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## Coates' Canons Blog: Where (and Just What) is the “Personnel File”?

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Philemona has just started a job as a Human Resources Director in Charterville. She has years of expertise, but she is new to North Carolina. At the end of her first day, the manager asks whether she has any questions. “Yes,” she says, “just one. I’ve heard a lot today about the employees’ personnel file. Where can I find that?” The manager says, “Great question! Under North Carolina law, the ‘personnel file’ is more a concept than a physical thing.” Like Philemona, you might have questions about the personnel file. This blog answers some you may have, even if you’re not new to your job.

### Is “personnel file” defined in the law?

Yes. State personnel privacy laws that apply to almost all types of state and local agencies include nearly identical provisions that define the personnel file:

For purposes of this section, an employee’s personnel file consists of any information in any form gathered by the city with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or non-selection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment.

### That sounds like a lot of records to keep all in one file. Who is responsible for filing all of these records and where should we keep the personnel file?

The answer to this question is not simple. It turns out that the statutory definition is a bit misleading. When it uses the term “personnel file,” it seems to suggest that the records are gathered into one central, physical place. But keep reading and you can see that the definition is more of a concept and comprises a range of information and records in any format that has been “gathered” by the unit.

### What is the meaning of “gathering” in this definition? Does it mean that everyone who has personnel records or information must bring them to the person that has the personnel file?

No, not really. North Carolina appellate cases analyzing this term have said, basically, that the mere fact that a unit of government is in possession of personnel records information, however it got that information, means that it has “gathered” the information.

For example, in *Elkin Tribune, Inc. v. Yadkin County Bd. of Commissioners*, 331 N.C.735 (1992), the newspaper sought copies of applications for county manager. The county considered these records to be confidential personnel records and refused to provide the copies. The newspaper argued that because the applications were *sent* to the county, not *gathered* by the county, the applications were not protected as part of the personnel file. The Court rejected that argument, ruling that the county’s mere receipt of the applications was included within the meaning of “gathered.”

In another case, *Knight Pub. Co. v. Charlotte-Mecklenburg Hosp. Auth.*, 172 N.C. App. 486, (2005), a newspaper requested access to non-salary benefits and expense reimbursements paid to hospital employees. In determining whether these records were personnel records, the court analyzed whether they had been “gathered” pursuant to the statute. Building on North Carolina Supreme Court cases and noting that the statute does not define the word, the court concluded that they must use the word’s “common and ordinary meaning.” It listed common definitions from the American Heritage Dictionary: “(1) [t]o cause to come together; convene[.],” (2) “[t]o accumulate gradually; amass[.],” (3) “[t]o harvest or pick: *gather flowers* [.]” or (4) “[t]o collect in one place; assemble.” The court concluded: “Logically, a personnel file, in the ‘commonly understood definition,’ is comprised of information and documents, including employee contracts and payroll

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documents, which are amassed, accumulated, and collected into one place by the employer. Contrary to plaintiff's argument in this case, the documents it requested from defendant were 'gathered' by defendant if the documents were amassed or assembled in an employee's personnel file." *Knight Pub. Co. v. Charlotte-Mecklenburg Hosp. Auth.*, 172 N.C. App. 486, 492–93, (2005) (citations omitted).

**I get that gathering is broadly interpreted based on the statutes and the cases. But does a record have to be in the personnel file in order to be confidential?**

No. Most of the personnel privacy statutes don't directly address this question, but a few of the them do. The definition of personnel file in the statutes for public schools (GS 115C-319), and community colleges (115D-27), include the phrase "wherever located or in whatever form." That makes it clear the personnel records are confidential no matter where they are kept. What about other units of government whose statutes do not include the phrase "wherever located or in whatever form"? Could that absence mean that those other units must keep all personnel records in one place? Another case suggests that such an interpretation makes no sense and it is not the way the courts have interpreted the meaning of the personnel file.

In *News Reporter Co. v. Columbus Cty.*, 184 N.C. App. 512 (2007), a newspaper sought access to a letter written by an employee. The letter expressed the employee's opinion of a person who was a candidate for position with the county. The county argued that the letter was part of the personnel file of the employee who wrote it, because his remarks reflected on him as an employee. The plaintiffs argued that record wasn't "gathered" by the county, but rather was voluntarily sent by the employee to the Board. The court rejected that argument based on the rulings in the *Elkin Tribune* and *Knight Publ'g* cases. The court also rejected the county's argument that the simple fact the fact the manager chose to place the letter in the employee's personnel caused it to be confidential. The manager's decision had no bearing on whether that letter fell within the scope of the statute, the court held. If it met the statutory definition, it was part of the personnel file, no matter what the manager did with it.

**So, whether a document is part of a "personnel file," turns on the nature of the document and not where the document has been filed. Right?**

Yes. The court in *News Reporter Co.* said, "Under the plain meaning of the statutory language, *any information* satisfying the definition of 'personnel file' is excepted from the Public Records Law." (emphasis added). That is, it becomes confidential as part of the personnel file. "As plaintiff points out, a contrary holding would transform a newspaper clipping discussing an employee's performance into a confidential record if that clipping happened to be filed in the employee's official personnel file." *News Reporter Co. v. Columbus Cty.*, at 512.

These cases make it clear that a document with the proper content is without question a part of the personnel file, and it remains a part of the personnel file even if it is not physically located a particular file. In this sense, the gathering and retaining of the record is more important than where it is housed.

**I get it now! It's the content of the record that makes it a personnel record under the personnel privacy statutes, not its location.**

Yes. Despite the lack clarity in the statutes, that's the way the courts have applied the law. Remember the definition of the personnel file:

[A]n employee's personnel file consists **of any information in any form** gathered by the city with respect to that employee...

As a practical matter, there may be personnel records that are technically part of the "personnel file" that simply cannot be brought together in one centralized location, especially with the predominance of digital records and information.

**The fact that personnel records can exist in many places might become difficult. Who is responsible for retaining these records and determining when they may be released?**

Good question! Managers, Human Resource, Finance and other department heads should take the lead on developing policies for employees who are custodians of, and others who manage personnel records. For more on the obligations of



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custodians and personnel records, see the blogs listed below.

Custodians of Public Records

Access to Records or Lists of Information: What Does the Public Records Law Require?