**2011 North Carolina Health Directors Legal Conference**

**Public Records and Personnel Information**

**Frayda S. Bluestein**

**School of Government**

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Hypothetical Public Records Requests:

1. A local health director has recently promoted a long-time health department employee to head the vital records division. Another employee, who had hoped to get the promotion but didn’t, has now requested a general description of the reasons for the promotion.
2. The local newspaper has recently run a series of stories about restaurant inspections. The stories disclosed apparent inconsistencies in the frequency of inspections and the standards applied by health department employees conducting these inspections. The department has responded by conducting a thorough investigation. You have drafted a report and circulated it internally for review, but it has not yet been submitted to or approved by the board. The newspaper has requested a copy of the report.
3. The report is very careful not to name any employees, but it does disclose that irregularities were discovered and that the problem was attributed to a lack of training, and in some cases, simply poor performance by specific employees. The report indicates that appropriate disciplinary actions have been taken, but does not identify which employees were affected. In fact, several employees were suspended without pay during the investigation. The newspaper requests the date and type of any change in position classification of any health department employees within the past month.
4. Two years ago, there was a big scandal involving a health department employee who was allegedly involved in a kick-back scheme in which office supply purchases were steered to a particular vendor, who in turn, was providing the employee with gift cards and other monetary rewards. The employee ultimately resigned, claiming she was innocent of any wrong-doing. A competing office-supply company now wants any and all information about the issue, including any notice of final dismissal that may have been prepared prior to the employee’s resignation.

**Employee Information That is Public**

**(Sections in bold became effective October 1, 2010)**

§ 153A‑98.  Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132‑6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a county are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the county with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the county.

(b) The following information with respect to each county employee is a matter of public record:

(1) Name.

(2) Age.

(3) Date of original employment or appointment to the county service.

(4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its possession.

(5) Current position.

(6) Title.

(7) Current salary.

**(8) Date and amount of each increase or decrease in salary with that county.**

**(9) Date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification with that county.**

**(10) Date and general description of the reasons for each promotion with that county.**

**(11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the county. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the county setting forth the specific acts or omissions that are the basis of the dismissal.**

(12) The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2)   The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted.

Ten Key Concepts About Public Records

1. State law requires public agencies to provide broad access to records made or received in the transaction of public business. [G.S. 132-1]
2. Email, text, and voicemail messages, and other electronic records are covered by the public records law. [G.S. 132-1]
3. The content of a record, not its form or location, determines whether it is subject to disclosure under the public records law.
4. The law does not apply to records that are personal and do not involve the transaction of public business.
5. The right of access includes the right to inspect and obtain a copy. [G.S. 132-6(a)] Public agencies may charge only “actual costs” for providing copies of public records, which means only those costs that would not have been incurred but for the request. Actual costs do not include employee time spent responding to the request. [G.S. 132-6.2]
6. The purpose or motive for which a person seeks a public record is irrelevant and cannot be requested as a condition of providing access. [G.S. 132-6(b)]
7. The law does not require public agencies to create records; only to provide access to records that exist. [G.S. 132-6.2(e)]
8. A record is subject to disclosure under the public records law unless a specific exception in the law allows or requires that it not be disclosed. There are two types of exceptions: some deny a right of access, though access is not prohibited (an example is criminal investigation information under G.S. 132-1.4); others prohibit disclosure (examples are trade secret information under G.S. 132-1.2(1), and exceptions in the various personnel privacy statutes).
9. There is no exception for “drafts” of public records. [*News & Observer Publishing Co. v. Poole,* 330 N.C. 465, 412 S.E.2d 7 (1992)]
10. State rules dictate what records must be retained and for how long. Records of “short term value” may be discarded, but if they exist when a request is received, they must be provided unless an exception applies. [NC Records Retention Guidelines: <http://www.records.ncdcr.gov/guidelines.htm> ]