

GENERAL ASSEMBLY OF NORTH CAROLINA

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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

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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

1 and under ~~his~~ reasonable supervision by any person, and ~~he shall~~ shall, as promptly as
2 possible, furnish ~~certified~~ copies thereof ~~on~~ upon payment of any fees as may be
3 prescribed by law. As used herein, 'custodian' does not mean an agency that holds the
4 public records of other agencies solely for purposes of storage or safekeeping or solely to
5 provide data processing.

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

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

14 State agencies after June 30, 1996;

15 Municipalities with populations of 10,000 or more, counties with populations of
16 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in
17 those counties, after June 30, 1997;

18 Municipalities with populations of less than 10,000, counties with populations of
19 less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in
20 those counties, after June 30, 1998;

21 Political subdivisions and their agencies that are not otherwise covered by this
22 schedule, after June 30, 1998.

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

30 (e) The application of this Chapter is subject to the provisions of Article 1 of
31 Chapter 121 of the General Statutes, the North Carolina Archives and History Act.

32 (f) Notwithstanding the provisions of subsection (a) of this section, the inspection
33 or copying of any public record which, because of its age or condition could be damaged
34 during inspection or copying, may be made subject to reasonable restrictions intended to
35 preserve the particular record."

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

38 **"§ 132-6.1. Electronic data-processing records.**

39 (a) After June 30, 1996, no public agency shall purchase, lease, create, or
40 otherwise acquire any electronic data-processing system for the storage, manipulation, or
41 retrieval of public records unless it first determines that the system will not impair or
42 impede the agency's ability to permit the public inspection and examination, and to

1 provide electronic copies of such records. Nothing in this subsection shall be construed
2 to require the retention by the public agency of obsolete hardware or software.

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

5 State agencies by July 1, 1996;

6 Municipalities with populations of 10,000 or more, counties with populations of
7 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in
8 those counties, by July 1, 1997;

9 Municipalities with populations of less than 10,000, counties with populations of
10 less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in
11 those counties, by July 1, 1998;

12 Political subdivisions and their agencies that are not otherwise covered by this
13 schedule, after June 30, 1998.

14 The index shall be a public record and shall include, at a minimum, the following
15 information with respect to each database listed therein: a list of the data fields; a
16 description of the format or record layout; information as to the frequency with which the
17 database is updated; a list of any data fields to which public access is restricted; a
18 description of each form in which the database can be copied or reproduced using the
19 agency's computer facilities; and a schedule of fees for the production of copies in each
20 available form. Electronic databases compiled or created prior to the date by which the
21 index must be created in accordance with this subsection may be indexed at the public
22 agency's option. The form, content, language, and guidelines for the index and the
23 databases to be indexed shall be developed by the Division of Archives and History in
24 consultation with officials at other public agencies.

25 (c) Nothing in this section shall require a public agency to create a computer
26 database that the public agency has not otherwise created or is not otherwise required to
27 be created. Nothing in this section requires a public agency to disclose its software
28 security, including passwords.

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

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

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

34 (3) Computer program. – A series of instructions or statements that permit
35 the storage, manipulation, and retrieval of data within an electronic
36 data-processing system, together with any associated documentation.
37 The term does not include the original data, or any analysis,
38 compilation, or manipulated form of the original data produced by the
39 use of the program or software.

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

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

4 **"§ 132-6.2. Provisions for copies of public records; fees.**

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

10 (b) Persons requesting copies of public records may request that the copies be
11 certified or uncertified. The fees for certifying copies of public records shall be as
12 provided by law. Except as otherwise provided by law, no public agency shall charge a
13 fee for an uncertified copy of a public record that exceeds the actual cost to the public
14 agency of making the copy. For purposes of this subsection, 'actual cost' is limited to
15 direct, chargeable costs related to the reproduction of a public record as determined by
16 generally accepted accounting principles and does not include costs that would have been
17 incurred by the public agency if a request to reproduce a public record had not been
18 made. Notwithstanding the provisions of this subsection, if the request is such as to
19 require extensive use of information technology resources or extensive clerical or
20 supervisory assistance by personnel of the agency involved, or if producing the record in
21 the medium requested results in a greater use of information technology resources than
22 that established by the agency for reproduction of the volume of information requested,
23 then the agency may charge, in addition to the actual cost of duplication, a special service
24 charge, which shall be reasonable and shall be based on the actual cost incurred for such
25 extensive use of information technology resources or the labor costs of the personnel
26 providing the services, or for a greater use of information technology resources that is
27 actually incurred by the agency or attributable to the agency. If anyone requesting public
28 information from any public agency is charged a fee that the requester believes to be
29 unfair or unreasonable, the requester may ask the Information Resource Management
30 Commission to mediate the dispute.

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

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

39 (e) Nothing in this section shall be construed to require a public agency to respond
40 to a request for a copy of a public record by creating or compiling a record that does not
41 exist. If a public agency, as a service to the requester, voluntarily elects to create or
42 compile a record, it may negotiate a reasonable charge for the service with the requester.

1 Nothing in this section shall be construed to require a public agency to put into electronic
2 medium a record that is not kept in electronic medium."

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

4 **"§ 132-9. Access to records.**

5 (a) Any person who is denied access to public records for purposes of inspection,
6 examination or copying—inspection and examination, or who is denied copies of public
7 records, may apply to the appropriate division of the General Court of Justice for an order
8 compelling disclosure, disclosure or copying, and the court shall have jurisdiction to issue
9 such orders. Actions brought pursuant to this section shall be set down for immediate
10 hearing, and subsequent proceedings in such actions shall be accorded priority by the trial
11 and appellate courts.

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

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

20 (1) The court finds that the agency acted without substantial justification in
21 denying access to the public records; and

22 (2) The court finds that there are no special circumstances that would make
23 the award of attorneys' fees unjust.

24 Any attorneys' fees assessed against a public agency under this section shall be
25 charged against the operating expenses of the agency; provided, however, that the court
26 may order that all or any portion of any attorneys' fees so assessed be paid personally by
27 any public employee or public official found by the court to have knowingly or
28 intentionally committed, caused, permitted, suborned, or participated in a violation of this
29 Article. No order against any public employee or public official shall issue in any case
30 where the public employee or public official seeks the advice of an attorney and such
31 advice is followed.

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

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

38 **"§ 132-10. Qualified exception for geographical information systems.**

39 Geographical information systems databases and data files developed and operated by
40 counties and cities are public records within the meaning of this Chapter. The county or
41 city shall provide public access to such systems by public access terminals or other output
42 devices. Upon request, the county or city shall furnish copies, in documentary or
43 electronic form, to anyone requesting them at reasonable cost. As a condition of

1 furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or
2 photo-optical device, a county or city may require that the person obtaining the copy
3 agree in writing that the copy will not be resold or otherwise used for trade or commercial
4 purposes. For purposes of this section, publication or broadcast by the news media shall
5 not constitute a resale or use of the data for trade or commercial purposes and use of
6 information without resale by a licensed professional in the course of practicing the
7 professional's profession shall not constitute use for a commercial purpose."

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

9 Sec. 7. The Office of the State Controller shall study the implementation of
10 this act and shall report to the General Assembly by March 1, 1997, on the
11 implementation, effect, and costs arising from the implementation of this act.

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