

# Procedure: 4.1.7p.

## Collection, Retention and Release of Employment Records

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### I.PUPROSE:

The System Office and each technical college shall maintain an official personnel file for every salaried and hourly-paid employee. To better ensure that an employee's personal information is maintained in a confidential manner and in an effort to protect his/her privacy rights and interests, these files shall be housed in a secure location with direct access restricted only to authorized Office of Human Resources staff and, as applicable, other authorized employees or officials.

Each personnel file shall contain only those employment-related documents necessary for the effective and efficient operation of the System Office or employing technical college to include those which must be collected and maintained pursuant to Technical College System of Georgia (TCSG) procedures, federal and/or state law or, as applicable, any related documents collected and maintained pursuant to a TCSG work unit directive. NOTE: certain documents in the course of an individual's employment must be maintained in a separate, confidential file as provided by the provisions of this procedure and, as applicable, corresponding federal and/or state law.

Upon request, a TCSG work unit shall provide an employee the opportunity to inspect his/her personnel file in a timely manner consistent with the provisions of this procedure. Any other disclosure of information/documents in an employee's personnel file or records/documents maintained in a separate file is governed by the Georgia Open Records Act and, as applicable, corresponding federal and state law and state agency rules and regulations.

In conjunction with a valid request submitted pursuant to the Georgia Open Records Act, the System Office or the employing technical college's Open Records Officer shall release to the requesting party only those employment-related records of a current or former employee which are considered to be a public record and subject to disclosure consistent with applicable provisions of the TCSG Procedure governing Open Records Requests. Employment records will also be released/disclosed in response to: a valid subpoena issued by a court of competent jurisdiction; in response to an order issued of a court of competent jurisdiction; or, as requested by a federal, state or local law enforcement agency or official seeking such records in an official capacity.

Other than as referenced above, access to materials in an employee's personnel file (or to other employment records maintained in a separate file) by any other System Office or technical college official/employee is strictly limited. The official/employee must be engaged in System Office or technical college business and the review must be consistent with his/her assigned duties and responsibilities. Further, access will be limited only to those documents which pertain directly to

the stated purpose of the review and these materials are subject to redaction of otherwise confidential information.

## **II.RELATED AUTHORITY:**

29 CFR Part 1602 et seq

Georgia Archives' Records Retention Schedule for State Government Paper and Electronic Records

O.C.G.A. § 15-6-72(c)(1) – Confidentiality of Military Discharge (DD214) Information

O.C.G.A. § 31-10-25(a) – Confidentiality of Vital Records (Birth Certificates)

O.C.G.A. § 45-18-36(b) – Confidentiality of Deferred Compensation Salary Deduction Information – Records of Individual Account Information

O.C.G.A. § 45-18-53(b) – Confidentiality of Flexible Benefits Information

O.C.G.A. § 50-18-70 et seq – Open Records Act

State Personnel Board Rule 9 – Records

State Board Policies and Technical College System of Georgia Procedures

## **III.APPLICABILITY:**

All work units and technical colleges associated with the Technical College System of Georgia.

## **IV.DEFINITIONS:**

**Documents, Materials, and Records:** for purposes of this procedure, these terms are used interchangeably as examples of employment/personnel records maintained in an official personnel file or those that are maintained in a separate file.

**EEOC:** Equal Employment Opportunity Commission.

**Employment Records Records:** Pursuant to State Personnel Board Rule 9 and this procedure, the term(s) include employment-related information generated in the course of an individual's employment with one or more TCSG work unit(s) including, but not limited to, an individual's job application and corresponding selection-related materials, new employee paperwork, wage/salary history records, benefits-related materials, performance-related documentation, disciplinary history information, personnel transactions and work history records (e.g., promotions, demotions, and lateral transfers) and, training records.

**GCEO:** Georgia Commission on Equal Opportunity.

**Open Records Officer:** the individual designated at the System Office or a technical college to receive written Open Records Requests.

**Open Records Request:** an oral or written request made by a person, firm, corporation, or other entity to examine or copy a public record.

**Public Employee:** for purposes of this procedure, a current or former employee of any TCSG work unit.

**Public Record:** for purposes of this procedure, all personnel/employment records, any computer-based or generated information, data, data fields or, similar materials or documents prepared, maintained or received by any TCSG work unit.

**Redact:** to delete/remove information from a document in preparation for its release. NOTE: for purposes of this procedure, a document must be produced/released if any portion of the document is exempt from disclosure but (such information) can be redacted. In these instances, the best practice to redact a portion of a document is to first copy the document, black out the pertinent information, and then make photocopy of the “copy”.

**Retention Schedule:** a set of disposition instructions prescribing how long, where, and in what form a record shall be kept.

**State Agency:** for purposes of this procedure, any State of Georgia employer to include a department in the Executive Branch, Board of Regents college or university, local department of public health, community services board, authority, public corporation or, commission.

**TCSG Work Unit:** the TCSG System Office, Quick Start Headquarters, Quick Start Regional Office or training center, or an associated technical college.

**V. ATTACHMENTS:** N/A

## **VI. PROCEDURE:**

### **A. Employment Records to be Maintained in an Official Personnel File:**

1. Records/documents generated initially in a paper format in conjunction with an individual's initial employment or those documents stored in an electronic or automated applicant tracking system and later photocopied, as well as those collected and maintained throughout the course of his/her continued employment with a TCSG work unit shall be placed in the official personnel file unless required to be maintained in a separate file. Examples include, but are not limited to:
  - a. appointment materials and documents unless all or a portion of these records are retained electronically in an automated applicant tracking system;
  - b. State Board Policy, TCSG Procedure and, as applicable, TCSG work unit initiated acknowledgement statements and related materials;
  - c. performance management evaluations and supplemental documentation;
  - d. Positive Discipline documentation;
  - e. diploma(s), certificate(s), training records and related personal accomplishment documentation;
  - f. personnel action request forms and accompanying documentation pertaining to employment status changes;

- g. wage/salary history and payroll authorization (payroll deduction) documents such as direct deposit forms, deferred compensation forms as well as historical tax withholding forms, State Health Benefit Plan and Flexible Benefit election forms;
- h. correspondence or other documentation pertaining paid leave and leaves of absence provided that these documents do not contain any confidential information; and,
- i. correspondence regarding a resignation or retirement.

**B. Employment Records to be Maintained in a Separate File:**

1. Exceptions to the requirements of Paragraph VI.A.1. are those records/documents which must be maintained separately as required by: federal and/or state law; State Board Policy or TCSG Procedure; or, as determined by the Director of Human Resources of the System Office or technical college or other TCSG work unit official . Examples include, but are not limited to:
  - a. interview and selection documents and materials including: screening materials and matrix; interview questions/answers; copy of work sample, if provided; reference check letters and documentation; all selection notes on candidates including reasons for non-selection; vacancy announcements; and, all other recruitment-related documents;
  - b. criminal history, credit history, and driver's history record check information;
  - c. investigative information, materials, and findings of an unlawful discrimination, harassment and/or retaliation complaint, an EEOC or GCEO complaint, a complaint initiated under the TCSG Employee Complaint Resolution Procedure, and the identify of donors as provided in the TCSG Leave Donation Procedure
  - d. information pertaining to a Worker's Compensation Claim;
  - e. information pertaining to a garnishment, tax levy or bankruptcy;
  - f. any medical record or medical information contained in any document, form, correspondence, etc., to include, but not limited to: medical certifications, notes or excuses associated with a leave request (e.g., FMLA documentation); the medical history information of an employee (e.g., Medical and Physical Examination Program forms); post-offer medical examination (e.g., Campus Police Officer); a written request for a disability-related accommodation (e.g., reasonable accommodation documents and/or information) and all documents associated with TCSG work unit's affirmative action in response to such a request; drug-testing screening results that report a lawful presence of drug use; fitness-for-duty examination results; applicable, solicitation requests and other notices pertaining to donated leave; and, as applicable, documentation from a EAP provider in response to mandatory EAP evaluation or provided independently to in response to a counseling session;

2. Although it is permissible to retain completed I-9 forms and associated documents in a personnel file, the preferred approach is to place these materials in a separate file as referenced in the TCSG Verifying Identity and Employment Eligibility Procedure.

**C. Access to Employment Records:**

1. Upon receipt of a verbal or written request, the System Office or technical college shall provide an employee the opportunity to review his/her personnel file as well as those documents and materials maintained in a separate file in a timely manner as follows:
  - a. The records shall be made available for inspection by an employee on a date and time communicated to the employee by a human resources representative. All such appointments shall be conducted on a regular business day (i.e., Monday through Friday) and only during the System Office or technical college's official business hours.
  - b. After the employee's identification has been verified, the inspection shall be made in the presence of a human resources representative.
  - c. An employee may not remove or add documents from/to his/her personnel file or any separate file during the inspection.
  - d. An employee who disagrees with information contained in their personnel or ancillary file and/or who objects to the inclusion of a specific document may request, in writing, that the identified document(s) be removed. NOTE: any written request should be directed to the System Office or technical college Director of Human Resources who shall review the request and respond to the employee, in writing, in a timely manner. An employee may also file a complaint pursuant to the TCSG Employee Complaint Resolution Procedure if he/she alleges that a TCSG policy or procedure was violated in conjunction with the collection and/or maintenance of his/her employment records.
  - e. An employee's request that a copy be made of one or more documents in his/her personnel file or contained in a separate file will be granted; however, the System Office or technical college may be charge a fee for photocopying all such document(s) as provided in the TCCSG Procedure governing Open Records Requests.
2. Access to information in an employee's personnel file or maintained in a separate file by a System Office official/employee other than the employee or an Office of Human Resources representative is strictly limited as follows:
  - a. the official/employee must be engaged in System Office or technical college business;
  - b. the review must be consistent with the official/employee's assigned duties and responsibilities;
  - c. access will be limited only to those documents which pertain directly to the stated purpose of the review; and,

- d. access to/disclosure of confidential information (e.g., medical information) will be restricted as defined by law and these material are subject to redaction before any inspection/release.
3. Employment records will be released in response to a valid subpoena (issued by a court of competent jurisdiction) or which are otherwise required to be disclosed by an order from a court of proper jurisdiction.
4. Upon request, employment records shall be released to a federal, state or local law enforcement agency or official seeking such records in his/her official capacity.

**D. Disclosure of Employment Records in Response to an Open Records Request:**

1. As a public employee, all employment-related records generated and collected during the course of an individual's employment with a TCSG work unit are considered "public records". Unless identified in the Georgia Open Records Act (Act) as exempt from disclosure or as provided in federal or state law, these records are subject to inspection and release in a manner prescribed in the Act.
2. Although most documents in a personnel file are subject to inspection and/or disclosure in response to a valid Open Records Request, those categories or types of information that are exempt include:
  - a. home address, home telephone number; and unlisted telephone number (if designated in a public record);
  - b. cell number(s) and personal e-mail address(es);
  - c. day and month of birth;
  - d. social security number;
  - e. insurance or medical information (e.g., flexible benefits and SHBP records including related payroll deduction information);
  - f. mother's birth name;
  - g. credit card information;
  - h. debit card information;
  - i. bank account information/account number; utility account number or password used to access this information;
  - j. financial data or information (e.g., credit history reports, payroll deductions, etc.) other than an employee's salary/hourly rate of pay; and,
  - k. the identity of an employee's immediate family members or dependents;

3. Other records that are exempt from inspection and/or release pursuant to state law include vital records information (i.e., birth certificates) and military discharge forms (i.e., DD 214's).
4. If records are requested which contain any of the information referenced above, but which also contain information that is not otherwise exempt from disclosure, the exempt information must be redacted prior to inspection and/or release.
5. Information/documents contained in an investigatory case file involving a complaint against a TCSG employee (e.g., an internal TCSG investigation) are subject to release no later than ten (10) days after the investigation is closed. As applicable, all exempt information referenced in Paragraph VI.D.2. and VI.D.3. is first redacted.
6. Criminal history information contained in reports generated from the Georgia Crime Information Center (GCIC) are subject to release only in conjunction with and pursuant to applicable GCIC Rules and corresponding state law. NOTE: felony conviction information is subject to release.
7. Driver's History Information is subject to release only in conjunction with and pursuant to applicable Department of Driver's Services Rules and corresponding state law.

#### **E. Maintenance of Employment Records:**

1. All employment records, including those generated in a paper, electronic, or automated format, must be maintained with accuracy, completeness, and timeliness.
2. Adequate safeguards for securing these records must be established by the System Office or technical college Office of Human Resources, as well as any other work unit responsible for maintaining such records (e.g., Payroll).

#### **F. Transfer of Employment Records:**

1. The official personnel file and all records/documents maintained in one or more separate files of an employee transferring to another TCSG work unit must be forwarded to the work unit's Director of Human Resources or other identified human resources representative in a timely manner.
2. The official personnel file and all records/document maintained in one or more separate files of an employing transferring to another state agency must be forwarded to the agency's Director of Human Resources or identified Human Resources representative in a timely manner.

### **VII. RECORD RETENTION:**

All employment records generated and/or collected for placement in an employee's official personnel file, as well as those records/documents placed in a separate file as required by the provisions of this procedure, shall be maintained confidentially and for the period of time outlined in the Georgia Archives' Retention Schedule for State Government Paper and Electronic Records.