

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 426

Short Title: Strengthen Public Records Law.

(Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I/Constitution

March 20, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC RECORDS LAW.

The General Assembly of North Carolina enacts:

Section 1. Existing G.S. 132-1 is redesignated as subsection (a), and a new subsection is added, to read:

"(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost and at no profit to the public agency unless otherwise specifically provided by law. As used herein, 'minimal cost' shall mean the actual cost of reproducing the public record or public information."

Sec. 2. G.S. 132-6 reads as rewritten:

"§ 132-6. Inspection and examination of records.

(a) Every person having custody custodian of public records shall permit them to be any record in his or her custody to be inspected and examined at reasonable times and under his reasonable supervision by any person, and he shall promptly furnish certified copies thereof on upon payment of any fees as may be prescribed by law. As used herein, 'custodian' does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

1 (b) No person requesting to inspect and examine public records, or to obtain
2 copies thereof, shall be required to disclose the purpose or motive for the request.

3 (c) No request to inspect, examine, or obtain copies of public records shall be
4 denied on the grounds that confidential information is commingled with the requested
5 nonconfidential information. If it is necessary to separate confidential from
6 nonconfidential information in order to permit the inspection, examination, or copying of
7 the public records, the public agency shall bear the cost of such separation.

8 (d) Notwithstanding the foregoing provisions of subsections (a) and (b) of this
9 section, public records relating to the proposed expansion or location of specific business
10 or industrial projects in the State may be withheld so long as their inspection,
11 examination or copying would frustrate the purpose for which such public records were
12 created; provided, however, that nothing herein shall be construed to permit the
13 withholding of public records relating to general economic development policies or
14 activities."

15 Sec. 3. Chapter 132 of the General Statutes is amended by adding two new
16 sections to read:

17 **"§ 132-6.1. Electronic data-processing records.**

18 (a) No public agency shall purchase, lease, create, or otherwise acquire any
19 electronic data-processing system for the storage, manipulation, or retrieval of public
20 records unless it first determines that the system will not impair or impede the agency's
21 ability to permit the public inspection and examination, and to provide electronic copies
22 of such records. Nothing in this subsection shall be construed to require the retention by
23 the public agency of obsolete hardware or software. As used herein, 'electronic data-
24 processing system' means computer hardware, computer software, or computer programs
25 or any combination thereof, regardless of kind or origin.

26 (b) As used herein, 'computer hardware' means any tangible machine or device
27 utilized for the electronic storage, manipulation, or retrieval of data. 'Computer program'
28 means a series of instructions or statements that permit the storage, manipulation, and
29 retrieval of data within an electronic data-processing system, together with any associated
30 documentation. 'Computer software' means any set or combination of compute programs.
31 Neither 'computer program' nor 'computer software' includes the original data, or any
32 analysis, compilation, or manipulated form of the original data produced by the use of the
33 program or software.

34 (c) Every computer database compiled or created by a public agency on or after
35 July 1, 1996, shall be recorded in an index, which shall be a public record. The index
36 shall include, at a minimum, the following information with respect to each database
37 listed therein: a list of the data fields; a description of the format or record layout;
38 information as to the frequency with which the database is updated; a list of any data
39 fields to which public access is restricted; a description of each form in which the
40 database can be copied or reproduced using the agency's computer facilities; and a
41 schedule of fees for the production of copies in each available form. Electronic databases
42 compiled or created prior to July 1, 1996, may be indexed at the public agency's option.

43 **"§ 132-6.2. Provisions of copies of public records; fees.**

1 (a) Persons requesting copies of public records may elect to obtain them in any
2 and all forms in which the public agency is capable of providing them. No request for
3 copies of public records in a particular form shall be denied on the grounds that the
4 custodian has made or prefers to make the public records available in another form. The
5 public agency may assess different fees for different forms as prescribed by law.

6 (b) Persons requesting copies of public records may request that the copies be
7 certified or uncertified. The fees for certifying copies of public records shall be as
8 provided by law. Except as otherwise provided by law, no public agency shall charge a
9 fee for an uncertified copy of a public record that exceeds the actual cost to the public
10 agency of making the copy. For purposes of this subsection, 'actual cost' is limited to
11 out-of-pocket costs, to include the cost of paper if a printed list is provided, the price paid
12 for the ink used to print a paper list, and the price paid for the blank disk or tape for data
13 supplied on disk or tape, but not to include the following:

- 14 (1) Estimated cost of assembling the database;
- 15 (2) Labor costs;
- 16 (3) Estimated depreciation costs;
- 17 (4) Estimated heating or air-conditioning costs;
- 18 (5) Prorated space rental costs; or
- 19 (6) Other fixed but allocated costs.

20 Notwithstanding the provisions of this subsection, if the request is such as to require
21 extensive use of information technology resources or extensive clerical or supervisory
22 assistance by personnel of the agency involved, the agency may charge, in addition to the
23 actual cost of duplication, a special service charge, which shall be reasonable and shall be
24 based on the actual cost incurred for such extensive use of information technology
25 resources or the labor costs of the personnel providing the service that is actually incurred
26 by the agency or attributable to the agency for the clerical and supervisory assistance
27 required. If anyone requesting public information from any agency of the State is
28 charged a fee that the requester believes to be unfair or unreasonable, the requester may
29 ask the Information Resource Management Commission to mediate the dispute.

30 (c) Persons requesting copies of databases may be required to make or submit such
31 requests in writing. Custodians of public records shall respond to all such requests
32 promptly. If the request is granted, the copies shall be provided as soon as reasonably
33 possible. If the request is denied, the denial shall be accompanied by an explanation of
34 the basis for the denial. If asked to do so, the person denying the request shall promptly
35 reduce the explanation for the denial to writing."

36 Sec. 4. G.S. 132-9 reads as rewritten:

37 "**§ 132-9. Access to records.**

38 (a) Any person who is denied access to public records for purposes of ~~inspection,~~
39 ~~examination or copying~~ inspection and examination, or who is denied copies of public
40 records, may apply to the appropriate division of the General Court of Justice for an order
41 compelling ~~disclosure,~~ disclosure or copying, and the court shall have jurisdiction to issue
42 such orders. Actions brought pursuant to this section shall be set down for immediate

1 hearing, and subsequent proceedings in such actions shall be accorded priority by the trial
2 and appellate courts.

3 (b) In an action to compel disclosure of public records which have been withheld
4 pursuant to the provisions of G.S. 132-6 concerning public records relating to the
5 proposed expansion or location of particular businesses and industrial projects, the
6 burden shall be on the custodian withholding the records to show that disclosure would
7 frustrate the purpose of attracting that particular business or industrial project.

8 (c) In any action brought pursuant to this section in which a party successfully
9 compels the disclosure of public records, the court may, in its discretion, allow the
10 prevailing party to recover reasonable attorneys' fees to be taxed as court costs against the
11 appropriate public agency if:

12 (1) The court finds that the agency acted without substantial justification in
13 denying access to the public records; and

14 (2) The court finds that there are no special circumstances that would make
15 the award of attorneys' fees unjust.

16 Any attorneys' fees assessed against a public agency under this section shall be
17 charged against the operating expenses of the agency and shall not be reimbursed from
18 any other source; provided, however, that the court may order that all or any portion of
19 any attorneys' fees so assessed by paid personally by any public employee or public
20 official found by the court to have knowingly or intentionally committed, caused,
21 permitted, suborned, or participated in a violation of this Article.

22 (d) If the court determines that an action brought pursuant to this section was filed
23 in bad faith or was frivolous, the court may, in its discretion, assess a reasonable
24 attorney's fee against the person or persons instituting the action and award it to the
25 defendants as part of the costs."

26 Sec. 5. G.S. 6-19.2 is repealed.

27 Sec. 6. This act becomes effective October 1, 1995.