

TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-090

October 31, 2025

Colonel Mike A. Hagar, Secretary
Arkansas Department of Public Safety
1 State Police Plaza Drive
Little Rock, Arkansas 72209

Dear Colonel Hagar:

I am writing in response to your request for my opinion on whether, under the Arkansas Freedom of Information Act (FOIA), the records custodian should withhold decertification records held by the Commission on Law Enforcement Standards and Training (CLEST) before the case for decertification has been presented to the Commission for a vote.

RESPONSE

As discussed further in the opinion, the exemptions for undisclosed investigations, personnel records, and personal contact information generally do not apply to decertification records held by CLEST. Other FOIA exemptions may apply, but the custodian will need to review the records on a case-by-case basis to determine whether to withhold, redact, or release them.

DISCUSSION

While I have not received any records to review, I will assume for the purposes of this opinion that “decertification records” are those records—including documents and video submitted by the employer—held by CLEST for use in a hearing under the Administrative Procedures Act to determine whether to decertify a law enforcement officer who is not employed by CLEST.

1. General rules. A document must be released in response to a FOIA request if all three of the following elements are met. First, the FOIA request must be directed to an entity subject to the

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FOIA.¹ Second, the requested document must constitute a public record.² Third, the document must not be subject to an exemption.³

The first two elements appear to be met here. The Department of Public Safety is a public entity subject to the FOIA.⁴ And because the records are held by a public entity, they are presumed to be public records,⁵ although that presumption is rebuttable.⁶ I have no information, however, to suggest that the presumption can be rebutted, so I will turn to whether any exemptions prevent the release of decertification records.

2. FOIA exemptions. Whether a particular FOIA exemption applies likely depends on the reasons for the decertification proceeding, as the type of records used in each proceeding would vary from case to case.

Because I don't have specific records to review, I cannot definitively conclude whether all "decertification records" are exempt from release. But under the FOIA, the custodian must withhold records that fall under a specific exemption, such as the following:

- State income tax records.⁷
- Certain medical records, adoption records, and education records.⁸

¹ *Legis. Joint Auditing Comm. v. Woosley*, 291 Ark. 89, 91, 722 S.W.2d 581, 582 (1987).

² *Id.*

³ *Id.*

⁴ *See, e.g.*, A.C.A. § 25-19-103(14)(A), as amended by Act 505 of 2025, § 1 (including "a public official or employee" or "a governmental agency").

⁵ The FOIA defines public records as "writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium, required by law to be kept or otherwise kept, and that constitute a record of the performance or lack of performance of official functions ... carried out by a public official or employee." A.C.A. § 25-19-103(14)(A), as amended by Act 505 of 2025, § 1.

⁶ *See Pulaski Cnty. v. Ark. Democrat-Gazette, Inc.*, 370 Ark. 435, 440–41, 260 S.W.3d 718, 722 (2007) ("[T]he presumption of public record status established by the FOIA can be rebutted if the records do not otherwise fall within the definition found in the first sentence, i.e., if they do not 'constitute a record of the performance or lack of performance of official functions.'" (quoting Ark. Att'y Gen. Op. 2005-095)).

⁷ A.C.A. § 25-19-105(b)(1); *see also* Ark. Att'y Gen. Op. 91-093 (opining that the state income tax exemption "is broad enough to encompass the amount of tax withheld from an employee's paycheck to satisfy state income tax liability").

⁸ *Id.* § 25-19-105(b)(2); Ark. Att'y Gen. Op. 2025-105 (listing additional opinions concerning medical records and worker's compensation records).

- Grand jury minutes.⁹
- Records protected from release by court order.¹⁰
- The identities of undercover law enforcement officers.¹¹
- Certain computer and network security records, including “passwords, personal identification numbers, transaction authorization mechanisms, and other means of preventing access to ... any data residing therein.”¹²
- Certain military discharge records.¹³
- Concealed-carry handgun license records.¹⁴
- The identities of confidential informants or sources if disclosure “could reasonably be expected to endanger the life or physical safety of the individual” or certain members of their family.¹⁵

The custodian must review the specific records and determine whether any exemptions apply.

3. Employee-evaluation records. Even if held by CLEST, records may qualify as employee-evaluation or job-performance records if they were created by or at the behest of the employer to evaluate the employee and detail the performance or lack of performance of the employee in question.¹⁶

⁹ A.C.A. § 25-19-105(b)(4).

¹⁰ *Id.* § 25-19-105(b)(8); *see also* Ark. Att’y Gen. Op. 2004-074 (opining that the Comprehensive Criminal Record Sealing Act of 2013—incorporated by reference into the FOIA—may exempt release of a sealed record).

¹¹ *Id.* § 25-19-105(b)(10)(A); Ark. Att’y Gen. Op. 96-005 (noting that the exemption does not apply to former undercover officers who are no longer employed).

¹² *Id.* § 25-19-105(b)(11); *see also* Ark. Att’y Gen. Ops. 2003-064 (credit card account numbers are exempt), 2008-137 (numbers that “provide access to computerized data” are exempt).

¹³ *Id.* § 25-19-105(b)(15).

¹⁴ *Id.* § 25-19-105(b)(18).

¹⁵ *Id.* § 25-19-105(b)(24).

¹⁶ *See, e.g.,* Ark. Att’y Gen. Ops. 2015-072, 99-147; Watkins, et al., *The Arkansas Freedom of Information Act* 202 (6th ed. 2017).

Employee-evaluation or job-performance records cannot be released unless all the following elements have been met:

- *Suspension or termination.* The employee was suspended or terminated;
- *Administrative finality.* The suspension or termination is administratively final and is, therefore, incapable of any administrative reversal or modification;
- *Relevance.* The records in question formed a basis for the decision to suspend or terminate the employee; and
- *Compelling interest.* The public has a compelling interest in the disclosure of the records in question.¹⁷

As for the fourth element, as this Office has consistently opined, law-enforcement officers are vested with significant public trust, so there is usually a compelling public interest in records that reflect policy violations.¹⁸

If the custodian of the records in question classifies any of the “decertification records” as employee-evaluation or job-performance records, he or she must apply the above test for release (or withholding).

4. Inapplicable exemptions.

For certain FOIA exemptions, I have sufficient information before me to conclude that they do not apply to “decertification records” held by CLEST: the undisclosed investigation exemption; the personnel records exemption; and the personal contact information exemption.

4.1. Undisclosed investigations. The exemption for “undisclosed investigations ... of suspected criminal activity” under A.C.A. § 25-29-105(b)(6) does not apply to records held by CLEST because CLEST proceedings are administrative, not criminal.

4.2. Personnel records. Records held by CLEST concerning a law enforcement officer subject to a decertification request are not personnel records because they concern an employee of another entity, not an employee of CLEST.¹⁹

4.3. Personal contact information. Certain personal contact information of public employees is exempt from release under the FOIA only if that information is “contained in

¹⁷ A.C.A. § 25-19-105(c)(1).

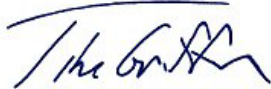
¹⁸ Ark. Att’y Gen. Ops. 2024-018, 2023-120, 2023-071, 2023-013, 2014-129, 2006-026.

¹⁹ See, e.g., Ark. Att’y Gen. Op. 92-145 (opining that teacher-employment contracts maintained in the office of county treasurer are not the teachers’ personnel records).

employer records.”²⁰ Because CLEST is not the employer of the law enforcement officer subject to decertification, A.C.A. § 25-19-105(b)(13)’s exemption for personal contact information does not apply.

Assistant Attorney General William R. Olson prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Griffin", with a horizontal line above it.

TIM GRIFFIN
Attorney General

²⁰ A.C.A. § 25-19-105(b)(13).