

§ 122C-158. Privacy of personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other State statute concerning access to public records, personnel files of employees or applicants for employment maintained by an area authority are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the area authority with respect to that employee, including his application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the area authority.

(b) The following information with respect to each employee is a matter of public record:

- (1) Name.
- (2) Age.
- (3) Date of original employment or appointment to the area authority.
- (4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.
- (5) Current position.
- (6) Title.
- (7) Current salary.
- (8) Date and amount of each increase or decrease in salary with that area authority.
- (9) Date and type each promotion, demotion, transfer, suspension, separation, or other change in position classification with that area authority.
- (10) Date and general description of the reasons for each promotion with that area authority.
- (11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the area authority. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the area authority setting forth the specific acts or omissions that are the basis of the dismissal.
- (12) The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders.

(c) All information contained in an employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and is open to inspection only in the following instances:

- (1) The employee or an authorized agent may examine portions of his personnel file except (i) letters of reference solicited before employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient.

- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (3) An area authority employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (4) By order of a court of competent jurisdiction, any person may examine the part of an employee's personnel file that is ordered by the court.
- (5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any part of a personnel file pursuant to G.S. 122C-25(b) or G.S. 122C-192(a) or when the inspection is considered by the official having custody of the records to be necessary and essential to the pursuance of a proper function of the inspecting agency. No information may be divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (6) An employee may sign a written release, to be placed with the employee's personnel file, that permits the person with custody of the file to provide, either in person, by telephone or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- (7) The area authority may tell any person of the employment or nonemployment, promotion, demotion, suspension, or other disciplinary action, reinstatement, transfer, or termination of an employee and the reasons for that personnel action. Before releasing the information, the area authority shall determine in writing that the release is essential to maintaining public confidence in the administration of services or to maintaining the level and quality of services. This written determination shall be retained as a record for public inspection and shall become part of the employee's personnel file.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

- (1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the area authority service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.
- (2) Investigative reports or memoranda and other information concerning the investigation of possible criminal action of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.
- (3) Information that might identify an undercover law-enforcement officer or a law-enforcement informer.
- (4) Notes, preliminary drafts, and internal communications concerning an employee. In the event these materials are used for any official personnel decision, then the employee or an authorized agent has a right to inspect these materials.

(e) The area authority may permit access, subject to limitations it may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that representative certifies that he will not release information identifying the

employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the area authority as long as each personnel file so examined is retained.

(f) The area authority that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in the employee's file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) Permitting access, other than that authorized by this section, to a personnel file of an employee of an area authority is a Class 3 misdemeanor and is punishable only by a fine, not to exceed five hundred dollars (\$500.00).

(h) Anyone who, knowing that he is not authorized to do so, examines, removes, or copies information in a personnel file of an employee of an area authority is guilty of a Class 3 misdemeanor and is punishable only by a fine, not to exceed five hundred dollars (\$500.00). (1983, c. 281; 1985, c. 589, s. 2; 1993, c. 539, ss. 924, 925; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s. 3; 2010-169, s. 18(d).)