
Coates' Canons Blog: Who Has Access to Applicant Information?

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Under North Carolina law, records containing information about applicants for local government jobs are confidential. Of course, employees and officials of the local government itself may view applicant information. This blog explores who, within the unit of government, can have access to employee information, and who may participate in closed sessions involving applicant information.

Under the personnel privacy statutes (G.S. G.S. 160A-168, for cities, and G.S. 153A-98, for counties), records about applicants, current employees, and former employees are confidential. Under subsection (b) of those statutes, certain information (such as name, title, salary, etc.) must be made available to the public. As noted in Bob Joyce's earlier blog post here, these provisions apply to employees and former employees, *but not to applicants*. That's because subsection (b) applies only to employees, and under subsection (a), the term "employee" is defined to include only employees and former employees, but not applicants. So the public has no right of access to any information about applicants.

Subsection (c) of the personnel privacy statutes specifies who can have access to personnel information. The list includes, for example, the employee, a supervisor, and a person who obtains a court order. Subsection (c) also provides limited authority for sharing personnel information with other public entities, and for releasing certain information to the public. This subsection, like subsection (b), applies only to employees and former employees, *but not applicants*. This means that the authority to share or release employee information under subsection (c) does not apply to applicants. It also means that the applicant has no right to view records in his or her personnel file, and that there is no statutory limitation on which employees or officials of the unit can access applicant records.

In the absence of statutory or judicial guidance, cities and counties presumably are free to make reasonable choices about sharing information internally as necessary to evaluate and process employment applications and to make hiring decisions. Other public records exceptions (such as the one for trade secrets and other information under G.S. 132-1.2) are similar in their lack of specificity regarding internal access to confidential records. Indeed, the personnel privacy statutes may be the only ones that specify who within the unit has access to confidential records.

Local governments should be conservative about sharing applicant information internally. Only those employees or officials who are involved in the hiring process should be given access. This is consistent with the strong protection of confidentiality under the law, which is evidenced by the criminal sanction for unauthorized access and release of these records. In addition, limiting access minimizes the chances of an unauthorized release of the information.

The open meetings law allows public bodies to meet in closed session to consider the qualifications of applicants for employment. There are actually two exceptions that authorize this type of closed session. The explicit authority is in the personnel exception, G.S. 143-318.11(a)(6). Since applications for employment are also confidential under the public records law, G.S. 143-318.11(a)(1), which allows closed sessions in order to protect the confidentiality of a record, provides additional authority.

The open meetings law does not address the question of who may attend a closed session. This is determined based upon the underlying authority for each type of closed session. In the case of closed sessions to consider applicants, attendance is limited by who has access to information about applicants. As outlined above, this means that only individuals within the unit of government who are involved in the recruitment process may attend this type of closed session.



Local governments sometimes enlist help from outside private professionals in the employee recruitment and hiring process. A board may also wish to invite members-elect or other community members to participate in the hiring process. Neither the open meetings law nor the public records law specifically authorizes disclosure of applicant information to anyone outside the unit. This means that private individuals should be allowed to participate in the process only if the applicants have waived confidentiality. Such a waiver can be required as part recruitment process, and can be limited to select individuals. With such a waiver, the information can be withheld from the general public, but may be shared with those who are participating in the process. The waiver provides limited access to the records, and provides a legal basis for attending a closed session to discuss applicants. Without a waiver, such access and attendance is limited to those employees or officials of the unit who are involved in the hiring process.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-168
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-98
- canons.sog.unc.edu/?p=6866
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.2
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=143-318.11