The North Carolina Post-conviction Review Commission

Hon. Jason C. Disbrow
Commission Chair

Laura N. Pierro
Executive Director

TITLE: ***NCPRC Records Policy***

PROPOSED: **Laura N. Pierro, Executive Director**

APPLICATION: **All Staff**

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I. PURPOSE

Like other state agencies, the North Carolina Post-conviction Review Commission creates, collects and maintains records for multiple agency purposes. Primarily, the Commission collects, creates, and maintains records in the course of the Commission's case investigations. This policy will identify the types of records the Commission may have and will outline the law, rules, and policies related to those records. This policy will also provide guidance as to how the Commission responds to requests for records or information.

II. LAWS AND RULES RELATED TO THE COMMISSION'S RECORDS

Both the Commission's governing statute and the Commission's Rules and Procedures as outlined by the Commission body provide the laws and regulations related to Commission records. Below is intended to be a summary of those statutes and/or rules that specifically mention records but to read the complete statute and the complete rules, please refer to the https://ncpcrc.gov/resources.

A. Commission's Governing Statute: N.C.G.S. § 15A-1460, et. al.

1. The Commission and the Commission's Director are charged with maintaining case records. G.S. 15A-1465, -1466.
2. Victim notification is required for formal inquiry and at least 10 days prior to the initial prehearing conference required in NCGS 15A-1468(a2). There are no requirements preventing the Commission from notifying the victim at an earlier date in the proceedings. The victim is also entitled to notification of the decision of the Commission. G.S. 15A-1467(c) and -1468(b), (c).
3. Co-defendant notification is required unless the Chair finds good cause when formal inquiry is granted. G.S. 15A-1467(cl).
4. A confidential case status update to the parties is required in formal inquiry. G.S. 15A-1467(c2).
5. Commission hearings are public hearings. G.S. 15A-1468(a).

6. A prehearing conference is required at least 30 days prior to any proceeding before the full Commission. G.S. 15A-1468(a2).
7. Evidence of criminal acts, professional misconduct, or other wrongdoing shall be referred to the appropriate authority. G.S. 15A-1468(d).
8. Evidence favorable to the convicted person shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel. G.S. 15A-1468(d). Favorable evidence shall also be disclosed to the District Attorney of the district where the person was convicted of the felony upon which the claim of factual innocence is based, or their designee. G.S. 15A-1468(d).
9. All proceedings of the Commission shall be recorded and transcribed. G.S. 15A-1468(e).
10. If a case moves forward to a three-judge panel, the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission shall become public when filed with the Superior Court as required. G.S. 15A-1468(e).
11. If a case does not move forward to a three-judge panel, the case shall remain confidential. G.S. 15A-1468(e).
12. All files and records not filed with the Clerk of the Superior Court or presented at the Commission hearings are confidential and exempt from the public record. G.S. 15A-1468(g).
13. The Commission transfers its entire file to the district attorney and defense counsel if the case is referred to a three-judge panel. The Commission will request a protective order to limit the use of the file to the three-judge panel and ensure that the portion of the file that is not made public record remains confidential as required by law. G.S. 15A-1469(bl).

B. Commission's Rules and Procedures

1. The Commission staff shall keep detailed records of the investigations. Regular reports of investigation will be made to the Executive Director. Article 4(G).
2. The Commission's Executive Director shall use due diligence to notify any victims of the crime about formal inquiry. If a victim is no longer living, efforts shall be made to notify the victim's next of kin. Next of kin is any living relative of the Victim. Victim's family will designate one member as the contact person for this purpose. Article 6(C).
3. Co-Defendant shall be notified of formal inquiry unless the chair determines good cause has been shown to forego that notification. Article 6(D).
4. A Confidential Case Status Update is required to the parties once a case is in formal inquiry as outlined by the statute. Article 6(E).
5. Commission hearings are public hearings and are subject to the Commission's rules of operation which allow the chair to remove individuals from the hearing and close portions of the hearing. If the Victim chooses to give a statement, that

shall be closed to the public. Deliberations are closed to the public and confidential. Article 7(E)(l) and Article 7(I).

6. All Commission proceedings and administrative meetings that are not Commission case hearings are closed. Article 7(E)(2).
7. All records of Commission proceedings are confidential and exempt from public records law except as outlined specifically by the Commission's governing statute. Article 7(G)(1).
8. The Record of a Commission hearing includes but is not limited to the Commission brief, any exhibits handed out during the Commission hearing and the transcript of the Commission hearing. The record will not include any documents the Chair has determined shall remain confidential and/or be sealed from the public record. The record is public upon filing. Any documents provided to the parties or judges prior to becoming public record are not public record until they are filed or introduced in court. Article 7(I).
9. Disclosure of File. If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Commission shall make a copy of the entire file available to the district attorney and the defense counsel.
    a. Confidentiality. All files and records not filed with the clerk of superior court or presented at the Commission hearings are confidential and exempt from the public record. Any violation of the confidentiality may result in a proceeding for contempt of court or referral to the State Bar as appropriate. All contempt proceedings related to this section shall be heard by the Commission Chair in his/her judicial capacity.
    b. Protective Orders. Due to the sensitive nature of files obtained during the course of the Commission's inquiries, and the existence of protective orders related to files obtained during the course of the Commission's inquiries, the Commission's Executive Director may request that the District Attorney and claimant or claimant's counsel consent to a protective order related to the Commission's file or any portion thereof. If the District Attorney, claimant or claimant's counsel will not consent to the entry of a protective order, the Commission's Executive Director, or counsel for the Commission, shall request to be heard before the Senior judge of the three- judge panel prior to turning over the Commission's files to the district attorney and defense counsel. The District Attorney and defense counsel shall be given an opportunity to be heard.
    Article 7(O).

C. Other Relevant Regulations

1. Commission records are exempt from the public record. G.S. 132-1.4
2. The Commission is exempt from public meetings. G.S. 143-318.18.
3. The State Agency Schedules regarding records can be found here: 2025 Functional Schedule for North Carolina State Government Agencies.
    a. The Commission's records include records which are governed by the following retention schedules:
        i. Legal Records - Case records are found here and kept for 50 years.

ii. Human Resource and Employment Records
iii. Governance Records
iv. Agency Management Records
v. Education and Training Records
vi. Public Relations Records

b. Each of the six types of records has a schedule to govern that type of record. Please refer to the appropriate schedule at the above link.

c. The retention schedule does not mean that a record is subject to public request. Records are governed by multiple different laws and statutes. The fact that the Commission holds a record DOES NOT MEAN that record is subject to disclosure.

4. The Commission also receives at least one federal grant (and may receive more) which has specific requirements related to record retention and/or confidentiality. In addition to other types of information, the confidentiality specifically impacts collection of personally identifying information and victim information.

III. TYPES OF RECORDS THE COMMISSION MAY HOLD

This section is not intended to be an exhaustive list of all the possible records that the Commission may collect, create, or maintain. In addition, this summary of possible records is not intended to suggest that the Commission always has a particular type of record. This section is intended to provide understanding as to the types of records the Commission maintains both in its files and in other contexts. The Commission, as noted above, is required to maintain its records in accordance with the North Carolina State Records Schedule and law as outlined in the prior section.

A. Commission Case File

1. Commission Work Product
    a. Commission Case Journal
    b. Commission Memoranda
    c. Commission Reports
    d. Notes concerning conversations with case officials, witnesses, other lawyers
    e. Notes or memoranda summarizing or outlining files collected from other sources
2. Commission Correspondence
3. Laboratory Reports and Records of Forensic Analysis both by the North Carolina State Crime Lab and by Private Labs; including the reports of independent experts analyzing the results on behalf of the Commission

4. Law Enforcement files from police departments, sheriff departments, the State Bureau of Investigation, and federal law enforcement
5. North Carolina State Crime Lab records
6. Governor's Clemency Office records
7. North Carolina Department of Adult Correction Records
    a. Prison Records
    b. Probation Records
    c. Medical Records
    d. Mental Health Records
    e. Substance Abuse Records
8. Division of Criminal information Network Records
9. CJLEADS records
10. North Carolina Administrative Office of the Courts CIPRS records
11. Legal Research and other LexisNexis records
12. Attorney files, including privileged/confidential information and work product

B. Other Types of Commission Records

1. Other Legal Records (besides case records)
    a. The Commission is advised and represented both by attorneys employed by the Commission and the Attorney General's office. There may be records that relate to production of the Commission's file outside of a case investigation and/or other legal matters that are managed by the Commission staff and/or the Attorney General's office.
2. Human Resource and Employment Records
3. Governance Records
4. Agency Management Records
5. Education and Training Records
6. Public Relations Records

IV. POLICY RELATED TO PUBLIC REQUESTS FOR RECORDS

In order to make a public request for records to the Commission, you can either email the Commission at ncpcrc@nccourts.org, mail in a written request to us at P.O Box 2448 Raleigh, NC 27602 ATTN: North Carolina Post-conviction Review Commission, or fax a written request to 919-890-1937. All requests for records or information related to the Commission should be directed to the Commission's Executive Director or Assistant Director. You may also make a request through the North Carolina Administrative Office of the Courts Public Relations by submitting your request here: https://www.nccourts.gov/services/request-a-public-record. ***Please check the Commission website to ensure that the record or question you have is not already available to you at: https://ncpcrc.gov/.***

The Commission will respond to written requests for records as required by law. **If you are not making a request for a record, but are instead asking a question, it is in the Commission's discretion whether or not to answer questions.** Where a question can be answered with a

responsive record, the Commission will do so. Generally, the Commission's Executive Director and Assistant Director are more than happy to answer any questions about the Commission's process.

The Commission staff is the appropriate place to make requests related to records or other questions about the Commission. **Commissioners are not responsible for responding to inquiries about the Commission, the Commission process, or Commission cases.** In addition, Commissioners are not your best resource for information about documents, specific cases, or other Commission records as they are not involved in the day-to-day management of the agency.

A. Case Records

The only records that are public are those records that are considered by the Commission at a full Commission hearing if a case is referred to a three-judge panel. If a case is not referred to a three-judge panel after hearing, the records of the case remain confidential. If a case is closed at any point prior to a Commission hearing, the records of the case remain confidential.

The Commission makes public records related to cases available to the public on its website at https://ncpcrc.gov/. The Commission may, at its discretion, choose to not publish certain records that may otherwise be public, such as photos of crime victims, on its website due to the sensitive nature of the record. However, that will be noted on the website in the record of that case and can be requested as a public record.

In addition, all public records in the Commission's cases are filed with the Clerk of Court from the original jurisdiction of the conviction. That record is a record of the Clerk and can be requested from the Clerk subject to the Clerk's rules and procedures.

The Commission will not answer questions related to confidential cases. The Commission's case list is not a matter of public record.

Claimants, their families, and their representatives are not entitled to information about their pending cases pursuant to the Commission's statute and rules except in limited circumstances.

B. Other Records

The Commission may have other records that are public such as policies, audit records, the Commission's annual report to the North Carolina General Assembly, and budget documents. The Commission may also have records such as employment records and attorney-client privileged documents that are not public record. Requests for records are considered on a case-by-case basis and will be provided as outlined by law and pursuant to any relevant State policies.

V. POLICY RELATED TO OTHER TYPES OF REQUESTS FOR RECORDS

Besides public records, which are outlined above, the Commission's governing statute does mention

other times when the Commission is required to report information.

A. Favorable Evidence: The Commission reports favorable evidence to any claimant either when the case is closed without a Commission hearing or when a case is closed after a Commission hearing but without being referred to a three-judge panel. Disclosure of favorable evidence is also reported to the claimant's counsel, if any, and to the District Attorney of the district where the claimant was convicted.

B. Wrongdoing: The Commission reports any criminal acts, professional misconduct or other wrongdoing to the appropriate authority.

C. Notifications: The Commission notifies a victim or co-defendant as required pursuant to the statute during formal inquiry. There are no requirements preventing the Commission from notifying the victim at an earlier date in the proceedings. The Commission updates the parties every 6 months during formal inquiry. The Commission schedules and holds a prehearing conference as required.

In addition, the Commissions statute outlines one requirement for production of the case file outside of the required filing of documents with the Clerk following a Commission hearing. The Commission is required to produce to the parties the Commission's entire file for purposes of the three-judge panel. This production can be, by law, subject to a protective order. The Commission's policy is to request a protective order to govern the production of the entire file to the parties that limits the use of the Commission's entire file to use at the three-judge panel.

VI. COMMON FAQs REGARDING COMMISSION RECORDS

A. I heard about a Commission case in the news, and I want to know what happened. What should I do first?

- Please go to the Commission's website and see if the Commission has published information about that case yet. The Commission generally files any public records related to a hearing in less than a week from the completion of the hearing: The website is updated generally within 2 weeks from the completion of hearing with any public records.

B. I want to access a document from a case file that is listed on the Commission's website but the document itself is not available on the website. Where should I go?

- The website will generally indicate if the document was sealed from the public record all together or if it was just ordered to be only available by request and not on the website. If the document is simply not on the website but is not sealed or otherwise confidential, please contact the Clerk of original jurisdiction or the Commission as indicated in section VII below.

C. How do I know whether my family member's case is being reviewed by the Commission?

- The Commission's list of active cases is not subject to public record. The Commission's rules require that a claimant not publicly discuss their case while the Commission has it open. Please understand that the Commission cannot provide you information about whether your family member has an

active case with the Commission.

D. How do I know whether my client's case is being reviewed by the Commission?

- The Commission may notify attorneys on a case-by-case basis when an applicant has a presently pending appeal, MAR or other court proceeding related to the case for which they have applied. The goal of this notification is to ensure that if that individual would benefit from the advice of counsel as to the effect of the Commission's investigation on their pending legal motion, the lawyer representing them on that pending legal motion has the opportunity to do so.

E. The Commission may also contact attorneys as part of the Commission's inquiry as attorneys may have information necessary to the Commission's inquiry.

- The Commission does not otherwise "generally" notify attorneys, past or present, of active Commission cases. Notification related to the Commission's process (such as updates in formal inquiry, counsel for waivers, favorable evidence) is done as required by law.

F. How do I get updates on my case, my client's case, or my family member's case?

- The claimant and his/her attorney are not entitled to updates except when a case is in formal inquiry as outlined by law. Family members of claimants are not entitled to any information regarding an active Commission matter.

G. How do I find out the details of Commission cases?

- The public is entitled to the details of cases as provided on the Commission's website. Please go to the cases on the website to learn more.

H. I am an attorney or an innocence project who has a client that has indicated they had or do have a case with the Commission. Where should I go for more information?

- Contact the Commission as outlined in Section VII below. The Commission generally does not duplicate efforts and will typically request that a claimant choose between attorneys/projects and the Commission to investigate his or her case. This does not mean that the claimant cannot ever re-apply, however, claimants should be aware that if evidence is heard at a post-conviction motion, the Commission's governing statute will no longer define that as new evidence of innocence.

I. My client wants to do DNA or other forensic testing, and they mentioned that the Commission had done some work on their case in the past. Can I get information about the work the Commission has done in the past?

- Please contact the Commission as outlined in Section VII. The Commission's practice is to confirm that you represent a claimant and then the Commission's Executive Director will decide on a case-by-case basis how best to provide information regarding a case. The Commission's governing statute does not outline a specific procedure for any such disclosure but the Commission is aware of the need for judicial efficiency and will work with attorneys both for the defendant and for the state on these requests as they arise. The Commission's files are extensive, and the Commission will not produce its entire file (except as outlined by statute) without requesting a hearing. The Commission will work with attorneys to attempt to determine the exact

information an attorney may seek.

J. I am a judge and I have a pending motion for DNA testing and/or a pending MAR on a case that was previously investigated by the Commission. Where can I go to get more information about that case?

- The Commission recognizes the need for judicial efficiency and respectfully requests that any judicial official reach out to the Commission directly to discuss any requests for information prior to entering orders regarding production of Commission records. The MAR statute specifically indicates that a judge may, as a course of relief, refer a case to the Commission. G.S. 15A-1417(a)(3a). In addition, some judges have held motions in abeyance related to review of a criminal conviction, including motions to request testing under G.S. 15A-269 while the Commission had that same case active.

VII. WHO TO CONTACT WITH QUESTIONS

If you have questions about this policy, please contact the Commission's Executive Director or Assistant Director at 919-890-1580. Public record requests may be routed through the North Carolina Administrative Office of the Courts at https://www.nccourts.gov/services/request-a-public-record.