

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE DRS75382-LR-142 (05/11)

Short Title: Open State Employee Personnel Files.

(Public)

Sponsors: Senator Berger of Rockingham.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT PROVIDING FOR OPEN RECORDS BY REQUIRING THE RELEASE OF  
3 LETTERS OF RECOMMENDATION, DISCIPLINARY ACTIONS, AND OTHER  
4 CAREER INFORMATION PERTAINING TO STATE EMPLOYEES AND GIVING  
5 STATE EMPLOYEES THE RIGHT TO INSPECT THEIR OWN PERSONNEL FILE IN  
6 ITS ENTIRETY.

7 The General Assembly of North Carolina enacts:

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

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

11 ...

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

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

24 "§ 126-23. **Certain records to be kept by State agencies open to inspection.**

25 Each department, agency, institution, commission and bureau of the State shall maintain a  
26 record of each of its employees, showing the following information with respect to each such  
27 employee: name, age, date of original employment or appointment to the State service, the  
28 terms of any contract by which the employee is employed whether written or oral, past and  
29 current, to the extent that the agency has the written contract or a record of the oral contract in  
30 its possession, current position, title, current salary, date and amount of ~~most recent increase or~~  
31 ~~decrease~~all increases and decreases in salary, date of ~~most recent~~each promotion, demotion,  
32 transfer, suspension, separation, or other change in position classification, and ~~the every~~the office  
33 or station to which the employee is ~~currently~~has been assigned. For the purposes of this  
34 section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other  
35 forms of compensation paid by the employing entity. Subject only to rules and regulations for



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1 the safekeeping of the records, adopted by the State Personnel Commission, every person  
2 having custody of such records shall permit them to be inspected and examined and copies  
3 thereof made by any person during regular business hours. Any person who is denied access to  
4 any such record for the purpose of inspecting, examining or copying the same shall have a right  
5 to compel compliance with the provisions of this section by application to a court of competent  
6 jurisdiction for a writ of mandamus or other appropriate relief."

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

8 "**§ 126-24. Confidential information in personnel files; access to such information.**

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

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

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

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

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