

# Personnel Records Policy

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## § 1. Policy

All personnel records necessary for the administration of the human resources system must be maintained securely. Access to and use of records shall only be allowed as described in this policy. Such personnel records as are necessary for the proper administration of the personnel system shall be maintained. Article 7, N.C.G.S. § 126, prescribes the basic provision for maintenance and use of State employee personnel records, with the Human Resources Commission establishing rules and regulations for the safekeeping of such records.

## § 2. Coverage

These provisions apply to:

- State employees,
- Former State employees, and
- Applicants for employment.

### § 3. Definition of Personnel Files

For purposes of this policy, a personnel file consists of any employment-related or personal information gathered by the agency or by the Office of State Human Resources.<sup>1</sup>

Employment-related information includes information related to an individual's:

- application;
- selection;
- promotion, demotion, transfer;
- salary and leave;
- contract for employment,
- benefits,
- performance evaluation; and
- suspension, disciplinary actions, and termination.

Personal information includes an individual's:

- home address,
- social security number,
- medical history,
- personal financial data,
- marital status, dependents and
- beneficiaries.<sup>2</sup>

### § 4. Records open to Inspection

The following information on each employee shall be maintained and open for inspection:

1. Name.
- ~~2.~~ ~~Age.~~
- ~~3.~~ ~~2.~~ Date of original employment or appointment to State service.
- ~~4.~~ ~~3.~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.
- ~~5.~~ ~~4.~~ Current position.
- ~~6.~~ ~~5.~~ Title.
- ~~7.~~ ~~6.~~ Current salary (includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation).
- ~~9.~~ ~~8.~~ Date and amount of each increase or decrease in salary with that department, agency, institution, commission, or bureau.
- ~~10.~~ ~~9.~~ Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau.

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<sup>1</sup> As specified in N.C.G.S. § 126A-2216-2(c), retirement files maintained by the Retirement Systems Division of the Department of State Treasurer are governed by N.C.G.S. § 135-6.1.

<sup>2</sup> These are specified in N.C.G.S. § ~~126A-16-2(b)(3)~~ ~~126-23(b)(3)~~.

- ~~11.~~<sup>10.</sup> Date and general description of the reasons for each promotion with that department, agency, institution, commission, or bureau
- ~~12.~~<sup>11.</sup> Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the department, agency, institution, commission, or bureau. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting forth the specific acts or omissions that are the basis of the dismissal.
- ~~13.~~<sup>12.</sup> The office or station to which the employee is currently assigned.<sup>3</sup>

## § 5. Confidential Information

All employment-related and personal information in an employee's personnel file not specified under "Records Open for Inspection" is confidential.<sup>4</sup>

Agencies shall maintain in personnel records only information that is relevant to accomplishing personnel administration purposes. Information obtained regarding the medical condition or history of an applicant that is collected by the agency must be maintained in a separate file in compliance with the Americans with Disabilities Act (42 U.S.C. § 12112 and 29 CFR § 1630.14(d)(4)).

Voluntary self-identification of disability information shall be stored in a "data analysis" file (41 CFR § 60-741.42(e)). This file shall not be part of the employee's personnel file or medical file. This file may be part of the existing Human Resource Information System or Applicant Tracking System, provided the disability-related data<sup>ae</sup> are stored securely, apart from other personnel information, so confidentiality is maintained. Access to this data shall be limited to personnel who need to know the information.

*Advisory Note:* Agencies should be aware that there may be information physically kept in an employee's personnel file that does not fall into any of the categories in § 4 (e.g., information about an employee's benefits.) If a public records request is made for any information that is kept in an employee's personnel file, and that information is not open for inspection under [N.C.G.S. 126A-16-3](#)~~G.S. 126-23~~, the agency should get both the consent of the employee and the advice of counsel before releasing such information.

## § 6. Required Access to Information

The public record information listed in § 4 above shall be made available for inspection and examination and copies thereof made by any persons during regular business hours.<sup>5</sup> This public information shall be made available pursuant to the procedures in the Public Records Law.

## § 7. Access to Information Used for Personnel Actions

### § 7.1. Use of Personnel File Information by Human Resources Staff

Human Resources staff necessarily need to be able to gather, view, and utilize information in the personnel file to complete their assigned tasks. Therefore, staff performing Human Resources functions may have access to the personnel file where that access is part of the staff member's job duties.

<sup>3</sup> These are specified in N.C.G.S. § [126A-16-3\(a\)](#)~~126-23(a)~~

<sup>4</sup> N.C.G.S. § [126A-16-4](#)~~126-24~~

<sup>5</sup> N.C.G.S. § [126A-16-3\(c\)](#)~~126-23(e)~~

This authorized access includes situations where staff at the Office of State Human Resources or Office of State Controller may gather, view, and utilize personnel file information in order to manage the state Human Resources systems or state payroll functions. Authorized access also includes personnel file information being made available to recruiters as necessary in the State's human capital management system for posting, hiring, and onboarding.

## **§ 7.2. Information Obtained from Other Sources**

Information used in making a determination about employment or other personnel actions should, to the extent practical, be obtained directly from the individual. There may be instances where it is necessary to obtain information from other sources. This may be obtained either directly from those sources or by the use of a consumer reporting agency.

If the consumer reporting agency is utilized, the requirement of the Fair Credit Reporting Act, Title VI of The Consumer Credit Protection Act (Public Law 91-508) must be followed.

- When a consumer reporting agency furnishes a report and employment, promotion, or reassignment is denied on the basis, in whole or in part, of information in the report, the applicant or employee must be informed and given the name and address of the consumer reporting agency. The appointing authority does not have to reveal the contents of the report.
- When an investigative consumer report is requested from a consumer reporting agency, the individual must be notified within three days, and told that he/she can make a written request for the "nature and scope" of the investigation. "Nature and scope" includes a description of the questions asked, disclosure of numbers and types of persons interviewed, and the name and address of the investigating agency.

## **§ 8. All information available to certain persons**

All information in an employee's personnel file shall be open for inspection and examination to the following persons.<sup>6</sup>

- The supervisor of the employee ~~;~~ ~~for this purpose, supervisor is and~~ any individual in the ~~chain of administrative authority~~ management chain above ~~the a given State~~ employee within ~~a pertinent State~~ their agency.
- Members of the General Assembly (under the authority of N.C.G.S. § 120-19).

*Advisory Note:* G.S. 120-19 provides as follows: Except as provided in [N.C.G.S. § 105-259](#), all officers, agents, agencies and departments of the State are required to give to any committee of either house of the General Assembly, or any committee or commission whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the General Assembly or one of its standing committees or the chair of a standing committee.

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<sup>6</sup> N.C.G.S. § ~~126A-16-5(a)~~ 126-24.

- A party by authority of a proper court order.
- An official of an agency of the Federal government, State government or any political subdivision thereof. An official is a person who has official or authorized duties on behalf of an agency; it does not imply a necessary level of duty or responsibility. Such an official may inspect any personnel records when such inspection is deemed by the department head to be necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution or a tax investigation. This right to access includes the circumstances where one State agency is considering for employment a person who is or has been employed in another State agency; the head of the latter agency may release to an official of another agency information relative to the employee's job performance.
- The employee, or his/her properly authorized agent. The personnel file may be examined in its entirety except for:
  - Letters of reference solicited prior to employment
  - Information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. The medical record may be disclosed to a licensed physician designated in writing by the employee. When medical information is obtained on any employee, the physician should indicate any information that should not be disclosed to the employee.
- A party to a quasi-judicial hearing of a State agency, or a State agency which is conducting a quasi-judicial hearing, may have access to relevant material in personnel files and may introduce copies of such material or information based on such material as evidence in the hearing either upon consent of the employee, former employee, or applicant for employment or upon subpoena properly issued by the agency either upon request of a party or on its own motion.

## § 9. Releasing Confidential Information

Each individual requesting access to confidential information will be required to submit satisfactory proof of identity, unless the individual is recognized by the person providing the information.

A department head may, under the conditions specified, take the following action with respect to an applicant, employee or former employee employed by or assigned to that department, or whose personnel file is maintained in the department.<sup>7</sup>

- In his/her discretion, the department head may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when such department head shall determine that inspection is essential to maintaining the integrity of such department or maintaining the level or quality of services provided by such department.
- Under the circumstances above, the department head may, in his/her discretion, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or non-employment of such applicant,

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<sup>7</sup> N.C.G.S. § [126A-16-5\(b\)](#)~~126-24, last paragraph.~~

employee, or former employee or other confidential matters contained in the personnel file.

- Provided, however, that prior to releasing such information or making such file or portion thereof available as provided herein, such department head shall prepare a memorandum setting forth the circumstances that the department has determined requires such disclosure, and the information to be disclosed, with a copy of the memorandum sent to the employee and the memorandum retained as a public record in the files of the department head.

## **§ 10. Records of former employees and applicants for employment**

The provisions for access to records apply to former employees and applicants the same as they apply to present employees. Personnel files of former State employees who have been separated from State employment for ten or more years may be open to inspection and examination except for papers and documents relating to demotions and to disciplinary actions resulting in the dismissal of the employee.<sup>8</sup>

## **§ 11. Remedies of employees objecting to material in files**

An employee who objects to material in his/her file may place a statement in the file relating to the material to which the employee objects. An employee may seek the removal of what the employee alleges to be inaccurate or misleading material in his/her personnel file in accordance with the grievance procedure of that agency; however, the employee does not have the right to appeal to the Office of Administrative Hearings. Also, an employee does not have the right to appeal the contents of a performance appraisal or a written warning.<sup>9</sup>

## **§ 12. Safeguarding confidential information**

In order to insure the security and confidentiality of records, each agency shall establish administrative, technical, and physical controls to protect confidential information from unauthorized access or disclosure.

## **§ 13. Penalty for permitting access to confidential file by unauthorized person**

N.C.G.S. § ~~126A-16-7~~~~126-27~~ provides that any public official or employee who permits any person to have access to or custody or possession of any portion of a personnel file designated as confidential, when that person is not specifically authorized to have access to the information, is guilty of a misdemeanor; upon conviction he/she shall be fined in the discretion of the court but not in excess of \$500.

## **§ 14. Penalty for examining, copying, etc., confidential file without authority**

N.C.G.S. § ~~126A-16-8~~~~126-28~~ provides that any person, not specifically authorized to have access to a personnel file designed as confidential, who examines in its official filing place,

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<sup>8</sup> N.C.G.S. § ~~126A-16-2(c)~~~~126-22(e)~~.

<sup>9</sup> N.C.G.S. § ~~126A-16-6~~~~126-25~~.

removes, or copies any portion of a confidential personnel file, is guilty of a misdemeanor; upon conviction he/she shall be fined in the discretion of the court but not in excess of \$500.

### **§ 15. Source of Authority**

- This policy is issued under [126A-16-1. N.C.G.S. § 126-4\(5\), \(10\).](#) It is compliant with N.C.G.S. §§ [126A-16-2 to 126A-16-8](#)~~126-22 to 126-29~~.

Note: Policy History moved to a separate document.