

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 505
SENATE BILL 611

AN ACT TO PROVIDE THE SAME CONFIDENTIALITY OF PERSONNEL RECORDS OF WATER AND SEWER AUTHORITIES AS ARE PROVIDED THOSE OF CITIES, COUNTIES, AND OTHER UNITS OF LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"§ 162A-6.1. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other law concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by an authority 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 authority 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 authority.

(b) The following information with respect to each authority employee is a matter of public record: name; age; date of original employment or appointment to the service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. The authority 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 authority 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 an authority 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 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) An authority employee having supervisory authority over the employee may 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 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 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 chief administrative officer, with concurrence of the authority, may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of an authority employee and the reasons for that personnel action. Before releasing the information, the chief administrative officer or authority shall determine in writing that the release is essential to maintaining public confidence in the administration of authority services or to maintaining the level and quality of authority services. This written determination shall be retained in the office of the chief administrative officer or the secretary of the authority, 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 authority'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 authority may permit access, subject to limitations it may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that that person 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 authority as long as each personnel file examined is retained.

(d) An authority 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 misdemeanor and upon conviction shall 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:

- (1) Knowingly and willfully examine in its official filing place; or
- (2) Remove or copy

any portion of a confidential personnel file shall be guilty of a misdemeanor and, upon conviction, shall be fined in the discretion of the court, but not in excess of five hundred dollars (\$500.00)."

Sec. 2. This act becomes effective October 1, 1993.

In the General Assembly read three times and ratified this the 24th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives