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## Coates' Canons Blog: Are Governmental Employment Contracts Open to Public Inspection?

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**UPDATE November 2013: In 2010 the General Assembly enacted substantial changes to the personnel records privacy statutes discussed in this post, but those changes do not affect the analysis in the post.**

The city manager enters a written contract of employment with the city council. The school superintendent has a written contract. So does the county manager. Are these contracts open for public inspection? Is any governmental employment contract open? Does a curious citizen, or the local newspaper, have the right to see and copy the contract? The answer has to be Yes, but the controlling statutes do not say that quite as clearly as could be desired.

In other words, I advise local governments that employment contracts of their employees are public records, but I have a hard time reading the statutes to say that. The statutes were amended in 2007 to address a holding of the North Carolina Court of Appeals. *Knight Publishing Co. v. Charlotte-Mecklenburg Hospital Authority*, 142 N.C. App. 486, *rev. denied*, 360 N.C. 176 (2005). Let's look at the statutes, that holding, and the 2007 amendments.

### Public records law and the personnel records exception

In the most general sense, under the North Carolina Public Records Law all documents made or received in the course of governmental business are public records, unless some specific exception in law provides otherwise. The various personnel records privacy statutes constitute a main exception: personnel files are not public records. Those statutes are found at

- G.S. 160A-168 (for city employees),
- G.S. 153A-98 (for county employees),
- G.S. 122C-158 (for area mental health authority employees),
- G.S. 126-22 (for state employees),
- G.S. 115D-27 (for community college employees),
- G.S. 162A-6.1 (for water and sewer authorities),
- G.S. 131E-257.2 (public hospital employees), and
- G.S. 115C-319 (for public school employees)

The exception in these personnel records statutes says that personnel files "shall not be subject to inspection and examination as [otherwise] authorized by G.S. 132-6" of the Public Records Law. [That's the wording in G.S. 115C-319; it varies a little from statute to statute.]

### Exceptions to the personnel records exception

But then each of the personnel records statutes goes on to create an *exception to the exception*. That is, the statutes provide that certain information in the personnel files is in fact open to the public. All of the statutes provide, for instance, that one of the elements of information open to inspection—one of the exceptions from confidentiality—is "current salary."

In *Knight Publishing*, the Charlotte Observer wanted to know the total compensation of a number of top officials at a local public hospital—not just salary, but also retirement benefits, severance packages, pension benefits, and "any additional monetary or other benefits" constituting "current compensation (in any form)." The hospital refused to provide any information other than literal current salary, and the newspaper sued.

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The trial court ruled for the newspaper and the hospital appealed. On appeal, the Court of Appeals said: "The specific issue before this Court is what compensation information regarding public hospital employees is a matter of public record."

The newspaper argued that it offends common sense to "allow public institutions to avoid revealing how public officials are paid simply by shifting the form of pay from fixed salary to bonuses, lump-sum payments, or other forms of compensation." That is, even though the personal records privacy statute exceptions literally say only "salary" is public, all forms of compensation should be public.

The Court rejected this argument. Salary means salary. The rest of the compensation information is confidential, the court said.

### **What about contracts?**

Before the *Knight Publishing* decision, there was debate on the question of whether a governmental employee's contract of employment was part of his personnel file and thus confidential, or a financial record of the government open to public inspection. Many observers thought that, because employment contracts often contain standard provisions regarding terms of employment, common to many employees, they are public financial records, not confidential elements of individual personnel files.

With the *Knight Publishing* decision, however, it seemed that an employment contract must be a confidential part of the personnel file. After all, elements such as bonus pay, severance pay, and other forms of non-salary compensation are likely to be spelled out in the contract, and the court in *Knight Publishing* held that those elements are confidential.

In 2007, the General Assembly spoke clearly to the confidentiality of "salary" and "compensation." It amended all the personal records privacy statutes to provide that the exception from confidentiality for "salary," includes "pay, benefits, incentives, bonuses, and deferred and all other forms of compensation." See **G.S. 160A-168(b)**, for example. Those statutory amendments had the effect of reversing the *Knight Publishing* court's limited reading of "salary."

Recognizing the effect that the *Knight Publishing* decision could have on the question of whether employment contracts are public records or confidential parts of the personnel file, the General Assembly went one step further with its amendments. It could have, but did not, simply say that contracts of employment are part of the exception from confidentiality and are open for public inspection. Instead, it said something more complicated. It added this provision to the list of exceptions from confidentiality: "the terms of any contract by which the employee is employed whether written or oral, past or current, to the extent that the city has the written contract or a record of the oral contract in its possession."

So, as far as employment contracts are concerned, what is public as part of the exception from confidentiality? "The terms" are public. Does that mean the contract itself, the actual document? Is there a distinction between "the terms" of a contract and the contract itself? If it is the contract itself that is open to public inspection, why do the statutes not say simply: "any current or past written contract of employment and the terms of any current or past oral contact as reflected in any written record the city has?"

The statutes are puzzling and if read literally they don't directly say that a city manager's written contract is itself open to public inspection, or a school superintendent's contract, or a county manager's, or any other governmental employee's. But that is what I think the General Assembly meant.

## **Links**

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- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-168.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-168.html)