
Coates' Canons Blog: Are Local Government Employee Time Sheets Public Records? (Applying the Framework for Answering Questions About Public Records Requests)

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A lot of information about public employees is confidential. It's well known, however, that what public employees get paid is public. So does that mean that their time sheets are public records? This post addresses the question of whether time sheets are public records using the framework I presented in **this post**. Imagine that a citizen has requested copies of time sheets for all hourly paid employees in a particular department of a local government for the entire current fiscal year. Must the local government provide copies of the time sheets? May it? Let's start with the first question in framework.

1. Does a record exist that corresponds to the request? (If not, no disclosure is required. If so, continue to question 2.)

Any public agency that has employees paid on an hourly basis has time sheets that are used to determine how much their periodic payments should be. These may be paper records, or they may be electronic. Either way, these are records that correspond to the request, so we go to the next question, right?

Not so fast. An important part of this first stage of the process is to get very clear about what is being requested. A "time sheet" may mean different things to different people. What if what the requester really wants is information about all overtime hours worked in this particular department. There may not be a record that corresponds to that request, but if there is, then the analysis might be different. If that information is only available on multiple independent records – all the individual time sheets, say — the unit has no obligation to compile it, but might it be required to provide access to the independent records? This is the time to obtain a clear understanding of what is being requested. Let's assume, in our case, that the citizen wants the complete time sheet including whatever information the public agency includes on them.

2. Is the record "made or received in the transaction of public business?" (If not, no disclosure is required. If so, continue to question 3.)

Clearly, time sheets are made in the transaction of public business, so we go to the next question.

3. Is there an exception that applies? (If not, the requested access must be provided. If so, continue to question 4.)

The answer to this question depends on what information is actually on the "time sheet." Maybe the time sheet contains only a record of hours worked. But maybe it contains other information. And if it does, that other information may fall within one or more exceptions to the Public Records Law, most likely, (1) personnel privacy (**G.S. 160A-168**, cities; **153A-98**, counties); or (2) social security and other personal identifying information (**G.S. 132-1.10**).

Personnel Record Privacy. The personnel exceptions for cities and counties limit access to "personnel files," which include information in any form gathered by the city or county with respect to a particular employee. The statute lists examples of personnel file information, including things relating to performance, disciplinary actions, evaluation, leave, salary, and termination. In **Public Records Law for North Carolina Local Governments**, David Lawrence distinguishes between *financial* records and *personnel* records, noting that some information about employees is maintained for financial, not personnel reasons. Time sheets may include a mix of both types of information, including hours worked, as well as sick or vacation leave taken, and comp time used. According to Lawrence, time sheets that simply record hours worked are "prepared solely for payroll purposes" and should be considered financial rather than personnel records. These time sheets are fully subject to public access under the Public Records Law. But time sheets containing leave or comp time information should be considered part of the personnel file. *Public Records* at p. 158

So if the leave and comp time information is part of the personnel file, does that mean it's confidential and must be

withheld? This requires consideration of one more issue. Not all information in the personnel file is confidential. The personnel record privacy statute, which creates an exception to the public records law, creates an exception to that exception. That is, there is some information in personnel files that must be made public. One of the things on the list of open information is “current salary.” The statute defines current salary to include “pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.” Would the information about vacation leave or comp time on the time sheets be considered part of current salary and thus open to the public?

Probably not. A June 2009 **Attorney General’s opinion** concludes that the term “benefits” includes employee leave balances and other deferred compensation. The opinion says that “‘current benefits’ includes the amount of accumulated leave time that an employee has available for use at the time the inspection is requested.” This seems an appropriate interpretation, since the statute seems to require a specific figure reflecting current salary and benefits at a point in time. This suggests that individual records of periodic leave taken or comp time used are not within the scope of the requirement to make salary information public. As noted above, specific payments to hourly employees for hours worked is public because it is essentially financial rather than personnel information, and not because it is considered “current salary” under the personnel statute.

Personal Identifying Information. Another possible exception is **G.S. 132-1.10**, which protects social security numbers and other personal identifying information. This provision would prohibit the release of social security numbers, as well as other information such as bank account numbers, digital signatures, and any other information that can be used to access a person’s financial resources. This information is confidential whether it exists on a financial record or a personnel record.

4. Does the exception apply to the entire record, or only to certain information, and does it prohibit disclosure or does it deny the right of access? (If a prohibition applies to the entire record, do not disclose; if it applies only to certain information, redact and disclose. If there is no right of access to some or all of the information, but release is not prohibited, determine whether or not to release the entire or a redacted record.)

The basic requirement under the Public Records Law is to provide access to records, not information; on the other hand, many of the exceptions create protections for certain types of information, not records. The law also provides that a request for access to a record cannot be denied on the grounds that confidential information is commingled with non-confidential information. Indeed, the law requires the public agency to bear the cost of separating the information in order to comply with the request. **G.S. 132-6(c)**. In some cases, a record containing confidential information must be redacted, at the public agency’s expense, in order to provide access to public information. In other cases, it may be that the entire record is not subject to public access. Also, as noted in my earlier blog post, some exceptions prohibit disclosure, while others allow, but do not require that records or information be withheld from public access.

Both of the exceptions discussed above create prohibitions on disclosure. So the public agency has no option to provide information covered by those exceptions. So, for time sheets containing a mix of financial and personnel information, the only question is whether the entire record, or just the confidential information, must be withheld.

The personnel privacy exception limits access to personnel “files.” As noted above, time sheets that contain only payroll information are not covered by the exception. Time sheets that include personnel information, on the other hand, are either entirely confidential, or must be provided with the personnel information redacted. It’s unclear which it is. The language of the statute suggests that it is the information, not necessarily the entire record, that is the subject of the protection, so that access to the purely financial information in time sheet should be provided, with any personnel information redacted. As noted earlier, the personnel file is defined in terms of *specific information*, which may exist in many places. The statute prohibits and creates sanctions for “knowingly, willfully, and with malice” allowing “access to *information* contained in a personnel file.” At least one case has required the redaction of personnel information in a letter, while requiring access to the rest. *News Reporter Co. v. Columbus County*, 184 N.C. App. 512 (2007).

The exception for social security numbers and other identifying information is more clear. It says that a public record is still a public record, even if it contains this information, and it requires public agencies to provide access to the public record with the identifying information “removed or redacted.” **G.S. 132-1.10(b)(5)**.

Conclusion: How a particular local government responds to a public records request for time sheets will depend upon the specific types of time sheet records they use, and what information those records contain. Time sheets that contain only financial information are public records and must be provided. The local government is prohibited from providing access to confidential information that might be included in time sheets, such as leave taken or comp time used, and social security



numbers and other personal identifying information.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-168.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-98.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.10.html
- www.sog.unc.edu/publications/books/public-records-law-north-carolina-local-governments-second-edition
- www.ncdoj.gov/About-DOJ/Legal-Services/Legal-Opinions/Public-Records-Act;-Accrued-Leave-Balances.aspx
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-6.html