

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

FILED SENATE
Apr 4, 2017
S.B. 649
PRINCIPAL CLERK

S

D

SENATE BILL DRS25062-LR-63G (03/02)

Short Title: Public Records Access - NC Residents Only. (Public)

Sponsors: Senators Daniel, Brock, and Hise (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ACCESS TO NORTH CAROLINA PUBLIC RECORDS
ARE FOR NORTH CAROLINA RESIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1(b) reads as rewritten:

"(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the ~~people-residents of this State~~. Therefore, it is the policy of this State that the ~~people-residents of this State~~ may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information."

SECTION 2. G.S. 132-1.4(d) reads as rewritten:

"(d) A public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132-6 as soon as the circumstances that justify withholding it cease to exist. Any ~~person-resident of this State~~ denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts."

SECTION 3. G.S. 132-1.9(c) and (d) read as rewritten:

"(c) Trial Preparation Material Prepared in Anticipation of a Legal Proceeding. – Any ~~person-resident of this State~~ who is denied access to a public record that is also claimed to be trial preparation material that was prepared in anticipation of a legal proceeding that has not yet been commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is trial preparation material that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. –

...

(3) Any ~~person-resident of this State~~ who is denied access to a public record that is also claimed to be trial preparation material and who is not a party to the



* D R S 2 5 0 6 2 - L R - 6 3 G *

1 pending legal proceeding to which such record pertains, and who is not
2 acting in concert with or as an agent for any party to the pending legal
3 proceeding, may petition the court pursuant to G.S. 132-9 for a
4 determination as to whether the public record is trial preparation material."

5 **SECTION 4.** G.S. 132-6 reads as rewritten:

6 **"§ 132-6. Inspection and examination of records.**

7 (a) Every custodian of public records shall permit any record in the custodian's custody
8 to be inspected and examined at reasonable times and under reasonable supervision by any
9 ~~person, resident of this State~~ and shall, as promptly as possible, furnish copies thereof upon
10 payment of any fees as may be prescribed by law. As used herein, "custodian" does not mean
11 an agency that holds the public records of other agencies solely for purposes of storage or
12 safekeeping or solely to provide data processing.

13 (a1) Notwithstanding subsection (a) of this section, the public records maintained by the
14 clerk of court and register of deeds of every county shall be open to inspection and copying by
15 any person. The access granted under this subsection is subject to the requirements and
16 conditions of this Chapter.

17 (b) No ~~person resident of this State~~ requesting to inspect and examine public records, or
18 to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

19"

20 **SECTION 5.** G.S. 132-6.2 reads as rewritten:

21 **"§ 132-6.2. Provisions for copies of public records; fees.**

22 (a) ~~Persons Residents of this State~~ requesting copies of public records may elect to
23 obtain them in any and all media in which the public agency is capable of providing them. No
24 request for copies of public records in a particular medium shall be denied on the grounds that
25 the custodian has made or prefers to make the public records available in another medium. The
26 public agency may assess different fees for different media as prescribed by law.

27 (b) ~~Persons Residents of this State~~ requesting copies of public records may request that
28 the copies be certified or uncertified. The fees for certifying copies of public records shall be as
29 provided by law. Except as otherwise provided by law, no public agency shall charge a fee for
30 an uncertified copy of a public record that exceeds the actual cost to the public agency of
31 making the copy. For purposes of this subsection, "actual cost" is limited to direct, chargeable
32 costs related to the reproduction of a public record as determined by generally accepted
33 accounting principles and does not include costs that would have been incurred by the public
34 agency if a request to reproduce a public record had not been made. Notwithstanding the
35 provisions of this subsection, if the request is such as to require extensive use of information
36 technology resources or extensive clerical or supervisory assistance by personnel of the agency
37 involved, or if producing the record in the medium requested results in a greater use of
38 information technology resources than that established by the agency for reproduction of the
39 volume of information requested, then the agency may charge, in addition to the actual cost of
40 duplication, a special service charge, which shall be reasonable and shall be based on the actual
41 cost incurred for such extensive use of information technology resources or the labor costs of
42 the personnel providing the services, or for a greater use of information technology resources
43 that is actually incurred by the agency or attributable to the agency. If anyone requesting public
44 information from any public agency is charged a fee that the requester believes to be unfair or
45 unreasonable, the requester may ask the State Chief Information Officer or his designee to
46 mediate the dispute.

47 (c) ~~Persons Residents of this State~~ requesting copies of computer databases may be
48 required to make or submit such requests in writing. Custodians of public records shall respond
49 to all such requests as promptly as possible. If the request is granted, the copies shall be
50 provided as soon as reasonably possible. If the request is denied, the denial shall be

1 accompanied by an explanation of the basis for the denial. If asked to do so, the person denying
2 the request shall, as promptly as possible, reduce the explanation for the denial to writing.

3 (d) Nothing in this section shall be construed to require a public agency to respond to
4 requests for copies of public records outside of its usual business hours.

5 (e) Nothing in this section shall be construed to require a public agency to respond to a
6 request for a copy of a public record by creating or compiling a record that does not exist. If a
7 public agency, as a service to the requester, voluntarily elects to create or compile a record, it
8 may negotiate a reasonable charge for the service with the requester. Nothing in this section
9 shall be construed to require a public agency to put into electronic medium a record that is not
10 kept in electronic medium."

11 **SECTION 6.** G.S. 132-9(a) reads as rewritten:

12 "**§ 132-9. Access to records.**

13 (a) ~~Any person~~ Any resident of this State who is denied access to public records for
14 purposes of inspection and examination, or who is denied copies of public records, may apply
15 to the appropriate division of the General Court of Justice for an order compelling disclosure or
16 copying, and the court shall have jurisdiction to issue such orders if the person has complied
17 with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate
18 hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and
19 appellate courts."

20 **SECTION 7.** This act becomes effective October 1, 2017, and applies to requests
21 to inspect and requests to copy made on or after that date.