
Coates' Canons Blog: Court Does Not Have Authority to Grant Public Access to Personnel Records

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State law prohibits general public access to most public employee records. The parallel statutes that govern city and county employee records, as well as several of the separate statutes that govern other types of public agencies, contain provisions that allow access to these records by court order. A recent Court of Appeals opinion, *In Re Release of the Silk Plant Forest Citizen Review Committee's Report and Appendices*, holds that these provisions do not confer jurisdiction on a court to grant general public access to personnel records. This blog summarizes the case and discusses the implications of its holding.

Background

The City of Winston-Salem appointed a citizen review committee (the "Silk Plant Forest Review Committee") to conduct a comprehensive review of the police department's investigation of a 1995 assault and robbery. As part of its review, the committee interviewed current and former city police officers about their role in the investigation. After the committee's report was released, the city received requests from the public and the media to release the full report, including source materials and appendices.

The city maintained that the officers' interviews were confidential personnel records, which the city was prohibited from releasing. The city filed a petition, however, under **G.S. 160A-168(c)(4)**, which allows access to personnel information by court order. The city requested that the court allow general public access to the officers' transcribed interviews. After conducting a hearing, and upon a finding that it was "necessary and essential to maintaining the public's confidence in the administration of City services," the trial court granted the city "authority and permission to make full and public disclosure" of the interview statements and transcripts. Police officers who joined the action as respondents appealed the order, which was stayed to prevent disclosure pending a decision by the Court of Appeals.

Summary of the Opinion

The issue before the court was whether the trial court had the authority to order the release of the records to the general public, or only to specific individuals. Reviewing the "plain language" of the statute, the court noted that the statute allows "examination" by "any person" of a portion of an employee's confidential file. Under the court's analysis, this language indicates a legislative intent "to maintain the privacy of a city employee's personnel file except under limited circumstances where examination of only the relevant portion of the file is allowed." Had the legislature intended to allow general public access, the court reasoned, it would have used language that would more clearly indicate its intent. The court noted that the legislature's intent to allow general public access is clear in subsection (b) of the same statute, which lists the information that is a "matter of public record," and to which broad rights of inspection and copying (in contrast to the right of individual examination) are allowed.

The court also relied on the ruling in the case of *In Re Brooks*, 143 N.C. App. 601 (2001), noting that the order in *Brooks* was narrowly framed, and contained restrictions necessary to "effectuate the legislature's intent that the information remain somewhat confidential." *Brooks*, at 611.

Based on this analysis, the court vacated the lower court's order, holding that the personnel privacy statute does not authorize a court to order the release of personnel records to general public. The officers had also asserted a constitutional privacy claim, but since the matter was resolved based on the statute, the court did not address the constitutional claim.

Implications

The effect of this decision is to limit general public access, even by court order, to confidential employee information. Though the case involved city employee information, it applies to counties as well, since the relevant statutes are identical. The statutes governing **schools, community colleges, and state agencies** contain similar language. Under those provisions, "a party" may by authority of a court order (or a subpoena in schools and community colleges), inspect and examine a particular portion of an employee personnel file. It is safe to assume that the ruling would also apply in these jurisdictions.

Public agencies have separate authority (G.S. 160A-168(c)(7), for cities) to inform "any person" (or corporation, for schools, community colleges, and state agencies) about employee information when the release is determined to be essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services." This provision only applies, however, to information of the employment, nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of an employee, and the reasons for that action. This provision is widely assumed to allow release of such information to the general public. Since the records in *Silk Plant* did not involve any specific employment action affecting the employees who gave the interviews, this provision did not apply and was not analyzed in the case. The effect of the opinion in *Silk Plant* is that confidential information that does not relate to a specific employment action cannot be released to the public without the employee's authorization.

Links

- appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNTE2LTEucGRm
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-168
- appellate.nccourts.org/opinions/?c=2&pdf=MjAwMS8wMC0zMzQtMS5wZGY=
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