

**Public Personnel Records Law
After October 1, 2010**

Local Government Law Essentials for Judges

Bob Joyce
School of Government
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Way too many statutes

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- municipal employees (GS 160A-168),
- county employees (GS 153A-98),
- state employees (GS 126-23),
- community college employees (GS 115D-27 thru -30), and
- public school employees (GS 115C-319 thru -321)
- others

Structure is the same
Public records law does not apply

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Public records law does not apply
GS 126-22(a): "Personnel files . . . shall not be subject to inspection and examination as authorized by G.S. 132-6"

Structure is the same
Public records law does not apply
But some *information* is available to the public

Structure is the same

Public records law does not apply

But some *information* is available to the public:

- name,
- date of original employment,
- terms of employment contract,
- current position,
- current title,
- current salary,
- date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and
- station to which assigned.

2010 Amendments

Five basic changes to the list of public *information*

1. Salary Info Change

- Old:
"date and amount of most recent increase or decrease in salary"
- New:
*"date and amount of **each** increase or decrease in salary with that [public employer]"*

2. Job Action Info Change

- Old:

“date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification”

- New:

*“date and **type** of **each** promotion, demotion, transfer, suspension, separation, or other change in position classification with that [public employer]”*

3. Promotions Description Change

- Old:

“date of most recent promotion”

- New:

*“date and **general description of the reasons** for **each** promotion with that [public employer]”*

4. Disciplinary Info Change

- Old:

“date of most recent . . . demotion, transfer, suspension, separation”

- New:

*“date and **type** of each dismissal, suspension, or demotion **for disciplinary reasons** taken by the [public employer]”*

**5. Written Notice of Dismissal
Change**

- Old:
"date of most recent . . . separation"
- New:
"If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the [public employer] setting forth the specific acts or omissions that are the basis of the dismissal."

Guidance

2010 AG Opinion

Guidance

The 2010 AG Opinion:
Directly concerned GS 126-23 (state employees
statute)

Salary Info Change Q 1

Is a public employer obligated to maintain in a way that is available to the public the full salary history of each employee for salary changes beginning October 1, 2010?

Salary Info Change Q 1

Is a public employer obligated to maintain in a way that is available to the public the full salary history of each employee for salary changes beginning October 1, 2010?

Yes.

Salary Info Change Q 2

Is a public employer obligated to research changes in salary occurring before October 1, 2010, to make that information available to the public?

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Yes. AG Opinion directly says so.

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Yes. AG Opinion directly says so.

But:

- (1) Only to extent old records exist
- (2) Access is to *information*, not to underlying records

Job Action Info Change Q 4

Is a public employer obligated to maintain in a way that is available to the public the full job action history of each employee for promotions, demotions, transfers, suspensions, separations, or other changes in position classification beginning October 1, 2010?

Job Action Info Change Q 4

Is a public employer obligated to maintain in a way that is available to the public the full job action history of each employee for promotions, demotions, transfers, suspensions, separations, or other changes in position classification beginning October 1, 2010?

Yes.

Job Action Info Change Q 5

Is a public employer obligated to research changes in job actions occurring before October 1, 2010, to make that information available to the public?

Job Action Info Change Q 5

Is a public employer obligated to research changes in job actions occurring before October 1, 2010, to make that information available to the public?

Yes.

Job Action Info Change Q 5

Is a public employer obligated to research changes in job actions occurring before October 1, 2010, to make that information available to the public?

Yes. But:

(1) Only to extent old records exist

(2) Access is to *information*, not to underlying records

Promotion Description Change Q 7

With respect to promotions occurring October 1, 2010 and later, is a public employer obligated to create a written document containing a general description of the reasons for the promotion?

Promotion Description Change Q 7

With respect to promotions occurring October 1, 2010 and later, is a public employer obligated to create a written document containing a general description of the reasons for the promotion?

Yes, it seems.

Promotion Description Change Q 8

Must public employers now create documents containing a "general description" of reasons for promotions that occurred before October 1, 2010?

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Must public employers now create documents containing a "general description" of reasons for promotions that occurred before October 1, 2010?
No.

Promotion Description Change Q 8

Must public employers now create documents containing a "general description" of reasons for promotions that occurred before October 1, 2010?
No.
Unless the information exists in the record.

Promotion Description Change Q 8

Must public employers now create documents containing a "general description" of reasons for promotions that occurred before October 1, 2010?

No.

Unless the information exists in the record.

Then, create a new "general description;" don't reveal the original record

Promotion Description Change Q 9

What is a "promotion" that triggers the requirement to create the "general description" document?

Promotion Description Change Q 9

What is a "promotion" that triggers the requirement to create the "general description" document?

Damned if I know.

Promotion Description Change Q 10

What level of detail is sufficient to constitute a "general description" of the reasons for the promotion?

Promotion Description Change Q 10

What level of detail is sufficient to constitute a "general description" of the reasons for the promotion?
Damned if I know.

Disciplinary Info Change Q 11

If a public employee is **suspended** for clearly disciplinary reasons, what information must/may the public employer make public?

Disciplinary Info Change Q 11

If a public employee is **suspended** for clearly disciplinary reasons, what information must/may the public employer make public?

“Suspended for disciplinary reasons on December 2, 2011.”

Disciplinary Info Change Q 12

If an employee is dismissed, suspended, or demoted for poor performance (as opposed to any kind of objectionable conduct), is that job action taken “for disciplinary reasons?”

Disciplinary Info Change Q 12

If an employee is dismissed, suspended, or demoted for poor performance (as opposed to any kind of objectionable conduct), is that job action taken “for disciplinary reasons?”

Damned if I know.

Written Notice of Dismissal Change Q 13

When an at-will employee is dismissed for disciplinary reasons, is the public employer obligated to create (and make available for public inspection) a written notice of dismissal setting forth the specific acts or omissions that are the basis of the dismissal?

Written Notice of Dismissal Change Q 13

When an at-will employee is dismissed for disciplinary reasons, is the public employer obligated to create (and make available for public inspection) a written notice of dismissal setting forth the specific acts or omissions that are the basis of the dismissal?

Yes. Or maybe No.

Written Notice of Dismissal Change Q 13

When an at-will employee is dismissed for disciplinary reasons, is the public employer obligated to create (and make available for public inspection) a written notice of dismissal setting forth the specific acts or omissions that are the basis of the dismissal?

Yes. Or maybe No.

(1) 2010 AG Opinion: “[P]ublic employers are required to document and maintain for public inspection a copy of the final decision of the public body dismissing each employee terminated for disciplinary reasons, including employees who are not otherwise entitled to such information.”

Written Notice of Dismissal Change Q 13

When an at-will employee is dismissed for disciplinary reasons, is the school system obligated to create (and make available for public inspection) a written notice of dismissal setting forth the specific acts or omissions that are the basis of the dismissal?

Yes. Or maybe No.

(1) 2010 AG Opinion: “[P]ublic employers are required to document and maintain for public inspection a copy of the final decision of the public body dismissing each employee terminated for disciplinary reasons, including employees who are not otherwise entitled to such information.”

(2) Record creation requirement

Record Creation Requirement

GS 160A-168:

“The following information with respect to each city employee is a matter of public record . . .”

GS 126-23(a):

State agency “shall maintain a record of each of its employees showing the following information with respect to each employee . . .”

Record Creation Requirement

GS 115C-320 (public schools)

GS 115D-28 (community colleges)

GS 126-23 (state government)

Written Notice of Dismissal Change Q 14

If an employee is dismissed for poor performance, is the public employer required to create (and make available for public inspection) a written notice of dismissal?

Written Notice of Dismissal Change Q 14

If an employee is dismissed for poor performance, is the public employer required to create (and make available for public inspection) a written notice of dismissal?

Damned if I know.

Written Notice of Dismissal Change Q 15

The statute requires the creation (and public availability) of the notice of "the final decision" of the public employer. What constitutes such a final decision?

Written Notice of Dismissal Change Q 15

The statute requires the creation (and public availability) of the notice of "the final decision of the local board of education." What constitutes such a final decision?

A decision from which the employee has no right to further review within the agency.

Written Notice of Dismissal Change Q 15

A decision from which the employee has no right to further review within the agency:

- A decision on which the highest authority has passed judgment
- A decision made by an agent to whom decision-making authority has been delegated
- A decision that might have been appealed but, due to the passage of time, no longer is eligible for appeal

Written Notice of Dismissal Change Q 16

For disciplinary dismissals made before October 1, 2010, must the public employer retroactively create (and make publicly available) written notices of dismissal?

Written Notice of Dismissal Change Q 16

For disciplinary dismissals made before October 1, 2010, must the public employer retroactively create (and make publicly available) written notices of dismissal?

No. AG says so.

Written Notice of Dismissal Change Q 17

There exists in the personnel file of a former employee a written notice of dismissal, created before October 1, 2010, setting out the misconduct of the employee. Is the public employer obligated to make that notice publicly available?

Written Notice of Dismissal Change Q 17

There exists in the personnel file of a former employee a written notice of dismissal, created before October 1, 2010, setting out the misconduct of the employee. Is the public employer obligated to make that notice publicly available?

Yes. AG says it does not “violate clearly established rights of former employees dismissed for disciplinary reasons.”

Written Notice of Dismissal Change Q 17

There exists in the personnel file of a former employee a written notice of dismissal, created before October 1, 2010, setting out the misconduct of the employee. Is the school system obligated to make that notice publicly available?

Yes. AG says it does not "violate clearly established rights of former employees dismissed for disciplinary reasons."

But maybe a right to a name-clearing hearing.

Written Notice of Dismissal Change Q 18

When is an employee who is being dismissed for disciplinary reasons entitled to a name-clearing hearing?

Written Notice of Dismissal Change Q 18

When is an employee who is being dismissed for disciplinary reasons entitled to a name-clearing hearing?

When stigma is at issue

Written Notice of Dismissal Change Q 18

When is an employee who is being dismissed for disciplinary reasons entitled to a name-clearing hearing?

When stigma is at issue

Offer opportunity before information is disseminated

Written Notice of Dismissal Change Q 18

When is an employee who is being dismissed for disciplinary reasons entitled to a name-clearing hearing?

When stigma is at issue

Offer opportunity before information is disseminated

Great care will be needed with respect to former employees

Written Notice of Dismissal Change Q 19

If a written notice is prepared and handed to the employee but the employee asks for and is granted the opportunity to resign rather than be dismissed, does the written notice become publicly available?

Written Notice of Dismissal Change Q 19

If a written notice is prepared and handed to the employee but the employee asks for and is granted the opportunity to resign rather than be dismissed, does the written notice become publicly available?

No.

Written Notice of Dismissal Change Q 20

What level of detail is required in "setting forth the specific acts or omissions that are the basis of the dismissal?"

Written Notice of Dismissal Change Q 20

What level of detail is required in "setting forth the specific acts or omissions that are the basis of the dismissal?"

Damned if I know.
