

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 426

Judiciary I/Constitution Committee Substitute Adopted 5/8/95

Finance Committee Substitute No. 2 Adopted 5/11/95

Short Title: Strengthen Public Records Law.

(Public)

Sponsors:

Referred to:

March 20, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC RECORDS LAW.

The General Assembly of North Carolina enacts:

Section 1. Existing G.S. 132-1 is redesignated as subsection (a), and a new subsection is added to read:

"(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people 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."

Sec. 2. G.S. 132-6 reads as rewritten:

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

(a) Every person having custody custodian of public records shall permit them to be any record in the custodian's custody to be inspected and examined at reasonable times and under his-reasonable supervision by any person, and he shall promptly furnish certified copies thereof on-upon payment of any fees as may be prescribed by law. As used herein, 'custodian' does not mean an agency that holds the public records of other

1 agencies solely for purposes of storage or safekeeping or solely to provide data
2 processing.

3 (b) No person requesting to inspect and examine public records, or to obtain
4 copies thereof, shall be required to disclose the purpose or motive for the request.

5 (c) No request to inspect, examine, or obtain copies of public records shall be
6 denied on the grounds that confidential information is commingled with the requested
7 nonconfidential information. If it is necessary to separate confidential from
8 nonconfidential information in order to permit the inspection, examination, or copying of
9 the public records, the public agency shall bear the cost of such separation on the
10 following schedule:

11 State agencies after June 30, 1996;

12 Municipalities with populations of 10,000 or more and counties with populations
13 of 25,000 or more, as determined by the 1990 U.S. Census, after June 30, 1997;

14 Municipalities with populations of less than 10,000 and counties with populations
15 of less than 25,000, as determined by the 1990 U.S. Census, after June 30, 1998.

16 (d) Notwithstanding the foregoing provisions of subsections (a) and (b) of this
17 section, public records relating to the proposed expansion or location of specific business
18 or industrial projects in the State may be withheld so long as their inspection,
19 examination or copying would frustrate the purpose for which such public records were
20 created; provided, however, that nothing herein shall be construed to permit the
21 withholding of public records relating to general economic development policies or
22 activities.

23 (e) The Division of Archives and History is not required to photocopy or
24 otherwise reproduce public records that are historical documents in its possession if
25 photocopying or reproducing the public records will physically damage the historical
26 documents."

27 Sec. 3. Chapter 132 of the General Statutes is amended by adding two new
28 sections to read:

29 **"§ 132-6.1. Electronic data-processing records.**

30 (a) No public agency shall purchase, lease, create, or otherwise acquire any
31 electronic data-processing system for the storage, manipulation, or retrieval of public
32 records unless it first determines that the system will not impair or impede the agency's
33 ability to permit the public inspection and examination, and to provide electronic copies
34 of such records. Nothing in this subsection shall be construed to require the retention by
35 the public agency of obsolete hardware or software.

36 (b) Every public agency shall create an index of computer databases compiled or
37 created by a public agency on the following schedule:

38 State agencies by July 1, 1996;

39 Municipalities with populations of 10,000 or more and counties with populations
40 of 25,000 or more, as determined by the 1990 U.S. Census, by July 1, 1997;

41 Municipalities with populations of less than 10,000 and counties with populations
42 of less than 25,000, as determined by the 1990 U.S. Census, by July 1, 1998.

1 The index shall be a public record and shall include, at a minimum, the following
2 information with respect to each database listed therein: a list of the data fields; a
3 description of the format or record layout; information as to the frequency with which the
4 database is updated; a list of any data fields to which public access is restricted; a
5 description of each form in which the database can be copied or reproduced using the
6 agency's computer facilities; and a schedule of fees for the production of copies in each
7 available form. Electronic databases compiled or created prior to the date by which the
8 index must be created in accordance with this subsection may be indexed at the public
9 agency's option.

10 (c) Nothing in this section shall require a public agency to create a computer
11 database that the public agency has not otherwise created or is not otherwise required to
12 be created.

13 (d) The following definitions apply in this section:

14 (1) Computer database. – A structured collection of data or documents
15 residing in a database management program or spreadsheet software.

16 (2) Computer hardware. – Any tangible machine or device utilized for the
17 electronic storage, manipulation, or retrieval of data.

18 (3) Computer program. – A series of instructions or statements that permit
19 the storage, manipulation, and retrieval of data within an electronic
20 data-processing system, together with any associated documentation.
21 The term does not include the original data, or any analysis,
22 compilation, or manipulated form of the original data produced by the
23 use of the program or software.

24 (4) Computer software. – Any set or combination of computer programs.
25 The term does not include the original data, or any analysis,
26 compilation, or manipulated form of the original data produced by the
27 use of the program or software.

28 (5) Electronic data-processing system. – Computer hardware, computer
29 software, or computer programs or any combination thereof, regardless
30 of kind or origin.

31 **§ 132-6.2. Provisions for copies of public records; fees.**

32 (a) Persons requesting copies of public records may elect to obtain them in any
33 and all media in which the public agency is capable of providing them. No request for
34 copies of public records in a particular medium shall be denied on the grounds that the
35 custodian has made or prefers to make the public records available in another medium.
36 The public agency may assess different fees for different media as prescribed by law.

37 (b) Persons requesting copies of public records may request that the copies be
38 certified or uncertified. The fees for certifying copies of public records shall be as
39 provided by law. Except as otherwise provided by law, no public agency shall charge a
40 fee for an uncertified copy of a public record that exceeds the actual cost to the public
41 agency of making the copy. For purposes of this subsection, 'actual cost' is limited to
42 direct, chargeable costs related to the reproduction of a public record. Actual cost does
43 not include costs that would have been incurred by the public agency if a request to

1 reproduce a public record had not been made. Notwithstanding the provisions of this
2 subsection, if the request is such as to require extensive use of information technology
3 resources or extensive clerical or supervisory assistance by personnel of the agency
4 involved, the agency may charge, in addition to the actual cost of duplication, a special
5 service charge, which shall be reasonable and shall be based on the actual cost incurred
6 for such extensive use of information technology resources or the labor costs of the
7 personnel providing the service that is actually incurred by the agency or attributable to
8 the agency for the clerical and supervisory assistance required. If anyone requesting
9 public information from any agency of the State is charged a fee that the requester
10 believes to be unfair or unreasonable, the requester may ask the Information Resource
11 Management Commission to mediate the dispute.

12 (c) Persons requesting copies of databases may be required to make or submit such
13 requests in writing. Custodians of public records shall respond to all such requests
14 promptly. If the request is granted, the copies shall be provided as soon as reasonably
15 possible. If the request is denied, the denial shall be accompanied by an explanation of
16 the basis for the denial. If asked to do so, the person denying the request shall promptly
17 reduce the explanation for the denial to writing.

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

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

26 Sec. 4. G.S. 132-9 reads as rewritten:

27 "**§ 132-9. Access to records.**

28 (a) Any person who is denied access to public records for purposes of ~~inspection,~~
29 ~~examination or copying~~ inspection and examination, or who is denied copies of public
30 records, may apply to the appropriate division of the General Court of Justice for an order
31 compelling ~~disclosure,~~ disclosure or copying, and the court shall have jurisdiction to issue
32 such orders. Actions brought pursuant to this section shall be set down for immediate
33 hearing, and subsequent proceedings in such actions shall be accorded priority by the trial
34 and appellate courts.

35 (b) In an action to compel disclosure of public records which have been withheld
36 pursuant to the provisions of G.S. 132-6 concerning public records relating to the
37 proposed expansion or location of particular businesses and industrial projects, the
38 burden shall be on the custodian withholding the records to show that disclosure would
39 frustrate the purpose of attracting that particular business or industrial project.

40 (c) In any action brought pursuant to this section in which a party successfully
41 compels the disclosure of public records, the court may, in its discretion, allow the
42 prevailing party to recover reasonable attorneys' fees if:

- 1 (1) The court finds that the agency acted without substantial justification in
2 denying access to the public records; and
3 (2) The court finds that there are no special circumstances that would make
4 the award of attorneys' fees unjust.

5 Any attorneys' fees assessed against a public agency under this section shall be
6 charged against the operating expenses of the agency; provided, however, that the court
7 may order that all or any portion of any attorneys' fees so assessed be paid personally by
8 any public employee or public official found by the court to have knowingly or
9 intentionally committed, caused, permitted, suborned, or participated in a violation of this
10 Article. No order against any public employee or public official shall issue in any case
11 where the public employee or public official seeks the advice of an attorney and such
12 advice is followed.

13 (d) If the court determines that an action brought pursuant to this section was filed
14 in bad faith or was frivolous, the court may, in its discretion, assess a reasonable
15 attorney's fee against the person or persons instituting the action and award it to the
16 public agency as part of the costs."

17 Sec. 5. Chapter 132 of the General Statutes is amended by adding a new
18 section to read:

19 "**§ 132-10. Qualified exception for geographical information systems.**

20 Geographical information systems databases and data files developed and operated by
21 counties and cities are public records within the meaning of this Chapter. The county or
22 city shall provide public access to such systems by public access terminals and other
23 output devices. Upon request, the county or city shall furnish copies, in documentary or
24 electronic form, to anyone requesting them at reasonable cost. As a condition of
25 furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or
26 photo-optical device, a county or city may require that the person obtaining the copy
27 agree in writing that the copy will not be resold or otherwise used for trade or commercial
28 purposes. For purposes of this section, publication or broadcast by the news media shall
29 not constitute a resale or use of the data for trade or commercial purposes and use of
30 information without resale by a licensed professional in the course of practicing the
31 professional's profession shall not constitute use for a commercial purpose."

32 Sec. 6. G.S. 6-19.2 is repealed.

33 Sec. 7. The State Information Processing Services shall study the
34 implementation of this act and shall report to the General Assembly by March 1, 1997, on
35 the implementation, effect, and costs arising from the implementation of this act.

36 Sec. 8. This act becomes effective October 1, 1995.