



Public Records, Open Records, and Restricted Records

Identifying Public, Open, and Restricted Records

- Public records:** created by government in the process of doing business. Required to be properly managed by law and statute.
- Open records:** public records that are freely available to the public or that are available to the public by request as specified by a state's requirements.
- Restricted public records:** public records that are not available to the public but are still required to be kept by law and statute.

Public Records

Public records are records created by government officials in the course of performing government business. Government employees, whether appointed, hired, or elected, create public records that document government actions, policies, and activities. Each state has laws, statues, or regulations that define public records as they are created and determine the length of time they are retained or preserved. Public records can be created at the city, county, state, or federal government level and may be documents, maps, recordings, films, photographs, court cases, or other materials regardless of format. Increasingly, public records are created and maintained in electronic formats.

Open Records

Open records are required to be made available to the public upon request. The 56 states and territories have their own laws and statutes designating what records are to be made available to the public and for how long. Some open records are made freely available online to all by state government transparency portals or by archives and records management agencies while others must be requested according to the requirements of the state or territory.

Exemptions to open access to records typically come in two categories:

Restrictions on access: Typically, this means that certain pieces of information collected as part of more substantial business processes must be kept confidential, such as social security numbers or other personally identifying information that is used purely for identification purposes. In these cases, information like this can be protected through redaction of records to remove confidential information but not damage the remainder of the record or its meaning.

Closure: Some records contain confidential information about the security of government facilities and networks, or include confidential business or medical information, or have otherwise hard-to-disentangle information that is protected from disclosure by law. In these cases, it would be impossible to redact the confidential information, so the entire record must be kept confidential. Thus, these records must be fully restricted to protect the information within.

Restricted Public Records

Not all public records are open records. Nearly all government records are public records, but public doesn't always mean "freely available for the public to inspect." While the public has a right to access most public information, public records might be restricted for a variety of legitimate reasons. Public access to records might be restricted for privacy or confidentiality reasons, either for a specific period of time or indefinitely. Depending on statutory and other legal requirements, public records might be offered under restricted access only to people connected to the record to maintain privacy. Some records may only be partially restricted; in that case the records may be made available, but the restricted parts might be redacted from the record.

States have a variety of laws and statutes they are compelled to follow about the treatment of confidential information. In many cases records that are restricted or confidential cannot



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be accessed by the public. Rather, access may be limited to a person of interest such as the person mentioned in the record or a family member or when required by a court order. Restricted or confidential information may include court cases, adoption and personnel records, or other records with personal or sensitive information, such as personally identifiable information (PII).

What Information Is Confidential?

Federal, state, and, sometimes, local laws typically define, in the context of public records, what information collected or created by government is protected from disclosure. While different in every jurisdiction, typically the law is explicit. As described above, security information, personally identifying information, personal health information, and other categories are commonly exempted from public inspection. Restriction of public access to information is not to be used as a tool to prevent political embarrassment or public audit of government operations; the purpose of most sunshine and Freedom of Information (FOIA) laws is to ensure the public has the ability to inspect the actions and decisions of government officials.

Requesting Access to Public Records

Many are familiar with the Freedom of Information Act (FOIA) which grants the right to request and obtain records from federal agencies. Federal records may be exempt from public disclosure under circumstances such as unnecessary invasion of an individual's privacy or when relating to classified national security matters. State governments have a variety of freedom of information legislation and statutes. The requirements to release information, how exempt information is identified and classified, and how requests are processed varies from state to state.

Additional Resources

Find additional resources at the Council of State Archivists (CoSA) website, www.statearchivists.org.

About NASS

Founded in 1904, the National Association of Secretaries of State (NASS) is the nation's oldest, nonpartisan professional organization for public officials. Membership is open to the 50 states, the District of Columbia and all U.S. Territories. NASS serves as a medium for the exchange of information between states and fosters cooperation in the development of public policy. The association has key initiatives in the areas of elections and voting, state business services, and state heritage/archives. Learn more about NASS at www.nass.org.

About CoSA

Formed in 2002, the Council of State Archivists (CoSA) is a national nonprofit using collaborative research, education, and advocacy to provide leadership that strengthens and supports state and territorial archives in their work to preserve and provide access to government records. Its members comprise the state archivists in the 50 state, 5 territorial and District of Columbia archives. These individuals oversee agencies that hold a legal mandate to document government and protect the rights and history of the American people across our country.

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