.2 provides that "No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium."

Finally, N.C. Gen. Stat. § 132-9 states 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 to the [court] for an order compelling disclosure or copying."

For your convenience, I have attached a copy of Ms. Hight's original public records request to this letter. Should there be a need for additional correspondence prior to the fulfillment of our request, please feel free to contact me by mail or by email at Elliot.engstrom@nccivitas.org.

Respectfully,

Elliot Engstrom

Elliot Engstrom
Attorney
Civitas Institute

Enclosures

From: Angela Hight [<mailto:Angela.Hight@nccivitas.org>]
Sent: Thursday, February 19, 2015 1:31 PM
To: Kathy Holland
Subject: 2nd Attempt: Public Records Request November 2014

This is a 2nd attempt to contact you about Public Records request. Please let me know if you have any questions.
Please find original email below.

Dear Director,

Please consider this email a request for public records pursuant to §132 of the North Carolina General Statutes.

Please provide the any of the following written or electronic documents (including voice mails) that your office received or created during the November 2014 Election (this means the entire election period – during absentee by-mail voting, one-stop voting, Election Day, and Second Primary voting periods):

- General Complaints by voters, candidates, political groups and or non-profit organizations or any other individual or group
- County Board of Elections Non Voting Systems Incident Reports
- Elections Systems Security Incident Forms
- Any other Form Provided by the State Board of Elections for Reporting Purposes
- Any communication between the county board of elections and the State Board of Elections or individuals or groups concerning problems reported to the county or state board of elections
- Election Protests
- Official Challenges

To expedite the information retrieval process, I request that you send any and all of the information requested above in electronic format to my email at angela.hight@nccivitas.org. Please include all documents, written and electronic (include voice mails and other audios). Please let me know and provide me with an estimate if there will be any costs before you proceed with the request. You may reach me at 919-834-2099.

I thank you in advance for your assistance. Please let me know if you have any questions.

Sincerely,

Angela Hight
Policy Analyst
John W. Pope Civitas Institute
100 S. Harrington St, Raleigh, NC 27603
(919)834-2099
(919)834-2350 (fax)

Alamance County

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Benjamin C. Pierce
Deputy County Attorney

March 9, 2015

Elliot Engstrom, Esq.
100 South Harrington Street
Raleigh, NC 27603

Re: Your Letter dated March 3, 2015

Dear Mr. Engstrom:

Your March 3, 2015 letter regarding public records has been received and in response let me again say that we have not denied your request. We have offered to make the records available for inspection and examination in full compliance with the law as set forth in our initial December 15, 2014 response to Ms. Hight's December 12, 2014 letter requesting records.

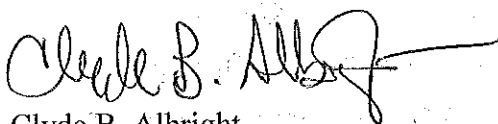
We have found that making records available for review before copying is the most efficient use of taxpayer money because we avoid making copies of documents that requestors often do not want. I believe that this is specifically contemplated by the statute and our policy complies with the law. We permit inspection and examination. We offer to make copies at 10 cents per page.

§ 132-6. Inspection and examination of records.

- (a) Every 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. (emphasis added)

We have not denied your public records request. We have offered to make the records available at a mutually convenient time and will furnish any copies upon payment of copying fees.

Sincerely,



Clyde B. Albright
Alamance County Attorney