

Personnel Records

Policy Such personnel records as are necessary for the proper administration of the personnel system shall be maintained.

Article 7, G.S. 126, prescribes the basic provision for maintenance and use of State employee personnel records, with the State Personnel Commission establishing rules and regulations for the safekeeping of such records.

Coverage These provisions apply to:

- State employees,
 - former State employees, and
 - applicants for employment.
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**Definition of
Personnel File**

For purposes of this policy, a personnel file consists of any employment-related or personal information gathered by the agency, the Retirement Systems Division of the Department of State Treasurer, or by the Office of State Personnel.

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.
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Personnel Records, Continued

Records Open to Inspection

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

- Name;
 - Age;
 - Date of original employment or appointment;
 - Contracts (terms, 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;
 - Current position title;
 - Current salary (pay, benefits, incentives, bonuses and deferred and all other forms of compensation paid by the employing agency);
 - Date and amount of most recent change in salary;
 - Date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and
 - Agency and location to which employee is currently assigned.
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Confidential information

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

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).

Advisory Note: Agencies should be aware that there may be information physically kept in an employee's personnel file which an employee believes is confidential but which does not fall into any of the above categories (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 G.S. 126-23, the agency should get both the consent of the employee and the advice of counsel before releasing such information.

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**Required
Access to
Information**

The information listed above shall be made available for inspection and examination and copies thereof made by any persons during regular business hours, subject to the following provisions:

- All disclosures of records shall be accounted for by keeping a written record of the following information: Name of employee, information disclosed, date information requested, name and address of the person to whom the disclosure is made (if the person requesting the information is willing to provide such information). The information must be retained for a period of two years. This does not apply to the processing of personnel records or routine credit reference.
- Upon request, the record of disclosure shall be made available to the employee to whom it pertains.
- An individual examining a personnel record may copy the information; any available photocopying facilities may be provided and the cost may be assessed to the individual.
- Any person denied access to any records shall have a right to compel compliance with these provisions by application to a court for a writ of mandamus or other appropriate relief.

**Access to
information
used for
personnel
actions**

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.

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Access to information used for personnel actions (continued)

- 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.
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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:

- The supervisor of the employee: for this purpose, supervisor is any individual in the chain of administrative authority above a given State employee within a pertinent State agency.
- Members of the General Assembly (authority G.S. 120-19).

Advisory Note: G.S. 120-19 provides as follows: Except as provided in 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.

- 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 in 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.
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Personnel Records, Continued

All information available to certain persons (continued)

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.

Releasing confidential information

Each individual requesting access to confidential information will be required to submit satisfactory proof of identity.

A record shall be made of each disclosure (except disclosures to the employee and his or her supervisor) and the record shall be placed in the employee's file.

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.

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Personnel Records, Continued**Releasing confidential information (continued)**

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

Releasing confidential information (continued)

- Provided 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.

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.

Remedies of employees objecting to material in file

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 inaccurate or misleading material in his/her personnel file in accordance with the grievance procedure of that agency, including appeal to the State Personnel Commission.

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.

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Penalty for permitting access to confidential file by unauthorized person

G.S. 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.

Penalty for examining, copying, etc., confidential file without authority

G.S. 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, 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.
