



Laws Relating to Confidential Records Held by North Carolina Government

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INTRODUCTION

Government records in North Carolina generally are public in nature. The public policy of the State of North Carolina as established by the General Assembly is to “provide that, as a general rule, the public would have liberal access to public records.”¹

The North Carolina Public Records Law, attached as Appendix A, states that public records “shall mean all documents papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina or its subdivisions.”²

In the absence of clear statutory exemption or exception, documents falling within the definition of public record are available for public review.

The Public Records Law itself includes several broad categories of records that are made or received in the course of public business that are not available for public inspection. Those records addressed in the Public Records Law that are not available for public review include:

- Written communications to any public board, council, commission or other governmental body that fall within the attorney-client privilege.
- Tax records.
- Trade secrets, if properly submitted to a government entity.
- Information that reveals an account number for electronic payment that is received by the State or local governments.
- Settlement documents in medical malpractice actions against a hospital facility.
- Information technology security features, including passwords, security standards, procedures, processes, configurations, software, and codes.
- Criminal investigative records.
- 911 Databases.

The Public Records Law also provides a qualified exception for geographical information systems databases and data files developed and operated by counties and municipalities. To obtain an electronic copy of the information, the county or local government may require that the person obtaining the copy not resell or otherwise use the information for trade or commercial purposes.

Within the Open Meetings Law, Appendix B, additional restrictions on disclosure of public information are found. For example, when a public body meets in closed session, the minutes of that session may be withheld from public inspection if the purpose of the

¹ *The News & Observer v. State ex rel. Starling*, 312 N.C. 276, 281, 322 S.E.2d 133, 137 (1984).

² G.S. §132-1.

closed session would be “frustrated” by the release. When the purpose of the closed session has been achieved, the minutes then become publicly available records.

Additional rules for keeping information confidential are found throughout state law.

What follows is a summary of those additional statutes and rules that affect the operation of state and local government on a daily basis.

Federal laws and rules may also apply to the confidentiality of records held by state and local governments. Some of those federal provisions are included. This document does not include a comprehensive survey of federal provisions that impose confidentiality requirements on state and local governments.

This document does not constitute legal advice. For specific interpretation or applicability of the statutes, a user of this document should contact legal counsel.

To ensure that this document is as complete, correct and as useful as possible, please call 919-754-6658 with any suggestions or changes you might have. We would ask that any changes in statutes and regulations be brought to our attention. Thank you.

Specific Confidentiality Laws Relating to Government Held Information³

ADDRESS CONFIDENTIALITY PROGRAM

The address confidentiality program allows victims of domestic violence, sexual assault or stalking to register with the Attorney General's Office and obtain alternate addresses for voting, real estate ownership and other public records. The real address must be made available to a local school board if a student is enrolled in a school, but it must be kept confidential. G.S. §15C-1, *et seq.* and G.S. 115C-366(g).

ADMINISTRATION

Bidders and Suppliers.

Information submitted by bidders or suppliers may be considered trade secrets⁴, proprietary or confidential and not open to public inspection. G.S. §143-52; NCAC T1-C5-S5B.1501.

Purchase and Contract.

Each contract file must include information on offers, reasons for award or cancellation, worksheets/evaluations, etc. After a contract is awarded, the material in the file shall be public record, except confidential information such as trade secrets and proprietary materials. G.S. §143-53; NCAC T1-C5-S5B.1903.

Energy Division.

The Energy Division may, with the prior express approval of the Governor and the Energy Policy Council, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils and propane for resale within the State file with the Energy Division information regarding stocks of coal and petroleum products and storage capacities. Any individually identifiable energy information obtained from suppliers of petroleum products sold in North Carolina shall be confidential. G.S. §143-345.13 and 345.14.

Veterans Affairs.

³ In this document, the legal citations are indicated as: G.S. for "General Statutes of North Carolina"; U.S.C. for "United States Code"; C.F.R. for "Code of Federal Regulations"; and, NCAC for "North Carolina Administrative Code." Within the NCAC citations "T" stands for Title, "C" stands for Chapter, and "S" stands for Section. In most instances, a court of competent jurisdiction may order the release of confidential information despite the existence of statutory restrictions to access of the information.

⁴ "Trade Secrets" are property of a private person disclosed or furnished to a public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules or ordinances of the United States, the State, or political subdivisions of the State. Misuse of the trade secret provides the owner a right of civil action for misappropriation. G.S. §66-153. The declaration of "trade secret" or "confidential" must be made at the time of the information's initial disclosure to a public agency. G.S. §132-1.2

No records of the Division of Veterans Affairs, including those held by County Veteran Service Officers, shall be disclosed or used for any purpose except for official purposes, and no records shall be disclosed, destroyed or used in any manner which is in violation of any existing federal law or regulation. G.S. §165-11.1.

AGRICULTURE AND CONSUMER SERVICES

Application to Sell Antifreeze.

The content, formulas and trade secrets⁵ contained within an individual's application to sell anti-freeze in North Carolina are confidential, and unlawful disclosure is a Class 2 misdemeanor. G.S. §106-579.11.

Biologics.

Information submitted for registration of biologics⁶ must include a protocol of methods of production in detail, a sample of the label, and any other information prescribed by the Board of Agriculture as necessary. To the extent that the release of information would divulge the contents or formulation of the product, the records shall be confidential. NCAC T2-C52-S52G.0303.⁷

Collection and Publication of Information relating to the Department of Agriculture and Consumer Services.

Information that would identify individual farmers and their operations is confidential in the Department's study of farm operation trends. G.S. §106-24.1.

Commercial Feed.

Anyone who uses to his/her own advantage or reveals to other individuals any information acquired under the Commercial Feed Law concerning any method, records, formulations, or processes which as a trade secret is entitled to protection is guilty of a Class 2 misdemeanor.⁸ G.S. §106-284.44.

Drought and Water Management

The Department shall annually collect information of water use by persons who withdraw 10,000 gallons a day or more from the surface or groundwater sources of the state for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products. The specific information gathered is confidential under the federal Title 7 USC

⁵ *Ibid.*

⁶ Biologics are defined as "preparations made from living organisms and their products, including serums, vaccines, antigens and antitoxins which are used for the treatment or prevention of diseases in animals other than humans, or in the diagnosis of diseases." G.S. §106-708(2).

⁷ The statute cited as authority for this rule does not make any reference to maintaining the biologic contents or formation of the product as confidential information. G.S. §106-712. If a preparation was designated as such upon submission it could, in some instances, be considered a trade secret under G.S. 132-1.2. (Appendix A).

⁸ Conviction of a Class 2 misdemeanor carries a minimum punishment of more than 30 days but not more than six months imprisonment.

Section 2276, Confidential Information Protection and Statistical Efficiency Act. G.S. §106-24 (b).

Fertilizer – Grade Tonnage Reports.

Every individual selling commercial fertilizer in the state must report the tonnage of each grade of commercial fertilizer to the Department of Agriculture and Consumer Services. The reports are confidential. G.S. §106-677.

Porcine Assessment.

A buyer of a porcine animal⁹ shall collect and report all purchases of porcine animals to the Department of Agriculture and Consumer Services and to the North Carolina Pork Producers Association, Inc., a North Carolina nonprofit corporation. Employees of the department and the Association must keep the information confidential. G.S. §106-794.

Structural Pest Control Committee.

EFFICACY DATA. Efficacy data and other technical information that constitute trade secrets submitted by registrants and manufacturers of pesticides and other materials or devices are not required to be disclosed by the committee and department. G.S. §106-65.29.

LICENSING. The Commissioner may obtain a criminal background check from the NC Department of Justice for any new applicant or renewing applicant for licensing of pest control operators. The information is confidential. G.S. §106-65.26.

ALCOHOLIC BEVERAGE CONTROL

Applicants for Alcoholic Beverage Control licenses shall have a criminal background check performed by the State Bureau of Investigation. The results are confidential. G.S. §18B-902.

ATTORNEYS

Communications from legal counsel to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship are not open to public inspection except that such communications shall become public records three years from the date such communication was received by the public board, council, commission or other governmental body. G.S. §132-1.1.

AUDITORS

State Auditor.

⁹ Swine raised for seed stock, market hogs or slaughter.

The State Auditor shall file copies of all audit reports for public inspection. However, he is not authorized to permit the publication of information whose disclosure is otherwise prohibited. G.S. §147-64.6(c)(14).

ACCESS TO CONFIDENTIAL RECORDS. The State Auditor and authorized personnel may examine state personnel files and tax records, as long as the Auditor maintains the confidentiality of the information. The review of State tax records shall be limited to matters of official business. G.S. §147.64.7(a).

AUDIT WORK PAPERS, including personnel files, shall be kept confidential except under certain circumstances, such as a court order or when required for inspection by authorized representatives of State and federal government in connection with a matter officially before them. These papers also may be made available, at the discretion of the Auditor and unless prohibited by law, for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations. G.S. §147-64.6(d).

MEDICAL RECORDS of employees insured through the Teachers' and State Employees' Comprehensive Major Medical Plan are not public records but may be released to the State Auditor, the Attorney General and other limited entities as set forth by law, who shall insure the records' confidentiality. G.S. §135-37.

Internal Auditors for the University of North Carolina and its constituent institutions

The audit papers of the internal auditors for the University of North Carolina and its constituent institutions are confidential unless subpoenaed. The reports are public records unless they include confidential information or would compromise the security systems of the University of North Carolina. G.S. §116-40.7.

Internal Auditor Health and Human Services.

The Department of Health and Human Services' Internal Auditor's work papers are confidential. Audit reports are public records to the extent that they do not include information that is confidential and exempt from the Public Records Law or would compromise the security systems of the department. G.S. §143B-216.51.

AUTOPSY

A photograph or video or audio recording of an official autopsy is not a public record that can be released. G.S. §132-1.8, G.S. §130A-389.1.

COMMERCE

Banks.

CONFIDENTIAL RECORDS. The following Banking Commission records shall be confidential: 1) Those prepared during an examination, audit or investigation; 2) Those prepared for litigation, examination, audit or investigation; 3) Those that

contain the names of any borrowers from a bank or reveal the collateral given by any such borrower; 4) An examination, audit, or investigation of any bank, bank affiliate, bank holding company or its non-bank subsidiary, data service center or banking practice if such records would be confidential under that jurisdiction's law or regulation; 5) Information and reports submitted by banks to federal regulatory agencies if such records would be confidential under federal law or regulation; 6) Complaints from the public if the complaints could result in an investigation; 7) Examinations and investigations of consumer finance licensees; 8) Examinations and investigations of licensees under the Sale of Checks Act; 9) Examinations and investigations of registrants under the Mortgage Bankers and Brokers Act; 10) Applications and investigations of registrants under the Refund Anticipation Loan Act; and, 11) Pre-need burial contracts, including investigations of such contracts and related credit inquiries. A bank may request that the Banking Commission release the individual bank's regulatory rating for insurance purposes. That rating retains its confidentiality when received by the insurance company. Individuals violating the confidentiality rules are guilty of Class 1 misdemeanors.¹⁰ G.S. §53-99; G.S. §53-125; T4-C3-S3B.0218.

COMPLIANCE REVIEW DOCUMENTS. Compliance review documents in the custody of a bank or regulatory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against a bank, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence. G.S. §53-99.1

CHANGE IN CONTROL OR MANAGEMENT. All information contained in an application or report for the proposed change in control of a bank or bank holding company and all information produced by examination and investigation of any application or report by the Commissioner of Banks shall be confidential and not available for public inspection. G.S. §53-42.1.

DISCOVERY. Any aggrieved person may discover any information from the Banking Commission or the Commissioner of Banks except records that relate solely to the internal procedures of the agency or those records that have been properly classified as confidential under statutory authority. G.S. §53-99; G.S. §53-125; G.S. §150B-39; NCAC T4-C3-S3B.0209.

SUSPENSION OF INVESTMENT AND LOAN LIMITATIONS. When a bank requests that the Commissioner of Banks suspend the limits on its statutorily required investment and loan limitations, the application and supporting information shall not be made available to the public. NCAC T4-C3-S3C.0804.

MORTGAGE LENDERS. The Commissioner of Banks may obtain criminal background information about applicants for mortgage bankers, mortgage brokers or loan officers from the State Bureau of Investigation. The information shall be confidential. G.S. §53-243.16.

¹⁰ Conviction of a Class 1 misdemeanor carries a maximum sentence of more than six months in jail and there is no limit on the fine imposed. G.S. §14-3; G.S. §15A-1340.23.

Money Transmitters.

The following information or reports obtained by the Commissioner of Banks from an applicant, licensee, or authorized delegate, are confidential: All information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the Commissioner; and financial statements, balance sheets, or authorized delegate information. The Commissioner, however, may provide for the release of information to representatives of State or federal agencies who state in writing under oath that they will maintain the confidentiality of the information. G.S. §53-208.17.

Trust Institutions.

CHARTER APPLICATION. The Commissioner of Banks must investigate the application and review the character of each proposed director, officer, and principal shareholder. Information bearing on the character, or information about the personal finances, of an existing or proposed organizer, officer, director, or shareholder is confidential. G.S. §53-334.

APPLICATION FOR ACQUISITION OF CONTROL. Information bearing on the character or information about the personal finances of an existing or proposed shareholder of a State trust company or other individual is confidential and not subject to public disclosure. G.S. §53-348.

MERGER APPLICATIONS, SHARE EXCHANGES, ASSET TRANSFER. The Commissioner may investigate the character of the proposed directors, officers, and principal shareholders of each resulting trust institution and of any other person proposed to succeed to the accounts of the applying institutions. Information bearing on the character or information about the personal finances of these individuals is confidential and not subject to public disclosure. G.S. §53-361.

PRIVATE TRUST COMPANIES. The Commissioner may gather information on actual or proposed accounts of the private trust company or proposed private trust company. The information is confidential and not subject to public disclosure. G.S. §53-364.

Savings and Loan.

CONFIDENTIAL INFORMATION. The following Savings and Loan Commission records are confidential: 1) Information obtained or compiled in an examination, audit or investigation of any association – either by the State or federal government; 2) Information reflecting the specific collateral given by a named borrower, the amount of stock held by a named stockholder or specific withdrawable accounts held by a named member or customer; 3) Information and reports submitted by associations to federal regulatory agencies, if the records or information would be confidential under federal law or regulation; and, 4) Information and complaints received from the public which concern associations and which could result in an investigation. A person who violates the nondisclosure provisions will be liable to any person injured by disclosure for all damages sustained because of the release. This penalty is not exclusive of other penalties, such as any federal punishment through the FDIC, the Office of

Thrift Supervisor, the Federal Reserve Bank, or the Office of the Controller of Currency. G.S. §54B-63. Compliance review documents in the custody of an association or regulatory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against an association, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence. G.S. §54B-63.1.

APPLICATIONS. If an applicant submits information that is confidential and relates to the answer to any item or a part of an exhibit for filing, the material shall be labeled CONFIDENTIAL and a statement shall be submitted setting forth the grounds for the claim. The information marked CONFIDENTIAL will be withheld from public inspection unless the Savings and Loan Administrator is legally compelled to release the information. G.S. §§54B-63; G.S. §54B-262; NCAC T4-C16-S16I.0803.

COMPLIANCE REVIEW DOCUMENTS for a Savings and Loan, in the custody of an association or regulatory agency, are confidential. G.S. §54B-63.1.

SAVINGS AND LOAN HOLDING COMPANIES. The same law applying to savings and loan associations shall govern savings and loan holding companies. G.S. §54B-262.

Savings Banks.

CONFIDENTIAL RECORDS. The following North Carolina Savings Institutions Commission records are confidential: 1) Information obtained or compiled in an examination, audit or investigation of any association – either by the State or federal government; 2) Information reflecting the specific collateral given by a named borrower, the amount of stock held by a named stockholder; or, specific withdrawal accounts held by a named member or customer; 3) Information and reports submitted by associations to federal regulatory agencies, if the records or information would be confidential under federal law or regulation; and, 4) Information and complaints received from the public which concern associations and could result in an investigation. A court of competent jurisdiction, however, may order disclosure of the above information. Anyone who violates the nondisclosure provisions will be liable to any person injured by disclosure for all damages sustained because of the release. This penalty is not exclusive of other penalties, such as any federal punishment through the FDIC, the Office of Thrift Supervisor, the Federal Reserve Bank or the Office of the Controller of Currency. G.S. §54C-60; NCAC T4-C16-S16I.0803.

APPLICATIONS. Information contained in an applicant's statements, including the financial statements of the incorporators and any further information the Administrator of the North Carolina Savings Institutions Commission deems confidential, shall be confidential. The confidential information will be withheld unless a court determines that it is in the public interest to release the information. An official or employee of this State violating this section is liable to any person injured by disclosure of confidential information for all damages sustained as a result of the release. This penalty is not exclusive of other

penalties, such as any federal punishment through the FDIC, the Office of Thrift Supervisor, the Federal Reserve Bank, or the Office of the Controller of Currency. G.S. §54C-60(c); G.S. §54C-60.1.

APPLICATION FOR CONVERSION. If an applicant wants to convert from a mutual to stock savings bank and submits information that it believes to be confidential, it shall note it on the application. G.S. §54C-33.

HOLDING COMPANIES. Savings bank holding companies are under the supervision of the Administrator. The Administrator shall exercise all powers and responsibilities with respect to holding companies that the Administrator exercises with respect to savings banks. G.S. §54C-196.

Credit Unions.

CONFIDENTIAL INFORMATION includes: 1) Materials obtained or compiled in the preparation, during, or as a result of an examination, audit or investigation of any credit union; 2) Information reflecting the specific collateral given by a named borrower, or specific withdrawable accounts held by a named member; 3) Information obtained, prepared or compiled during or as a result of an examination, audit or investigation of any credit union by an agency of the United States if the records would be confidential under federal law or regulation; 4) Information and reports submitted by credit unions to federal regulatory agencies, if the records or information would be confidential under federal law or regulation; 5) Information and records regarding complaints from the members received by the Division of Credit Unions, in the Department of Commerce, which concern credit unions when the complaint would or could result in an investigation; and, 6) Any other letters, reports, memoranda, recordings, charts or other information or other documents or records that would disclose any information of which disclosure is prohibited in this section. Any official or employee violating the nondisclosure provisions shall be liable to any person injured by disclosure of such confidential information for all damages sustained thereby. Penalties provided shall not be exclusive of other penalties. The willful or knowing violation of the provisions by any employee of the credit union division shall be a Class 1 misdemeanor.¹¹ G.S. §54-109.105.

Trade Secrets Protection Act.

An individual may seek damages for disclosure of trade secrets and any misappropriation of them.¹² G.S. §66-152.

Precious Metal Dealers.

BACKGROUND CHECKS. All dealers in precious metals must obtain a criminal background check, which shall be confidential. G.S. §66-165.

¹¹ See, Fn. 10.

¹² This is included as a reference for all agencies charged with the protection of trade secrets.

RECORD ENTRIES. Every dealer licensed to sell precious metals shall maintain a tightly bound book in which shall be recorded, at the time of any purchase of precious metal, a serially numbered account and description of the specific item purchased. The files of local law-enforcement agencies that include copies of record book entries shall not be subject to inspection and examination. Anyone who releases such material is guilty of a Class 3 misdemeanor and upon conviction shall be fined not more than \$500. G.S. §66-169.

CONTROLLER

Contributions.

To insure that employee contributions in activities such as the State Employees Combined Campaign are made on a voluntary basis, actions that do not allow free choice or that create an impression of required giving are prohibited. Employee gifts shall be confidential, except that employees may opt to have their designated contributions acknowledged by the recipient organizations. NCAC T1-C35.0302.

Working papers.

Work papers and other supportive material created as a result of a compliance review conducted under G.S. §143-426.39(1) are not public records. Any report resulting from a compliance review is a public record. G.S. §143B-426.39B.

CORRECTIONS

Executioners and Witnesses.

The names and other identifying information of witnesses and the persons designated to carry out an execution shall be confidential unless the Senior Resident Superior Court Judge for Wake County orders disclosure after making a determination that disclosure is necessary to a proper administration of justice. G.S. §15-190.

Health Records

A hospital does not breach patient confidentiality by providing the Department of Correction with the medical records of inmates who receive medical treatment at the hospital while in the custody of the Department. G.S. §131E-98.

Inmate Involuntary Referrals and Transfers.

Whenever an inmate is transferred or referred to a mental health treatment facility within the Department of Correction, all written documents or verbal information are to be considered confidential. The inmate shall not have direct access to his/her client record. G.S. §148-19(d); NCAC T10-C14-S14U.1206.

Interstate Corrections Compact.

At least 30 days before an inmate is transferred to another state system, the Secretary of Correction must notify the victim, district attorney, the judge, and the law enforcement agency that arrested the prisoner. The Secretary also must post a notice at the courthouse where the inmate was convicted. If, in the discretion of the Secretary, notice or disclosure requirements would jeopardize the safety of persons or property, the provisions will not apply. G.S. §148-121.

The Commission's bylaws shall establish conditions and procedures under which the commission shall make information available. The commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. G.S. §148-65.5.

Prisoner Complaints and Grievances.

All reports, investigations, and other supporting documents prepared by the department in response to a prisoner complaint or grievance shall be confidential. G.S. §148-118.5; NCAC T5-C2-S2G.0309.

Prison Records

Prison records are confidential and are not subject to inspection by the public or by the inmate involved. G.S. §§148-74 and 76, *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972); *Paine v. Baker*, 595 F.2d 197 (4th Cir. 1979), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

Sexual Assault.

In a pilot program, inmates who are sexually assaulted in prison may have confidential counseling with community-based rape crisis counselors. The Department shall evaluate and classify each prisoner with respect to the probable risk of sexual assault. When feasible, incoming inmates shall be handled separately until the classification is made. The classification shall be prominently displayed in the inmate's confidential file. G.S. §143B-262.2.

COUNTIES AND MUNICIPALITIES

County Veteran Service Officers.

Records in county veteran service offices shall not be disclosed or used for any purpose except for official purposes, and no records shall be disclosed, destroyed or used in any manner which is in violation of any existing federal law or regulation. County Veteran Service Officers may provide the amount of money a veteran receives in benefits but cannot release any other information. G.S. §165-11.1.

Criminal record checks for municipalities and county governments

Cities and counties may obtain criminal record checks from the Department of Justice, which shall be kept confidential. G.S. §114-19.14.

Fire Department Criminal Record Checks.

When requested by a designated local Homeland Security director or, when there is no designated local Homeland Security director, the SBI may provide criminal histories of applicants for paid or volunteer positions with a fire department. The information is confidential. G.S. §114-19.12.

Local Confinement Facilities.

ACCESS TO CONFIDENTIAL HEALTH INFORMATION. Municipal lock-up officers shall not have access to confidential information contained in the health screening form for a prisoner admitted to municipal lock-up facilities. G.S. §153A-221; NCAC T10-C3-S3J.3926.

STATE INSPECTIONS. The Department of Health and Human Services shall visit and inspect every local confinement facility at least semi-annually. The Department shall not disclose confidential or privileged information obtained during the inspection unless written authorization from the inmate is obtained or a court of competent jurisdiction orders release. The Department also shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from the records or interviews shall be considered public records. G.S. §153A-222.

Medical Assistance Program.

MEDICAL ASSISTANCE PROGRAM RECORDS shall be placed in a secure area and have restricted access. Only authorized individuals may remove a file from a storage area. The authorizing individuals are responsible for the security of the record before it is returned. The State must follow this directive in order to get funds from the federal government. G.S. §108A-54; G.S. §108A-80; NCAC T10A-C21-S21A.0405; 42 C.F.R. 431.306.

PATIENT RECORDS. An individual has a right to get information about his/her own case but may not review documents in his/her file that the agency is required to keep confidential by State or federal statutes or regulations, confidential information from another agency, and information that would breach another individual's right to confidentiality. The State must comply with this requirement to qualify for federal funds. Further, where there is an inconsistency between state and federal laws on confidentiality, the government agency must apply the statute or regulation which provides more protection for the patient. G.S. §108A-54; G.S. §108A-80; T10A-C21-S21A.0407; T10-C50-S50A.0404; 42 C.F.R. 431.306

Medical Assistance.

County Social Services shall administer the medical assistance programs under rules developed by the Social Services Commission. All records concerning allegations of provider fraud, abuse, over-utilization, or inadequate quality of care shall be confidential, and the information contained in the files of such investigations shall be confidential.

Each member of a county board of social services may review the records but must not disclose any information acquired from examining such records. G.S. §108A-25; NCAC T10-C26-S26G.0106; and, §G.S. 108A-11.

Nursing Home Advisory Committees.

Each Board of County Commissioners in a county with a nursing home shall appoint a Nursing Home Advisory Committee. Members of the committee may communicate through the chair about the interest of any patient. The identity of the patient or any complainant shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended. G.S. §131E-128.

Public Assistance Appeals.

An applicant for public assistance whose application is denied may appeal the denial. The applicant is not entitled to review material in his files that is considered confidential or which does not relate to the appeal. G.S. §108A-79.

Social Services – Juvenile Abuse, Neglect and Dependency.

Each county director shall maintain a separate case record or a separate section in a case record on a child for whom protective services are initiated or who the court places in the custody of the county department of social services. This information shall be confidential and available only to the guardian ad litem, the juvenile and the juvenile's representative. A court may order sharing of this information among treating agencies. G.S. §7B-2901.

Tax Information.

Local tax records that contain information about a taxpayer's income or receipts are not public records. Disclosure may be made: 1) To comply with a court order or law; 2) For review by the Attorney General or his representative; 3) To sort, process, or deliver tax information on behalf of the county, as necessary to administer a tax; and, 4) To exchange information with the Department of Revenue. Violation of this statute is a Class 1 misdemeanor.¹³ If the person who violates this statute is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. G.S. §153A-148.1; G.S. §160A-208.1. See also, G.S. §132-1.1.

Taxicab driver licensing.

Cities may license and regulate all vehicles operated for hire in a city, including requiring for drivers a criminal record background check and a controlled substance examination. The results of the background check and the controlled substance examination are confidential. G.S. §160A-304.

¹³ See, Fn.10.

COURTS¹⁴

Adoption.

RECORDS OF ADOPTION are confidential and sealed, including all papers filed with a court regarding the adoption. All agencies, attorneys and providers of professional services for the adoption must keep their records confidential and sealed as well, both during and after the adoption. Further, all prospective adoptive parents must have criminal record checks to determine, in part, whether individuals are fit to have responsibility for the safety and well being of children. The record checks, too, are confidential. G.S. §48-9-102; G.S. §48-3-309. Release of sealed information is prohibited if it could lead to information regarding the identity of an adoptee, parent, sibling, etc. except if the information is needed by the agency to carry out its duties pursuant to G.S. §48-9-104. G.S. §48-9-109. A child placing agency licensed by the Department of Health and Human Services or a county department of social services may agree to act as a confidential intermediary for a biological parent or adult adoptee or lineal descendant of a deceased adoptee, without court appointment, to obtain and share non-identifying birth family health information or facilitate contact or share identifying information in certain circumstances. G.S. §48-9-104.

UNFAVORABLE PREPLACEMENT ASSESSMENT. If a prospective adoptive parent of a minor child receives an unfavorable preplacement assessment for adoption, the adoption shall not be allowed to go forward. The assessment and any response filed with the Department of Health and Human Services shall not be public records. G.S. §48-3-308.

CRIMINAL BACKGROUND CHECKS are mandatory for prospective adoptive parents as well as for all individuals 18 years or older who reside in the prospective adoptive home. These records are not public records. G.S. §48-3-309.

Collaborative Law Proceedings.

When a husband and wife who are seeking divorce or contemplating divorce use collaborative law proceedings to resolve the disputes arising from the marital relationship, all statements, communications and work product of any attorney are confidential and are inadmissible in any court proceeding. G.S. §50-77.

Criminal Background Checks

¹⁴ Please note that the judicial system of North Carolina has limited involvement with the Public Records Law. Judicial records may be kept confidential in several situations. "Trial courts always retain the necessary inherent power granted them by Article IV, Section 1 of the North Carolina Constitution to control their proceedings and records in order to ensure that each side has a fair and impartial trial. ... [A] trial court may ... shield portions of court proceedings and records from the public; the power to do so is a necessary power rightfully pertaining to the judiciary as a separate branch of the government, and the General Assembly has 'no power' to diminish it in any manner." *Virmani v. Presbyterian Health Services Corp.*, 350 N.C. 449, 515 S.E.2d 675 (1999).

Background checks performed by the North Carolina Department of Justice for the Judicial Department for any current or prospective employee, volunteer, or contract shall be confidential. G.S. §114-19.16.

Criminal Incompetency Evaluations.

When the mental capacity of a defendant is in question on his/her ability to understand criminal proceedings, the defendant shall be afforded a psychiatric examination. Any report made to the court shall be sealed until introduced into evidence or as otherwise ordered by the court. G.S. §15A-1002.

Custody Proceedings

Mediation proceedings related to child custody decisions shall be private and confidential. G.S. §50-13.1.

Dispute Resolution Commission

The Dispute Resolution Commission shall keep confidential all information relating to certification of mediators, the qualification of other neutrals, the certification or qualification of training programs for mediators or other neutrals, and the renewal of such certifications and qualifications. The Commission shall also keep confidential the identity of those persons requesting information guidance or the issuance of formal advisory opinions from the Commission or its staff. G.S. §7A-38.2(h).

District Criminal Court Mediation

Any memorandum, work note, or product of a mediator and any case file maintained by a community mediation center that holds criminal court mediations and any mediator certification application are confidential. G.S. §7A-38.3D.

Judicial Standards Commission

Unless waived by the justice or judge involved, all papers and preliminary proceedings filed with the commission as part of an investigation are confidential, as are letters of caution issued to a justice or judge. Formal disciplinary proceedings are not confidential. G.S. §7A-377.

Jury Lists

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the following year, and licensed to drive a motor vehicle as of July 1 of each odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be updated provided annually. The list shall contain the address and zip code of each driver, plus the driver's date of birth, sex, social security number. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain

confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes. G.S. §20-43.4.

Incompetency Evaluations.

To help determine the nature and extent of an individual's level of competency, a Clerk of Court, on his/her own motion, may order that a multidisciplinary evaluation be performed. The evaluation shall be kept under such conditions as ordered by the Clerk and its contents revealed only as directed by the Clerk. The evaluation is not a public record and shall not be released except by order of the Clerk. G.S. §35A-1111.

Innocence Inquiry Commission.

All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except if the Commission has discovered evidence of other wrongdoing, which will be provided to the appropriate authority. G.S. §15A-1468.

Mental Capacity of Defendants.

Reports on a defendant's ability to stand trial are not public records until the reports are introduced as evidence. G.S. §15A-1002(d).

Presentence Reports.

Presentence reports may be released to the defendant, his/her counsel, and the prosecutor. The court may have access at any reasonable time. The release covers a written presentence report or any record of an oral presentence report. The reports are not matters of public record. G.S. §15A-1333.

Probation Officer Files.

All information and data received in the discharge of official duties by a probation officer shall be privileged information, shall not be received as evidence in any court, shall not be received as evidence in any court, and shall not be disclosed to any person, except the judge and others within the system who are entitled to receive reports. G.S. §15-207.

Grand Jury Proceedings.

Members of a grand jury and others authorized to attend sessions of the grand jury are bound to keep its secrets. These individuals may be found in contempt of court for violating secrecy provisions. The authorized individuals may include law enforcement officers holding a suspect in custody and interpreters, as needed. G.S. §15A-623.

Bill of Indictment.

The presiding judge may direct that a bill of indictment be kept secret until the defendant is arrested or appears before the court. The clerk must seal the bill of indictment and no person including a witness may disclose the finding of the bill of indictment, or the proceedings leading to the finding, except when necessary for the issuance and execution of an order of arrest. G.S. §15A-623.

Record Expunctions .¹⁵

CHARGES DISMISSED OR INDIVIDUAL FOUND NOT GUILTY. If any person is found not guilty, has charges dismissed, or receives a finding that the person was not responsible, the person may file for an expunction of the record. If granted, all official records will be removed except for a confidential file listing the individual's name for retention by the Administrative Office of the Courts ("AOC"). G.S. §15A-146.

DNA. When an individual's conviction has been reversed and dismissed, the individual may have his/her DNA sample removed from the State Databank. G.S. §15A-146.

DRUGS AND PARAPHERNALIA. In certain criminal drug and paraphernalia charges, a first-time convicted individual may have his/her record expunged. All official records will be removed except a confidential file listing the individual's name for retention by the AOC. The same approach is used for first offenders convicted to inhaling or possessing any substance having the property of releasing toxic vapors or fumes.¹⁶ G.S. §90-96; G.S. §90-113.14.

FIRST OFFENDERS UNDER THE AGE OF 18. When a person who has not yet become 18 years old and pleads guilty to a misdemeanor other than a traffic violation, the person may file a petition to have his/her record expunged. If granted, all official records will be removed except for a confidential file listing the individual's name for retention by the AOC. G.S. §15A-145.

PARDON OF INNOCENCE. Where a pardon of innocence is received, the personal may have his/her record expunged. G.S. §15A-149.

PRESENTENCE REPORTS. On motion of the defendant, the court in its discretion may order a written presentence report or the record of an oral presentence report expunged from the court record. G.S. §15A-1333(c).

Wills

A person may file his/her will with the Clerk of Court for safekeeping. The will is not open for public inspection until offered for probate. G.S. §31-11.

¹⁵ The Administrative Office of the Courts will release an individual's name only to a judge who needs to determine whether the person charged with an offense has been previously granted an expunction.

¹⁶ From toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or other substances which will induce intoxication through inhalation. G.S. §90-113.12.

CRIME CONTROL AND PUBLIC SAFETY

Alcohol Law Enforcement Agents.

Agents shall have the authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the Alcohol Beverage Control laws and the Controlled Substances Act. Agents shall not make public opinions or other statements as to the character, reputation, guilt, or innocence of a person charged with an offense. Nor shall they make statements about the credibility, character or reputations of witness and other investigative information, including the names of juveniles who are under investigation or who have been taken into custody. G.S. §18B-500; NCAC T14A-C8-S8H.1803.

Butner Public Safety Medical Services.

All medical information collected by the Butner Public Safety Medical Services Director on Public Safety Officers within the Department shall be confidential and shall not be disclosed by the Director unless the involved Public Safety Officer permits such disclosure or such disclosure is required by a court order. NCAC T14A-C10-S10B.0207.¹⁷

National Guard.

No National Guard records shall be disclosed or used for any purpose except for official purposes, and no records shall be disclosed, destroyed or used in any manner which is in violation of any existing federal law or regulation. G.S. §127A-17.1.

Missing Persons.

Information gathered by the North Carolina Center for Missing Persons may be released only to law enforcement agencies, by order of a court of competent jurisdiction, a District Attorney, and others authorized by the Secretary of Crime Control and Public Safety. Anyone who improperly releases such information is guilty of a Class 2 misdemeanor. G.S. §143B-499; G.S. §143B-499.6.

CRIME VICTIMS COMPENSATION COMMISSION

All medical information relating to the mental, physical or emotional condition of a victim or claimant and all law enforcement records and information and any juvenile records shall be held confidential. G.S. §15B-8.1.

In a contested case, an administrative law judge shall have access to records of juvenile proceedings which are relevant to the application for compensation but, to the extent possible, the administrative law judge will maintain the confidentiality of the records. G.S. §15B-12.

¹⁷ Statutes cited as authority, G.S. §122C-408 and G.S. §143B-10, do not expressly grant confidentiality to Public Safety Officers. The medical records would be confidential under the State Personnel Act, G.S. §126-1, et seq.

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Certification of Programs.

Chief academic officers of institutions shall submit requests to the Commission for certification of criminal justice education and training. The Program Evaluation Committee shall review the materials submitted. Information in the self-evaluation report, the team report, and the supplementary reports are confidential and are not shared with the members of the North Carolina Criminal Justice Association, the press, or the public, except as may be required by government regulations. NCAC T12-C9-S9B.0606.

Custodian of Records.

The Attorney General shall have legal custody of all books, papers, documents or other records and property of the commission. G.S. §17C-7.

CRIME PREVENTION AND PRIVACY COMPACT

The National Crime Prevention and Privacy Company provides a legal framework for the exchange of criminal history records for noncriminal justice purposes, such as employment suitability and licensing determinations, among state and federal agencies. The use of the criminal history records must comply with the federal Privacy Act. G.S. §114-19.50.

CRIMINAL HISTORY RECORD CHECKS

The State Bureau of Investigation is authorized to provide criminal history records checks to a broad range of employees. The records are confidential. Chapter 114, Part 2 "Criminal History Record Checks." Some of these are referenced within the sections of this document where the employee works. The list covered in Chapter 114, Part 2 follows: school personnel (G.S. §114-19.2); providers of treatment for or services to children, the elderly, mental health patients, the sick and the disabled. (G.S. §114-19.3); foster care workers (G.S. §114-19.4); child care providers (G.S. §114-19.5); employees and applicants for employment with the Department of Health and Human Services, and the Department of Juvenile Justice and Delinquency Prevention (G.S. §114-19.6); adopting parents prior to adoption of a minor who is in the custody or placement responsibility of a county department of social services (G.S. §114-19.7); Applicants for auctioneer, apprentice auctioneer, or auction firm license (G.S. §114-19.8); McGruff House Program volunteers (G.S. §114-19.9); adult care homes, nursing homes, home care agencies, and providers of mental health, developmental disabilities, and substance abuse services (G.S. §114-19.10); applicants for licensure as registered nurses or licensed practical nurses (G.S. §114-19.11); applicants for registration, certification, or licensure as a substance abuse professional (G.S. §114-19.11A); applicants to fire departments and emergency medical services (G.S. §114-19.12); applicants for manufactured home manufacturer, dealer, salesperson, or set-up contractor licensure (G.S. §114-19.13); applicants for positions in municipalities and county governments (G.S. §114-19.14); applicants for locksmith licensure or apprentice designation (G.S. §114-19.15); applicants and employees for the State Lottery Commission and its

Director (G.S. §114-19.16); applicants for permit or license to conduct exploration, recovery, or salvage operations and archaeological investigations (G.S. §114-19.17); applicants for psychologists or psychological associate (G.S. §114-19.18); applicants and employees of the Judicial Department (G.S. §114-19.19); applicants and employees of the North Carolina Office of Information Technology (G.S. §114-19.20); EMS personnel (G.S. §114-19.21); applicants for licensure as chiropractic physicians (G.S. §114-22 and G.S. §90-143.3); employees and applicants of the Department of Public Instruction (G.S. §114-23); Division of Motor Vehicles applicants, current employees, and, contractual employee or applicant (G.S. §114-19.24); and applicants for licensure as nursing home administrators (G.S. §114-19.25).

CRIMINAL RECORDS

Public Law Enforcement Agencies.

Law enforcement agencies may temporarily withhold the name and address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation. G.S. §132-1.4(d).

Criminal Investigations and Criminal Intelligence Records.

Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not public records. The records may be released by order of a court of competent jurisdiction. G.S. §132-1.4(a).

DNA Results.

DNA profiles and samples submitted to the SBI pursuant to the DNA Database and Databank Law shall be treated as confidential except for criminal investigative purposes or by a court order. G.S. §15A-266.12; G.S. §15A-266.8.

911 Databases.

Automatic number identifications and automatic location identifications consisting of the names, addresses, and telephone numbers of telephone subscribers and contained in a county 911 database is confidential if the information are required to be confidential by an agreement with the telephone company from which the information was obtained. G.S. §132-1.5.

Police Information Network.

REGISTRATION INFORMATION entered into the network is confidential. The information includes records of arrests made, convictions, acquittals, punishment, and the necessary data to make a trace regarding all firearms seized, forfeited, found, or otherwise coming into possession of any State or local law enforcement agency that are believed to have been used in the commission of a crime. G.S. §14-208.31; G.S. §114-10; G.S. §114.10.1.

TRAFFIC STOP STATISTICS. The identity of the law enforcement officer making the stop is confidential and the agency may assign anonymous identification numbers to the officers. The correlation between the identification numbers and the names of the officers shall not be a public record and shall not be disclosed by the agency except when required by a court of competent jurisdiction to resolve a claim or defense properly before the court. G.S. §114-10.01.

Sexual Offenders, Predators, and Abusers of Juveniles.

Convicted sexual offenders, predators, and abusers of juveniles must register for at least a period of 10 years on a public database. The identity of the victim is not a public record. Further, information regarding the convicted offender's medical records or documentation of treatment for the person's mental abnormality or personality disorder shall not be a part of the public record. Registration must take place within 10 days of moving into the state or upon release from prison or immediately upon being convicted if not incarcerated. In some instances, there are procedures for being removed from the list. G.S. §14-208.6A; G.S. §14-208.10.

CULTURAL RESOURCES

Archaeological Resources Protection.

Information relating to archaeological resources, such as Indian mounds and possible archaeological sites, may be public except in those situations where disclosure may cause harm to the resource or its location. G.S. §70-18.

Archives and History.

Private collections of materials donated to the North Carolina State Archives may be accessible only in accordance with the terms and conditions under which the materials were donated. G.S. §121-4(3).

Licenses to conduct exploration, recovery or salvage operations and archaeological investigations.

All applicants for licenses must agree to a criminal background check. The Department of Cultural Resources may obtain a criminal record check from the State Bureau of Investigation for applicants seeking a license or permit to conduct exploration, recovery, or salvage operations and archaeological investigations. The Department shall keep all information obtained confidential. G.S. §114-19.17; G.S. §121-25.1.

Protection of Indian antiquities, archaeological resources and unmarked human skeletal remains.

All applicants for licenses must agree to a criminal background check. The Department of Cultural Resources may obtain a criminal record check from the State Bureau of Investigation for applicants seeking a license. The Department shall keep all information obtained confidential. G.S. §70-13.1.

North Carolina Museum of Art Collection Records.

Archival records are maintained of the history, condition and documentation of works in the museum's collections. Information may be classified by the museum as confidential, such as names of donors who have retained the right to remain anonymous and financial transactions not a part of the public record. NCAC T7-C3-S3B.0401.¹⁸

DISTRICT ATTORNEYS

Victim Notification.

When an individual is committed to the Department of Correction or other agency, a victim may elect to be notified when matters regarding the inmate are raised. The District Attorney is responsible for the notification. At the time of sentencing, the District Attorney shall forward the victim's notification information form to the Department of Correction or any other agency receiving the defendant. After sentencing, the victim's notification form shall be confidential. G.S. §15A-832.

Non-Disclosure of Information re: Illegitimate Child.

No district attorney, assistant district attorneys, specially appointed lawyers, or staff shall disclose any information, record, report, case history or any memorandum that may be related to the mother or father of an illegitimate child, or any illegitimate child, unless it is necessary or required in the prosecutor's duties when prosecuting abandonment and non-support cases. G.S. §15-155.3.

ECONOMIC DEVELOPMENT

Records relating to the proposed expansion or location of specific business or industrial projects may be withheld from public inspection, examination or copying so long as release would frustrate the purpose for which such records were created. Once an announcement has been made of the development or a decision not to go forward, the records shall be disclosed as soon as practicable. G.S. §132-1.6(d), G.S. § 132-1.11, and §120C-101.

ELECTIONS

Credit Card Contributions

No entity shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of one hundred dollars (\$100.00) unless such contribution be in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. For a contribution made by credit card, the credit card account number of a contributor is not a public record. G.S. §163-278.14(b).

¹⁸ Actual donations to the Museum of Art go through the North Carolina Museum of Art Foundation, a non-profit corporation that is not a public agency.

Treasurer Reports for Legal Funds

The Board shall keep bank any account number confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or except as confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. G.S. §163-178.309.

Voting

Voted ballots and paper records of individual ballots shall be treated as confidential and shall not be disclosed to members of the public in such a way as to disclose how an individual voted, unless a court orders otherwise. G.S. §163-165.1(e).

Voter Registration

VOTER REGISTRATION APPLICATION FORM. The voter registration application form required by law shall include a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register shall remain confidential and shall be used only for voter registration purposes. G.S. §163-82.4.

VOTER REGISTRATION INFORMATION. The electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number on a voter registration document are not public records. G.S. §132-1.2. The official record of voter registration may include full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered, and drivers license numbers. The information is confidential. Cumulative data based on these items may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data. G.S. §163-82.10(a).

VOTER RECORDS IN CASES OF DOMESTIC ABUSE PROTECTIVE ORDERS.

If a registered voter submits a copy of a protective order, accompanied with a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family would be jeopardized if the record were open to public inspection, the voter's record shall be kept confidential as long as the protective order remains in effect. G.S. §163-82.10(d).

Voting Systems

Prior to certifying a voting system, the State Board of Elections shall review, or designate an independent expert to review, all source code of a system and certify that the systems comply with state and federal law. Any specific information related to any trade secret as designated pursuant to G.S. 132.1.2 shall be confidential. G.S. §163-165.7(c).

EMPLOYMENT SECURITY COMMISSION (ESC)

Job Service Information.

Information contained in ESC records and reports that has been obtained from claimants and employers is confidential. Release of confidential information can be punished with a fine of between \$20 and \$200 and not more than 90 days in jail. G.S. §96-4(t).

Claimants/Employers and Units of Government Records.

Records from claimants, employers and units of government submitted to the ESC are confidential, except in limited circumstances, such as when public officials require the records' use in the performance of their official duties or when statute or regulation requires disclosure. Release of confidential information can be punished with a fine of \$20 - \$200 and not more than 90 days in jail. G.S. §96-4.

Follow-up Information Management System.

Individual data collected for ESC's tracking employment status of current and former participants in state job training, education and placement programs shall be confidential. G.S. §96-32. Information provided by state agencies who receive funds for job training which identifies individual persons and employers shall be confidential. G.S. §96-33.

The Department of Revenue may furnish information to the ESC, including the names and social security numbers of both the individual and his/her spouse. This information may be used only in a nonidentifying form for ESC statistical and analytical purposes related to the NC WORKS study of the working poor. G.S. §105-259.

Tax Records.

ESC representatives may obtain an employer's tax listings, inventories, statements of assets and other information required to be filed with county tax supervisors. This information shall not be open to public inspection. An ESC employee or Commission member who violates this section shall be fined not less than \$20.00 nor more than \$200.00, or imprisoned for not longer than 90 days, or both. G.S. §96-10.

ENVIRONMENT AND NATURAL RESOURCES

Air Quality.

Upon the request of an applicant, the Director of Air Quality is authorized to determine what information is entitled to confidential treatment, such as information that would disclose methods or processes, which are trade secrets.¹⁹ The Director shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his/her determination of confidentiality. G.S. §143-215.3(a)(1), (a)(2) and (a)(4); G.S. §132-6; G.S. §143-215.65; NCAC T15-C2-S2H.0115.

¹⁹ See, Fn. 4.

Environmental Management Commission (EMC).

The EMC has the authority to make certain information confidential when such information is deemed to be a trade secret or proprietary in nature. G.S. §143-215.3C; NCAC T15A-C2-S2Q.0107.

Lead Poisoning Prevention Program

All patient-privileged medical records in the possession of the Department of Health and Human Services, State Health Division, the Department of Environment and Natural Resources, or the local health departments shall be confidential. G.S. §130A-12.

Low Level Radioactive Waste Authority.

The following are confidential records: 1) Those that the Secretary of Environmental and Natural Resources determines are trade secrets²⁰; 2) Information that is confidential under any provision of State or federal law; and, 3) Information compiled in anticipation of enforcement or criminal proceedings, but only when release of the information could reasonably be expected to interfere with the institution of such proceedings. Any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a Class 1 misdemeanor²¹ and shall be removed from office or discharged from employment. G.S. §104E-29.

Marine Fisheries.

SEA GRANT APPLICATIONS are confidential until after the closing date for submission. G.S. §113-200(e).

COASTAL AND ESTUARINE COMMERCIAL FISHING LICENSES. The Marine Fisheries Commission shall keep confidential all records, accounts, and reports that licensees are required by the Commission to make, keep, and exhibit. The Commission also shall keep confidential all records from investigations and inspections, containing data and information reflecting a licensee's assets; liabilities; inventories, revenues and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged; the location of catch; size, weight, quantity and value of the catch; the location of catch; and, the time of fishing, number of hauls, and the disposition of the fish and other seafood. G.S. §113-170.3.

IDENTIFYING INFORMATION. Social security numbers and other identifying information obtained by the Commission shall be treated as provided in G.S. 132-1.10. Identifying information also includes a person's mailing address, residence address, date of birth, and telephone number. G.S. §143-254.5.

²⁰ See, Fn. 4.

²¹ See, Fn. 10.

Mercury in Motor Vehicles.

Vehicle manufacturers who submit an annual report to the Department of Environment and Natural Resources that lists motor vehicles with components that contain mercury may mark as confidential any information in the report that constitutes a trade secret. G.S. §130A-310.56(b).

Mining.

Individuals engaged in uranium exploration may request that their logs, survey plats and reports be considered proprietary in nature and not subject to disclosure for four years after the disclosure to the Department. An additional two-year period may be added. The North Carolina Geological Survey shall also treat the information as confidential. G.S. §74-88.

Oil and Gas Conservation Reports.

Within 30 days after the completion of a producing well drilled for oil or gas, technical data about the well shall be submitted. If such information is of a confidential nature, then upon the request of the operator, the director will hold such information in confidence for a period of one year. Extensions of this confidentiality shall be allowed up to a maximum one-year at the discretion of the director. NCAC T15A-C5-S5D.0008. See also, G.S. § 132-1.2.

Within 30 days of the termination of drilling operations of any oil or gas well, the operator must file with the director a complete log of the drilling. Upon request by the operator, this information will be kept confidential for a period of one year after completion or abandonment of the well. Extensions of the confidentiality shall be allowed up to a maximum of one year at the discretion of the director. NCAC T15A-C5-S5D.0010. See also, G.S. §132-1.2.

Air Quality and the Oil Pollution and Hazardous Substances Control Programs.

Any information relating to a secret process, device or method of manufacturing or production discovered or obtained in the course of an inspection, investigation, project or activity shall not be revealed except as may be required by law or lawful order or process. G.S. §143-215.80.

Radiation Protection Act.

In regulating the transportation, possession and other matters involving nuclear substances, the Secretary of Environment and Natural Resources may designate information received as confidential. For example, it may refuse to make public dissemination of information relating to the source of radiation within this state after the Department first determines that the disclosure of such information would contravene the state policy and purposes of the Act and would be against the health, welfare and safety of the public. Other information, such as trade secrets and proprietary business information,²² are confidential, as are any other records that are classified as such by

²² See, Fn. 4.

state or federal law. Any officer or employee of the State who knowingly discloses this information shall be guilty of a Class 1 misdemeanor²³ and shall be removed or discharged from office. G.S. §104E-9; G.S. §104E-29.

Waste Water Treatment Works.

Trade secrets or proprietary information²⁴ filed with the Department shall be confidential. The EMC may review the request for confidential information and rule that the material is not subject to confidentiality. When the EMC determines that the information is not subject to confidentiality, the submitter may request a declaratory ruling. The material will continue to be confidential until a final judicial determination has been made. Confidential information will be shared with any officer, employee, or authorized representative of any federal or State agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant to a proceeding to control pollution. G.S. §143-215.3C.

Water Resources

When necessary, employees of the Environmental Management Commission may seek information on the condition, withdrawal or use of waters, water sources and installation of wells or surface water withdrawal or use facility. Any information that a person contends is entitled to confidentiality shall be placed in a separate folder and withheld from public inspection unless disclosed or used in an administrative or judicial proceedings after certain conditions are met. G.S. §143-215.19.

Control of Wastewater Pollution.

Information identifying the nature and frequency of a discharge shall be available to the public without restriction. All other information which may be so submitted or which may be furnished by an industrial user to a publicly owned treatment works ("POTW") director in connection with required periodic reports shall also be available to the public unless the industrial user or other interested person specifically identifies the information as confidential and POTW director agrees. G.S. §132-6; G.S. §143-215.1(a), (b), (c); G.S. 143-215.3(a)(3); NCAC T15A-C2-S2H.0913.

Wildlife Resource Commission Licenses, Gifts and Customers

Personal identifying information obtained by the Commission from an applicant for a license, title, permit, or registration issued by the Commission, from a consumer who purchases or subscribes to a good or service offered by the Commission, or from a donor in connection with any gift to the Commission is confidential under G.S. §132-1.2. G.S. §143-254.5.

ETHICS

Advisory Opinions

²³ See, Fn. 10.

²⁴ See, Fn.4.

Requests for advisory opinions and advisory opinions issued by the State Ethics Commission are confidential. The Commission shall publish its advisory opinions within 30 days of issuance. The formal advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting the opinions. G.S. §138A-13.

Complaints and Responses

Complaints and responses filed with the State Ethics Commission and reports and other investigative documents records connected to an inquiry shall be confidential, except when the covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes public sanctions. At such time as a public hearing into the matter, or if no public hearing, the Commission recommends sanctions to the employing entity, public sanctions are imposed on a covered person, the complaint, response, and Commission's report to the employing entity shall become public. Records that are otherwise privileged or confidential under law shall not be released. G.S. §138A-12(n).

Statements of Economic Interest

Statements of economic interest filed by prospective public servants for appointed or employed positions and the Ethics Commission evaluations are not public records until the prospective public servant is appointed or employed by the State. G.S. §138A-23.

A judicial officer may use a business address instead of the home address and may also use the initials of an unemancipated child for the statement made available to the public. The Ethics Commission shall keep the full information about the child and the address confidential. G.S. §138A-24.

Use of Confidential Information for Private Gain

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employee's extended family, or a person or governmental unit with whom or business with which the public servant or legislative employee is associated. A public servant or legislative employee shall not improperly use or improperly disclose any confidential information. G.S. §138A-34.

FEDERAL FUNDS AND STATE OFFICIAL/EMPLOYEE REPAYMENT

In certain situations where a public official or certain state and local education entity employees owe money to the state, the agencies involved shall share information to resolve the issue. When federal law prohibits sharing of information among these State agencies, and federal funding is involved, the federal requirements will take precedence. Disclosure of confidential information to someone not authorized to receive the information is a Class 3 misdemeanor.²⁵ G.S. §143-560; G.S. §143-561.

²⁵ A Class 3 misdemeanor is punishable by a maximum fine of \$200.00 and up to thirty days imprisonment.

FINANCIAL PRIVACY ACT

Government authorities may not obtain customers' financial records unless the financial records are sought under certain terms and conditions, including but not limited to, the federal Right to Financial Privacy Act (12 U.S.C. §3404), a search warrant, or a court order in connection with a grand jury proceeding. A violation of the State law can result in a penalty of \$5,000 as well as actual and punitive damages arising from the unauthorized release of the records. G.S. §53B-4.

GENERAL ASSEMBLY

Access to Confidential Agency Records

Members of the General Assembly are ex officio visitors of all State mental health, developmental disabilities, and substance abuse programs and facilities but this does not include the right to access confidential information unless access is specifically granted by statute. G.S. §122C-186.

Audit Information.

In situations where the State Auditor is precluded from conducting an audit because of a conflict of interest or a prohibition under G.S. §147-64.12, the Hotline manager will transfer a report of allegations of improper governmental activities to the Legislative Services Officer and the General Assembly shall provide the audit. The report shall retain the same confidentiality after transmittal to the General Assembly as it had in the possession of the Auditor. G.S. §147-64.12.

Legislator's use of confidential information.

No legislator can use confidential information obtained through the General Assembly that would result in a financial gain for the legislator or others, including a non-profit with which the legislator is associated. G.S. §120-87.

Bill Drafting Requests.

A drafting request to a legislative employee and any supporting documents generated as a result of the request shall be confidential and may not be made public by the staff member without the consent of the legislator. G.S. §120-130.

Ethics

Complaints, responses, records, and findings of the Legislative Ethics Committee are confidential unless the legislator under inquiry requests that the records and findings be made public. If the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall be made public. A legislator may be issued a private admonishment. If such an admonishment is issued and the legislator engages in subsequent unethical activities that are similar to and the subject of an earlier private admonishment, the Committee

may make public the earlier admonishment and the records and findings related to it. G.S. §120-103.1.

Fiscal Notes and Requests to the Program Evaluation Division.

When a State agency employee, other than an employee at the General Assembly, is requested to help prepare a fiscal note, the request and the documents are confidential. The existence of the request shall be revealed only to others in the agency when necessary to respond to the request fully. A request, and any accompanying documents, made by a legislative employee in the Program Evaluation Division, to a state employee for assistance in preparing an evaluation report, shall be confidential and the employee may reveal the existence of the request to other agency employees to the extent that it is necessary to respond to the request and to the employee's supervisor. G.S. §120-131.1.

Program Evaluation Division

When the division receives reports alleging improper activities or matters of public concern listed in G.S. §126-84, the individual making the report may remain anonymous. Any report received under this subdivision, in whatever form, shall not be a public record and will become available to the public until it is introduced or otherwise disclosed in a public place. See, Work Product below. G.S. §120-36.12.

Work Product.

Documents prepared by legislative employees at the request of legislators are confidential. Only after introduction of bills, resolutions, proposed amendments or committee substitutes, and other documents distributed at public legislative meetings do the documents become matters of public record. An employee may be compelled to testify about documents if ordered by a court of competent jurisdiction. G.S. §120-131; G.S. §120-132.

Redistricting Communications.

All drafting and information requests to legislative employees and documents prepared by the employees are confidential until the act establishing the relative district plan (Congressional or General Assembly) becomes law. Employees may be compelled to testify under G.S. §120-132. G.S. §120-133.

Access to State Government Records.

Every State department, agency or institution shall provide the Legislative Services Office and the Research, Fiscal Research, and Bill Drafting Divisions any information requested. Except when accessibility is prohibited by a federal statute, federal regulation or State statute, every entity shall give access to whatever information is maintained by computer, or other electronic data processing equipment. G.S. §120-32.01.

GOVERNOR'S ADVOCACY COUNCIL FOR PERSONS WITH DISABILITIES

The Council shall keep all client information confidential in accordance with the federal Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §6000, and Public Law 99-319, as amended, the Protection and Advocacy for the Mentally Ill Act of 1988. Federal law requires confidentiality in exchange for providing the State with funds. G.S. §143B-403.1; 42 C.F.R. Part 1386.

HEALTH AND HUMAN SERVICES

Division of Aging.

Information from an older person or his/her designated representative, obtained by the division or by agencies on aging or service providers, shall not be disclosed in a form that identifies the person without that person's informed consent. The agency shall assure that all individuals authorized to have access are informed of the confidential nature of client data. The Division also shall distribute a written policy and provide training for all employees authorized to access the information. NCAC T10-C22-S22N.0201.

Biological Agents Registry.

The Department of Health and Human Services shall establish a registry of all biological agents possessed and maintained by any person in the state. Generally, the information shall be confidential and shall not be a public record under G.S. §132-1. The Department may release information in limited circumstances. G.S. §130A-479(e).

Blind Services.

The Services for the Blind will carry out provisions relative to case records and confidentiality of information as set forth in federal regulations. The Department of Health and Human Services is authorized to provide the Division of Motor Vehicles and the Department of Revenue the name and medical records of any person listed in the Register of the Blind. All information and documents released shall be treated by the departments as confidential for their use only, and the departments shall not release the records for political or commercial reasons. Further, all information released to the North Carolina Library of the Blind and Physically Handicapped will be confidential. Federal law requires compliance with its confidentiality provisions as a condition of the State receiving federal funds. G.S. §111-28; NCAC T10-C19-S19G.0604; 34 C.F.R. 361.39; 34 C.F.R. 361.49.

All information in client files of the agency is confidential and cannot be released to anyone without written consent of the client or in compliance with State or federal law or regulations. G.S. §111-28; G.S. 143B-157; NCAC T10-C19-S19F.0601; NCAC T10-C19-S19E.0704.

Childcare Commission.

The schedules for inspection of childcare facilities shall be confidential unless a court orders disclosure. G.S. §110-105.

Childcare Residential Facilities.

Residential childcare facilities that use physical restraints must provide the Department of Health and Human Services with information on the use of restraints. The information is subject to all applicable state and federal laws on confidentiality. G.S. §131D-10.5A.

A facility that has a death occur within seven days of the use of physical restraints must report to the Department of Health and Human Services, which will investigate the death. In carrying out the requirements of the investigation, the Secretary and the agency will adhere to all applicable state and federal laws on confidentiality. G.S. 131D-10.6B.

Child Custody/Kidnapping – Parent Locator Service.

All non-judicial records regarding the unlawful taking or restraint of a child and child custody determinations are confidential. Only authorized representatives of social service agencies, public officials with child-support enforcement and related duties, and members of legislative committees shall have access to the records. For locating parents, the Department of Health and Human Services may request confidential information from any governmental department, agency, board or commission. G.S. §110-139; G.S. §110-139.1(b).

Child Support.

When provided notice that child support is in arrears or a licensee has not complied with a subpoena, an occupational licensing board shall suspend the individual's license until the board receives certification by the clerk of superior court that the licensee is no longer delinquent in child support payments, or, as applicable, that the licensee is in compliance with the subpoena. The licensing board shall not give any details for the suspension but, instead, shall cite G.S. §110-142.1 as the reason. The information collected is confidential. G.S. §142.1; G.S. §110-129.1.

Employers are required to report information on all new hires to a State Directory of New Hires that will identify whether the employee owes child support. The information is confidential.²⁶ G.S. §110-129.2

Client Confidentiality.

ELECTRONIC MEDICAL RECORDS. Any health care provider or facility may create and maintain medical records in an electronic format. The legal rights and responsibilities of patients, health care providers, facilities, and governmental units for paper copies shall apply to records in electronic form. These legal rights and responsibilities apply with respect to the security, confidentiality, integrity, access to, and disclosure of medical records. G.S. §90-412.

FEDERAL REQUIREMENTS FOR CONFIDENTIALITY. No provisions of State law that allow access to confidential records about clients shall apply to the records of a

²⁶ Other uses of the registry include reporting to the Employment Security Commission, the Department of Revenue, and the Industrial Commission.

client when federal statutes or regulations applicable to that client prohibit the disclosure of the information. Disclosure of confidential information to someone not authorized to receive the information is a Class 3 misdemeanor.²⁷ The federal government requires the State to follow its standards as a condition for receiving funding. G.S. §122C-52; G.S. §131E-67; G.S. §143B-147; 42 C.F.R. Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

SHARED CONFIDENTIAL INFORMATION AMONG FACILITIES. Whenever an area or state facility receives confidential information from another facility, agency or individual, the information shall be treated as any other confidential information generated by area or state facilities, unless other statutes allow sharing of confidential information among providers who need it for treatment and for research, etc. A violation is a Class 3 misdemeanor.²⁸ G.S. §122C-52; G.S. §131E-67; 143B-147.

Criminal History Checks.

EMPLOYEES AND APPLICANTS PROVIDING DIRECT CARE. Criminal history checks provided by the State Bureau of Investigation to the Department of Health and Human Services and to the Department of Juvenile Justice and Delinquency Prevention for employees are confidential. Criminal history checks are to be performed on employees and applicants providing direct care to individuals as well as those employees' supervisors. G.S. §114-19.6.

PROVIDERS OF TREATMENT FOR OR SERVICES TO CHILDREN, THE ELDERLY, MENTAL HEALTH PATIENTS, THE SICK, AND THE DISABLED. Criminal history checks provided by the State Bureau of Investigation to hospitals, hospices, child placing agencies, residential child care facilities, hospitals, licensed child care facilities and non-licensed child care facilities regulated by the State are confidential. G.S. §114-19.3.

CHILD CARE PROVIDERS AND FOSTER PARENTS. All individuals who provide child care or foster care are required to have a criminal history check so that the Department can determine a provider's fitness to provide for the safety and well being of children. The criminal history checks and any other information collected to determine fitness are not public records. G.S. §110-90.2; G.S. §131D-10.3A. A registry of applicants for foster care homes, including therapeutic foster care, shall be maintained. Basic information is a matter of public record. Items not included in the statute are confidential. G.S. §131D-10.6C.

LONG-TERM CARE FACILITIES. Offers of employment to individuals who do not need an occupational license shall be conditioned on consent to a criminal history check. All criminal history information is confidential and may not be disclosed. G.S. §122C-80.

²⁷ Except as required or permitted by law, this Class 3 misdemeanor is punishable only by a fine, not to exceed \$500.00.

²⁸ *Ibid.*

MCGRUFF HOUSE PROGRAM VOLUNTEERS. The North Carolina Department of Justice and the FBI may provide a criminal history record check to a local law enforcement agency for the purpose of screening volunteers and members of their households 18 years and older. These records are not public records and must be kept confidential by local law enforcement agencies receiving the information. G.S. §114-19.9.

OFFERS OF EMPLOYMENT. (AREA MENTAL HEALTH PROVIDERS, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES AND OTHER PROVIDERS). An offer of employment to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check. The area mental health and other providers must keep the result of the record check confidential. G.S. §122C-80.

Handlers of Drug Detection Dogs

Dog handlers who use drugs to train dogs to detect drugs require a criminal background check, which shall be confidential. G.S. §90-102.1.

Mental Health, Developmental Disabilities and Substance Abuse.

COMMITMENT HEARINGS. Court records of commitment hearings are confidential and not open to the public unless a court compels disclosure in situations where it is in the best interest of the patient or in the interest of the public. Each mental health facility and specialty hospital that keeps confidential data in an automated data processing system shall develop written policies and procedures regarding the provision of safeguards to ensure controlled access to such information. G.S. §122C-52; G.S. §122C-53; G.S. §122C-207.). A record of involuntary commitment shall be placed in NICS and shall be accessible only by an entity having access to NCIS. G.S. §122C-54(d). District court hearings for involuntary commitments shall be closed to the public unless the respondent requests otherwise. G.S. §122C-267.

RESTORATION STATUS FOR INVOLUNTARY COMMITMENTS. Any individual over the age of 18 may petition for the removal of the mental commitment bar to purchase, possess or transfer a firearm when the individual no longer suffers from the condition that resulted in the individual's involuntary commitment. The hearing shall be closed unless the court determines that the public interest would be better served by making it public. Any medical records used in the hearing shall remain confidential. G.S. §122C-54.1.

CONTROLLED SUBSTANCES REPORTING SYSTEM Dispensers of prescriptions for all Schedule II through V controlled substances shall submit prescription information as required by rules promulgated by the Commission on Mental Health, Developmental Disabilities and Substance Abuse. This information is privileged and confidential and is not a public record. G.S. §90-113.74.

EXPUNGEMENT OF COURT RECORDS FOR JUVENILES. Court records of a juvenile court proceeding that relate to a juvenile's admission and discharge to a state facility may be expunged at the request of the legally responsible person or the

minor admitted or committed after the minor has been released and reached adulthood. G.S. §122C-54(e).

FACILITIES LICENSING AND INSPECTIONS. Any confidential or privileged information reviewed by the Department, including records of residents, must remain confidential unless the client or his legally responsible person authorizes disclosure in writing. G.S. §122C-25.

INTERVENTION ADVISORY COMMITTEES. Intervention Advisory Committees at State mental health hospitals and other similar facilities shall provide additional safeguards for patients who may be physically restrained or otherwise restricted in movement. The members of the committees shall have access to client records on a need to know basis and only with the written consent of the client or his/her legally responsible person. The information in the client record shall be confidential. Members of the committees may not disclose the information to any other individuals. G.S. §§122C-51 through 122C-56; G.S. §143B-147.

OFFERS OF EMPLOYMENT. (MENTAL HEALTH PROVIDERS, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES). An offer of employment to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check. The area authorities must keep the result of the record check confidential. G.S. §122C-80.

PATIENT ADVOCATES. Advocates within mental health facilities and specialty hospitals may access confidential patient records but shall keep them confidential. They may provide the Secretary of Health and Human Services or his/her designee information obtained while fulfilling monitoring and advocacy functions. Outside advocates may have access to confidential patient records only if the patient or his/her designee authorize the access in writing. G.S. §122C-53; G.S. §131E-67; G.S. §143B-147; NCAC T10-C18-S18D.0217.

Whenever a minor client is admitted to a regional psychiatric hospital, the child's advocate may have access to educational records. The advocate must comply with confidentiality rules. G.S. §122C-53; G.S. §122C-62; NCAC T10-C14-S14H.0207.

STATE/LOCAL CONSUMER ADVOCATES. Except as required by law, a consumer advocate shall not disclose any confidential or privileged information unless written authorization has been obtained. All confidential or privileged information collected by the consumer advocate is exempt from disclosure under the Public Records Law. Access to information shall be in compliance with federal confidentiality laws protecting medical records. G.S. §122C-17.

QUALITY ASSURANCE AND PEER REVIEW COMMITTEES. Records of quality assurance and peer review committees of a hospital licensed as a mental health facility shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. G.S. §122C-30, G.S. §122C-191.

PHYSICAL RESTRAINTS OR SECLUSION. A facility that employs physical restraints or seclusion of a client shall keep records on such activities and make the records available to the Secretary of Health and Human Resources upon request. The Secretary shall maintain the confidentiality of the information. G.S. §122C-60. If an individual dies within seven days of the imposition of restraints, the facility must notify the Secretary who will investigate. The Secretary and agency are subject to all applicable state and federal laws on confidentiality. G.S. §122C-31.

RETURN OF CLIENTS TO 24-HOUR FACILITIES. When a client has been involuntarily committed, is detained pending a judicial hearing, or is incompetent escapes from a mental health facility, identifying information about him is available only to appropriate law enforcement officers. When a client who is voluntarily committed to the facility escapes, the responsible professional at the mental health facility should provide the same information to law enforcement officers if the client: (1) is a minor; (2) may cause property damage or injury to himself or others, including a felony or violent misdemeanor; or, (3) the client's health or safety is endangered. The law enforcement authority charged with finding the client may release identifying information in order to protect the public. G.S. §122C-205.

LEGAL COUNSEL. A facility shall disclose to a client's attorney confidential information about the client upon receipt of written authorization from the client or his/her legally responsible person. G.S. §122C-53(i).

SHARING CONFIDENTIAL MENTAL HEALTH INFORMATION. Any area or state facility or the psychiatric service of the UNC hospitals may share confidential information regarding any client when necessary to coordinate appropriate care, treatment or habilitation of the client. This provision applies as well to physicians and other individuals responsible for evaluation, management, and supervision of treatment of clients on an outpatient basis. When it is believed that a client is eligible for benefits through a DHHS program, any State or area facility or UNC hospitals may share confidential information but disclosure is limited to that information necessary to establish initial eligibility for benefits, determine continued eligibility over time, and obtain reimbursement for the costs of services provided. G.S. §122C-55.

RESEARCH AND PLANNING. Under certain circumstances, information about individuals in state and area facilities may be used for preparing statistical reports, for planning, or for general research or clinical, financial, or administrative audits. No confidential information may be further disclosed. G.S. §122C-56.

North Carolina Partnership for Children

The North Carolina Partnership and local partnerships shall adopt procedures for operations that are comparable to those in Article 33C of Chapter 143, the Open Meetings Law, and Chapter 132, the Public Records Law. The procedures may provide for the confidentiality of personnel files comparable to Article 7 of Chapter 126 of the General Statutes. G.S. §§143B-168.12(a)(2) and 143B-168.14(a)(2).

Review and Protection of Information When Accrediting Organizations.

Except where required by law, it is unlawful for the Secretary of Health and Human Services or his/her representative to: 1) Disclose any confidential or privileged information obtained while performing quality assurance activities unless the client or his/her legal representative authorizes disclosure in writing; or, 2) Disclose the name of anyone who has furnished information concerning an area authority or State facility without that individual's consent. Peer review information that is confidential may be released to a professional standards review organization that contracts with an agency of this State or the federal government to perform any accreditation or certification. The information released for accreditation or certification purposes retains its confidentiality. Violation of this law is a Class 3 misdemeanor.²⁹ G.S. §122C-192; G.S. §122C-191; G.S. §8-53; G.S. §8-53.3.

Cardiac Rehabilitation Programs.

The Department shall inspect such programs as necessary. The Department also shall not disclose the name of anyone providing information about a facility without the express consent of that person. Any confidential or privileged information obtained during these inspections shall not be disclosed without written authorization of the patient or his/her legal representative. G.S. §131E-170.

Drug Research.

The Department may enter contracts for the research related to controlled substances. The Department may authorize individuals engaged in research on the use and effects of controlled substances to withhold the names and other characteristics of any individual who is a subject in the research project. G.S. §90-113.3(e).

Drug Treatment.

Information about an individual who seeks drug treatment and rehabilitation from a practitioner is confidential. The practitioner or employees shall not disclose the name of such person to any law-enforcement officer or agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless the individual consents. G.S. §90-109.1.

Application for Exempt Chemical Preparations.

A person seeking to have a preparation or mixture containing controlled substances and one or more non-controlled substances may apply for approval of use. Any information considered a trade secret³⁰ shall be confidential. G.S. §90-88; NCAC T10-C45-S45H.0210.

Adult Care Homes for the Aged and Disabled.

²⁹ By statute, this Class 3 misdemeanor is punishable only by a fine, not to exceed \$500.00.

³⁰ See, Fn. 4.

DECLARATION OF RESIDENTS' RIGHTS. Residents have the right to have their personal and medical records kept confidential and not disclosed without the written consent of the individuals and/or their guardians. A treating physician will have access to the records, with or without consent, as will emergency medical services to the extent that the records are needed to respond to a medical emergency. G.S. §131D-21. Peer review committees may have access to the records but must keep them confidential. G.S. §131D-21.1.

LICENSING AND INSPECTIONS. The Department shall keep confidential resident information unless the resident or his/her legal representative agrees in writing for the information's release, or a court of competent jurisdiction orders the information released. The Department also will not release the name of anyone who has provided information about a facility without that person's consent. All confidential or privileged information obtained and the names of persons providing such information are exempt from the Public Records Law. G.S. §131D-2(b).

ADULT CARE HOME COMMUNITY ADVISORY COMMITTEES. Advisory committee members who inspect adult care homes with developmentally disabled adults must adhere to rules of confidentiality adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. G.S. §131D-32.

DEATH AFTER PHYSICAL RESTRAINT. A facility licensed as an adult care facility must notify the Department of Health and Human Services if a resident dies within seven days after being physically restrained. The Department is subject to all applicable state and federal confidentiality requirements. G.S. §131D-34.1.

DOMICILIARY HOMES. The names of individuals who file complaints alleging violations of the Declaration of the Residents' Rights are confidential. The Department shall keep resident information confidential unless the resident or his/her legal authority consents to release. The Department also will not release the name of anyone who has provided information about a facility without that person's consent. All confidential or privileged information obtained and the names of persons providing such information are exempt from the Public Records Law. G.S. §131D-27; G.S. §131D-2.

EMPLOYEE CRIMINAL HISTORY RECORD CHECKS. Applicants to fill positions in adult care homes, nursing homes and home care agencies that do not require occupational licenses are required to consent to a criminal history record check. This information shall be confidential. G.S. §131E-265; §131D-40; G.S. §114-19.10.

QUALITY ASSURANCE, MEDICAL, OR PEER REVIEW COMMITTEES. The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential. G.S. §131D-21.2.

Nursing Homes.

INSPECTIONS. The Department shall keep confidential any confidential or privileged information between physician and patient obtained by the Department of Health and Human Services during an inspection. The Department shall institute appropriate policies to maintain confidentiality. The Department also shall maintain the confidentiality of all persons who register complaints with the Department or otherwise provide information about a nursing home facility. All medical records inspected by the Department shall be confidential. A person who has filed a complaint against a facility may have access to a patient's file if a consent form has been obtained from the patient or his/her legal representative. A peer review committee shall have access to medical records but shall keep them confidential. G.S. §131E-105; G.S. §131E-108; G.S. §131E-124; G.S. §131E-128.1.

MEDICAL TREATMENT. To receive respect and privacy in the patient's medical care program. Case discussion, consultation, examination, and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract. G.S. §131E-117.

LICENSING OF NURSING HOME ADMINISTRATORS. A person applying for initial licensure or renewal of licensure shall consent to a criminal history record check. The State Board of Examiners for Nursing Home Administrators shall keep the information confidential. G.S. § 90-288.01; G.S. §114-19.25.

QUALITY ASSURANCE, MEDICAL, PEER REVIEW COMMITTEES: The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers are confidential. G.S. §131E-107. The nursing home shall also Develop a confidential and nonpunitive process for internal reporting of actual and potential medication-related errors. G.S. §131E-128.2.

Home Care Licensure Act.

The Department shall keep confidential any confidential or privileged information between a physician and patient obtained by the Department of Health and Human Services during an inspection. The Department also shall keep confidential the names of persons providing information about the home care facility unless the persons agree to disclosure. G.S. §131E-141.

EMPLOYEES. Employees of home care facilities shall have annual performance evaluations. These evaluations may be confidential. G.S. §131E-140; NCAC T10-C3-S3L.1003.

CRIMINAL RECORD CHECKS. Employees of nursing homes or home care agencies who are not required to hold an occupational license must agree to a criminal history check. The criminal history is confidential. G.S. §131E-265.

Local Confinement Facilities Inspections.

The Department of Health and Human Services shall visit and inspect every local confinement facility at least semi-annually. The Department shall not disclose confidential or privileged information obtained during the inspection, including medical records of inmates, the results of psychiatric evaluations and notes from employees of the facility about the inmate. The Department also shall keep confidential the names of persons providing information about the confinement facility unless the persons agree. G.S. §153A-222.

Certificate of Public Advantage.

Hospitals may enter agreements with others to share technological and scientific resources for provision of health care or to make joint acquisitions of facilities. Any applicant or other person aggrieved by a decision by the Medical Care Commission – either an applicant or a competitor – may file for superior court review. In any action instituted under this section, the work product of the Department of Health and Human Services and the Attorney General or his staff is not a public record. G.S. §131E-192.10.

Hospice.

The Department of Health and Human Services may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any person who is or has been a hospice patient. The Department shall not disclose any confidential or privileged information unless the patient or his/her legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders the release. Names of individuals who provide information about hospices shall be kept confidential unless the individuals consent. If the name of anyone who has released information concerning a hospice to the Department becomes public as a result of the Department, the responsible Department employee may be convicted of a Class 3 misdemeanor and be fined not more than \$500.00. G.S. §131E-207.

Internal Auditor.

The Department's Internal Auditor's work papers are confidential. Audit reports are public records to the extent that they do not include information that is confidential and exempt from the Public Records Law or would compromise the security systems of the department. G.S. §143B-216.51.

Medical Information in Patient Files of Provider Sponsored Health Care Organizations.

Any information relating to diagnosis and treatment of health of any enrollee or applicant shall be confidential unless the enrollee or applicant consents to release or a court orders its release. G.S. §131E-310.

Medicaid.

Client information may be disclosed without consent to federal, State, or county employees for the purpose of monitoring, auditing, evaluation, or to facilitate the

administration of other State and federal programs, provided that the need for disclosure of confidential information is justifiable for the purpose and that adequate safeguards are maintained to protect the information from re-disclosure. The client will be notified of the disclosure and the method of notification shall be documented in the file. G.S. §108A-54; G.S. §108A-80; NCAC T10-C50-S50A.0412 and .0404; 42 C.F.R. 431.302 and .306.

Privileged Medical Records.

All privileged patient medical records in the possession of the Department shall be confidential. G.S. §143B-139.6.

Provider Sponsored Health Care Organizations.

All applications for licensure of health care providers affiliated with another health care provider shall be public records except for information that constitutes a bona fide trade secret, proprietary information and/or competitively sensitive information of a sponsoring provider or parent company of a sponsoring provider. G.S. §131E-309; G.S. §131E-276.

Social Services.

APPLICANTS AND PERSONAL INFORMATION. Names of applicants and information about them in their applications and files for public assistance or social services are confidential. A list of individuals receiving public assistance or social service benefits with their addresses and the amounts of monthly grants is to be filed monthly with the county auditor and is public. Use of public records of individuals receiving public assistance cannot be used for political or commercial purposes. A violation of this prohibition is a Class 1 misdemeanor.³¹ Comparable language applies to lists of recipients maintained by a county board of social services or its department. Individuals employed by an agency governed by the State Personnel Act are subject to disciplinary action for failure to comply with the rules. Individuals other than employees, who have access to the information and fail to comply with confidentiality rules, may be subject to dismissal or termination of relationship with the agency. It is unlawful for anyone to obtain, disclose or use, or to allow or acquiesce in the use of any information concerning persons applying for or receiving public assistance or social services. G.S. §108A-80.

CHILD FATALITY REVIEW TEAM. The Team conducts in-depth reviews of any child fatalities which have occurred involving children and families involved with local departments of social services child protective services in the 12 months preceding that fatality. The purpose is to identify factors that may have contributed to conditions and to develop recommendations for improved local and State agencies' coordination which might avoid the threat of injury or fatality. The Team may obtain confidential information involving children who die from child abuse but may not reveal confidential information about children and families. All otherwise confidential information and records acquired by the Team may be disclosed only as necessary to carry out the purposes of the State Child Fatality Review Team. G.S. §143B-150.20.

³¹ See, Fn.10.

COUNTY SOCIAL SERVICES.

Space. Local departments of social services must maintain adequate space to ensure privacy and confidentiality when discussing matters with clients. The departments also must limit access to confidential information to authorized personnel only. G.S. §108A-80; G.S. §143B-153; NCAC T10A C70 S70F.0204; 42 C.F.R. 205.170(a)(b).

Medical Assistance. County Social Services shall administer the medical assistance programs under rules developed by the Social Services Commission. All records concerning allegations of provider fraud, abuse, over-utilization, or inadequate quality of care shall be confidential, and the information contained in the files of such investigations shall be confidential. G.S. §108A-25; NCAC T10-C26-S26G.0106; 42 C.F.R. Part 455.

ADULT PROTECTIVE SERVICES REGISTER. Information submitted by county departments of social services to the Adult Protective Services Register is confidential. Non-identifying statistical information and general information about the scope, nature and extent of adult abuse, neglect and exploitation in North Carolina is not confidential. G.S. 108A-80; G.S. §108A-103; G.S. 143B-153; NCAC T0A C71 S71A.0806 .

IDENTITY OF COMPLAINANT AND OF INDIVIDUALS WHO HAVE KNOWLEDGE OF DISABLED ADULT. The identities will be confidential unless the court requires that such persons' identities be revealed. G.S. 108A-103; G.S. §143B-153; NCAC T10A-C71A-S71A.0802.

SOCIAL SERVICES PROGRAMS. All information relating to a recipient of grants-in-aid available for programs of social services under the Social Security Act, other federal laws or regulations, State appropriations and other non-federal sources shall be held as confidential. G.S. §108A-71; G.S. §108A-73; G.S. §108A-80.

State/Regional Long-Term Care Ombudsman.

The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended. G.S. §143B-181.22.

Thomas S. Mortality Review.

Thomas S. represents a class of persons who were admitted to a state psychiatric hospital for treatment, as an adult and with the diagnosis of mental retardation. The U.S. District Court for the Western District of North Carolina³² ruled that these individuals had been unconstitutionally deprived of a right to safety, protection from harm, and treatment under safe conditions. The court ordered the state to minimally provide treatment

³² Thomas S. et al v. Britt, (C-C-82-0418-M, Western District.)

necessary to remedy any injuries caused by the inappropriate treatment in the past. All information relating to the death of a class member not living in a state facility, including police, medical examiner, health and mental health records are available to the Secretary. Reports of the Thomas S. Mortality Review Committee are public records and shall be available upon request with “due regard to privacy and confidentiality of involved persons.” G.S. §122C-3; 10A NCAC 10A-C29B-S19B.0106.

IDENTITY THEFT

If an agency suffers a security breach that exposes certain personally identifiable information, the agency must notify the individuals whose information has been exposed. G.S. §132-1.10(c1). The definition of personal information for notification purposes is found in G.S. §§ 14-113.20, 75-65, and 132-1.10(b)(5).

INDUSTRIAL COMMISSION

The Industrial Commission’s Rule requires that information in workers’ compensation files will be released only to the: 1) Claimant, upon proving identity and signing a release form; 2) Executor or administrator of a deceased claimant who provides authorization and signs a release form; 3) Claimant’s employer and/or insurance carrier or self-insured adjuster; and, 4) Lawyer representing any of the above parties. Industrial Commission Rule, promulgated pursuant to G.S. §97-25, June 15, 1990.

Records of the Commission that refer to accidents, injuries and settlements shall not be open to the public. G.S. §97-92.

The Commission may share confidential information with the Commissioner of Labor and such federal and state agencies for the purpose of studies and reports. The specific, identifying information of individuals and companies shall remain confidential. G.S. §97-81.

INFORMATION TECHNOLOGY

A public agency does not have to disclose security features of electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes. G.S. §132-6.1(c). This statute covers information agencies provide to the State Chief Information Officer regarding information technology requirements and programs. G.S. §147-33.113.

INFORMATION TECHNOLOGY SERVICES

Procurement.

After the award of a contract, all contract information for the procurement of information technology is a matter of public record except for trade secrets, test data, similar proprietary information and security information may remain confidential. G.S. §147-33.95.

Security of data.

No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this subdivision until safeguards for the data's security satisfactory to the department head and the Chief Information Officer have been designed, installed and are fully operational. G.S. §147-33.83(b).

INSURANCE

Acquisition of Control of or Merger with Domestic Insurer.

In providing the information required by G.S. 59-19-15 for acquisitions and mergers, the lender providing funding for the acquisition or merger shall be revealed to the Commissioner but shall be confidential, if the person filing the statements so requests. G.S. §58-2-40; G.S. §58-19-15; NCAC T11-C11-S11B.0218.

Actuarial Opinions

The underlying documents, materials, workpapers, or other information in the possession or control of the Department, provided for the actuarial opinions, shall remain confidential except in narrow circumstances. G.S. §58-10-175.

Actuary Memorandum with Asset Adequacy Analysis.

Each life insurance company shall annually submit the opinion of a qualified actuary as to whether the reserves and other information provided to the Commissioner is as stated. Any memorandum in support of the opinion shall be confidential. G.S. §58-58-50; NCAC T11-C11-S11F.0307.

Course Material.

The Department must approve educational programs for members of the insurance industry. The program providers may request that the materials be kept confidential if they are proprietary in nature. NCAC T11-C6-S6A.0809.

Court Files.

Records filed with the Clerk of Court in insurers' supervision and seizure matters shall be confidential and not subject to public inspection until a court order is entered. G.S. §58-30-70.

Criminal Investigation Records – Arson and Suspicious Fires.

Records compiled as a part of an investigation for the crime of arson, of unlawful burning or of fraud shall not be considered as public records and may be made available to the public only upon a court order. G.S. §58-2-100. Fire reports by local fire chiefs and fire marshals are public records. G.S. §58-79-45.

Domestic Insurer Reports.

Every insurer must file a report with the Commissioner disclosing material acquisitions and dispositions of assets or material non-renewals, cancellations, or revisions of ceded reinsurance agreements. No report may be disclosed unless the insurer gives written consent or the Commission determines that the public's, policyholders', or shareholders' interests would be served if disclosure were made. G.S. §58-10-55.

Examination Reports.

All examination reports by the Department of Insurance for insurers shall be confidential for 30 days after filing. At the end of that time, they will be filed as a public record unless a court order has been obtained staying release of the report. G.S. §58-2-132.

Fire Insurance Companies.

Under State law, fire insurance companies must provide information about suspicious fires to fire chiefs, fire marshals, or the SBI. Anyone who receives this information must keep it confidential until it is required for a criminal or civil proceeding. G.S. §58-79-40(d).

Gramm-Leach-Bliley.

INTERAGENCY CONSULTATION. Upon the request of the Federal Reserve Board or the appropriate federal banking agency, the North Carolina Secretary of State, or the North Carolina Commissioner of Banks, the Insurance Commissioner may provide any examination or other reports, records or other information to which the Commissioner has access with respect to any insurance producer. If the information is confidential or otherwise privileged, the information will retain its confidential nature. G.S. §58-2-128.

Health Maintenance Organizations (HMO).

Any information relating to diagnosis, treatment of health of any enrollee in or applicant for an HMO shall be confidential unless the enrollee or applicant consents or a court orders release of the information. G.S. §58-67-180.

Holding Company Systems.

These systems are entities comprised of two or more affiliated persons, one or more of which is an insurer. Information produced, obtained or disclosed to the Commissioner during an examination or investigation shall be confidential, unless the Commissioner, after giving the insurer or acquiring party notice, determines that the interest of the insurer's policy holders or the public will be served by the publication of some or all of the documents. G.S. §58-19-40.

Insurance Regulatory Information System.

Unless Commission rules allow dissemination of financial test ratios, data or information generated by the Commissioner pursuant to NAIC Insurance Regulatory Information

System are not public records and are not subject to the Public Records Law. G.S. §58-2-220.

Interstate Insurance Product Regulation Compact Act

CERTAIN RECORDS. Any audit work papers and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, that is received by the Interstate Insurance Product Regulation Commission shall be confidential. G.S. §1468(f).³³

CONFIDENTIALITY LAWS Except as specifically provided in the Act, disclosure to the Commission of records that are confidential under the member state's laws shall retain their confidentiality. Confidential information of the Commission shall remain confidential after the information is provided to any commissioner. G.S. §58-91-40(b).³⁴

Licensing of insurance agents.

Documents, materials or other information in the control or possession of the Commissioner or any organization of which the Commissioner is a member that is furnished by an insurer, producer or obtained by the Commissioner in an investigation shall be confidential and not subject to the public records law. The Commissioner may release final, adjudicated actions including for cause terminations. G.S. §58-33-56.

Market conduct analysis and financial analysis records

All market analysis, documents arising from market conduct action, and financial statement analysis work papers in the custody of the Department of Insurance are confidential and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department of insurance, unless a court finds otherwise. G.S. §58-2-240, G.S. §58-2-132(f).

Medical Records.

All patient medical records in the Department's possession are confidential. The Department may disclose patient medical records to an independent review organization, and the organization shall maintain the confidentiality of those records as required by this section, except as allowed by G.S. 58-39-75 and G.S. 58-39-76. Further, all information related to the credentialing of medical professionals that is in the possession of the Commissioner is confidential. G.S. §58-2-105.

Postassessment Insurance Guaranty Association.

The Board of Directors may request that the Commissioner of Insurance order an examination of any member insurer that the Board believes may be in a dangerous financial condition. The request for an examination shall not be available for public inspection before the examination report is released to the public. G.S. §58-48-60.

³³ Effective until October 1, 2009.

³⁴ Effective until October 1, 2009.

Professional Employer Organizations

APPLICANTS: Applicants for licensing as a professional employer organization must undergo criminal background checks. The results are reported to the Insurance Commissioner, who must keep the information confidential. G.S. §55-89A-60.

LICENSEES RECORDS: Licensees shall maintain and make available at all times certain information, which shall be treated as confidential and proprietary: the names of each client company, the client company contracts, and a listing of each client company by a classification code. G.S. §55-89A-140.

Prevention of Delinquencies.

The Commissioner shall provide the Life and Health Insurance Guaranty Association Board information of NAIC Insurance Regulatory Information System financial test ratios. The information provided shall be confidential until the Commissioner or another lawful authority releases it. G.S. §58-62-56.

Public Officers and Employees Liability Insurance Commission.

The Commission can obtain information about loss ratios, loss factors, loss experience and other facts and figures from any agency or company issuing professional liability insurance covering public officers, employees or law-enforcement officers in the State of North Carolina. The information shall not be deemed a public record under the Public Records Law. The Commission may make public aggregate statistics. G.S. §58-32-10.

Risk-based Capital Reports.

Risk-based capital reports and plans filed with the Commissioner, including the results or reports of any examination or analysis of an insurer, shall be confidential. The General Assembly determined that the information is only to indicate a need for possible corrective action and not for comparison purposes. For that reason, the General Assembly determined that the reports may not be made public or be subject to subpoena, other than by the Commissioner, and then only for enforcement actions. G.S. §58-12-35.

Standard Valuation Law.

The Commissioner shall annually value reserve liabilities for all outstanding life insurance policies, annuities and pure endowment contracts of every life insurance company doing business in North Carolina. For an alien company, the valuation shall be limited to its United States business. Actuaries shall have the status as an examiner for purposes of obtaining data from the company. Any information provided by the company shall be kept confidential. G.S. §58-58-50(j)(10); NCAC T11-C11-S11F.0307.

Supervision of Insurer.

All proceedings, hearings, notices, correspondence, reports, records, and other information in the possession of the Commissioner of Insurance or the Department relating to the supervision of an insurer shall be confidential. G.S. §58-30-62.

Surety (Bail) Bondsmen.

An insurer who cancels a contract with a surety bondsman must file a written notice of the termination. Information furnished in the notice to the Commissioner shall be privileged and shall not be used as evidence in or as a basis for any action against the insurer or any of its representatives. G.S. §58-71-115.

Runners.

Every bondsman may appoint runners who hold runners' licenses. When a bondsman terminates the appointment of a runner, the bondsman must provide a written notice of termination to the Commissioner, along with the reasons for termination. This filing is confidential. G.S. §58-71-125.

Surplus Requirements for Workers' Compensation Self-Insurers.

Every year a member must file its most recent year-end financial statements with the Department. This information shall be confidential although the Commissioner may use the information in any judicial or administrative proceeding. G.S. §58-47-65.

Third Party Administrators (TPAs).

RECORDS. The Commissioner shall keep confidential any trade secrets³⁵ in TPA or service company books and records, including the names and addresses of members of a self-insurer or identities of policyholders. The TPA must maintain all records for a period of five years. The Commissioner, however, may use the information in any judicial or administrative proceeding against the TPA. G.S. §58-47-165; G.S. §58-56-16. Contracts filed with the commissioner are also confidential. G.S. §58-47-160.

TPA SURPLUS REQUIREMENTS. To ensure that claimants and policy holders do not experience delay in payment and to avoid financial loss because of the insolvency of an insurer, each group shall maintain surplus requirements. Each year a year-end balance sheet shall be filed with the Commissioner, if requested. The filing shall be kept confidential. The Commissioner may use the information, however, in any judicial or administrative proceeding. G.S. §58-47-85.

TPA LICENSE. A TPA must hold a license and must disclose to the Commissioner certain information, such as financial statements, trade secrets³⁶ and all corporate documents. The Commissioner must keep these documents confidential, provided that the Commissioner may use the information in any judicial or administrative proceeding against the TPA. G.S. §58-56-51.

³⁵ See, Fn. 4.

³⁶ *Ibid.*

Viatical Settlements and Contracts.

ANTIFRAUD INITIATIVES. Viatical settlement providers and brokers shall have antifraud initiatives. These plans are confidential when submitted to the Commissioner of Insurance. G.S. §58-58-268.

REPORTS AND INVESTIGATIONS OF SUSPECTED FRAUD. Information and evidence collected by the Commissioner in the investigation of suspected fraudulent viatical settlement acts is confidential, is not a public record, and is not subject to subpoena in a civil or criminal action. G.S. §58-58-280.

Rate Deviations.

In certain instances, insurers, officers and agents of an insurance company may increase their rates in high-risk situations with the insured's agreement. The deviations shall be filed with the Commissioner upon his request. Any data that the Commission receives is proprietary and shall be kept confidential. G.S. §58-36-30.

Workers' Compensation Experience Rate Modifier.

The Workers' Compensation Rate Bureau shall provide the Department information that shows each employer's experience rate modifier. The information shall be kept confidential. G.S. §58-36-16.

Teachers' and State Employees' Major Medical Plan.

Terms pertaining to reimbursement rates or other terms of consideration of any contract between hospitals, hospital authorities, doctors or other medical providers, an option program contract, or a pharmacy benefit manager and the Plan shall not be a public record under Chapter 132 or the General Statutes until 30 months after the date of the expiration of the contract. Certain state officials are authorized to review the information in the furtherance of their duties and responsibilities. G.S. §135-40.4.

JUVENILES AND JUVENILE JUSTICE

Central Registry.

Information listed in the registry for child abuse, neglect, dependency and fatalities shall be confidential. G.S. §7B-311.

Confidentiality of Records.

The Clerk of Court shall keep juvenile cases confidential and the cases may be examined only by court order. G.S. §7B-3000. The juvenile court counselor shall notify the school of a juvenile who is found to be delinquent. G.S. §7B-3100. The Director of the Division of Social Services shall maintain records of juvenile cases referred to the Department of Health and Human Services by the Court. The records may be examined only by court order, except that the guardian ad litem, or juvenile, shall have the right to examine them. G.S. §7B-2901. Communications between a guardian ad litem and the parent and between a guardian ad litem and the parent's counsel are privileged and

confidential. G.S. §7B-602 and G.S. §7B-1101.1. The guardian ad litem also has the authority to obtain any information or reports, whether confidential or not, that may be relevant to the case. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law. G.S. 7B-601.

Diversion Plans.

In certain instances juveniles, instead of going to juvenile court, may enter into diversion plans with probation officers. These diversion plans state the responsibilities with which a juvenile and his/her family must comply to avoid going to court. The diversion contracts are not public records. G.S. §7B-1706.

Disclosure in Child Fatality or Near Fatality Cases.

A public agency shall disclose to the public, upon request, the findings and information about the child fatality or near fatality if a person is criminally charged with having caused the fatality or near fatality or the district attorney has certified that a person would be charged but for that person's death. This section does not authorize public access to psychiatric, psychological or therapeutic evaluations, or to criminal investigative reports and criminal intelligence information of public law enforcement agencies and confidential information in the possession of the State Child Fatality Prevention Team, the local teams, and the Child Fatality Task Force. G.S. §7B-2902.

Disclosure of Confidential Information about Juveniles.

Only through a court order authorizing the sharing of confidential information without consent of juveniles under the jurisdiction of the Office of Juvenile Justice can information be shared among treating agencies. Educational information may be disclosed only before the juvenile is adjudicated delinquent. All information remains confidential. G.S. §7B-3100; 20 U.S.C. §1232g.

Employment Background Checks

EMPLOYEES AND APPLICANTS PROVIDING DIRECT CARE. Criminal history checks provided by the State Bureau of Investigation to the Department of Health and Human Services and to the Department of Juvenile Justice and Delinquency Prevention for employees are confidential. Criminal history checks are to be performed on employees and applicants providing direct care to individuals as well as those employees' supervisors. G.S. §114-19.6.

Expunction of Records.

Any person who has reached the age of 18 may request that his/her record be expunged where he/she was adjudicated delinquent or the offence would have been a crime other than a Class A, B1, B2, C, D, or E felony³⁷ if charged as an adult and at least 18 months

³⁷ Felonies for which expungement may be considered include burning schoolhouses or buildings of educational institutions, extortion, taking indecent liberties with children, and perjury.

have passed since the juvenile was released from juvenile court jurisdiction. The names of individuals whose records have been expunged shall be filed with the Administrative Office of the Courts. The names are confidential and shall be disclosed only when a judge needs to check whether an individual has previously had a record expunction. G.S. §7B-3200.

Interstate Compact for Juveniles

The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. Further, the Commission can close meetings with a 2/3rds vote where an open meeting would 1) Relate solely to the Interstate Commission's internal personnel practices and procedures; 2) Disclose matters specifically exempted from disclosure by statute; 3) Disclose trade secrets or commercial or financial information which is privileged or confidential; 4) Involve accusing any person of a crime or formally censuring any person; 5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; 6) Disclose investigative records compiled for law enforcement purposes; 7) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity; 8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or 9) Specifically relate to the Interstate Commission's issuance of a subpoena or its participation in a civil action or other legal proceeding. G.S. 7B-4001, Article III, h and i.

Investigation of Abuse and Neglect

The director of social services, upon receiving a complaint of child abuse or neglect, shall perform an assessment. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. The director shall, however, disclose confidential information to any federal, State, or local governmental entity that needs the confidential information to protect a juvenile from abuse and neglect. G.S. §7B-302. The director may be required to disclose the identity of the reporter in court proceedings. G.S. §7B-303. The State Team, the Local Teams, and the Task Force during its existence, shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this Article, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records. All otherwise confidential information and records acquired by the State Team, the Local Teams, and the Task Force during its existence, in the exercise of their duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the State Team, the Local Teams, and the Task Force. G.S. §7B-1413.

Fingerprinting and Photographing Juveniles.

Fingerprints and photographs of juveniles accused of committing certain offenses are not public records. Officials may, however, release a photograph if the juvenile escapes from custody in certain circumstances. G.S. §7B-2102; G.S. §7B-3102.

Juvenile Court Records

Juvenile court records that accompany a juvenile to a youth development center are confidential and may be used only in a manner consistent with the best interests of the juvenile. G.S. §7B-2513.

Permanency Mediation Program

The Permanency Mediation Program, established by the Administrative Office of the Courts, shall resolve issues in cases in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependant, or in which a petition or motion to terminate a parent's rights has been filed. These proceedings are confidential. G.S. §7B-202.

Registration of Certain Juveniles Adjudicated Delinquent for Committing Certain Offenses.

When a juvenile is adjudicated delinquent for first and second degree rape or sexual offense and is at least 11 years old at the time of the incident, he/she may be required to register as a sexual offender if a court determines that the juvenile is a danger to the community. The registration is not a public record and is available only to law enforcement agencies. G.S. §14-208.26 and G.S. §14-208.29.

Treatment of Minors

Court proceedings for a minor seeking an abortion without parental consent shall be confidential. G.S. §90-21.8.

LABOR

Amusement Device Safety Act.

Trade secrets³⁸ submitted under the Department of Labor's safety program, including an amusement device's design and construction, are confidential, unless the secrets are relevant in any proceeding involving investigation of accidents and violations of rules and regulations. Even so, the Commissioner or the Court may issue orders as may be appropriate to protect the confidentiality of trade secrets. G.S. §95-111.17; G.S. §111.2; G.S. §132-1.2.

Apprentice Program.

Identity of complainants shall be kept confidential in any matter involving intimidation, threat, coercion, or retaliation by or with the consent of any sponsor or participating employer in violation with the Civil Rights Act of 1964, as amended, or in retaliation of a

³⁸ See, Fn. 4.

complaint (except to the extent necessary to carry out the purposes of this Section), including the conduct of any investigation, review, hearing or judicial proceeding arising under the Apprentice Program. G.S. §94-1; G.S. §94-4; NCAC T13-C14.0816.

Bureau of Labor Statistics.

The Commissioner shall present to the Governor a statistical report relating to all divisions of labor in the State, and particularly concerning the following: unemployment, hours of labor, number of employees and sex thereof, daily wages and conditions of employment. No one in the Commissioner's office shall publish or give or permit to be published any individual statistics obtained from any employer. G.S. §95-5; G.S. §95-6.

Conciliation Service and Mediation of Labor Disputes.

The Commissioner of Labor, any conciliator and all other employees of the Commission of Labor shall not be compelled to disclose any information relating to the activities of the conciliation service or labor dispute mediation. The Commissioner and others, however, may be required to testify in a proceeding in which the commission of a crime is the subject of inquiry G.S. §95-36.

Elevators and Other Devices.

The Labor Department shall maintain a program for coordinating enforcement and inspection activity relative to equipment, devices and operations, such as elevators, escalators and moving walks, personnel hoists, and conveyors. Information obtained in the Department's inspection and enforcement efforts that contains or might reveal a trade secret shall be confidential. G.S. §95-110.5; G.S. §95-110.14.

Mines.

The Department shall publish annually, in summary form, statistical information related to accidents and injuries in mine operations within the state. Any information that reveals the internal fiscal operation of individual mines, including man-hours worked, will be confidential and not be considered public information. G.S. §74-24.13; G.S. §95-4(2); NCAC T13-C6.0308.

North Carolina Rate Bureau.

The Bureau shall provide records indicating each employer's experience rates for workers' compensation insurance and the name and business address of each employer whose workers' compensation coverage is provided to the assigned risk pool. The Department of Labor shall keep the records confidential and not open them for public inspection. G.S. §58-36-16.

Occupational Safety and Health Act ("OSHA") Investigations.

The Commissioner may compile, analyze and publish, in summary or detailed form, all reports or information from witness statements in an OSHA investigation. These documents are closed to the public until the enforcement proceeding is closed. An employer is entitled to receive a copy of the official inspection report. The names of

witnesses or complainants shall be redacted from any copy of the official inspection report provided to the employer or third party. The Commissioner shall make available to an employer, 10 days before a scheduled enforcement hearing, unredacted copies of witnesses' statements the Commissioner plans to use at the enforcement hearing, the statements of witnesses the Commissioner intends to call to testify, and statements of witnesses whom the Commissioner does not intend to use that might support an employer's affirmative defense or otherwise exonerate the employer. G.S. §95-136.

FILES. Trade secrets, personnel or medical files, complainant and witness names, and interagency or intra-agency documents otherwise protected by law remain confidential. An employee in a proceeding may grant access to personnel or medical records. A complainant or witness may agree to make his/her name public. G.S. §95-129; G.S. §95-136(g); NCAC T13-C7-S7A.0303.

TRADE SECRETS. In an OSHA proceeding before the Safety and Review Board or an examiner, where trade secrets or other matters may be divulged and the confidentiality of which is protected by law, the board or hearing examiner shall issue such orders as may be appropriate to protect the confidentiality of such information. G.S. §95-135; NCAC T13-C10.0111.

PUNISHMENT FOR VIOLATION OF OSHA CONFIDENTIALITY RULES. In an OSHA investigation, the Commissioner or his agents may, in certain circumstances, be fined or imprisoned not more than one year, or both, and shall be removed from office or employment. The circumstances under which such action would be taken includes the release of all information reported to or obtained by the Commissioner or his agents containing or which might reveal a trade secret, tax information, processes, operations, or apparatus. The employer makes the determination whether information is a trade secret. G.S. §95-152; 18 U.S.C. §1905.

Private Personnel Services – Licensing.

The Department of Justice may provide a criminal record check to the Commissioner for a person or agency who has applied for a license through the Commissioner. The results are confidential. G.S. §95-47.2.

*Withholding Hazardous Substances Trade Secrets.*³⁹

The Commissioner of Labor and the Fire Chief may hold confidential the names and contents of hazardous substances stored, manufactured, or used at a facility and any manufacturer data sheets if the information contains a trade secret.⁴⁰ Any knowing release to the public of the Hazardous Substance List, the company's emergency response plan and the manufacturers data sheets is a Class 1 misdemeanor.⁴¹ G.S. §95-197; G.S. §95-194.

Wage and Hour Act.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ See, Fn. 10.

Files and other records relating to investigations and enforcement proceedings are confidential while the investigations and proceedings are pending. G.S. §95-25.20.

Workers' Compensation Self-Insurance.

The Insurance Commissioner shall provide the Department of Labor, on an annual basis, the name and business address of every employer that is self-insured for workers' compensation. This information is confidential and not open for public inspection under the Public Records Law. G.S. §58-2-230.

LAW ENFORCEMENT

Law Enforcement Code of Ethics.

An officer pledges that whatever the officer sees or hears of a confidential nature and when something of a confidential nature is confided to the officer while performing duties, the information will remain secret unless revelation is necessary in the performance of duty. NCAC T12-C9-S9A.0103.

Peer Support Group Counselors.

Law enforcement peer counselors may not disclose any communication made by a client law enforcement employee or a member of the client law enforcement employee's immediate family while receiving counseling. Disclosure may occur if the client or, if deceased, his estate authorizes release or the disclosure is compelled by a judge. G.S. §8-53.10.

LIBRARIES

A library shall not disclose any library records that identifies a person as having requested or obtained specific materials, information, or services, or as otherwise having used the library unless necessary for the reasonable operation of the library, upon written consent of the user or under a subpoena, court order, or where otherwise required by law. G.S. §125-19.

LICENSING BOARDS

General Licensing Law.

EXAMINATION QUESTIONS. When an applicant for an occupational licensing board fails to pass the licensing examination, the applicant may review the examination in the presence of the board or a representative of the board. Nothing in the law, however, requires an occupational licensing board to disclose questions or answers to tests provided by recognized testing organizations pursuant to contracts which prohibit such disclosures. G.S. §93B-8.

SOCIAL SECURITY NUMBER. Every occupational licensing board shall require applicants to submit their social security number. The number will be treated as

confidential and may be released only to the State Child Support Enforcement Program and to the Department of Revenue. G.S. §93B-14.⁴²

Alarm System Licensing Act

The Alarm System Licensing Board, when obtaining criminal background checks for applicants for licensing, shall keep those checks confidential. G.S. §74D-2.

Auctioneers.

In the licensing process for auctioneers, the Auctioneers Commission shall have an applicant's criminal record checked for conviction of a crime that bears upon an applicant's fitness to be licensed as an auctioneer. All of the information the Commission receives is for its use only and shall be confidential. G.S. §85B-3.2; G.S. §114-19.8.

Certified Public Accountants

Investigative papers, application information and ethics inquiries are not public records until such information is admitted into evidence in a hearing held by the Board of Certified Public Accountants Examiners. G.S. §93-12.2.

Chiropractic Physicians

Any person applying for licensure as a chiropractic physician shall have a criminal background check and the information included in that check will be confidential. G.S. §90-143.3; G.S. §114-19.22.

Dental Examiners.

Proceedings and hearings of a dental review committee, except those concerning the investigation of Medicare and Medicaid charges or payments, shall be confidential until needed in a court proceeding. G.S. §90-48.10.

DENTAL HYGIENE LICENSING. The board may obtain a criminal background check for an applicant. The information obtained from the NC Department of Justice shall be confidential. G.S. §90-224.

DENTAL DISCIPLINARY ACTION. Records compiled in an investigation of a dentist for fraud, mental unfitness to practice dentistry, solicitation of patients or other violations of the Board of Dental Examiners shall not be public records until the information is necessary to use in the filing of charges or as evidence in a hearing before the Board of Dental Examiners. G.S. §90-41.

IMPAIRED DENTIST PEER REVIEW. If the review section involves specific information on patients, the information shall be confidential and not released to any party outside the membership of the peer review section. G.S. §90-48.2(e); NCAC T21-C16-S16S.0202; NCAC T21-C16-S16S.0205.

⁴² See, *Child Support*, at page 32.

Engineers and Surveyors.

Any investigative materials obtained in the course of responding to a complaint shall be confidential until the Board of Examiners issues a citation to the registrant. Reference and Evaluation Forms of Surveyor applicants are confidential and shall not be released. G.S. §89C-10; NCAC T21-C56.0602.

Board of Funeral Service.

LICENSING. The Board of Funeral Service may obtain a criminal background check from the NC Department of Justice for an applicant. The information contained in the background check is confidential. G.S. §90-210.25.

PRE-NEED CONTRACTS. The names and addresses of the purchasers and beneficiaries of pre-need funeral contracts filed with the Board shall not be subject to the Public Records Law. G.S. §90-210.73.

General Contractors Board.

When a complaint has been filed against a licensed or unlicensed general contractor the Board may, in its discretion, keep the identity of a complaining party confidential until a time no later than the receipt of the complaint by the full Board for a disciplinary hearing or injunction action. G.S. §87-15.3.

Geologists Licensing Act.

APPLICANT MATERIALS. All test scores, applications and material that is used to evaluate an applicant shall be confidential. G.S. §89E-14.

INVESTIGATIONS. Investigations by the Board for Licensing of Geologists shall be confidential until the Board takes disciplinary action against a licensee or corporate registrant. The information also becomes a matter of public record when admitted into evidence in a hearing before the Board. G.S. §89E-17.

Hearing Aid Dealers and Fitters

Records and other documents containing information collected compiled by or on behalf of the Board as a result of an investigation, inquiry, or interview conducted in connection with registration, licensure, or a disciplinary matter shall not be considered public records within the meaning of Chapter 132. Any notices of hearings, etc. are a matter of public record except that if any record identifies the name of a consumer who has not consented to having his/her name made public, the name shall be deleted. G.S. §93D-13.

Interpreters and Transliterators.

The North Carolina Interpreter and Transliterators Licensing Board may obtain a criminal background check on an applicant from the N.C. Department of Justice. The information will be confidential. G.S. §90D-7.

Locksmith Licensing Board.

The Locksmith Licensing Board may perform a criminal background check on an applicant's fitness for licensure to practice locksmithing. The background check is confidential. G.S. §§74F-18.

Manufactured Housing Board.

The North Carolina Manufactured Housing Board may receive criminal histories of any applicant for licensure as a manufactured home manufacturer, dealer, salesperson, or set-up contractor. The histories shall be kept confidential. G.S. §114-19.13; G.S. §143-143.10A.

Board of Massage and Bodywork Therapy

The Massage and Bodywork Board may obtain criminal histories of any applicant for licensure as part of its investigation that bears on an applicant's fitness for licensure to practice massage and bodywork therapy. G.S. §90-622.

Medical Board.

BACKGROUND CHECKS. The Medical Board may request background checks on applicants to practice medicine or physician's assistants from the NC Department of Justice. The results are confidential. G.S. §90-11.

PHYSICIAN'S FILES. The Board may release all confidential information in a physician's file to any health care licensure boards in this State or others, including criminal records, disciplinary actions, investigative files, other investigative information and other documents in the possession of or received or gathered by the Board. The licensee or applicant may receive information the Board plans to offer into evidence. Otherwise, the information is confidential. G.S. §90-16.

PATIENT INFORMATION. Any information identifying a patient, produced before or inquired into by the board, shall be withheld from public disclosure unless the patient or the patient's representative expressly consents to the disclosure. G.S. §§90-8 and 16.

HEALTH CARE INSTITUTIONS AND DISCIPLINARY ACTION. Health care institutions, including hospitals, Health Maintenance Organizations, and preferred providers shall report to the Medical Board any revocation, suspension or limitation of a physician's privileges at an institution. The Board may request details about any action and the officers of the health care institution must provide the requested information. The reports are privileged and shall not be open to the public. The Board, however, shall report all violations of this section to the Commissioner of Insurance. G.S. §90-14.13.

Medical Peer Review Records.

These records are not subject to the Public Records Law. Confidential information about a medical professional may be released to a professional standards review organization that performs any accreditation or certification function. Information released to a professional standards organization retains its confidentiality. G.S. §90-21.22(e); G.S. §90-21.22A.⁴³ Quality assurance, medical or peer review committees must keep records confidential. G.S. §131E-107, G.S. §131E-95, G.S. §131D-21.2.

North Carolina Medical Society and Academy of Physician Assistants.

Any confidential patient information and other nonpublic information acquired, created, or used in good faith by the Academy of Physician Assistants or the North Carolina Medical Society or its local medical society components when conducting peer reviews, shall be confidential and shall not be subject to subpoena or discovery in a civil case. G.S. §90-21.22.

Nursing.

NURSE LICENSURE COMPACT. North Carolina has adopted a compact with member states regarding the status of nursing licenses in the states. The compact allows state regulatory agencies to share information on the status of nursing licenses. In states where a licensee participates in an alternative program instead of being disciplined, and the applicable state law requires the licensee's status to be confidential, the licensee's status is confidential. States that allow licensees to enter alternative programs agree not to allow the licensee to practice in any other member state without prior authorization from that state. G.S. §90-171.85.

CRIMINAL HISTORY RECORD CHECKS. The NC Department of Justice may provide criminal background histories to the NC Board of Nursing. All applicants must submit fingerprints and agree to a criminal history check. The board shall keep all information gathered confidential. G.S. §114-19.11 and G.S. §90-171.48.

Nursing Pool Licensure Act.

Department of Health and Human Services representatives may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any person who is or has been a nursing pool patient. The Department shall not disclose any confidential or privileged information obtained in the review unless the patient or his/her legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure. The information will not be released to the Department until a signed release is obtained. The name of anyone who has provided information about a nursing pool shall be confidential, unless that person consents to the release of his/her name. G.S. §131E-154.8.

State Board of Examiners in Optometry.

The Board may enter agreements with the North Carolina State Optometric Society for peer review of optometrists. Any confidential patient information used in the review shall remain confidential. G.S. §90-128.1.

⁴³ This section does not apply to reviews under G.S. §131E-95, which covers hospital matters.

Fee-Based Pastoral Counselors.

A certificate applied for or issued may be suspended, refused or revoked in certain circumstances, such as conviction of a felony, moral turpitude, fraud, or addiction to alcohol or drugs. Names of individual clients or records involving them presented at a hearing for action on a license shall be kept confidential and will be subject to deletions of identifying information concerning the treatment or delivery of pastoral counseling. G.S. §90-390.

Perfusionist⁴⁴ Licensing.

The Perfusionist Advisory Committee of the Medical Board shall have the authority to investigate perfusionists. The records received in the investigations, inquiries, or interviews conducted in connection with a licensing, complaint, or disciplinary matter shall not be considered public records. G.S. §90-685.1.

Pharmacists.

LICENSURE. When the Department of Justice performs criminal history background checks on applicants for a pharmacy license, the information shall be confidential. G.S. §90-85.15.

IMPAIRED PHARMACY PERSONNEL PEER REVIEW COMMITTEES. The North Carolina Board of Pharmacy may enter agreements with special impaired pharmacy personnel peer review organizations. Any confidential patient information and other non-public information obtained, created or used in good faith by an impaired pharmacist peer review organization shall be confidential. G.S. §90-85.41(e).

PHARMACY QUALITY ASSURANCE PROGRAM. Each entity with a pharmacy permit shall establish or participate in a pharmacy quality assurance program to evaluate the quality of the practice of pharmacy, the cause of alleged medication errors and incidents, pharmaceutical care outcomes, possible improvements for the practice of pharmacy and methods to reduce alleged medication errors and incidents. The proceedings of the program are confidential and not considered public records. G.S. §90-85.47.

Private Protective Services Board.

Except for administration and for law enforcement purposes, the home address and telephone number of an applicant, licensee or the spouse, children or parents of an applicant or licensee are confidential. Violation of this provision is a Class 3 misdemeanor. If a criminal record check is obtained through the N.C. Department of Justice, the information is confidential. G.S. §74C-8.

⁴⁴ A perfusionist is a trained health professional who operates the heart-lung machine during cardiac surgery and other surgeries that require cardiopulmonary bypass.

Professional Certification Board.

The Board may hold closed hearings to receive evidence regarding the provision of substance abuse counseling or other treatment and services provided to a client when necessary to protect the client or the accused substance abuse professional. All records, papers, and other records compiled by the Board shall not be public records, except any notice of hearing or statement of charges shall be a public record. Further, if any of the evidence found during the closed hearings is admitted into a public hearing, the evidence will be public record. The Board may withhold from public disclosure the name of any client who has not agreed to have his or her name made public. G.S. §90-113.34.

Psychology Board.

When a licensed or certified psychologist or health services provider is convicted of a felony, has been convicted of a misdemeanor involving moral turpitude, misrepresentation or fraud, or violated the Code of Ethics for the profession, his/her license may be revoked, suspended or denied. Any individual patient information disclosed as part of the Board's hearing and deliberations shall not be a public record. G.S. §90-270.15.

Criminal record checks of applicants for licensure, for reinstatement, or for individuals under investigation by the Board shall have criminal background checks. The board shall keep all information obtained confidential. G.S. §90-270.22, G.S. §114-19.16.

Real Estate Appraisers.

LICENSING AND CERTIFICATION EXAMINATIONS are confidential. No applicant, licensee, or certificate holder shall obtain, attempt to obtain, receive or communicate examination questions to other persons. Violation of this Rule shall be grounds for denial of a real estate appraiser license or certificate if the violator is an applicant and disciplinary action if the violator holds an appraiser license or certificate. NCAC T21-C57-S57A.0305.

INVESTIGATIONS AND COMPLAINTS. Records, papers and other documents received or compiled during an investigation are not public records. The statement of charges contained within a notice of public hearing is a public record. Once introduced into evidence at a public hearing, the investigative records are a matter of public record. G.S. §93E-1-12.1.

Real Estate Commission.

Licensing examinations are the exclusive property of the Commission and are confidential. Violation of this Rule shall be grounds for denial of a real estate license if the violator is an applicant and disciplinary action if the violator is a licensee. NCAC T21-C58-S58A.405.

The scores of license examinations are not a matter of public record. G.S. §93A-4(b).

If the Commission receives a criminal background report from the N.C. Department of Justice, the Commission must keep the report confidential. G.S. §93A-4(b1).

Board of Refrigerator Examiners.

The board may revoke or suspend the license of any refrigerator contractor who is guilty of any fraud or deceit in obtaining a license or is found to be grossly negligent, incompetent or in non-compliance with the Board rules. All records compiled in an investigation for such contractor shall not be public records under the Public Records Law. G.S. §87-59.

Respiratory Care Board

The Department of Justice may perform a criminal background check for the Board when determining the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure. The information shall be confidential. G.S. §90-652.

Social Work Certification and Licensing Board.

Any communication, oral or written, made on behalf of any person or entity to the Board or to any person designated by the Board to investigate matters relating to disciplinary issues, shall be treated in a confidential manner and not be subject to the Public Records Law. In any proceeding before the Board, the Board may withhold from public disclosure the identity of a client who has not consented to public disclosure and such information shall be deleted before public disclosure of any records. The Board, when investigating a licensee, may order a psychiatric evaluation. The examination is confidential until introduced into evidence at a hearing. G.S. §90B-11.

Social workers shall have a primary obligation to protect the client's right to confidentiality as established by law and professional standards of practice. G.S. §90B-6; G.S. §90B-11; NCAC T21-C63.0507.

Substance Abuse Professional Practice.

Applicants for registration, certification, or licensure as a substance abuse professional shall have a criminal record check through the State Bureau of Investigation. The Board of Substance Abuse Professionals shall keep all information involving the criminal record check confidential. G.S. §90-113.46; G.S. §114-19.11A.

Board for Licensing Soil Scientists.

The Board shall not release any information regarding an applicant except as required by law or by rule of the Board. G.S. §89F-15.

State Bar.

All matters concerning the qualification of an applicant for certification as a specialist in a specific area of law, including test scores and recommendations, shall be confidential. NCAC T27-C1-S1D.1720.

All proceedings involving allegations of misconduct by or disability of a member of the State Bar shall remain confidential until a complaint has been filed against the member, the member requests that the matter be public, a petition or action is filed in the general courts of justice, the member files an affidavit of surrender of license, and the previous issuance of disciplinary action may be revealed in a disciplinary action. NCAC T27-C1-S1B.0129.

Records, papers, and other documents containing information collected or compiled by the North Carolina State Bar or any of its members or employees as a result of any investigation, application, inquiry or interview conducted in connection with an application for a certificate of registration are not public records within the meaning of Chapter 132 of the General Statutes. G.S. §84A-2.

Continuing legal education records as they relate to members who have failed to satisfy the rules of continuing legal education shall be confidential, except in furtherance of the duties of the CLE Board. T27-C1-S1D.1525.

State Board of Law Examiners.

The Board shall fully investigate all applicants for the practice of law in North Carolina. Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations and licensing matters, are not public records. G.S. §84-24.

Veterinary Medical Board.

The Veterinary Medical Board shall maintain as confidential information obtained, created or used in good faith by an impaired veterinary personnel organization or the Board shall be confidential. G.S. §90-187.15.

LOTTERY

Audits

Each year the Director of the Lottery shall engage an independent firm experienced in security procedures, including computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Commission and of the lottery. The portion of the security audit report containing specific recommendations shall be confidential, shall be presented only to the Director and to the Commission, and shall be exempt from Chapter 132. G.S. §18C-122.

Criminal Record Checks

The Department of Justice may provide the Lottery Commission and its Director the criminal history of any prospective employee of the Commission and any prospective lottery retailer or contractor. The Commission and its Director shall keep all information obtained confidential. G.S. §114-19.16.

Game Play Rules

All players acknowledge that the determination of whether a ticket holder is a winner is subject to confidential validation tests established by the Commission for the particular lottery game involved. G.S. §18C-133.

Investigation of Lottery Vendors

Lottery vendors shall cooperate with the Director in completing any investigation into contracts. The documents compiled during the investigation shall be confidential. G.S. §18C-152.

Prizes awarded to certain winners

If a prize winner submits to the Commission a copy of a protective order or a lawful order of any court restricting the access or contact of one or more persons with that prize winner or a valid Address Confidentiality Program authorization card, the winner's identifying information shall be treated as confidential as long as the protective order remains in effect or the prize winner remains a certified program participant in the Address Confidentiality Program. The prize winner's identifying information shall be available for inspection by a law enforcement agency or by a person identified in a court order if inspection of the address by that person is directed by that court order. G.S. §18C-132(k).

MILITARY DISCHARGE RECORDS

All military discharge documents filed on or after January 1, 2004, shall be considered a public record and filed with the registers of deeds in each county. They are exempt from public inspection and access except as permitted by law and to authorized parties. G.S. §47-113.2.

NOTARY

In the application for a notary commission, certain information is not a public record as defined in G.S. 132-1: the applicant's date of birth; the mailing address for the applicant's residence, the street address for the applicant's residence, and the telephone number for the applicant's residence; the last four digits of the applicant's social security number; and the applicant's personal and business e-mail addresses. G.S. §10B-7.

In a registration for electronic notary, the e-mail address of the registrant is not a public record as defined as defined in G.S. 132-1. G.S. §10B-106.

PERSONNEL RECORDS AND ACTIONS

Disciplinary Action for Employee Violations of Confidentiality Rules.

Individuals employed in area and state mental health and other specialized health facilities and employees governed by the State Personnel Act are subject to suspension, dismissal or disciplinary action for failure to comply with the confidentiality rules of state government. Individuals who are not state employees and who fail to comply with the

rules shall be denied access to confidential information by the facility. Conviction for an unauthorized disclosure is a class 3 misdemeanor and the penalty shall be only a fine of not more than \$500.00. G.S. §122C-52; G.S. §131E-67; G.S. §143B-147(a)(6); NCAC T10-C18-S18D.0120.

A public official or employee who knowingly, willfully, and with malice permits any person to have access or obtains unauthorized access to information contained in a school employee's personnel file is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not in excess of \$500.00. G.S. §115C-321.

BEACON Project

The plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal and State law shall be limited to appropriate and authorized persons. 2007 Appropriations Act § 6.8(a).

Employee Records.

The only information that is public in personnel files is: 1) The name and age of the employee; 2) The date of original employment; 3) The current position title, current salary, and the date and amount of the most recent increase or decrease in salary; 4) The date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; 5) the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the employer has the written contract or a record of the oral contract in its possession; and, 6) The office to which the employee is currently assigned.⁴⁵ The remaining information is confidential and may be used only for personnel administration purposes and as information used in making a decision about employment or other personnel actions. Certain information in personnel records is confidential, including disciplinary action, performance reviews, and recommendations. If the employer decides it is in the best interest of an agency, board or commission and the public, the records, in some instances, may be made public. Applications for employment are also considered employee records. Any unauthorized individual who knowingly and willfully examines a file in its official filing place, removes or copies any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and that individual shall be only fined no more than \$500.00.⁴⁶ G.S. §126-24; G.S. §126-28; NCAC T25-C1-S1C.0304. (In addition, please review the footnote for other laws addressing employee records.)

⁴⁵ See: State Personnel Act, G.S. §126-22 and 126-23; Additionally, see: Area Mental Health Authorities, G.S. §122C-158; Community Colleges, G.S. §§115D-28 and 29; County Government, G.S. §153A-98; Criminal Justice Education and Training Standards Commission, G.S. §17C-7(c); District Health Departments, G.S. §130A-42; Elementary and Secondary Schools, G.S. §§115C-319, 320 and 321; Municipal and Authority Hospitals sold to nonprofit corporations, G.S. §131E-97.1; Municipalities, G.S. §160A-168; Public Health Authorities, G.S. §130A-45.9; Public Hospitals, G.S. §131E-257.2, which also requires disclosure of base salary, bonus compensation, and other information for "covered officers"; Water and Sewer Authorities, G.S. §162A-6.1; and, the North Carolina Partnership for Children and local partnerships if they want to receive State funds, G.S. §143B-168.12.

⁴⁶ Under the following statutes, the maximum penalty for violating employee confidentiality is \$500.00: Area Mental Health Facilities, G.S. §122C-158; County Government, G.S. §153A-98; Municipalities, G.S. §160A-168; Public Hospitals, G.S. §131E-257.2; State Employees, G.S. §126-27; and Water and Sewer Authorities, G.S. §162A-6.1.

Medical Records.

Records of employees and teachers insured through the State Health Plan for Teachers and State Employees or its claims processor are not public records but may be released to the State Auditor, the Attorney General, and others authorized by law who shall maintain the records' confidentiality. G.S. §135-37.1.

Safeguarding Confidential Information.

All agencies shall establish administrative, technical and physical controls to protect confidential employee information from unauthorized access or disclosure. G.S. §126-25; G.S. §126-26; NCAC T25-C1-S1C.0307.

Shared Leave.

Vacation leave may be donated to another employee for medical purposes. Individual leave records are confidential, and only individual employees may reveal their donation or receipt of leave. Similarly, the medical information supporting the shared leave is confidential, and only the employee can reveal the medical information. G.S. §126-4; NCAC T25-C1-S1E.1305; NCAC T25-C1-S1E.1304.

PUBLIC BODIES

Each State appointing authority that makes appointments to a statutorily created body that has decision making powers and certain county bodies shall file annual reports with the Secretary of State reporting the number of appointments according to gender made during the preceding year and the percentage of total membership of each. Nothing in the statute requires disclosure of an applicant's identity or any other information made confidential by law. G.S. §143-157.1.

PUBLIC CONTRACTS

All information and documentation relative to the development of a contractual document (Request for Quotation, Invitation for Bids, Request for Proposals, Waiver of Competition, Negotiation, etc.) for a proposed procurement or contract shall be confidential except as deemed necessary by the purchaser to prepare a complete contractual document. Such material will remain confidential until the award of the contract. G.S. §133-33; G.S. §143-53; G.S. §143-60; NCAC T1-C5-S5B.0103.

The State Building Commission, which adopts rules for standard procedures and criteria for design and other projects for state government, shall make certain that bids are sealed. Opening a bid without the permission of the bidder prior to the time set for opening bids shall constitute a Class 1 misdemeanor.⁴⁷ G.S. §143-135.26; G.S. §143-129.

The Board of Awards shall keep records of all meetings and make those records public unless the Secretary of Administration or the State Chief Information Officer, as

⁴⁷ See, Fn. 10.

applicable, determines a specific record of the meeting needs to be confidential due to the nature of the contract. G.S. §143-52.1.

PUBLIC HEALTH

General Provisions

Privileged medical information or protected health information received by the State Health Director pursuant to this section shall be confidential and is not a public record under G.S. 132-1. The information shall not be released, except when the release is made pursuant to any other provision of law, to another federal, state, or local public health agency for the purpose of preventing or controlling a disease or public health hazard or to a court or law enforcement official or law enforcement officer for the purpose of enforcing the provisions of this Chapter or for the purpose of investigating a disease or public health hazard. G.S. §130A-15.

AIDS Patients.

Confidential information about a client with HIV infection, AIDS or AIDS related conditions shall only be released in accordance with G.S. §130A-143. Some situations in which patient information may be released are: 1) to protect the public health; 2) to health care personnel providing medical care to the patient; 3) by subpoena and court order; and, 4) for research purposes. G.S. §130A-143; NCAC T10A-C26-S26B.0202.

Ambulatory Surgical Facilities.

The Department of Health and Human Services shall inspect ambulatory surgical facilities as necessary. Information that is physician-patient privileged and confidential shall be kept confidential by the Department. Before any information is released or allowing any inspections, the patient must be advised in writing by the facility that the patient has the right to object in writing to this release of information or review of the records. G.S. §131E-150.

Autopsies.

When the Chief Medical Examiner determines that an autopsy is not advisable or in the public interest and the next-of-kin requests one, that autopsy shall not be a public record. G.S. §130A-389. Photographs and audio or video recordings made pursuant to an autopsy may be viewed at reasonable times but no custodian of the original recorded images shall furnish copies of photographs or video or audio records of an autopsy to the public.⁴⁸ G.S. § 130A-389.1.

Biologic Agents.

⁴⁸ Any person not authorized to obtain a copy of an autopsy photograph or video or audio recording, who knowingly removes, copies, or otherwise creates an image of an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class 1 misdemeanor.

A biologic registry shall be established. Information contained on the registry shall not be a public record under G.S. §132-1, *et seq.* G.S. §130A-479.

Birth Defects.

Maternal Child Health and Women's Health Program. All individually identifiable information collected and analyzed by the program about patient/child shall be confidential. This information is not a public record. G.S. §130A-131.17.

Cancer Registry.

Patient clinical data submitted to the Cancer Registry shall be confidential and not available for public inspection. Only individuals authorized by the head of the cancer control program and others individuals authorized by his designee may access the records. Statistical data can be released as long as no information that could identify a patient is released. G.S. §130A-212; NCAC T10A-C26-S47B.0106.

Childhood Immunizations.

Every child in North Carolina shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles and rubella.⁴⁹ The Commission for Public Health shall establish methods for tracking such immunizations. The immunization information shall not be open for public inspection. G.S. §130A-152; G.S. §130A-153; G.S. §130A-155; G.S. §130A-12.

Child Health Assessments.

Any child entering public school and some private kindergartens shall have a health assessment on file with the school. The files shall be open to inspection by the Department of Health and Human Services and the Department of Public Instruction, or their authorized representatives. Whoever has access to the assessments must keep them confidential. G.S. §130A-441.

Clinical Reports.

Reports of individual cancer patients shall be confidential. The Commission for Health Services shall adopt rules for the use of the records and reports for medical research. G.S. §130A-212.

Computer and Television Equipment – Discarded

The department shall establish a program for discarded computer equipment collectors and shall develop and maintain a list of manufacturers that are in compliance with statutory requirements for disposal of such equipment. The department shall maintain the confidentiality of any information that is required to be submitted by a manufacturer that is designated as a trade secret and that is designated as confidential. G.S. §130A-309.95.

⁴⁹ Some exceptions to the immunizations requirement exist.

Early Intervention Program for Infants and Toddlers with Disabilities.

Each State receiving federal funds shall develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained, including the right of parents of written notice of and written consent to the exchange of this information among agencies consistent with federal and State laws. All facilities receiving these funds must safeguard access to confidential information. Federal law requires the State to keep such information confidential as a condition of receiving federal funds. G.S. §143B-147; NCAC 10A-C27 S27G.0905; 34 C.F.R. 303.460.

Emergency Department Data Reports

The State Health Director shall establish a syndromic surveillance⁵⁰ program for hospital emergency departments to detect and investigate public health threats that may result from a terrorist incident using nuclear, biological, or chemical agents or an epidemic or infections, communicable, or other diseases. Data reported to the State Health Director is confidential. The State Health Director may share information with local health departments and the Centers for Disease Control and Prevention for public health purposes, and local health departments must maintain the confidentiality of the information. G.S. §130A-480.

Emergency Medical Services(EMS) Peer Review.

Peer review of medical records by the EMS Peer review Committee is confidential. G.S. §131E-155(6a).

Emergency Services – Medical Records

Medical records compiled and maintained by the Department, hospitals participating in the statewide trauma system, or EMS providers in connection with dispatch, response, treatment, or transport of individual patients or in connection with the statewide trauma system pursuant to Article 7 of Chapter 131E of the General Statutes may contain patient identifiable data which will allow linkage to other health care-based data systems for the purposes of quality management, peer review, and public health initiatives. G.S. §143-518.

Emergency Medical Services Criminal Background Reports

An individual who applies for EMS credentials or a renewal of those credentials is subject to a criminal background review. The information shall be maintained as confidential. G.S. 131E-159(g).

⁵⁰ The term “syndromic surveillance” applies to surveillance using health-related data that precede diagnosis and signal a sufficient probability of a case or an outbreak to warrant further public health response. Though historically syndromic surveillance has been utilized to target investigation of potential cases, its utility for detecting outbreaks associated with bioterrorism is increasingly being explored by public health officials. *Source*, Centers for Disease Control.

Emergency Response Plans.

Emergency response plans adopted by a public hospital as defined in G.S. §159-39 and the records related to the planning and development of these emergency response plans are not public records as defined by G.S. §132-1 and shall not be subject to inspection examination under G.S. §132-6. G.S. §132-1.6.

Health Care Facility Act.

All information and documentation relative to the development of a specification shall be confidential until the adoption of that specification or an award of contract, if developed for a specific procurement or contract, whichever is later. G.S. §133-33; G.S. §143-53; G.S. §143-60; NCAC T1-C5B.0210.

Hospital Licensing.

COMPETITIVE HEALTH CARE FACILITIES. Information relating to competitive health care activities by or on behalf of hospitals and public hospital authorities shall be confidential. Any contract entered into by or on behalf of a public hospital or public hospital authority shall be public unless otherwise exempted by law or the contract contains competitive health care information, which can be redacted from the contract. The disclosure to any public entity does not affect the confidentiality of the information. A court procedure is established for individuals challenging the redacted material. G.S. §131E-97.3.

FINANCIAL TERMS. Financial terms and other competitive health care information directly related to the financial terms in a health care service contract between a hospital or a medical school and a managed care organization, insurance company, employer, or other payer are confidential. Public officials may have access to this information in a closed session but members of the public body may not further disclose the information. G.S. §131E-99.

HOSPITAL LICENSURE AND INSPECTIONS. When the Department inspects any hospitals for compliance with the Department's rules and regulations, department representatives shall have access to all patient medical records. Names of individuals who provide information about the hospital shall be confidential and not released without the consent of the individuals. The Department shall not release any confidential or privileged information unless the patient agrees or a court of competent jurisdiction orders the release. If any officer, administrator, or employee willfully discloses information without authority, that individual shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined no more than \$500.00. G.S. §131E-80.

MEDICAL CARE DATA. The following information is not public information under the Public Records Law: 1) Patient information furnished to and maintained by a statewide data processor through the Division of Health Service Regulation; 2) Compilations of patient data; and, 3) Patient data furnished by a statewide data processor to the state. Certain compilations of data prepared for release or dissemination by the state are public records, such as summaries of procedures or charges at various hospitals. A statewide data processor shall make available

to the Division a report that includes a comparison of the 35 most frequently reported charges of hospitals and freestanding ambulatory surgical facilities. The data processor shall not reveal any confidential patient records or records prohibited by state or federal law. The State Health Director may obtain the data but must keep it confidential. G.S. §§131E-214.3 and 131E-214.4.

MEDICAL REVIEW COMMITTEES. Information obtained by medical review committees within hospitals is confidential. The information may be released to a professional standards review organization that performs any accreditation or certification function. The information released to or produced by the medical review committees and professional standards review committees remains confidential and is not subject to discovery or use in any civil actions. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. G.S. §131E-95.

PATIENT RECORDS. Medical records regarding the admission, treatment and discharge of individual patients are not public records. Charges, accounts, credit histories, and other financial records are not public records. G.S. §131E-97.

PUBLIC HOSPITAL PHYSICIAN CREDENTIALING. The information acquired by a public hospital or a State-owned or State-operated hospital, in connection with credentialing and peer review for individuals seeking to practice medicine, shall be confidential and not subject to the Public Records Law. G.S. §131E-97.2.

Home Health Clients

The Department of Health and Human Services may inspect home care clients' medical records maintained at a home health agency when necessary to investigate any alleged violation of the Home Care Clients' Bill of Rights. The Department shall maintain the confidentiality of all persons who register complaints and of all medical records inspected by the Department. G.S. §131-144.7.

As part of the Home Care Clients' Bill of Rights, a patient or his representative has the right for his personal and medical information to remain confidential and not disclosed without appropriate written consent, except as set forth in the above paragraph. G.S. §131E-144.3.

Organ Procurement Organization Records.

All hospital and patient information, interviews, reports, statements, memoranda, and other information obtained or created by a tissue bank or federally designated organ procurement organization when reviewing organ donation potential shall be privileged and confidential. G.S. §130A-412.2.

Patient Medical Records.

All patient-privileged medical records in the possession of the Department of Health and Human Services, State Health Division, the Department of Environment and Natural Resources, or the local health departments shall be confidential. G.S. §130A-12.

Pharmacy Records.

Written prescription orders on file in a pharmacy or other place or other place where prescriptions are dispensed are not public records. G.S. §90-85.36.

Public Health Authorities.

CREDENTIALING RECORDS and peer review information of persons having or applying for privileges to practice in a public health facility are confidential. G.S. §130A-45.10.

COMPETITIVE HEALTH CARE. Information relating to competitive health care activities by or on behalf of public health authorities shall be confidential. Any contract entered into by or on behalf of a public health authority shall be a public record unless otherwise exempted by law. G.S. §130A-45.11.

MEDICAL REVIEW COMMITTEE. Proceedings of a medical review committee shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action against a public health authority or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. G.S. §130A-45.7.

PATIENT INFORMATION. Medical records and charges, accounts, credit histories and other personal information are not public records. G.S. §130A-45.8.

TERRORIST INCIDENTS USING NUCLEAR, BIOLOGICAL, OR CHEMICAL AGENTS. Confidential medical information received by the State Health Director and others from health care providers, which relate to a terrorist attack, shall remain confidential. G.S. §130A-476.

Solid Waste Facilities.

Trade secrets or proprietary information⁵¹ filed with the Department shall be confidential. Any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a Class 1 misdemeanor⁵² and shall be removed from office or discharged from employment. G.S. §130A-304.

State Center for Health Statistics.

Medical records of individual patients are confidential. The State Center for Health Statistics may disclose medical records of individual patients if it limits access to individuals with training in handling confidential information, designates an individual to be responsible for physical security, and develops a system for monitoring security. G.S. §130A-374.

⁵¹ See, Fn. 4.

⁵² See, Fn. 10.

Statewide Trauma System.

The Department of Health and Human Services shall establish and maintain a program for the development of a statewide trauma system. The program shall include a Trauma Peer Review Committee. Review of medical records by this group is confidential. G.S. §131E-162.

Vital Records.

Medical information contained in a birth certificate shall not be a public record. G.S. §130A-102.

PUBLIC EDUCATION*Department of Public Instruction.*

STUDENT FILES, including identifying information on tests and scores, are not public records and cannot be released except as allowed under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), as amended, even in school transfers. G.S. §115C-402; G.S. §115C-403; G.S. §115C-174.11; G.S. §115C-174.13; 20 U.S.C. §1232(g).⁵³

FORMER STUDENT RECORDS. Confidential information related to a former student is not to be divulged or sent to any agency or individual requesting such information without the consent of the former student if 18 years of age or his/her parent or legal guardian, if younger. G.S. §115C-114; G.S. §143B-216.33(d); NCAC T10A-C94-S94.0108.

MEDIATION RECORDS FOR CHILDREN WITH DISABILITIES. The Department of Public Instruction encourages local school districts to conduct mediation with families of children with disabilities. Evidence of statements made and conduct occurring in a mediation are confidential, are not subject to discovery, and are inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. Mediators shall not be compelled in any civil proceeding to testify or produce evidence concerning statements made and conduct occurring in a mediation. G.S. §115C-109.4.

STUDENT RECORDS DERIVED FROM CONTRACTORS. It is unlawful for a person who enters into a contract with a local board of education or its designee to sell any personally identifiable information that is obtained from a student as a result of the person's performance under the contract unless the student's parent or guardian provides prior written authorization. G.S. §115C-401.1.

JUVENILE COURT INFORMATION. A principal must keep confidential delinquency information about a juvenile and not make the information a part of the student's permanent record. The records must be kept in a secure location and must be destroyed when the juvenile's delinquency petition has been dismissed, when the

⁵³ FERPA is commonly known as the Buckley Amendment or the Buckley Act.

juvenile is transferred to the jurisdiction of the Superior Court, and when the juvenile's record has been expunged. The principal also must destroy the records when the principal finds the school no longer needs the information to protect the safety of or to improve the educational opportunities for the juvenile or others. G.S. §115C-404.

SPECIAL EDUCATION RECORDS. All matters relating to the confidentiality and access to education records are subject to federal rules. Identifiable information of youth in special education is not a public record. Federal funding for special education requires confidentiality provisions. G.S. §115C-141; T16-C6-S6H.0009; 34 C.F.R. 300.128 and 129.

GOVERNOR MOREHEAD SCHOOL. The school is subject to the Department of Public Instruction rules governing the confidentiality of student information. G.S. §115C-114; NCAC T10-C21-S21A.0401.

CHARTER SCHOOLS. The State Board of Education may require criminal history checks of members of the Board of a charter school and its employees. Such information shall be confidential. G.S. §115C-238.29K; G.S. §114-19.2.

LOCAL BOARDS OF EDUCATION. The State Board of Education may require criminal history checks of full or part time employees and independent contractors. Such information shall be confidential. This requirement also applies to residential school personnel. G.S. §115C-332; G.S. §143B-146.16; G.S. §114-19.2.

HIGHER EDUCATION. The State Board of Education shall require local boards of education to provide to the parents of children at a school all information except for confidential information received about that school from institutions of higher education and to make that information available to the general public. G.S. §115C-12.

EMERGENCY RESPONSE PLANS. Local boards of education may adopt emergency response plans relating to incidents of school violence. These plans are not a public record as the term 'public record' is defined under G.S. §132-1 and shall not be subject to inspection and examination under G.S. 132-6. G.S. §115C-47.

Local Board of Education

Records of school volunteers are not public records as provided in Chapter 132 of the General Statutes. They are available for inspection under limited circumstances. G.S. §115C-209.1.

Community Colleges.

EMERGENCY RESPONSE PLANS. Emergency response plans adopted by a community college and the records related to the planning and development of these emergency response plans are not public records as defined by G.S. §132-1 and shall not be subject to inspection examination under G.S. §132-6. G.S. §132-1.6.

STUDENT FILES, including identifying information on tests and scores, are not public records and cannot be released except as allowed under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), as amended. 20 U.S.C. §1232(g).

University System.

EMERGENCY RESPONSE PLANS. Emergency response plans adopted by a constituent institution of The University of North Carolina and the records related to the planning and development of these emergency response plans are not public records as defined by G.S. §132-1 and shall not be subject to inspection examination under G.S. §132-6. G.S. §132-1.6.

STUDENT FILES, including identifying information on tests and scores, are not public records and cannot be released except as allowed under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), as amended. 20 U.S.C. §1232(g).

STUDENT COURT. Records of student court proceedings are confidential. *DTH Publishing Corp. v. University of North Carolina*, 128 N.C. App. 534, 496 S.E.2d 8 (1998).

LIABILITY INSURANCE RECORDS. The Board of Governors of the University of North Carolina may secure insurance or create self-insurance. Records relating to the liability insurance program shall not be public records. G.S. §116-222.

Postsecondary education meningococcal vaccine.

Each public or private educational institution that offers a postsecondary degree and has a residential campus shall provide vaccination information on meningococcal disease to each student. The vaccination information obtained under this section is confidential and shall not be a public record under G.S. §132-1. G.S. §116-260.

REGISTERED PUBLIC OBLIGATIONS ACT

Records of ownership of or security interests in registered public obligations are not subject to inspection or copying under any law of North Carolina. At the same time, if a public entity owns such obligations, its holdings are subject to public inspection. G.S. §159E-11.

REVENUE

Contested Tax Cases

The records, proceedings, and decision in a contested tax case are confidential until the final decision is issued in the case. G.S. §150B-31.1.

Disclosure of Tax Records.

Disclosure is prohibited except under certain circumstances, such as compliance with a court order or law, review by the Attorney General or his representative, or to provide the Employment Security Commission with name, address and account information. Violation of this section is a Class 1 misdemeanor under North Carolina law and a felony under federal law.⁵⁴ The Department may furnish tax information to the Employment Security Commission, including names and social security numbers of both the individual and his/her spouse. This information may be used only in a nonidentifying form for statistical and analytical purposes related to the NC WORKS study of the working poor. G.S. §105-259. *See also*, G.S. §132-1.1.

Illegal Substances Taxes.

The Department may seek payment of taxes and revenue stamp purchases from dealers of unauthorized substances such as marijuana and cocaine. Stamps issued may not be used in a criminal prosecution other than a prosecution for a violation of this section. Any one who violates this Article is guilty of a Class 1 misdemeanor.⁵⁵ G.S. §105-113.112.

Lands and Forestry.

The Department of Revenue may review production records of processors of forest products. Anyone who otherwise shares information, except as may be necessary for the administration and collection of the assessment, or in the performance of official duties, or in connection with litigation to collect the tax, shall be guilty of a Class 3 misdemeanor punishable by a fine not more than \$50.00. G.S. §113A-195(f).

Refunds to Taxpayers.

A designated county official may request information from the Department for a list of each claimant – interstate carriers, nonprofit entities and hospital drugs, nonprofit schools, hospitals, qualified retirement facilities, and others – that has, within the last 12 months, received a refund of at least \$1,000.00 of tax paid to the county. This information shall be confidential when received by a county. G.S. §105-164.14.

Setoff Debt Collection.

Confidentiality and Non-Disclosure of Individual Tax Information. Notwithstanding G.S. 105A-259 or any other provision prohibiting disclosure by the Department of Revenue, and any other confidentiality statute of any claimant agency, it is lawful to exchange information among agencies for the information for debt collection purposes. G.S. §105A-15.

⁵⁴ The Class 1 misdemeanor in North Carolina carries a penalty of not less than a \$200 fine nor more than a \$2,000 fine, two years imprisonment or both. Federal law makes a violation of the law a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution. 26 U.S.C. §7231.

⁵⁵ *See*, Fn. 10.

Taxpayer Identification Numbers.

These payor identification numbers are confidential codes assigned to each taxpayer which uniquely identifies the taxpayer and allows the taxpayer to communicate payment information to the Data Collection Center. G.S. §105-241; G.S. §105-262; NCAC T17-C1-S1C.0503.

RETIREMENT SYSTEMS

Local Governmental Employees' Retirement System.

Social Security numbers, names and any other materials contained in employee retirement files are confidential. Violation of this statute will result in immediate dismissal and is considered a Class 1 misdemeanor. If the individual is a public official or employee, the individual will not be allowed to hold office or be employed by government for a period of five years.⁵⁶ G.S. §128-28.

Board of Trustees Teachers' and State Employees' Retirement System.

Social Security numbers, names and any other materials contained in files are confidential. Violation of this statute will result in immediate dismissal and is considered a Class 1 misdemeanor. If the individual is a public official or employee, the individual will not be allowed to hold office or be employed by government for a period of five years.⁵⁷ G.S. §135-6.

SECRETARY OF STATE

Commodities Trading.

Under the Commodities Act, the following information is confidential: 1) Information obtained in private investigations under the Act; 2) Information made confidential by the Public Records Law; and, 3) Information obtained from federal agencies which may not be disclosed under federal law. G.S. §78D-25.

Information disclosed by interrogatories to profit and non-profit corporations and limited liability companies.

Interrogatories propounded by the Secretary and the responses shall not be open to public inspection until they are required to be made public by the Secretary or required for evidence in a criminal proceeding or other action by the state. G.S. §55-1-33; G.S. §55A-1-33; G.S. §57C-1-33.

Investment Advisers.

Any criminal investigative materials developed by the Secretary of State or her designee as Administrator for investment advisers shall be confidential as provided in the Public

⁵⁶ See, Fn.10.

⁵⁷ See, Fn. 10.

Records Law. Any materials obtained from law enforcement agencies must be treated with the same confidentiality levels as the sending agency. G.S. §78C-31; G.S. §132-1.4.

North Carolina Securities Act.

The files and records of the Secretary of State or her securities administrator relating to criminal investigations and enforcement proceedings are considered criminal records that may not be disclosed. Any materials obtained from law enforcement agencies must be treated with the same confidentiality levels as the sending agency. G.S. §78A-50; G.S. §132-1.4.

SECURITY

Emergency Response Plans.

LOCAL SCHOOL BOARDS. Local boards of education may adopt emergency response plans relating to incidents of school violence. These plans are not a public record as the term 'public record' is defined under G.S. §132-1 and shall not be subject to inspection and examination under G.S. 132-6. G.S. §115C-47.

UNC, COMMUNITY COLLEGES AND PUBLIC HOSPITALS. Emergency response plans adopted by a constituent institution of The University of North Carolina, a community college, or a public hospital as defined in G.S. §159-39 and the records related to the planning and development of these emergency response plans are not public records as defined by G.S. §132-1 and shall not be subject to inspection examination under G.S. §132-6. G.S. §132-1.6.

Information Technology Security.

A public agency does not have to disclose security features of electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes. G.S. §132-6.1(c).

Public Buildings and Infrastructure.

Public records, as defined in G.S. 132-1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities. Information relating to the general adoption of public security plans and arrangements, and budgetary information concerning the authorization or expenditure of public funds to implement public security plans and arrangements, or for the construction, renovation, or repair of public buildings and infrastructure facilities shall be public records. G.S. §132-1.6.

SOUTHERN DAIRY COMPACT

Commission members (of which North Carolina has five) and employees shall not release information obtained through examining books and records of any regulated

person relating to his or her milk business. Anyone who violates this provision is subject, upon conviction, to a fine of not more than \$1,000 and imprisonment of not more than a year. G.S. §106-810, Article VI. §15.

STATE TREASURER

Escheated and Abandoned Property.

The State Treasurer may keep supporting data for escheated and abandoned property confidential until six months after notice to court clerks. This provision does not apply to individuals seeking their own property. G.S. §116B-62.

Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be used in various ways. G.S. §116B-72.

TRANSPORTATION

Board of Transportation.

Prospective board members must disclose all campaign contributions made by the person and his/her immediate family (spouse, children, parents, brothers, and sisters). The disclosures are not a matter of public record until the prospective board members' appointments are officially made public. G.S. §143B-350.

Board members and their families shall not use confidential information to profit from proposed projects. G.S. §136-14.

Division of Motor Vehicles (DMV).

FEDERAL REQUIREMENTS FOR LICENSE AND REGISTRATION INFORMATION. It is illegal to release DMV driver's licenses and registrations except in compliance with the federal Driver's Privacy Protection Act. The Driver's Privacy Protection Act prohibits a state from knowingly disclosing personal information regarding licenses and registrations for any individual. The following individuals are able to access the information without consent: government agencies, insurers, employers to verify that an employee has a commercial driver's license, private investigators, tow truck operators, researchers, private toll transportation operators, and in legal proceedings. 18 U.S.C. §§2721-2725. (Records of accidents, violations and driver status are not considered personal information.) DMV may also disclose personal information to federally designated organ procurement facilities and eye banks for the purpose of identifying organ donors. G.S. 20-43.1.

STATE LICENSE INFORMATION RELEASE RESTRICTION. The State requires that personal information regarding driver's licenses and registrations be released only after obtaining written consent from the individual whose personal information is at issue, except as authorized by federal law. If an individual wants his or her license or registration information to be made available to

others, State law requires that the individual affirmatively state that the information can be released. G.S. §20-43.1. Photographic copies of signatures are confidential as well. G.S. §20-43. License information provided to courts for potential jurors and for county election boards is confidential as well. G.S. §20-43.4.

REVOCATION OF LICENSES FOR MENTAL INCOMPETENTS, ALCOHOLICS AND HABITUAL USERS OF NARCOTIC DRUGS. When an individual has been involuntarily committed to an institution for the treatment of alcoholism or drug addition, the persons in charge of the institution shall send relevant information to the Commissioner of Motor Vehicles so that the Commissioner may determine whether the individual should retain his/her driver's license. The information sent to the Commissioner shall be confidential. G.S. §20-17.1. Information submitted at a hearing to determine whether an incompetent person should have his/her driver's license shall be confidential. G.S. §20-9.

SPECIAL CATEGORIES. Law enforcement agents, IRS agents and public officials may have private registration tags issued in situations where they provide satisfactory evidence that their personal safety is at risk. The file for these tags shall be confidential. G.S. §20-39.1.

PRIVATE PLATES ON PUBLIC VEHICLES. In situations where safety is an issue or where a vehicle is used in transporting, apprehending, or arresting persons charged with criminal violations or for transporting individuals to programs for mental health, developmental disabilities, or substance abuse, the vehicles do not have to be marked as public transportation and, in some instances, the tag information may be kept confidential. This applies to local, State, or federal law enforcement agencies, the Department of Crime Control and Public Safety, and agents of the Internal Revenue Service, and agents of the Department of Defense. G.S. §20-39.1.

SOCIAL SECURITY NUMBERS. State law requires that an individual provide evidence of his/her social security number in order to obtain a driver's license or register a motor vehicle. The social security number is not a public record. Release of social security numbers under this section, except under limited circumstances, is a felony under federal law and carries a maximum fine of \$5,000 and up to five years in prison. G.S. §20-7; G.S. §20-27; G.S. §20-52; 42 U.S.C. §405(c)(2)(C)(vii); 26 U.S.C. §7213(a).

Division of Highways.

All cost estimates prepared for comparing bids, and the names and identities of corporations, firms, partnerships, individuals or joint venturers who have requested plans or proposal forms for preparing their bids shall be confidential and not disclosed until the bids are opened. A potential bidder who requests a set of plans/proposals, however, may request that his/her name remain confidential at the time he requests the plans/proposals. G.S. §133-33; NCAC T19A-C2-S2D.0825.

Construction diaries kept in connection with construction and repair contracts shall not be public records until the final estimate has been paid. Analyses generated by DOT's

Bid Analysis and Management System, including work papers, documents and the output of automated systems are confidential. G.S. §136-28.5.

State-Owned Railroad Company.

Confidential information of a state-owned railroad company includes: 1) information related to a proposed specific business transaction where inspection, examination, or copying of the records would frustrate the purpose for which the records were created; or, 2) information that is subject to confidentiality obligations of a railroad company. G.S. §124-3.

UTILITIES

911 Information.

WIRELESS 911 BOARD: All proprietary information, including customer lists and technology descriptions, submitted to the Board or the State Auditor shall be kept in confidence and not be subject to the Public Records Law, unless the owner of the information agrees. The records are considered trade secrets under the Trade Secrets protection Act, Article 24 of Chapter 66 of the General Statutes. G.S. §62A-52.

TELEPHONE SERVICE PROVIDER: Every telephone service provider shall provide subscriber telephone numbers, names and service addresses to 911 systems. A local government cannot release a telephone number required to be provided under this section to any person for purposes other than including the number in the emergency telephone system database or providing the number to permit a response to police, fire, medical, or other emergency system. G.S. §62A-9.

Municipal Agreements.

Municipalities may enter agreements with other municipalities to obtain electrical power and energy. All discussions of a proposed or existing contract to which a joint agency may be or is a party for the construction, ownership or operation of works, plants, and facilities for or incident to the generation, transmission, use of electric power and energy generation, sale, exchange, interchange, wheeling, or pooling shall be confidential. Any contract entered into shall be a public record. G.S. §159B-38.

Nuclear Facility Background Checks

The Chief Personnel Officer or his designee of any public utility franchised to do business in North Carolina shall be permitted to obtain from the State Bureau of Investigation a confidential copy of criminal history record information for screening an applicant for employment with or an employee of a utility or utility contractor where the employment or job to be performed falls within a class or category of positions certified by the North Carolina Utilities Commission as permitting or requiring access to nuclear power facilities or access to or control over nuclear material. G.S. §62-333.

Public Enterprise Billing Information.

Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise is not a public record as defined in G.S. 132-1. G.S. §132-1.1(c).

Rates of Some Telephone or Telegraph Public Utilities

In a case where there is a sufficient likelihood that a telephone or telegraph company may suffer a competitive disadvantage if the rates of a specific competitive service were disclosed, the Utilities Commission may waive the disclosure of the rates. The Commission may revoke the disclosure waiver upon a showing that the competitive disadvantage no longer exists. G.S. §62-138.

Shipping.

It is illegal for any common carrier engaged in intrastate commerce or any officer, receiver, trustee, lessee, agent, or employee of such carrier to receive information and to knowingly disclose the information to any person other than the shipper or consignee, unless the shipper or consignee give permission. The information may be provided in response to any legal process issued under a proper authority. G.S. §62-324.

Utilities Commission Information.

No staff members or agents of the North Carolina Utilities Commission shall release any information obtained through an examination or inspection, unless authorized by the Commission or a judge. G.S. §62-316.

VOTER RECORDS AND REGISTRATIONS

Dates of Birth

Boards of elections shall keep the date of birth of every registered voter and applicant confidential except when a voter has filed for elective office, has been nominated as a candidate, when a voter has been challenged, or when the voter or applicant expressly authorizes the disclosure of the birth date. G.S. §163-82.10B.

Voter Registration Application Form.

The voter registration application form required by law shall include a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register shall remain confidential and shall be used only for voter registration purposes. G.S. §163-82.4.

Voter registration information.

The electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number is confidential if the agency has those items because they are on a voter registration document. G.S. §132-1.2.

Voter Records in Cases of Domestic Abuse Protective Orders.

If a registered voter submits a copy of a protective order, accompanied with a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family would be jeopardized if the record were open to public inspection, the voter's record shall be kept confidential as long as the protective order remains in effect. G.S. §163-82.10(d).

APPENDIX A-Public Records Law

NORTH CAROLINA PUBLIC RECORDS LAW

§ 132-1. "Public records" defined

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(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 unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information

(a) Confidential Communications. --Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of 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 or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. -- Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information. -- Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise, excluding airports, is not a public record as defined in G.S. 132-1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

(1) That the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making

informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;

(2) That is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or

(3) That is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

As used herein, "billing information" means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311, excluding subdivision (9), and G.S. 153A-274, excluding subdivision (4), or other public entity providing utility services, excluding airports, relating to services it provides or will provide to the customer.

(d) Address Confidentiality Program Information. -- The actual address and telephone number of a program participant in the Address Confidentiality Program established under Chapter 15C of the General Statutes is not a public record within the meaning of Chapter 132. The actual address and telephone number of a program participant may not be disclosed except as provided in Chapter 15C of the General Statutes.

(e) Controlled Substances Reporting System Information. -- Information compiled or maintained in the Controlled Substances Reporting System established under Article 5D of Chapter 90 of the General Statutes is not a public record as defined in G.S. 132-1 and may be released only as provided under Article 5D of Chapter 90 of the General Statutes.

§ 132-1.2. Confidential information

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:

- a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
- b. Is the property of a private "person" as defined in G.S. 66-152(2).
- c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
- d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) Reveals the electronically captured image of an individual's 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, public officials, or public employees; public records

(a) Public records, as defined in G.S. 132-1, shall include all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions, as defined in G.S. 132-1, in connection with or arising out of such agency's official actions, duties or responsibilities, except in an action for medical malpractice against a hospital facility. No agency of North Carolina government or its subdivisions, nor any counsel, insurance company or other representative acting on behalf of such 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, except in an action for medical malpractice against a hospital facility. No settlement document sealed under subsection (b) of this section shall be open for public inspection.

(b) No judge, administrative judge or administrative hearing officer of this State, nor any board or commission, nor any arbitrator appointed pursuant to the laws of North Carolina, shall order or permit the sealing of any settlement document in any proceeding described herein except on the basis of a written order concluding that (1) the presumption of openness is overcome by an overriding interest and (2) that such overriding interest cannot be protected by any measure short of sealing the settlement. Such order shall articulate the overriding interest and shall include findings of fact that are sufficiently specific to permit a reviewing court to determine whether the order was proper.

(c) Except for confidential communications as provided in G.S. 132-1.1, the term "settlement documents," as used herein, shall include all documents which reflect, or which are made or utilized in connection with, the terms and conditions upon which any proceedings described in this section are compromised, settled, terminated or dismissed, including but not limited to correspondence, settlement agreements, consent orders, checks, and bank drafts.

§ 132-1.4. Criminal investigations; intelligence information records

(a) Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

(b) As used in this section:

(1) "Records of criminal investigations" means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements.

(2) "Records of criminal intelligence information" means records or information that pertain to a person or group of persons that is compiled by a public law enforcement agency in an effort to anticipate, prevent, or monitor possible violations of the law.

(3) "Public law enforcement agency" means a municipal police department, a county police department, a sheriff's department, a company police agency commissioned by the Attorney General pursuant to G.S. 74E-1, et seq., and any State or local agency, force, department, or unit responsible for investigating, preventing, or solving violations of the law.

(4) "Violations of the law" means crimes and offenses that are prosecutable in the criminal courts in this State or the United States and infractions as defined in G.S. 14-3.1.

(5) "Complaining witness" means an alleged victim or other person who reports a violation or apparent violation of the law to a public law enforcement agency.

(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be public records within the meaning of G.S. 132-1.

(1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.

(2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.

(3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.

(4) The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness.

(5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.

(6) The name, sex, age, and address of a complaining witness.

(d) A public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132-6 as soon as the circumstances that justify withholding it cease to exist. Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(e) If a public law enforcement agency believes that release of information that is a public record under subdivisions (c)(1) through (c)(5) of this section will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such action the law enforcement agency shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Nothing in this section shall be construed as authorizing any public law enforcement agency to prohibit or prevent another public agency having custody of a public record from permitting the

inspection, examination, or copying of such public record in compliance with G.S. 132-6. The use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record.

(g) Disclosure of records of criminal investigations and criminal intelligence information that have been transmitted to a district attorney or other attorney authorized to prosecute a violation of law shall be governed by this section and Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed as requiring law enforcement agencies to disclose the following:

(1) Information that would not be required to be disclosed under Chapter 15A of the General Statutes; or

(2) Information that is reasonably likely to identify a confidential informant.

(i) Law enforcement agencies shall not be required to maintain any tape recordings of "911" or other communications for more than 30 days from the time of the call, unless a court of competent jurisdiction orders a portion sealed.

(j) When information that is not a public record under the provisions of this section is deleted from a document, tape recording, or other record, the law enforcement agency shall make clear that a deletion has been made. Nothing in this subsection shall authorize the destruction of the original record.

(k) The following court records are public records and may be withheld only when sealed by court order: arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders.

(l) Records of investigations of alleged child abuse shall be governed by Article 29 of Chapter 7B of the General Statutes.

§ 132-1.5. 911 database

Automatic number identification and automatic location identification information that consists of the name, address, and telephone numbers of telephone subscribers which is contained in a county 911 database is confidential and is not a public record as defined by Chapter 132 of the General Statutes if that information is required to be confidential by the agreement with the telephone company by which the information was obtained. Dissemination of the information contained in the 911 automatic number and automatic location database is prohibited except on a call-by-call basis only for the purpose of handling emergency calls or for training, and any permanent record of the information shall be secured by the public safety answering points and disposed of in a manner which will retain that security except as otherwise required by applicable law.

§ 132-1.6. Emergency response plans

Emergency response plans adopted by a constituent institution of The University of North Carolina, a community college, or a public hospital as defined in G.S. 159-39 and the records related to the planning and development of these emergency response plans are not public records as defined by G.S. 132-1 and shall not be subject to inspection and examination under G.S. 132-6.

§ 132-1.7. Sensitive public security information

(a) Public records, as defined in G.S. 132-1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities.

(b) Public records as defined in G.S. 132-1 do not include plans to prevent or respond to terrorist activity, to the extent such records set forth vulnerability and risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public or the security of any governmental facility, building, structure, or information storage system.

(c) Information relating to the general adoption of public security plans and arrangements, and budgetary information concerning the authorization or expenditure of public funds to implement public security plans and arrangements, or for the construction, renovation, or repair of public buildings and infrastructure facilities shall be public records.

§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A-389(a), is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

§ 132-1.9. Trial preparation materials.

(a) Scope. – A request to inspect, examine, or copy a public record that is also trial preparation material is governed by this section, and, to the extent this section conflicts with any other provision of law, this section applies.

(b) Right to Deny Access. – Except as otherwise provided in this section, a custodian may deny access to a public record that is also trial preparation material. If the denial is based on an assertion that the public record is trial preparation material that was prepared in anticipation of a legal proceeding that has not commenced, the custodian shall, upon request, provide a written justification for the assertion that the public record was prepared in anticipation of a legal proceeding.

(c) Trial Preparation Material Prepared in Anticipation of a Legal Proceeding. – Any person who is denied access to a public record that is also claimed to be trial preparation material that was prepared in anticipation of a legal proceeding that has not yet been commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is trial preparation material that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. –

(1) When a legal proceeding is subject to G.S. 1A-1, Rule 26(b)(3), or subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending proceeding may seek access to such record only by motion made in the pending legal proceeding and pursuant to the procedural and substantive standards that apply to that proceeding. A party to the pending legal proceeding may not directly or indirectly commence a separate proceeding for release of such record pursuant to G.S. 132-9 in any other court or tribunal.

(2) When a legal proceeding is not subject to G.S. 1A-1, Rule 26(b)(3), and not subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending legal proceeding

may petition the court pursuant to G.S. 132-9 for access to such record. In determining whether to require the custodian to provide access to all or any portion of the record, the court or other tribunal shall apply the provisions of G.S. 1A-1, Rule 26(b)(3).

(3) Any person who is denied access to a public record that is also claimed to be trial preparation material and who is not a party to the pending legal proceeding to which such record pertains, and who is not acting in concert with or as an agent for any party to the pending legal proceeding, may petition the court pursuant to G.S. 132-9 for a determination as to whether the public record is trial preparation material.

(e) Following a Legal Proceeding. – Upon the conclusion of a legal proceeding, including the completion of all appeals and postjudgment proceedings, or, in the case where no legal proceeding has been commenced, upon the expiration of all applicable statutes of limitations and periods of repose, the custodian of a public record that is also claimed to be trial preparation material shall permit the inspection, examination, or copying of such record if any law that is applicable so provides.

(f) Effect of Disclosure. – Disclosure pursuant to this section of all or any portion of a public record that is also trial preparation material, whether voluntary or pursuant to an order issued by a court, or issued by an officer in an administrative or quasi-judicial legal proceeding, shall not constitute a waiver of the right to claim that any other document or record constitutes trial preparation material.

(g) Trial Preparation Materials That Are Not Public Records. – This section does not require disclosure, or authorize a court to require disclosure, of trial preparation material that is not also a public record or that is under other provisions of this Chapter exempted or protected from disclosure by law or by an order issued by a court, or by an officer in an administrative or quasi-judicial legal proceeding.

(h) Definitions. – As used in this section, the following definitions apply:

(1) Legal proceeding. – Civil proceedings in any federal or State court. Legal proceeding also includes any federal, State, or local government administrative or quasi-judicial proceeding that is not expressly subject to the provisions of Chapter 1A of the General Statutes or the Federal Rules of Civil Procedure.

(2) Trial preparation material. – Any record, wherever located and in whatever form, that is trial preparation material within the meaning of G.S. 1A-1, Rule 26(b)(3), any comparable material prepared for any other legal proceeding, and any comparable material exchanged pursuant to a joint defense, joint prosecution, or joint interest agreement in connection with any pending or anticipated legal proceeding.

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

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments 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 of the State or its political subdivisions, or any agent or employee of a government 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 for the performance of

that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a social security number from an individual, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a valid public records request.

(3) Fail, when collecting a social security number from an individual, to provide, at the time of or prior to the actual collection of the social security number by that agency, 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.

(6) Intentionally print or imbed an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(8) Require an individual to use the individual's social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed. A social security number that is permitted to be mailed under this subdivision may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) To social security numbers or other identifying information disclosed pursuant to a court order, warrant, or subpoena.

(3) To social security numbers or other identifying information disclosed for public health purposes pursuant to and in compliance with Chapter 130A of the General Statutes.

(4) To social security numbers or other identifying information that have been redacted.

(5) To certified copies of vital records issued by the State Registrar and other authorized officials pursuant to G.S. 130A-93(c). The State Registrar may disclose any identifying information other than social security numbers on any uncertified vital record.

(6) To any recorded document in the official records of the register of deeds of the county.

(7) To any document filed in the official records of the courts.

(d) No person preparing or filing a document to be recorded or filed in the official records by the register of deeds or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.

(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of deeds. The register of deeds may not reject an instrument presented for recording because the instrument contains an individual's personal information.

(f) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Web site available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.

(g) A register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request a register of deeds or clerk of court to remove, from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.

(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on a register of

deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by a register of deeds or clerk of court.

§ 132-1.11. Economic development incentives.

(a) Assumptions and Methodologies. – Subject to the provisions of this Chapter regarding confidential information and the withholding of public records relating to the proposed expansion or location of specific business or industrial projects when the release of those records would frustrate the purpose for which they were created, whenever a public agency or its subdivision performs a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business or industrial project, the agency or its subdivision must describe in detail the assumptions and methodologies used in completing the analysis or assessment. This description is a public record and is subject to all provisions of this Chapter and other law regarding public records.

(b) Disclosure of Public Records Requirements. – Whenever an agency or its subdivision first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project, the agency or subdivision must disclose that any information obtained by the agency or subdivision is subject to laws regarding disclosure of public records. In addition, the agency or subdivision must fully and accurately describe the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed.

§ 132-1.12. Limited access to identifying information of minors participating in logval government parks and recreation programs.

(a) A public record, as defined by G.S. 132-1 does not include, as to any minor participating in a park or recreation program sponsored by a local government or combination of local governments, any of the following information as to that minor participant: (I) name, (II) address, (III) age, (IV) date of birth, (V) telephone number, (VI) the name or address of that minor participant's parent or legal guardian, or (VII) any other identifying information on an application to participate in such program or other records related to that program.

(b) The county, municipality, and zip code of resident of each participating minor covered by subsection (a) of this section as a public record, with the information listed in subsection (a) of this section redacted.

(c) Nothing in this section makes the information in subsection (a) of this section confidential 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 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 and upon conviction only fined not less than ten dollars (\$ 10.00) nor more than five hundred dollars (\$ 500.00).

(b) Revenue Records. -- Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Department of Revenue has been copied in any manner, the original record may be destroyed upon the order of the Secretary of Revenue. If a record of the Department of Revenue has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Secretary of Revenue.

(c) Employment Security Commission Records. -- Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Employment Security Commission has been copied in any manner, the original record may be destroyed upon the order of the Chairman of the Employment Security Commission. If a record of the Commission has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Chairman of the Employment Security Commission.

§ 132-4. Disposition of records at end of official's term

Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the Department of Cultural Resources, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of 10 days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a Class 1 misdemeanor.

§ 132-5. Demanding custody

Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for 10 days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a Class 1 misdemeanor.

§ 132-5.1. Regaining custody; civil remedies

(a) The Secretary of the Department of Cultural Resources or his designated representative or any public official who is the custodian of public records which are in the possession of a person or agency not authorized by the custodian or by law to possess such public records may petition the superior court in the county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such public records. The court may order such public records to be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the petitioner may request that the court enforce such order through its contempt power and procedures.

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

(1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or

(2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

§ 132-6. Inspection and examination of records

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

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

(c) No request to inspect, examine, or obtain copies of public records 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 on the following schedule:

State agencies after June 30, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

(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 in the State may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision

to the State or local government agency involved with the project, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project.

(e) The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act.

(f) Notwithstanding the provisions of subsection (a) of this section, the inspection or copying of any public record which, because of its age or condition could be damaged during inspection or copying, may be made subject to reasonable restrictions intended to preserve the particular record.

§ 132-6.1. Electronic data-processing records

(a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software.

(b) Every public agency shall create an index of computer databases compiled or created by a public agency on the following schedule:

State agencies by July 1, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option. The form, content, language, and guidelines for the index and the

databases to be indexed shall be developed by the Office of Archives and History in consultation with officials at other public agencies.

(c) Nothing in this section shall require a public agency to create a computer database that the public agency has not otherwise created or is not otherwise required to be created. Nothing in this section requires a public agency to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes.

(d) The following definitions apply in this section:

(1) Computer database. -- A structured collection of data or documents residing in a database management program or spreadsheet software.

(2) Computer hardware. -- Any tangible machine or device utilized for the electronic storage, manipulation, or retrieval of data.

(3) Computer program. -- A series of instructions or statements that permit the storage, manipulation, and retrieval of data within an electronic data-processing system, together with any associated documentation. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(4) Computer software. -- Any set or combination of computer programs. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(5) Electronic data-processing system. -- Computer hardware, computer software, or computer programs or any combination thereof, regardless of kind or origin.

§ 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, or for

a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. 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.

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

(d) Nothing in this section shall be construed to require a public agency to respond to requests for copies of public records outside of its usual business hours.

(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. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

§ 132-8. Assistance by and to Department of Cultural Resources

The Department of Cultural Resources shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. When requested by the Department of Cultural Resources, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Secretary of Cultural Resources, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the Department of Cultural Resources shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make available space in its Records Center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.

§ 132-8.1. Records management program administered by Department of Cultural Resources; establishment of standards, procedures, etc.; surveys

A records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of official records shall be administered by the Department of Cultural Resources. It shall be the duty of that Department, in cooperation with and with the approval of the Department of Administration, to establish standards, procedures, and techniques for effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the Department of Cultural Resources in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government.

§ 132-8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof

In cooperation with the head of each State agency and the governing body of each county, municipality, and other subdivision of government, the Department of Cultural Resources shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of such essential public records. Preservation duplicates shall be durable, accurate, complete and clear, and such duplicates made by a photographic, photostatic, microfilm, micro card, miniature photographic, or other process which accurately reproduces and forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record. Such preservation duplicates shall be preserved in the place and manner of safekeeping prescribed by the Department of Cultural Resources.

§ 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. 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.

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

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow the prevailing party to recover reasonable

attorneys' fees if attributed to those public records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs.

§ 132-10. Qualified exception for geographical information systems

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose. For purposes of this section, resale at cost by a real estate trade association or Multiple Listing Services operated by a real estate trade association shall not constitute a resale or use of the data for trade or commercial purposes.

APPENDIX B – Open Meetings Law

NORTH CAROLINA OPEN MEETINGS LAW

143-318.9. Public policy.

Whereas the public bodies that administer the legislative, policymaking, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.

143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.14A, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, 'public body' means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, 'public body' means (1) the governing board of a 'public hospital' as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) 'Public body' does not include (1) a meeting solely among the professional staff of a public body, or (2) the medical staff of a public hospital.

(d) 'Official meeting' means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in a closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

318.11. Closed sessions.

(a) Permitted Purposes. It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded;
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.
- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.
- (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

- (8) To formulate plans by a local board of education relating to emergency plans by a local board of education relating to emergency response to incidents of school violence.
- (9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.

(b) [Repealed.]

(c) Calling a Closed Session. -- A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

(d) Repealed by Laws 1993, c. 570, § 2, eff. Oct. 1, 1994.

143-318.12. Public notice of official meetings.

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

- (1) For public bodies that are part of State government, with the Secretary of State;
- (2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;
- (3) For the governing board and each other public body that is part of a city government, with the city clerk;
- (4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings. If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

- (1) If a public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.
- (2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed or delivered to each newspaper, wire service, radio station, and television station, which has filed a

written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and mailed or delivered at least 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars (\$10.00) per calendar year, and may require them to renew their requests quarterly.

- (3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by telephone or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. An "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) Repealed.

143-318.13. Electronic meetings; written ballots; acting by reference

- (a) Electronic Meetings. -- If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A fee of up to twenty-five dollars (\$25.00) may be charged each such listener to defray in part the cost of providing the necessary location and equipment.
- (b) Written Ballots. -- Except as provided in this subsection or by joint resolution of the General Assembly, a public body may not vote by secret or written ballot. If a public body decides to vote by written ballot, each member of the body so voting shall sign his or her ballot; and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.
- (c) Acting by Reference. -- The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon. However, this subsection does not prohibit a public body from deliberating, voting, or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon, are available for public inspection at the meeting.

143-318.14. Broadcasting or recording meetings

- (a) Except as herein below provided, any radio or television station is entitled to broadcast all or any part of a meeting required to be open. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.
- (b) A public body may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting. However, the public body must allow such equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of such equipment shall not be declared to constitute undue interference; provided, however, that if the public body, in good faith, should determine that the size of the meeting room is such that all the members of the public body, members of the public present, and the equipment and personnel necessary for broadcasting, photographing, filming, and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public body, acting in good faith and consistent with the purposes of this Article, may require the pooling of such equipment and the personnel operating it; and provided further, if the news media, in order to facilitate news coverage, request an alternate site for the meeting, and the public body grants the request, then the news media making such request shall pay any costs incurred by the public body in securing an alternate meeting site.

143-318.14A. Legislative commissions, committees, and standing subcommittees

(a) Except as provided in subsection (e) below, all official meetings of commissions, committees, and standing subcommittees of the General Assembly (including, without limitation, joint committees and study committees), shall be held in open session. For the purpose of this section, the following also shall be considered to be "commissions, committees, and standing subcommittees of the General Assembly":

- (1) Legislative Research Commission;
- (2) The Legislative Services Commission;
- (3) The Advisory Budget Commission;
- (4) The Joint Legislative Utility Review Committee;
- (5) The Joint Legislative Commission on Governmental Operations;
- (6) The Joint Legislative Commission on Municipal Incorporations;
- (7) Deleted by Laws 1997, c. 443, § 12.30, eff. August 28, 1997.
- (8) The Joint Select Committee on Low-Level Radioactive Waste;
- (9) The Environmental Review Commission;
- (10) The Joint Legislative Transportation Oversight Committee
- (11) The Joint Legislative Education Oversight Committee;
- (12) The Joint Legislative Commission on Future Strategies for North Carolina;
- (13) The Commission on Children with Special Needs;
- (14) The Legislative Committee on New Licensing Boards;

(15) The Agriculture and Forestry Awareness Study Commission;

(16) The North Carolina Study Commission on Aging; and

(17) The standing Committees on Pensions and Retirement.

(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, "reasonable public notice" includes, but is not limited to:

(1) Notice given openly at a session of the Senate or of the House; or

(2) Notice mailed or sent by electronic mail to those who have requested notice, and to the Legislative Services Office, which will post the notice on the General Assembly web site.

G.S. 143-318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly.

(c) A commission, committee, or standing subcommittee of the General Assembly may take final action only in an open meeting.

(d) A violation of this section by members of the General Assembly shall be punishable as prescribed by the rules of the House or the Senate.

(e) The following sections shall apply to meetings of commissions, committees, and standing subcommittees of the General Assembly: G.S. 143- 318.10(e) and G.S. 143-318.11, G.S. 143-318.13 and G.S. 143- 318.14, G.S. 143-318.16 through G.S. 143-318.17.

143-318.15. Advisory Budget Commission and appropriation committees of General Assembly; application of Article

(a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-10 (or any similar statutes hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) This Article does not amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees and subcommittees of the General Assembly.

143-318.16. Injunctive relief against violations of Article

(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (i) threatened violations of this Article, (ii) the recurrence of past violations of this Article, or (iii) continuing violations of this Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

- (b) Any injunction entered pursuant to this section shall describe the acts enjoined with reference to the violations of this Article that have been proved in the action.

(c) **Repealed.**

143-318.16A. Additional remedies for violations of Article

- (a) Any person may institute a suit in the superior court requesting the entry of a judgment declaring that any action of a public body was taken, considered, discussed, or deliberated in violation of this Article. Upon such a finding, the court may declare any such action null and void. Any person may seek such a declaratory judgment, and the plaintiff need not allege or prove special damage different from that suffered by the public at large. The public body whose action the suit seeks to set aside shall be made a party. The court may order other persons be made parties if they have or claim any right, title, or interest that would be directly affected by a declaratory judgment voiding the action that the suit seeks to set aside.
- (b) A suit seeking declaratory relief under this section must be commenced within 45 days following the initial disclosure of the action that the suit seeks to have declared null and void; provided, however, that any suit for declaratory judgment brought pursuant to this section that seeks to set aside a bond order or bond referendum shall be commenced within the limitation periods prescribed by G.S. 159-59 and G.S. 159-62. If the challenged action is recorded in the minutes of the public body, its initial disclosure shall be deemed to have occurred on the date the minutes are first available for public inspection. If the challenged action is not recorded in the minutes of the public body, the date of its initial disclosure shall be determined by the court based on a finding as to when the plaintiff knew or should have known that the challenged action had been taken.
- (c) In making the determination whether to declare the challenged action null and void, the court shall consider the following and any other relevant factors:
 - (1) The extent to which the violation affected the substance of the challenged action;
 - (2) The extent to which the violation thwarted or impaired access to meetings or proceedings that the public had a right to attend;
 - (3) The extent to which the violation prevented or impaired public knowledge or understanding of the people's business;
 - (4) Whether the violation was an isolated occurrence, or was a part of a continuing pattern of violations of this Article by the public body;
 - (5) The extent to which persons relied upon the validity of the challenged action, and the effect on such persons of declaring the challenged action void;
 - (6) Whether the violation was committed in bad faith for the purpose of evading or subverting the public policy embodied in this Article.
- (d) A declaratory judgment pursuant to this section may be entered as an alternative to, or in combination with, an injunction entered pursuant to G.S. 143-318.16.
- (e) The validity of any enacted law or joint resolution or passed simple resolution of either house of the General Assembly is not affected by this Article.

143-318.16B. Assessments and awards of attorneys' fees

When an action is brought pursuant to G.S. 143-318.16 or G.S. 143- 318.16A, the court may make written findings specifying the prevailing party or parties, and may award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of any fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation; provided, that no order against any individual member shall issue in any case where the public body or that individual member seeks the advice of an attorney, and such advice is followed.

143-318.16C. Accelerated hearing; priority

Actions brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

143-318.16D. Local acts.

Any reference in any city charter or local act to an "executive session" is amended to read "closed session".

143-318.17. Disruptions of official meetings.

A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a Class 2 misdemeanor.

143-318.18. Exceptions.

This Article does not apply to:

- (1) Grand and petit juries.
- (2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.
- (3) The Judicial Standards Commission.
- (3a) The North Carolina Innocence Inquiry Commission.
- (4) Repealed by Session Laws 1991, c. 694, s.9.
- (4a) The Legislative Ethics Committee.
- (4b) A conference committee of the General Assembly.
- (4c) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.
- (5) Law enforcement agencies.
- (6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or

certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supersede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

- (7) Any public body subject to the Executive Budget Act (G.S. 143-1 et seq.) and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.
- (8) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238.
- (9) Repealed by Session Laws 1991, c.694, s.9.
- (10) The Board of Awards.
- (11) The General Court of Justice.