

**N.C Public and Personnel Records Laws for Charter Schools
An Annotated Condensation of Terms and Provisions**

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From the N.C. Charter School Act

N.C. Public Records Laws

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From the N.C. Charter School Act¹

§ 115C-218.25. Open meetings and public records [as applied to charter schools].

The charter school and board of directors of the private nonprofit corporation that operates the charter school are subject to the **Public Records Act, Chapter 132** of the General Statutes, and the **Open Meetings Law, Article 33C of Chapter 143** of the General Statutes. Notwithstanding the requirements of Chapter 132 of the General Statutes, inspection of charter school **personnel records for those employees directly employed by the board of directors** of the charter school shall be subject to the

¹ The N.C. Charter Act, G.S. 115C, Art. 14a is available at

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_115C/Article_14A.html

requirements of **Article 21A** of this Chapter. The ... school shall use the same schedule established by the Department of Natural and Cultural Resources for retention and disposition of records of local school administrative units.

N.C. Public Records Laws²
(Non-header bold font added for emphasis)

§ 132-1. "Public records" defined.

- (a) **all documents**... made or received ... in connection with the **transaction of public business**....
- (b) The public records... are the property of the people...
... [T]he people may obtain copies of their public records ... **free or at minimal cost unless otherwise specifically provided by law**
... "minimal cost" shall mean the **actual cost** of reproducing....

§ 132-1.1. Confidential Communications

- (a) ...Public records... shall not include
... written communications... within the **attorney-client relationship** by any attorney-at-law serving any such governmental body,
... concerning **any claim** against or on behalf of the governmental body
... such communications ... shall become public records ... three years from the date such communication was received...

§ 132-1.2. Confidential information ***

- (1) Meets all of the following conditions:
 - a. ...a **"trade secret"**
 - b. [T]he property of a private "person"
 - c. made ... in connection with ... the performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws. ...
 - d. Is designated ... "confidential" or as a "trade secret" at the time of its initial disclosure ...
- (2) Reveals an **account number**
- (3) Reveals a document, file number, password, or any other information maintained by the Secretary of State
- (4) ...[an] electronically captured ... signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.

§ 132-1.3. Settlements made by or on behalf of public agencies ...

- (a) Public records... shall include **all settlement documents** in any suit, administrative proceeding or arbitration.... No agency ... shall approve, accept or enter into any settlement of any such suit, arbitration or proceeding if the settlement provides that its terms and conditions shall be confidential....

§ 132-1.7. Sensitive public security information.

- (a) Public records...shall not include...information containing specific details of public security plans and arrangements or the detailed plans and drawings of public...facilities or plans

² The Public Records Act, G.S. 132, is available at https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_132.html

§ 132-1.9. Trial preparation materials.

§ 132-1.10. Social security numbers and other personal identifying information.

(3)[regarding] social security numbers or other personal identifying information... [agencies should] minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsections (c) and (d) of this section, no agency ... shall do any of the following:

(1) **Collect a social security number** from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise **imperative.... relevant to the purpose ... and** unless the need for social security numbers has been **clearly documented**.

(2) Fail... to **segregate that number** on a separate page ... in order that the social security number can be **more easily redacted....**

(3) Fail...to provide, ... that individual, upon request, with a **statement of the purpose** or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than the purpose stated.

(5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. **"Identifying information"**, as used in this subdivision, shall have the same meaning as in G.S. 14-113.20(b), except it shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or drivers license numbers appearing on law enforcement records. **Identifying information shall be confidential³** and not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information.

§ 132-2. Custodian designated.

The public official in charge of an office having public records shall be the custodian thereof.

§ 132-3. Destruction of records regulated.

(a) Prohibition. - No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5 and G.S. 130A-99, without the consent of the Department of Natural and Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor

§ 132-6. Inspection, examination and copies of public records.

(a) Every custodian of public records **shall permit any record** in the custodian's custody to be

³ G.S. 14-113.20(b): SS/Tax I.D. #; drivers license, state identification, or passport #s, bank account #s, PINs; e-mail and internet addresses and account # and names; Digital signatures; info that can be used to access a person's financial resources; biometric data; fingerprints; passwords; parent's legal surname

inspected and examined at reasonable times and under reasonable supervision by any person, and shall, **as promptly as possible, furnish copies** thereof **upon payment of any fees** as may be prescribed by law. ...

(a1) A public agency or custodian may [make...] public records **available online** ... [and] the public agency... is not required to provide copies ... in any other way.

(b) No person ... shall be required to disclose the **purpose or motive** for the request.

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

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created....

§ 132-6.1. Electronic data-processing and computer databases as public records.

(a1) ...a public agency may satisfy the requirement under G.S. 132-6 to provide access to public records in computer databases by making public records in computer databases individually available online in a format that allows a person to view the public record and print or save the public record to obtain a copy. A public agency that provides access to public records under this subsection is not required to provide access to the public records in the computer database in any other way; provided, however, that a public agency that provides access to public records in computer databases shall also allow inspection of any of such public records that the public agency also maintains in a nondigital medium.

(c) **Nothing in this section shall require a public agency to create a computer database** that the public agency has not otherwise created....

§ 132-6.2. Provisions for copies of public records; fees.

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

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law.

...Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, "actual cost" is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made.

... Notwithstanding the provisions of this subsection, if the request is such as to **require extensive use of information technology resources or extensive clerical or supervisory assistance** by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of

information requested, then the agency may charge, in addition to the actual cost of duplication, **a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs** of the personnel providing the services....

...If anyone requesting public information from any public agency is charged a fee that the requester believes to be **unfair or unreasonable, the requester may ask the State Chief Information Officer** or his designee to mediate the dispute

(e) Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by **creating or compiling a record that does not exist**. If a public agency, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. **Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium.**

§ 132-7. Keeping records in safe places; copying or repairing; certified copies.

Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read.

§ 132-9. Access to records.

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

§ 132-10. Qualified exception for geographical information systems.

§ 132-11. Time limitation on confidentiality of records.

(a)all restrictions on access to public records shall expire **100 years** after...creation of the record.

(b) Subsection (a) of this section shall apply to any public record in existence at the time of, or created after, **August 18, 2015**.

(c) No provision of this section shall be construed to authorize or require the opening of any record that meets any of the following criteria:

- (1) Is ordered to be sealed by any state or federal court, except as provided by that court.
- (2) Is prohibited from being disclosed under federal law, rule, or regulation.
- (3) Contains federal Social Security numbers.
- (4) Is a juvenile, probationer, parolee, post-releasee, or prison inmate record, including medical and mental health records.
- (5) Contains detailed plans and drawings of public buildings and infrastructure facilities.
- (d) For purposes of this section, the custodian of the record shall be the Department of Natural and Cultural Resources or other agency in actual possession of the record. (2015-218, s. 3; 2015-241, s. 14.30(c).)

Privacy of Employee Personnel Records (115C, Article 21A)⁴

§ 115C-319. Personnel files not subject to inspection.

Personnel files of employees... former employees... or [job] applicants... shall not be subject to inspection and examination.... [A] personnel file consists of any informationwhich information relates to the individual's application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment wherever located or in whatever form.

Nothing in this section shall be construed to prevent local boards of education from disclosing the certification status and other information about employees as required by Section 1111(h)(6) of P.L. 107-110. (1987, c. 571, s. 1; 2002-126, s. 7.36.)

§ 115C-320. Certain records open to inspection.

(a) Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee:

- (1) Name.
- (2) Age.
- (3) Date of original employment or appointment.
- (4) The **terms of any contract** by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its possession.
- (5) Current position.
- (6) Title.
- (7) Current salary.
- (8) Date and amount of each increase or decrease in salary with that local board of education.
- (9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that local board of education.
- (10) Date and general description of the reasons for each promotion with that local board of education.
- (11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons.... If the disciplinary action was a dismissal, a copy of the **written notice of the final decision**... setting forth the specific acts or omissions that are the basis of the dismissal.
- (12) The office or station to which the employee **is currently assigned**.

(b) **For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.**

(c) Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief. (1987, c. 571, s. 1; 2002-171, s. 4;

⁴ Available at https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_115C/Article_21A.html

§ 115C-321. Confidential information in personnel files; access to information.

(a) All **information** contained in a personnel file, **except as otherwise provided** in this Chapter, is confidential and shall not be open for inspection and examination except to any of the following persons:

- (1) The **employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times** in its entirety **except for letters of reference** solicited prior to employment.
- (2) The superintendent and other supervisory personnel.
- (3) Members of the ... board of education and the board's attorney.
- (4) A party by authority of a subpoena or proper court order.....

(a1) Notwithstanding any other provision of this Chapter, information contained in a personnel file that is **relevant to possible criminal misconduct** may be made available to law enforcement and the district attorney to assist in the investigation of:

- (1) A report made to law enforcement pursuant to G.S. 115C-288(g), or
- (2) Any report to law enforcement regarding an arson, attempted arson, destruction of, theft from, theft of, embezzlement from, embezzlement of any personal or real property owned by the local board of education.

(a2) The employee shall be given **five working days prior written notice** of any disclosure under subsection (a1) of this section to permit the employee to apply to the district court for an in camera review prior to the date of disclosure to determine if the information is relevant to the possible criminal misconduct. Failure of the employee to apply for a review shall constitute a waiver by the employee of any relief under this subsection.

(a3) Statements or admissions made by the employee and produced under subsection (a1) of this section shall not be admissible in any subsequent criminal proceeding against the employee.

(b) Notwithstanding any other provision of this Chapter, **any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation** of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is **essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board**; provided, that **prior to releasing** the information or making the file or any portion available as provided herein, the **superintendent shall prepare a memorandum setting forth the circumstances** which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record.

(c) 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 permitted by this section, is guilty of a **Class 3 misdemeanor** and upon conviction shall only be fined an amount not in excess of five hundred dollars (\$500.00).

(d) Any person, not specifically authorized by this section to have access to a personnel file, who shall knowingly and willfully examine in its official filing place, remove, or copy any portion of a personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined not in excess of five

hundred dollars (\$500.00). (1987, c. 571, s. 1; 2005-321, s. 1; 2007-192, s. 1; 2008-194, s. 11(b); 2016-108, s. 2(e); 2016-110, s. 3; 2016-116, s. 1; 2017-57, ss. 7.26E(c), (f).)