



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

April 19, 2013

Thelma Hill
Department of Commerce
PO Box 25903
Raleigh NC 27611

Re: Rules 04 NCAC 24E .0102 and .0104

Dear Ms. Hill:

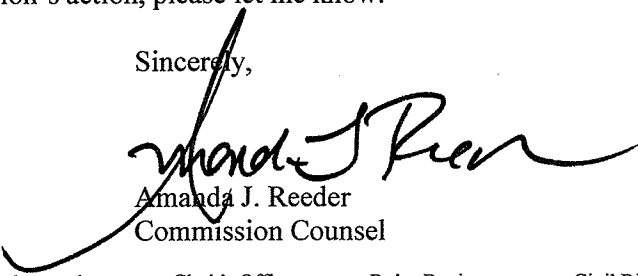
At its April 18, 2013 meeting, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 04 NCAC 24E .0102 based upon ambiguity and lack of statutory authority. Specifically, it is not clear within the Rule what the standards will be for a "reasonable" amount of effort to find the records or to begin the search for those records. It is unclear which third parties will routinely receive the information in Paragraph (g). Further, the rule allows third parties to request the confidential records of applicants and recipients of Unemployment Compensation if the third party includes a statement that the applicant or employer has waived confidentiality. 20 CFR 603.5 provides that the State may release confidential information to third parties when there is a signed release by the party that includes information to ensure informed consent. There is no such requirement for a signed release or informed consent in this Rule.

The Commission objected to Rule 04 NCAC 24E .0104 due to ambiguous language. It is unclear in Paragraph (b) what standards will be used to "assure to the satisfaction of the individual retrieving the information" that payment will be made. It is also unclear what constitutes a "substantial search," which triggers this payment.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,


Amanda J. Reeder
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

1 04 NCAC 24E .0102 is adopted as published in 27:12 NCR 1110-111 as follows:

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3 **04 NCAC 24E .0102 REQUEST FOR DOCUMENTS AND RECORDS**

4 (a) Any person who desires to inspect or copy any record containing confidential unemployment insurance
5 information will submit a written request to that effect to the Legal Services Section of DES or the section of DES
6 which has custody of the record.

7 (b) Each request should reasonably describe the record or records sought; i.e. in sufficient detail to permit
8 identification and location thereof with a reasonable amount of effort. The request should specify, when possible,
9 the subject matter of the record, the date or approximate date when made, the place where made, the person or office
10 that made it, and any other pertinent identifying details such as a form number.

11 (c) If the description is insufficient so that a professional employee who is familiar with the subject area of the
12 request cannot locate the record with a reasonable amount of effort, the individual processing the request will notify
13 the applicant and, to the extent possible, indicate the additional information required.

14 (d) The request will be evaluated in light of all federal regulatory and state statutory provisions that govern
15 disclosure of the items requested. The individual responsible for determining whether a request for agency records
16 will be complied with in whole or in part will initiate a search for the records within a reasonable time after the
17 request is made. If it is determined that the request will be denied, a reply denying the request will be made in
18 writing to the requester with a brief statement of the reasons for the denial.

19 (e) To the extent required to prevent a clearly unwarranted invasion of personal privacy or to comply with
20 applicable law prohibiting disclosure of specific information, the individual authorized to disclose information from
21 a record may delete identifying details when the requested record is made available. Justification for the deletion
22 will be explained in writing upon request.

23 (f) Nothing in this Rule will be construed to prevent DES, upon written request and on a reimbursement basis which
24 complies with the requirements of this Rule from disclosing any information or records obtained from and releasable
25 to a claimant, employer, applicant, or other persons, to a third party or person clearly identified by name and address
26 in said request and said request will contain a statement that the claimant, employer, applicant, or other person,
27 waives confidentiality as to the information requested.

28 (g) When DES requests an individual or employing entity to supply information about that individual or employing
29 entity, DES will notify the individual or employing entity of the use that will be made of the information, which
30 persons outside of DES might routinely be provided this information, which parts of the requested information are
31 required and which are optional, and the consequences of a failure to provide the information requested.
32 Furthermore, the individual or employing entity will be notified that, while DES takes normal precautions to keep all
33 such information confidential and privileged pursuant to G.S. 96-4(x), DES does not guarantee the confidentiality or
34 privilege of any information transmitted to it by way of the Internet, as it is not possible, and does not accept liability
35 for any loss of confidentiality or privilege resulting from the transmission of the information to DES by way of the
36 Internet or other electronic means. This notice may be given by providing a copy of this Rule, on the written form

1 used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in
2 handbooks, or in manuals.

3 (h) Nothing in this Rule will be construed to prevent the DES, upon written request and on a reimbursement basis,
4 as provided in rule 04 NCAC 24E .0103, that complies with the requirements of this Rule from releasing or
5 disclosing to a third party or person information as to an individual's quarterly wage records, including the amount
6 of such wages and names and addresses of the employer(s) reporting wages for said individual; provided that the
7 third party or person is clearly identified by name and address in said request and the request contains a statement
8 that the individual waives confidentiality as to the information requested, and the employing entity from whom such
9 information was collected has been properly provided notice.

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11 *History Note: Authority G.S. 96-4(d); 96-4(x); 150B-20; Title 20 Code of Federal Regulations, Part 603;*
12 *Eff. May 1, 2013.*
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1 04 NCAC 24E .0104 is adopted as published in 27:12 NCR 1111 as follows:

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3 **04 NCAC 24E .0104 PAYMENT OF FEES**

4 (a) Payment of fees as set forth in Rule 04 NCAC 24E .0103 will be made in cash, money order or certified check,
5 except that an agency of state or federal government, a county or municipality may pay by its customary draft.

6 (b) Payment of the known and officially estimated searching and copying fees will be made or assured to the
7 satisfaction of the individual retrieving the information prior to the performance of substantial searching or copying
8 services.

9 (c) No fees will be charged for those records or documents customarily furnished to the parties in connection with a
10 contested claim for unemployment insurance benefits or tax (contributions) liability matters except as provided by
11 statute.

12 (d) No fees will be charged to the North Carolina State Bureau of Investigation for searching and copying records
13 pursuant above when requested by the Bureau as part of an official investigation.

14 (e) The individual transmitting any records, transcript or document under whatever name subject to a fee charge
15 under this Rule will notify the applicant to remit the fee to the North Carolina Department of Commerce, Division of
16 Employment Security, ATTN: Finance and Budget, Post Office Box 25903, Raleigh, North Carolina 27611.

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18 *History Note: Authority G.S. 96-4(d); 96-4(x); 132-1-10; 150B-20; Title 20 Code of Federal Regulations;*
19 *Eff. May 1, 2013.*
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