

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 254

DATE: May 17, 1983

TO: Glenn R. Jernigan, Chairman

FROM: T. S. Whitaker, Chief Counsel

SUBJECT: Disclosure of Information Interpretation of Sections 96-4(g)(1), 96-10(b) (2), 96-15(j), 96-18(a), 96-23, of the Employment Security Law, Section 126-22 through 126-29 of the Privacy Act of State Employee Personnel Records, and 5 USC 552(a), 26 USC 3304(16)(a), 42 USC 503(e), and 42 USC 503(d).

One of the major functions of the Employment Security Commission of North Carolina is that of fact-finding and assembling all kinds of information necessary to the effective operation of the Commission and to the fulfillment of the aims and purposes for which the Commission was created. Thus, in an Agency erected to administer the Employment Security Law of North Carolina, the assemblage of information from employers and employees is perhaps one of its most important functions. It must obtain the wage record and employment history of the individual. This requires the individual to divulge many personal facts about himself. In the same manner employers are required to provide information about their operations and payrolls and financial structure. This information also is of a personal nature. The problem created by this necessity of assembling information is obvious: Under what circumstances could or should any or all of this information be divulged? Because an increasing number of requests for information are being served on the Commission, and because of the lack of a uniform policy for responding to such requests, established herein are the policies of the Employment Security Commission governing the disclosure of information and the procedures for carrying out such policies.

- I. It is the Policy of the Employment Security Commission of North Carolina to permit disclosure of information from the files and records of the Employment Security Commission of North Carolina:
 - A. To individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, employment counseling, and other agency functions.
 - B. To any properly identified claimant for benefits or payments under state, territorial, or federal unemployment compensation or readjustment allowance law, or to his duly authorized representative, information which directly concerns the claimant and is reasonably necessary for the proper presentation of his claim.

- C. To any officer or employee (including law enforcement offices) of any agency of the federal government, lawfully charged with the administration of a federal, state, or territorial law, but only for purposes reasonably necessary for the proper administration of such law and only after receiving a written request for information.
- D. To applicants, employers, and the public, general information concerning employment opportunities, employment levels and trends, and labor supply and demand, provided such release or publication does not include information identifiable to individual applicants, employers, or employing establishments.

II. Information Covered by the Policy.

The policies governing disclosure of information apply to all information received from workers, employers, or other persons or groups as an incident to the operation of the Employment Security Commission of North Carolina, and available from records in the custody of the Employment Security Commission of North Carolina. The following items do not deal with all types of information or all situations in which information is disclosed, but only with those points in the policy which are not self-explanatory.

A. Disclosure of Information Concerning Applicants to Employers:

Information concerning an individual applicant which is pertinent to placement may be disclosed, at the time of referral, to an employer who is considering the applicant for a job. Such disclosure should be restricted to information which will indicate whether or not the applicant meets the employer's specifications. This information may include names of previous employers, length of experience, type of experience, reasons for leaving jobs, education, personal qualifications, etc. Care must be taken, however, not to reveal any confidential information which has no bearing on the applicant's qualifications for the job or his ability to meet any legitimate employer specifications.

Employers ordinarily should not be permitted to examine or review application cards. However, when essential to expedite placement, an employer may be permitted to examine applications provided that the cards have been selected beforehand by an interviewer and do not contain any information which should not be disclosed. Employers are not permitted access to the whole application file, or portions of it, or to other local office records.

Information concerning individual applicants is usually pertinent to placement only at the time the applicant is being considered by the

employer for a specific job. The address of a former employee may be disclosed to an employer who wishes to call him back to his job. Other information should not be disclosed to employers who make inquiries concerning their current or past employees who have applications on file in the local office.

B. Disclosure of Unemployment Insurance Claims Information to a Claimant or Employer or Duly Authorized Representative.

A claimant for unemployment insurance benefits or his last employer or a duly authorized representative (See 96-17(b)) shall be given information from agency records which is necessary for the proper presentation of a claim or defense thereto. No person shall be deemed a "duly authorized representative" unless he has been authorized as such by the claimant or employer in writing. A copy of the writing shall be retained by the agency.

C. Disclosure of Information Concerning Labor Market Information.

The Public Information Officer is responsible for the release of all labor market information to the news media. Local offices will be provided with a copy of the released and are encouraged to supply local application and interpretation of published releases to meet the needs of each community.

Local office managers shall use only published information when discussing employment and unemployment trends for their areas. Local office managers shall not speculate or draw conclusions that are not supported by the information released by the Public Information Office.

D. Disclosure of Information pursuant to the Federal Privacy Act.

The Federal Privacy Act does not apply to the Employment Security Commission of North Carolina. That Act applies only to federal agencies. No information shall be released because of any provisions contained in the Federal Privacy Act.

E. Disclosure of Information to Officers and Employees of a State or Federal Government including Law Enforcement Officers

Disclosure of information to law enforcement officers of governmental agencies or commissions with enforcement responsibilities is included in the policy stated in section I. C. All requests for information from any officer or employee of a state or federal government shall be made in writing and any release of information shall be in writing except a director, department head or local office manager may authorize a verbal disclosure when:

1. Presented with proper identification; i.e., sheriff's badge, FBI badge; and
2. Verbal release is deemed necessary by the director, department head or local office manager for the proper administration of the law administered or enforced by the public officer; and
3. Verbal disclosure shall be documented by the director, department head or local office manager who authorizes a verbal disclosure.

III. Referring Special Requests to the State Office.

From time to time requests may be made for the disclosure of information in which special circumstances may appear to justify the disclosure or in which there may be doubt as to whether the information may be disclosed under existing policies. In such a situation, the request shall be referred to the state office (legal department) for approval or rejection. The local office will be notified in writing of the decision.

IV. Disclosure of Information to Courts When a Subpoena is Served.

When any subpoena or other compulsory process is served by a court or other tribunal upon an employee of the Employment Security Commission calling for information from the files and records of the Commission, such information may be disclosed if the disclosure is otherwise permitted under the policy on disclosure of information or interpretations of the policy.

When a subpoena or other compulsory process is served calling for information which may not be disclosed under the policy or interpretations of the policy, the state office (legal department) shall be notified immediately. The legal department will take appropriate steps promptly to ensure that a motion to quash the subpoena is made and supported or other appropriate action is taken to protect the agency.

V. Disclosure of Employee Personnel Records.

Every state agency is required to maintain a personnel record of each of its employees. The Employment Security Commission complies with this requirement by maintaining a personnel record for each of its employees. Each employee may examine his own personnel record. The following information with respect to each employee is not confidential and is open for inspection and examination. Any request for inspection must be directed to the Director of Employee Relations who is the custodian of such records.

- A. Name

- B. Age
- C. Date of original employment or appointment to State service
- D. Current position and title
- E. Current salary
- F. Date and amount of most recent increase or decrease in salary
- G. Date of most recent promotion, demotion, transfer, suspension, separation or other changes in position classification
- H. The office or station to which the employee is currently assigned

All other information contained in a personnel file is confidential and shall not be open for inspection and examination except for the following persons:

- A. The employee, applicant for employment, former employee, or his properly authorized agent who may examine his own personnel file in its entirety except for (i) letters of reference solicited prior to employment, or (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient .An employee's medical record may be disclosed to licensed physician designated in writing by the employee;
- B. The supervisor of the employee;
- C. Members of the General Assembly who may inspect and examine personnel records under the authority of G.S. 120-19;
- D. A party by authority of a proper court order may inspect and examine a particular confidential portion of a state employee's personnel file; and
- E. An official of an agency of the federal government, state government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the department head of the employee whose record is to be inspected or, in the case of an applicant for employment or a former employee, by the department head of the agency in which the record is maintained as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

Any subpoena or proper court order calling for the production or examination of personnel records shall be forwarded to the legal department for review and any appropriate action.

VI. Questions and Answers.

From time to time, various question concerning the release of information have been received. Listed below are some of the most common questions and their answers.

- Q. What information, taken during the fact-finding investigation, may be released and to whom?
- A. The claimant, the employer, and the representative for the claimant and employer have the right to see the claim folder at any time there is not a final decision in a matter.
- Q. May an FBI agent, a law enforcement agent, a sheriff, deputy sheriff, policeman, etc., be supplied with the name, address, social security number, etc., of a claimant?
- A. If the request is made in the official performance of duty, the information should be released.
- Q. If an agent of Social Services, Housing Authority, etc., requests information on a claimant, can that information be released?
- A. The information can be released if the request is made in the official capacity of the agent. The information must, of course, be for official business.
- Q. May family members or friends obtain information on behalf of the claimant?
- A. No. Since CETA and other manpower-type programs are currently in a state of evolution, do not release any information on CETA or other manpower-type programs; call the legal department in Raleigh at (919) 733-4636.
- Q. To whom should a subpoena be directed?
- A. If the information is in the local office, it should be directed to the person with custody of the records; i.e., the local office manager, the field tax auditor, the appeals referee. If the information is in the state office, it should be directed to the Commission's process agent.
- Q. Now that the law allows for subpoenas to be served by telephone, may an agent of the Commission accept a subpoena by telephone service?

- A. No. The Commission will accept only in-person service.
- Q. Who is the process agent for the Commission?
- A. T. S. Whitaker, Chief Counsel
P.O. Box 25903
215 W. Jones Street
Raleigh, NC, 27611
- Q. If a valid request for information is received but the information requested is not readily available or will cause an excessive amount of time or cost to comply, what should be done?
- A. Contact the legal department and inform the person making the request that you are doing so.

Adopted as an official Interpretation of the Commission on May 6, 1983.

Rescinds Interpretation No. 202 adopted September 30, 1969, which rescinded Interpretation No. 195 adopted August 8, 1967.