§ 131E-257.2. Privacy of employee 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 and applicants for employment maintained by a public hospital 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 public hospital with respect to an employee and, by way of illustration but not limitation, relating to the employee's application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, employment contracts, leave, salary, and termination of employment. As used in this section, "employee" includes both current and former employees of a public hospital.

(b) The following information with respect to each public hospital employee is a matter of public record:

(1) Name.
(2) Age.
(3) Date of original employment.
(4) Current position title.
(5) Date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification.
(6) The office to which the employee is currently assigned.

In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public hospital shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists.

(b1) In addition, the following information for the last completed fiscal year, beginning with the fiscal year ending in 2008, of a public hospital with respect to each Covered Officer and the five key employees (who are not Covered Officers) with the highest annual compensation of a public hospital is a matter of public record:

(1) Base salary.
(2) Bonus compensation.
(3) Plan-based incentive compensation.
(4) Dollar value of all other compensation, which includes any perquisites and other personal benefits.

(b2) As used in this section:

(1) "Covered Officer" means each of the following:
    a. All individuals serving as the public hospital's chief executive officer or acting in a similar capacity at any time during the last completed fiscal year, regardless of compensation level.
    b. The public hospital's four most highly compensated executive officers, determined by the aggregate amount reportable under subdivisions (1) through (4) of subsection (b1) of this section, other than the chief executive officer, who were serving as executive officers at the end of the last completed fiscal year.
    c. Any individual for whom disclosure would have been provided pursuant to sub-subdivision b. of this subsection but for the fact that the individual's service as an executive officer of the public hospital terminated during the last completed fiscal year.

(2) "Executive officer" means each employee of the public hospital specifically appointed by the governing board of the public hospital to serve as an officer.

(3) "Key employee" means any person having responsibilities, powers, or influence similar to those of an officer. The term includes the chief management and administrative officials of a public hospital.

(b3) The governing board of a public hospital 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 governing board of the public hospital 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 a public hospital 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 the employee's duly authorized agent may examine all portions of the employee's personnel file, except letters of reference solicited prior to employment.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A public hospital 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 the inspection is deemed by the person having custody of the file to be inspected 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 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 the 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 the employee's 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.

(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 public hospital'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.

(e) The governing board of a public hospital 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 representative certifies that he or she 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 public hospital as long as each personnel file so examined is retained.

(f) The governing board of a public hospital 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 or her 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 hospital director, trustee, officer, 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 Class 3 misdemeanor; however, conviction under this subsection shall be punishable only by a fine not to exceed 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, or remove, or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor; however, conviction under this subsection shall be punishable, in the discretion of the court, by a fine not to exceed five hundred dollars ($500.00). (1997-517, s. 2; 2007-508, s. 5.5.)