

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

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**SENATE BILL 1433**

Short Title: Open State Employee Personnel Files. (Public)

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Sponsors: Senator Berger of Rockingham.

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Referred to: Judiciary I.

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May 26, 2010

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR OPEN RECORDS BY REQUIRING THE RELEASE OF LETTERS OF RECOMMENDATION, DISCIPLINARY ACTIONS, AND OTHER CAREER INFORMATION PERTAINING TO STATE EMPLOYEES AND GIVING STATE EMPLOYEES THE RIGHT TO INSPECT THEIR OWN PERSONNEL FILE IN ITS ENTIRETY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 126-22(a)(3) reads as rewritten:

"(a) Except as provided in G.S. 126-23 and G.S. 126-24, personnel files of State employees shall not be subject to inspection and examination as authorized by G.S. 132-6.

...

(3) "Personnel file" means any ~~employment-related~~ employment-related, retirement benefits-related, or personal information gathered by an employer, the Retirement Systems Division of the Department of State Treasurer, or by the Office of State Personnel. Employment-related information contained in a personnel file includes information related to an individual's application, letters of recommendation, selection, promotion, demotion, transfer, leave, salary, contract for employment, benefits, suspension, performance evaluation, disciplinary actions, and termination. Personal information contained in a personnel file includes an individual's home address, social security number, medical history, personal financial data, marital status, dependents, and beneficiaries."

**SECTION 2.** G.S. 126-23 reads as rewritten:

**"§ 126-23. Certain records to be kept by State agencies open to inspection.**

Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee: name, age, date of original employment or appointment to the State service, 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, current position, title, current salary, date and amount of ~~most recent increase or decrease~~ all increases and decreases in salary, date of ~~most recent~~ each promotion, demotion, transfer, suspension, separation, or other change in position classification, and ~~the every~~ the office or station to which the employee is ~~currently~~ has been assigned. For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies



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1 thereof made by any person during regular business hours. Any person who is denied access to  
2 any such record for the purpose of inspecting, examining or copying the same shall have a right  
3 to compel compliance with the provisions of this section by application to a court of competent  
4 jurisdiction for a writ of mandamus or other appropriate relief."

5 **SECTION 3.** G.S. 126-24 reads as rewritten:

6 "**§ 126-24. Confidential information in personnel files; access to such information.**

7 All other information contained in a personnel file is confidential and shall not be open for  
8 inspection and examination ~~except to the following persons:~~ by these persons as follows:

- 9 (1) The employee, applicant for employment, former employee, or his properly  
10 authorized agent, who may examine his own personnel file in its ~~entirety~~  
11 ~~except for (i) letters of reference solicited prior to employment, or (ii)~~  
12 ~~information concerning a medical disability, mental or physical, that a~~  
13 ~~prudent physician would not divulge to a patient. An employee's medical~~  
14 ~~record may be disclosed to a licensed physician designated in writing by the~~  
15 ~~employee;entirety.~~  
16 (2) The supervisor of the ~~employee;employee.~~  
17 (3) Members of the General Assembly who may inspect and examine personnel  
18 records under the authority of ~~G.S. 120-19;~~G.S. 120-19.  
19 (4) A party by authority of a proper court order may inspect and examine a  
20 particular confidential portion of a State employee's ~~personnel file; and~~file.  
21 (5) An official of an agency of the federal government, State government or any  
22 political subdivision thereof. Such an official may inspect any personnel  
23 records when such inspection is deemed by the department head of the  
24 employee whose record is to be inspected or, in the case of an applicant for  
25 employment or a former employee, by the department head of the agency in  
26 which the record is maintained as necessary and essential to the pursuance of  
27 a proper function of said agency; provided, however, that such information  
28 shall not be divulged for purposes of assisting in a criminal prosecution, nor  
29 for purposes of assisting in a tax investigation.

30 Notwithstanding any other provision of this Chapter, any department head may, in his  
31 discretion, inform any person or corporation of any promotion, demotion, suspension,  
32 reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant,  
33 employee or former employee employed by or assigned to his department or whose personnel  
34 file is maintained in his department and the reasons therefor and may allow the personnel file of  
35 such person or any portion thereof to be inspected and examined by any person or corporation  
36 when such department head shall determine that the release of such information or the  
37 inspection and examination of such file or portion thereof is essential to maintaining the  
38 integrity of such department or to maintaining the level or quality of services provided by such  
39 department; provided that prior to releasing such information or making such file or portion  
40 thereof available as provided herein, such department head shall prepare a memorandum setting  
41 forth the circumstances which the department head deems to require such disclosure and the  
42 information to be disclosed. The memorandum shall be retained in the files of said department  
43 head and shall be a public record."

44 **SECTION 4.** Fees for copies of the personnel files regulated by the act shall reflect  
45 the actual cost of providing the records in order to offset the additional costs associated with the  
46 implementation of this act.

47 **SECTION 5.** This act becomes effective July 1, 2010.