

Personnel Records

What They Are and When They Can Be Disclosed

Disclosure and the Name-Clearing Hearing

If a record is made or received in connection with the business of the government, it is a public record, open to inspection and copying by anyone who wants to see it. That's what the state's Public Records Law says.¹ There are exceptions, however. Some records created by the government are not open to public inspection: criminal investigation records, student records, medical records and others.

In 1975, the General Assembly enacted the first of a set of statutes creating an exception to the Public Records Laws for the contents of the personnel files of employees of the state,² cities,³ and counties.⁴ No longer would most information in these employees' files be public information, but it would instead be confidential and available for release only to a limited set of people:

- the employee himself or herself
- supervisor
- person with a court order
- official of an agency of government undertaking an official function
- anyone with a release granted by the employee

A limited range of information about an employee would still be public, however:

- name
- age
- date of employment
- position
- current salary
- date and amount of most recent
- date of most recent promotion, demotion, suspension, or separation

¹ G.S. Chapter 132. See especially G.S. 132-1 and 132-6.

² G.S. 126-22 through -29.

³ G.S. 160A-168.

⁴ G.S. 153A-98.

- office to which currently assigned

In 1987 a substantially similar statutory scheme was put into place for public school employees,⁵ and in 1991 one followed for community college employees.⁶ Provisions are now in place for area mental health employees,⁷ water and sewer authority employees,⁸ public health authorities employees,⁹ and public hospital employees.¹⁰

Confidentiality with respect to applicants 1992

It is generally agreed that all information about applicants for employment—even their names—is confidential and not open to the public. This is a handy idea. It allows hiring employers to help candidates for high level positions keep their interest secret from their current employers during the interview process.

The idea comes from a 1992 decision of the North Carolina Supreme Court, *Elkin Tribune, Inc. v. Yadkin County Board of Commissioners*.¹¹ The Tribune, a local newspaper, wanted to know the names (and look at the applications) of individuals who had applied for the open position of county manager. The county resisted and the matter eventually got to the state's highest court. The supreme court clearly and definitively held that the names and applications of applicants were confidential and could not be released to the newspaper or anyone else.

To reach that conclusion, the supreme court had to give a really close reading to the statute that governs confidentiality of county employee personnel files. It takes three steps to get there.

First, the county personnel records confidentiality statute says that it completely controls access to information related to current employees, former employees, and applicants for employment. Access can be given to personnel file information about those three categories of individuals only if the statute specifically allows it.

Second, the county statute does specifically allow access to names and certain other information for current employees and former employees. It specifies that that information is to be available with respect to “employees,” and it defines “employee” to include both current employees and former employees.

But, third, the county statute does not allow access to any information about applicants. That’s because it does not define “employee” to include “applicant.” So, the part of the statute that says personnel file information is confidential does apply to applicants. By contrast, the part of the statute that allows access to specified information, such as name and salary, does not

⁵ G.S. 115C-319 through -321.

⁶ G.S. 115D-27 through -30.

⁷ G.S. 122C-158.

⁸ G.S. 162A-6.1.

⁹ G.S. 130A-45.9.

¹⁰ G.S. 131E-257.2.

¹¹ 331 N.C. 735.

include “applicants,” only current and former employees. The conclusion, then, is that name and other information about applicants is completely confidential.

So, if a newspaper (or anyone else) wants to know the names of county employees, it is entitled to a list. If it wants to know the names of former employees, it is entitled to that list as well. If it wants to know the names of applicants for a job, however, it cannot have them

That case was decided back in 1992. The relevant parts of the county statute still read the same way, and the interpretation of the statute is the same. For counties, the names of applicants for jobs are confidential and cannot be given out.

For cities, the situation is the same. Back in 1992, the statute that governs cities as employers, GS 160A-168, was just like the county statute with respect to applicants, and it still is today. By direct analogy, the names of applicants for jobs with a city are confidential, just as with counties.

For community colleges and public schools, the answer is probably the same, but the statutes are just enough different that the three-step reasoning cannot be exactly applied. That’s because those statutes, as similar as they are to the county statute, do not define “employee” at all. They don’t define the term to include “former employees” and thus by extension to exclude “applicants.” So, steps two and three do not apply. When these statutes specify that certain information with respect to “employees,” like name and salary, is available for access, does that access apply to former employees, as with counties and cities? It’s very hard to say. And it’s very hard to come to the conclusion that it applies to former employees but not applicants. Nevertheless, since that’s how the courts have dealt with cities and counties, that’s the way most community colleges and public school systems deal with the question of access to information about applicants—they don’t allow it and they keep applicants’ names confidential. Would the supreme court interpret those statutes the same way it has interpreted the county and city statutes? It’s hard to say, but the best guess is Yes.

Expansion of public information in 2010

In 2010, the General Assembly amended the various public employee confidentiality statutes to expand in five ways the set of information that, despite the general confidentiality of employee records, is available to the public.

It provided that the entire salary history of a public employee with the current employer is available to the public. Before 2010, only the current salary and most recent change were available.

It provided that not just the date of the most recent promotion, demotion, suspension or separation was available (as the statute had said in a silly way—just the date?). The statutes now say that the entire job history of an employee with the current employer is publicly available.

It requires that public employers prepare and make publicly available a “general description of the reasons” for each promotion of a public employee.

It requires that public employers tell, with respect to each employee, the reasons for every disciplinary dismissal, suspension, or demotion.

It provides that, in the case of a dismissal for disciplinary reasons, a written notice setting forth the specific acts or omissions that were the basis for the dismissal is a public document.

Ten Things to Know About Public Personnel Records

(And a Bonus)

One

There are lots of different statutes:

state employment	GS 126-22 through -29
municipal	GS 160A-168
county employment	GS 153A-98
area mental health	GS 122C-158
public schools	GS 115C-319 through -321
community colleges	GS 115D-27 through -30
water and sewer	GS 162A-6.1
public health	GS 130A-45.9
public hospitals	GS 131E-257.2

But there are no good reasons to have lots of different statutes. And they are all a little bit different from each other, and interpreting the differences can be tricky.

Two

A document is part of the personnel file even if it is not in the manila folder in the boss's office.

“[A]n employee's personnel file consists of **any information in any form** gathered by the city 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 city.”

Three

Most of the information in a personnel file is confidential, in contrast to government records generally.

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 city are subject to inspection and may be disclosed only as provided by this section.

Four

Some information in the personnel file is always open to the public.

- (1) Name.
- (2) Age.
- (3) Date of original employment or appointment to the 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 city 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 municipality.
- (9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that municipality.
- (10) Date and general description of the reasons for each promotion with that municipality.
- (11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the municipality. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the municipality setting forth the specific acts or omissions that are the basis of the dismissal.
- (12) The office to which the employee is currently assigned.

Five

The employee is entitled to see (almost all of) his or her own personnel file.

“The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.”

Six

Supervisors with active authority over employees are entitled to see those employees' personnel files.

Seven

Other governmental officials may have access where access is “necessary and essential to the pursuance of a proper function” of that official.

Eight

Files of applicants are confidential in their totality.

In the early 1990s, the local newspaper wanted the names of all people being considered for the job of county manager in Yadkin County, North Carolina. The state supreme court held that the name of each candidate was part of the personnel file of that candidate because each candidate could be considered an “applicant for employment” and because the personnel records law governing county employees applied to applicants. But that statute went on to apply the portion authorizing public disclosure of name, salary, and so forth, only to “employees,” defined to include “former employees of the county” but not applicants. Because the privacy parts of the statute covered applicants, but the disclosure parts did not, the court held that no information at all could be released about candidates for the job of manager—or any other job. *Elkin Tribune, Inc., v. Yadkin County Bd. of County Comm’rs*, 331 N.C. 735, 417 S.E.2d 465 (1992)

Nine

In special circumstances, confidential personnel information may be disclosed.

“The city manager, with concurrence of the council, or, in cities not having a manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.”

Ten

A wise government spokesperson says this: “The law prohibits me from disclosing the information you have requested.” Not this: I can’t talk about that because it’s a personnel matter.”

Eleven

There are two looming questions:

- Do we have to create written dismissal letters (which would become public) when we dismiss an employee for disciplinary reasons?
- When and under what circumstances must we offer a name-clearing hearing?

Municipal Personnel Records Privacy Statute (as an example)

§ 160A-168. Privacy of employee personnel records

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act

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concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a city are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's

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personnel file consists of any information in any form gathered by the city 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 city.

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

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- (1) Name.
- (2) Age.
- (3) Date of original employment or appointment to the 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 city 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 municipality.
- (9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that municipality.
- (10) Date and general description of the reasons for each promotion with that municipality.
- (11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the municipality. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the municipality 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 city council 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 city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

- (1) The employee or his duly authorized agent may examine all portions of his

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personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (3) A city employee having supervisory authority over the employee may

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examine all material in the employee's personnel file.

- (4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
- (5) An official of an agency of the State or federal government, or any political

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subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

- (6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- (7) The city manager, with concurrence of the council, or, in cities not having a

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manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the

release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

- (1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the city's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.
- (2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.
- (3) Information that might identify an undercover law enforcement officer or a law enforcement informer.
- (4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The city council may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the city as long as each personnel file examined is retained.

(d) The city council of a city that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars (\$500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00).

Disclosure and the Name-Clearing Hearing

The Fourteenth Amendment to the U.S. Constitution provides that the government may not “deprive any person of . . . liberty . . . without due process of law.” “Liberty,” like “property,” (also protected by the Fourteenth Amendment), has a broad meaning. It means more than simply staying out of jail.

Liberty Interest in Engaging in Life’s Ordinary Occupations. The term “liberty” includes the right “to engage in the common occupations of life, unfettered by unreasonable restrictions” imposed by the government.¹² That right is abridged when the government “unfairly imposes some stigma or disability that will itself foreclose the freedom to take advantage of employment opportunities.” In one North Carolina case, a veteran dining room manager alleged that her liberty interest was violated when her supervisor publicly disclosed his belief that the manager was supplying liquor to painters at work in the building for them to drink on the premises. That public statement by the supervisor, made in connection with the dismissal of the manager, would, if left unrefuted, apply a stigma to the manager, making it difficult for her to obtain employment.

The procedural protections of due process apply, the North Carolina Supreme Court said in another case, if the accuracy of the charge is contested, there is some public disclosure of the charge, and it is made in connection with the termination of employment or other adverse employment action.¹³ The federal Fourth Circuit Court of Appeals has said that the due process requirement applies when the government’s statements about its employee

- placed a stigma on the employee’s reputation
- were made public by the employer
- were made in conjunction with the employee’s termination or demotion, and
- were false¹⁴

Notice and Hearing. When those elements are present, due process requires notice and a hearing. “[W]here [the government] publicly and falsely accuses a discharged employee of dishonesty, immorality, or job-related misconduct, considerations of due process demand that the employee be afforded a hearing in order to have an opportunity to refute the accusation and remove the stigma to his reputation.”¹⁵

Due Process. The scope of the process that is due to protect an employment liberty interest is more modest and ill-defined than the process due to protect property interests. The purpose of the due process hearing, the United States Supreme Court has said, is to provide the person an opportunity to clear his or her name. Once that has happened at the hearing, the

¹² *Presnell v. Pell*, 298 N.C. 715, 724, 260 S.E.2d 611, 617 (1979), (internal quotation marks and citation omitted). See *Board of Regents v. Roth*, 408 U.S. 564, 573, 92 S. Ct. 2701, 2707, 33 L. Ed. 2d 548, 558 (1972).

¹³ *Crump*, 326 N.C. at 614, 392 S.E.2d at 584. See *Williams v. Johnston County Bd. of Educ.*, No. 5:95-CV-621-B02 (E.D.N.C., 1996).

¹⁴ *Sciolino v. City of Newport News*, 480 F.3d 642, 646 (2007).

¹⁵ *Presnell*, 298 N.C. at 724, 260 S.E.2d at 617.

employer is free to deny the person future employment. In fact, the hearing may even come after the termination of employment (or other adverse action), because the focus of the liberty interest is on *future* employment opportunities.¹⁶ But while the hearing may come after the termination, the federal Fourth Circuit Court of Appeals, in the case mentioned above, made clear that the hearing must be offered before the stigmatizing, false information is made public. “An opportunity to clear your name after it has been ruined by dissemination of false, stigmatizing charges is not meaningful,” the court said.¹⁷

Protection for All Employees. The due process protections of this liberty interest apply equally to all public employees—at-will employees, probationary employees, and employees with property interests in their jobs.

A Complication from the 2010 Changes in the Personnel Records Statutes. As explained above (see page 3), in 2010 the General Assembly made five substantive changes to the personnel records privacy statutes. One of those changes provides that, in the case of a dismissal for disciplinary reasons, a written notice setting forth the specific acts or omissions that were the basis for the dismissal is a public document.

In other words, if the governmental employer terminates an employee for disciplinary reasons, and gives to the employee a letter stating what those reasons are, that letter is “a public document.” It must be shown to whoever wants to see it.

Let’s take an example. Suppose a local news media outlet asks to see such a letter regarding a terminated employee. The governmental employer would be obligated to turn it over. Does the requirement for a due process name-clearing right kick in? Recall that there are four criteria:

- stigma on the employee’s reputation
- made public by the employer
- made in conjunction with the employee’s termination or demotion, and
- false

In our example, the third of the four is clear. The termination letter is certainly in conjunction with the termination. And the second of four is clear. The letter has been turned over to the news media outlet because the 2010 changes require it.

So, if the employer does not provide the opportunity for a name-clearing hearing before turning the letter over to the news media outlet, the terminated employee can sue (and win) if he can show that the letter was stigmatizing and something in it was false.

¹⁶ *Presnell*, 298 N.C. at 724, 260 S.E.2d at 617.

¹⁷ *Sciolino*, 480 F.3d at 653. See *Cannon V. Village of Bald Head Island*, 2020 WL 7041459 (E.D.N.C. 2020), awarding damages for a liberty interest due process violation. The court said, “Plaintiffs were not offered a name-clearing hearing until more than two years after termination and notice of the false, stigmatizing charges, which offer was not made at a reasonable time to be ‘meaningful.’ [citing *Sciolino*]

In 2018, the federal Fourth Circuit Court of Appeals applied just this reasoning in a case involving several law enforcement officers dismissed from the town of Bald Head Island in North Carolina. After they received their dismissal letters, they asked for a hearing. The town did not give them one. Then a local newspaper asked for copies of the letters. The town realized that it was obligated to turn them over, under the 2010 changes. The court held that the charges in the letters were both stigmatizing and false and ruled in favor of the terminated employees.¹⁸

A question arises from the provision, instituted in 2010 and found in GS 160A-168(b)(11), that a written notice of dismissal setting forth the specific acts or omissions that were the basis for the dismissal “is a matter of public record.” Does that provision alone mean that such a written notice, lingering in a personnel file, is sufficient to meet the requirement that, for the right to a name-clearing hearing to attach, there must be stigma, which came about in conjunction with a dismissal, was false and “and was made public by the employer. In a 2025 decision, the federal district court for the Eastern District of North Carolina answered “No.” Plaintiff must allege that prospective employers “will request the file.” The mere assertion that the document that is a “matter of public record” lies in the personnel file is insufficient to show that the employer made the document public and triggered the requirement for a name-clearing hearing. *Honn v. Town of Pikeville*, 2025 WL 2811521.

¹⁸ *Cannon v. Village of Bald Head Island*, 891 F.3d 489 (2018).