



City of Greensboro POLICE

Date: February 8, 2008
To: City Council and City Manager
From: Captain J. F. Allen, Commanding Officer, Professional Standards Division
Subject: Release of Internal Affairs Information

Per your request, the following is the basis for any request that information gathered during the course of any Internal Affairs investigation, including any investigation associated with the previous administration, and any other administrative investigation conducted with the Greensboro Police Department, not be released to the public or to criminal investigators:

During administrative investigations, employees are compelled to truthfully provide information. Any statement provided by employees is therefore involuntary and can not be used against the employees criminally. *Garrity v. New Jersey*, 385 U.S. 493 (1967). It is important that employees know they can speak truthfully when interviewed in an administrative investigation without fear of criminally incriminating themselves. Employees are provided with a copy of their Garrity rights when interviewed during an administrative investigation (copy attached).

In North Carolina, General Statute 160A-168, Privacy of Employee Personnel Records (attached) which applies to Internal Affairs records, and states that an employee's personnel file is confidential and shall be open to inspection only for specific instances.

It should additionally be noted, that when information is provided under any of the allowed instances noted in N.C.G.S. 160A-168, (c)(3),(7), or any other exception within this statute, when released in part, out of the context of a total completed investigation, it may be subject to misinterpretation or an inaccurate portrayal of circumstances.

If you require additional information, please feel free to contact me.

J. F. Allen, Captain
Professional Standards Division

Attachments (2)

Greensboro Police Department
300 W. Washington Street • Greensboro, NC 27402
T. R. Bellamy, Chief of Police

GREENSBORO POLICE DEPARTMENT

EMPLOYEE ADMINISTRATIVE RIGHTS AND RESPONSIBILITIES

I wish to advise you that you are being questioned as part of an official administrative investigation for the Greensboro Police Department. You will be asked questions specifically directed and narrowly related to the performance of your official duties and/or your continued fitness for the position.

Neither your statements nor any information gained by reason of such statements can be used against you in any subsequent criminal proceedings. In that regard, you are not being compelled to waive your Constitutional right against self-incrimination. Since no statement you make nor information resulting from it can be used as part of a criminal charge, you do not have the right to refuse to answer questions in this strictly administrative interview.

I advise you that if you refuse to answer questions relating to the performance of your official duties or your continued fitness for the position, you will be subject to Departmental charges which could result in your dismissal from the Department.

I repeat that neither your statements nor any information gained by reason of such statements can be used against you in any subsequent criminal proceedings. These statements and resulting information can, however, be used against you in regards to any administrative charges.

I advise you that, as required by Departmental rules, all your statements must be truthful and any documentation of any untruthful statement may result in a separate Department administrative charge being lodged against you.

I, _____, understand the above information and realize that my statement is being given pursuant to a Departmental administrative investigation.

Name

Date

Witness

Date

§ 160A-168. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a city are subject to inspection and may be disclosed only as provided by this section. 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 nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the city.

(b) The following information with respect to each city employee is a matter of public record: name; age; date of original employment or appointment to the service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

- (1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.
- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- * (3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
- (5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective

employers, educational institutions, or other persons specified in the release.

- * (7) The city manager, with concurrence of the council, or, in cities not having a manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

- (1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the city's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.
- (2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.
- (3) Information that might identify an undercover law enforcement officer or a law enforcement informer.
- (4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The city council may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the city as long as each personnel file examined is retained.

(d) The city council of a city that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars (\$500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00). (1975, c. 701, s. 2; 1981, c. 926, ss. 1-4; 1993, c. 539,

ss. 1084, 1085; 1994, Ex. Sess., c. 24, s. 14(c.)

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