



**To:** James Coleman, Provost & Executive Vice Chancellor  
Kimberly Osborne, Senior Director, Integrated Marketing Communications  
Todd Sutton, Associate Vice Chancellor for Learning Technology and Customer Success

**cc:** Jerry D. Blakemore, General Counsel  
Donna Heath, Vice Chancellor Information Technology  
Tina McEntire, Vice Chancellor Enrollment Management  
Waiyi Tse, Chief of Staff  
Christopher M. Partridge, University Registrar  
Toni Douglas, Associate General Counsel

**From:** Kristen S. Bonatz, Deputy General Counsel

**Date:** August 19, 2020

**Re:** The Application of Public Records Law and the Family Educational Rights and Privacy Act to video platform recordings.

**I. Purpose**

I was asked to answer questions regarding the recording of zoom meetings and the application of the open meetings and public records act as well as the application of FERPA to these meetings.

**II. Executive Summary**

In North Carolina, because “public bodies” exist solely to conduct the people’s business, the meetings of public bodies must be open. However, the definition of a public body is very specific, and does not include a meeting that is solely among the professional staff of the University. For instance, the committees of the faculty senate, and the faculty senate itself, are not considered public bodies, and therefore, are not obligated to comply with the provisions of the open meetings act. Accordingly, there is no requirement that meetings of UNC Greensboro staff be live-streamed or that notice of the meeting being provided 48 hours in advance of the meeting, as would be the case if it were to be considered a public body, and needed to comply with the open meetings.

The same is not true, however, with respect to compliance with the public records act. The North Carolina Public Records Act makes

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 . . . in connection with the transaction of public business” the property of the people of the state of North Carolina.

Accordingly, UNC Greensboro must make those records available for free or at minimal cost. There are limited, technical, exceptions to what is considered a public record,

including student information, certain personnel file information, certain research data, and certain trade secrets. A fact-specific analysis regarding a particular record is required to determine if one of these exceptions applies. Generally, most records are considered public.

Finally, the Family Educational Rights and Privacy Act (FERPA) protects the privacy of personally identifiable student information that is maintained by the University. FERPA also requires, that absent certain narrow exceptions, the University have a student's signed, dated, consent for the disclosure of information from an education record. Sample consents that can be used are attached to this memorandum as Attachment 1 and Attachment 2.

### III. Frequently Asked Questions

#### A. **Do I need student consent before I can record a course?**

No consent would be required when the video is being maintained by UNC Greensboro, only for members of the course, who will only have access as part of their course.

*Practical Tip:* Notify students, as noted in the Brand Guide (<https://uc.uncg.edu/imaging-photography/>), that you are recording the session for either/both current and future use, so those who do not wish to appear will not be captured.

#### B. **If I record my live lecture, with students in attendance, and post it in canvas for my students to review or other members of the course to watch, is that a public record?**

**No.** Because the class session is closed to only those members of the course, this would not be considered a public record. In addition, the students in the course have a privacy right in the recording, to the extent the video is identifiable to them, and UNC Greensboro could not meaningfully protect that privacy if we were to disclose the record.

#### C. **If I record my live lecture for re-broadcast in future semesters or to other cohorts is that a public record?**

**No.** For the reasons stated above. In this fact scenario, students' confidential education records will be disclosed to others, who do not have a legitimate educational interest in the records. Accordingly, student consent is required, since the record will be distributed outside of the initial cohort.

#### D. **If a student is in a zoom session (let's say for Virtual SOAR or the new classroom streaming video software, Panopto) and it's recorded - do they have to sign a video release before that could be shared?**

**No.** Students do not have to sign a video release if the video will be used by the specific class or members of the same cohort at later date. If it will be available to a separate cohort, or the general public, however, *and the video is such that students are identifiable*, then a consent for the release is necessary.

#### E. **Why does it matter if the students are *identifiable* in the recording?**

FERPA defines an education record as all personally identifiable non-directory information that is maintained by UNC Greensboro. A video image identifies the person(s) who have been recorded. The very nature of classroom recordings requires that the students be identifiable. It is possible to have

videos that are not considered education records. For example, the videos UNC Greensboro streams so that community members can see the length of the lines in the EUC for Chick-fil-A and Starbucks are not sufficiently personally identifiable to be considered part of any education record. The camera feed does not easily identify who is in the line, just the line's length.

**F. Does the University provide a standard video release?**

**Yes.** The photography release in the Brand Guide is sufficient (also attached to this memorandum). In the alternative, faculty can use the attached simpler release when the videos are being used solely for academic purposes.

**G. If I record a faculty meeting, is that considered a public record?**

**Yes.** While faculty meetings would not be classified as meetings of a public body under the open meetings act, the records of those meetings would be created in the course of the public business. Accordingly, a video recording, or, minutes of a meeting, would be considered public record and UNC Greensboro would need to disclose them upon request.

There may be some narrow exceptions for some meetings or portions thereof, where personnel or student information is discussed, but most meetings of the University's employees that are recorded would need to be disclosed to comply with the North Carolina Public Records Act.

**IV. Conclusion**

Records created in the course of University business are considered public records, unless an exception applies. In the case of records containing non-directory student information, FERPA requires they be maintained confidentially, and if information is going to be disclosed a student needs to provide a signed, dated consent. Two versions of this consent are attached for your use and reference. Additional helpful information can also be found at the Imaging and Photography section of University Communications' website: [uc.uncg.edu/imaging-photography](http://uc.uncg.edu/imaging-photography).



## Student Consent to Disclose Class Video Records

(To be completed by the student)

I am a student at UNC Greensboro enrolled in \_\_\_\_\_  
course.

I understand that the course will be video recorded via live capture for the purpose of re-use at a later date and that my course participation may be recorded. I understand that if I appear in this video recording, it is part of my education record, and that my consent is required for such re-use.

I intend for this consent to be effective until \_\_\_\_\_ (date). I understand I may revoke this consent in writing at any time. If I choose to do so, I will advise my faculty of my decision, and all efforts will be made not to record my participation.

Name: \_\_\_\_\_ Student ID #: \_\_\_\_\_

Student Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**UNC  
GREENSBORO**

*University Communications*

1100 W. Market Street  
Greensboro, NC 27412

## PHOTO RELEASE

By signing below, I hereby irrevocably grant and convey to The University of North Carolina at Greensboro (UNCG) all right, title and interest in and to record my name, image, voice, statements and/or writings including any and all photographic images and video or audio recordings made by UNCG in connection with \_\_\_\_\_. I further irrevocably grant to UNCG, its advertisers, customers, agents, successors and assigns, unrestricted rights to use the above mentioned sound, still, or moving images in any medium, including posting on the Internet and World Wide Web, for educational, promotional, advertising, or other purposes without limitation consistent with the mission of the University. I agree that all intellectual property rights to the sound, still, or moving images belong to UNCG. I voluntarily waive the right to inspect or approve such images and waive my right to any royalties, proceeds or other benefits derived from such photographs or recordings.

If I am an enrolled student, I understand that this release constitutes a waiver of my privacy rights under The Federal Educational Rights and Privacy Act. This release is effective on the date written below and will remain in effect indefinitely. If individual is less than eighteen (18) years of age, his/her parent or legal guardian must also sign below.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Parent/Legal Guardian Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name/Relationship

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### For Office Use Only

\_\_\_\_\_  
Department

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Campus Address

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Project Name

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Project Manager

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Photographer

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Production/Session Notes

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