

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 281
HOUSE BILL 689

AN ACT TO INSURE PRIVACY OF AREA MENTAL HEALTH, MENTAL
RETARDATION AND SUBSTANCE ABUSE AUTHORITY EMPLOYEE
PERSONNEL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122 is amended by adding a new section 122-35.45.1 as follows:

"§ 122-35.45.1. Privacy of personnel records. – (a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by an area mental health, mental retardation and substance abuse 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 area mental health, mental retardation and substance abuse 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 area mental health, mental retardation and substance abuse authority.

(b) The following information with respect to each employee is a matter of public record; name; age; date of original employment or appointment to the area mental health, mental retardation and substance abuse authority; current position title; current salary; date and amount of 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 local governing board 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, examination and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the local governing board 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 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 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 area mental health, mental retardation and substance abuse 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 local governing board may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of an employee and the reasons for that personnel action. Before releasing the information, the board shall determine in writing that the release is essential to maintaining public confidence in the administration of services or to maintaining the level and quality of services. This written determination shall be retained as a record for public inspection and shall become part of the employee's personnel file.
- (d) 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 area mental health, mental retardation and substance abuse authority

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 action 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.

(e) The area board may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he 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 area mental health, mental retardation and substance abuse authority as long as each personnel file so examined is retained.

(f) The area board of area mental health, mental retardation and substance abuse 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.

(g) 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 of not more than five hundred dollars (\$500.00).

(h) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, 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 is effective upon ratification.

In the General Assembly read three times and ratified, this the 6th day of May, 1983.