

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 734

Short Title: Open Government/Nondisclosure Penalties. (Public)

Sponsors: Representatives Blust, Allred, Cleveland (Primary Sponsors); Blackwood, Brown, Current, Frye, Grady, Gulley, Hilton, Howard, Justice, McCormick, McGee, Moore, Randleman, Sager, Setzer, Starnes, Steen, Tillis, and West.

Referred to: Judiciary I, if favorable, Finance.

March 23, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE PUBLIC RECORDS LAWS TO PROVIDE THAT THE SUCCESSFUL PLAINTIFF IN A PUBLIC RECORDS DISPUTE IS ENTITLED TO REASONABLE ATTORNEYS' FEES AND TO IMPOSE INDIVIDUAL LIABILITY FOR CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCESS TO A PUBLIC RECORD WITHOUT GOOD CAUSE; CREATING THE OPEN GOVERNMENT UNIT OF THE DEPARTMENT OF JUSTICE; AND, ESTABLISHING A FEE FOR MODERATION AND MEDIATION SERVICES BY THAT UNIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-9(c) reads as rewritten:

"(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow the prevailing party to recover its reasonable attorneys' fees if attributed to those public records, ~~unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust records.~~

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed."

SECTION 2. Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ 132-11. Public officer individual civil liability for unwarranted nondisclosure.

In any case where the court finds that a public officer or official (State or local) violated the public records access requirements of this Chapter without good cause, the court may, in its discretion, find that the public officer or official is individually liable for a civil penalty of up to fifty dollars (\$50.00) for each day that the public officer or official failed to provide access to the public record without good cause. The clear proceeds of the civil penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Open Government Unit.



1 **"§ 114-45. Open Government Unit.**

2 (a) To further the goal of government transparency and to provide that public records,
3 as defined by G.S. 132-1, compiled by State agencies or by political subdivisions of the State
4 are the property of the people of North Carolina, there is created within the Department of
5 Justice, the Open Government Unit.

6 (b) The Open Government Unit shall do all of the following:

7 (1) Develop and implement education and awareness programs designed to
8 educate the public and government agencies of their rights and
9 responsibilities under the public records and open meetings laws.

10 (2) Serve as a moderator or mediator in resolving public record and open
11 meeting issues between parties, including adopting procedures and
12 guidelines for assisting in the informal resolution of open government
13 disputes and issuing advisory opinions.

14 (3) Assemble and maintain a collection of relevant State laws, opinions, rules,
15 and regulations related to public records and open meetings laws, which
16 shall be made available electronically as a resource.

17 (4) Report annually to the General Assembly on its activities generally on the
18 subject of open government as appropriate.

19 (5) Research and study open meetings and open records procedures in other
20 states and state legislatures and annually report to the General Assembly
21 with recommendations on how to improve access to meetings and records of
22 the General Assembly.

23 (6) Adopt and develop policies and procedures as may be necessary to
24 accomplish these functions.

25 (c) A reasonable fee shall be charged for services of moderation or mediation in
26 resolving public record and open meeting issues by the Open Government Unit of the
27 Department of Justice. The fee authorized by this section shall not exceed the actual cost of
28 preparing, researching, and conducting the moderation or mediation. The fee for moderation or
29 mediation services is a departmental receipt of the Department and must be used to offset the
30 cost of the Open Government Unit.

31 (d) This section shall not apply to the Judicial Department."

32 **SECTION 4.** During the 2010-2011 fiscal year, the Department of Justice Open
33 Government Unit shall receive and attempt to informally resolve disputes between the public
34 and more than 430 State and local government agencies, along with educating and raising
35 awareness among the public and governmental agency representatives about rights and
36 responsibilities under the public records and open meetings laws.

37 **SECTION 5.** Section 1 of this act becomes effective October 1, 2009, and applies
38 to actions brought on or after that date. Section 2 of this act becomes effective October 1, 2009,
39 and applies to violations on or after that date. The remainder of this act is effective when it
40 becomes law.