

## Employee Personnel Records: What to Keep Where

A municipality should maintain a personnel file for every municipal employee that contains an array of documents related to that individual's employment with the municipality. When these records exist as paper documents, they should be kept in a locked file cabinet to restrict access. When their format is electronic, care should be taken to prevent unauthorized access through password-protection and other computer security methods.

A municipal employee may rightfully access his or her own personnel file, though the municipality may require that access is by appointment with and in the presence of the appropriate municipal official. According to VLCT's model personnel policy:

*“Personnel records will be maintained for each employee of the Town. In accordance with Vermont’s Public Records Law, any employee or the employee’s designated representative may inspect or copy his or her personnel file at a mutually agreeable time during regular office hours. The Town reserves the right to have its representative present at the time its files are examined or copied.”*

Other than the employee and his or her legal representative, no other individual has an unlimited legal right to access the employee's personnel file. However, the documents in a personnel file generally fit within the legal definition of “public records” pursuant to 1 V.S.A. § 317(b). As such, a request by any individual to inspect or copy the documents in a personnel file must be granted unless a statutory exemption applies. In this instance, the most applicable exemption is 1 V.S.A. § 317(c)(7), which is an exemption for “[p]ersonal documents relating to an individual, including information in any files maintained to hire, evaluate, promote, or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation.” However, this exemption is not absolute; the Vermont Supreme Court has ruled that the exemption applies only to documents that reveal “intimate details of a person's life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment or friends.” *Trombley v. Bellows Falls Union High School District No 27*, 160 Vt. 101, 110 (1993). Even in such situations, a document might still be subject to inspection if the public interest in the information outweighs the private interest of the employee. Because this is a confusing and complicated area, a municipal employer should seek legal advice when there is a request to inspect documents relating to an employee.

Some information should be included in a personnel file, other information must be stored separately for legal reasons, while other information should be stored separately in accordance with best practice standards. These three standards are outlined below.

### 1. **The types of documents that should be kept in an employee's personnel file include:**

- payroll-related forms such as a W-4 and W-4VT, deduction authorizations, direct deposit authorizations, etc. (unless kept in a separate payroll file instead);
- application materials such as a job application form, resume, and cover letter;
- job offer and acceptance letters;
- job description;

- signed acknowledgement of receipt of personnel policy;
- all written performance reviews and documentation of verbal feedback;
- any other performance-related documentation, whether positive or negative, such as written warnings, documentation of oral warnings, performance improvement plans, letters of thanks, commendation, or congratulations; further, if the town has a progressive discipline policy, it is particularly important to document that all steps are properly taken;
- any backup documentation for performance issues (such as a record of tardiness or excessive absences);
- forms or letters regarding pay increases, promotions, or transfers;
- documentation of training, certificates, or degrees;
- an employee's written requests and the employer's written responses, e.g., request for a flexible work schedule or unpaid leave of absence for personal reasons;
- letter of resignation or separation agreement; and
- other substantive communication between the municipality and employee.

**2. Information that must legally be excluded from personnel files.** In accordance with the non-discrimination requirements of several laws, including the Health Insurance Portability and Accountability Act (HIPAA) and the Genetic Information Non-discrimination Act (GINA), employers must be careful to exclude employees' or family members' medical information from personnel files. Whenever it is necessary to obtain such health information, it must reside in separate and secure files that are only accessible to [who?]. Examples include:

- Family and Medical Leave Act (FMLA) or Vermont Parental and Family Leave Act (VPFLA) information;
- notes from a doctor or other health practitioner;
- medical exam information;
- requests for reasonable accommodation based on a disability;
- workers' compensation first report of injury and other information;
- short-term or long-term disability leave information; and
- benefits enrollment forms.

**3. We recommend excluding the following types of information and documentation from a personnel file and keeping it in separate, secure, confidential files:**

- I-9 Employment Eligibility Verification forms. For further I-9 information, see the related February 2017 *VLCT News* [FAQs](#).
- Reference check notes. Reference sources expect confidentiality when they provide a truthful assessment of a candidate. That expectation should be honored even after a candidate is hired.
- Timesheets or other documentation of work hours and leave time taken. Keep separate for ease of access in the event of an audit by the Department of Labor.
- Complaint investigation documentation such as when an employee makes a legally-protected complaint, e.g., regarding safety or sexual harassment.
- CMV driver requirements. For further information, see Section III of the PACIF [Commercial Motor Vehicle Operations Manual](#).
- CMV driver qualification information. For further information, see Section IV of the PACIF [Commercial Motor Vehicle Operations Manual](#).

Municipalities often deal with space constraints so the topic of personnel record maintenance begs the question "How long do we need to keep these records?" Under 1 V.S.A. § 317a, public records may not be destroyed or discarded unless authorized by law or pursuant to a record schedule

approved or by the Vermont State Archives and Records Administration (VSARA). Vermont State Record Retention Schedules are available from VSARA [here](#). For assistance with specific records management matters, please contact Records Analyst Megan Wheaton-Book at [megan.wheaton-book@sec.state.vt.us](mailto:megan.wheaton-book@sec.state.vt.us) or 802-828-3897.

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