



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2026-053

May 28, 2026

Ms. Sherita Washington
Arkansas Department of Public Safety
#1 State Police Plaza Drive
Little Rock, Arkansas 72209

Dear Ms. Washington:

You have requested an opinion from this Office regarding the Arkansas Freedom of Information Act (FOIA). Your request, which is made as the subject of the records, is based on A.C.A. § 25-19-105(c)(3)(B)(i). This subdivision authorizes the custodian, requester, or the subject of certain employee-related records to seek an opinion stating whether the custodian's decision regarding the release of such records is consistent with the FOIA.

According to correspondence we received from the records custodian, the Arkansas Department of Public Safety received a FOIA request for your personnel file. The custodian has provided me with a redacted copy of 16 records he has classified as personnel records and intends to release. You object to the release of these records, and you ask if the custodian's decisions are consistent with the FOIA.

RESPONSE

In my opinion, the custodian has correctly classified these records as personnel records that are subject to release. And the custodian has also properly redacted your personal contact information, Social Security number, date of birth, personnel number, and information related to marital status and dependents.

DISCUSSION

1. General rules. A document must be disclosed in response to a FOIA request if (1) the request was directed to an entity subject to the FOIA, (2) the requested document is a public record, and (3) no exceptions allow the document to be withheld.¹

¹ *Harrill & Sutter, PLLC v. Farrar*, 2012 Ark. 180, at 8, 402 S.W.3d 511, 515.

The first two elements appear to be met. The request was made to the Arkansas Department of Public Safety—a public entity subject to the FOIA. And the records at issue appear to be public records.² Because these records are held by a public entity, they are presumed to be public records,³ although that presumption is rebuttable.⁴ I have no information to suggest that the presumption can be rebutted here, so I will focus on whether any exceptions prevent the documents’ disclosure.

For FOIA purposes, documents in a public employee’s file can usually be divided into two distinct groups: “personnel records”⁵ and “employee evaluation or job performance records.”⁶ Personnel records are records that pertain to an individual employee that were not created by or at the behest of the employer to evaluate the employee.⁷ Employee evaluation and job-performance records, on the other hand, are records (1) created by or at the behest of the employer (2) to evaluate the employee (3) that detail the employee’s performance or lack of performance on the job.⁸

The test for whether these two types of documents may be released differs significantly. When reviewing documents to determine whether to release under the FOIA, the custodian must first decide whether a record meets the definition of either a “personnel record” or an “employee evaluation or job performance record” and then apply the appropriate test for that record to determine whether the record should be released under the FOIA. Because the records at issue here are personnel records, I will restrict my analysis to that category of records.

² 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(15)(A).

³ *Id.*

⁴ 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)).

⁵ A.C.A. § 25-19-105(b)(12) (“It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter ... [p]ersonnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy”).

⁶ *Id.* § 25-19-105(c)(1) (“[A]ll employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure”).

⁷ See, e.g., Ark. Att’y Gen. Ops. 2015-072, 1999-147.

⁸ *Thomas v. Hall*, 2012 Ark. 66, at 8–9, 399 S.W.3d 387, 392; see also *Davis v. Van Buren Sch. Dist.*, 2019 Ark. App. 466, 7–8, 572 S.W.3d 466, 471 (noting that “[o]ur supreme court has approved” the definition of employee-evaluation records developed by the Attorney General’s Office); Ark. Att’y Gen. Ops. 2015-057, 2009-067, 2006-038, 2003-073, 1995-351, 1993-055.

2. Personnel records. A personnel record is open to public inspection except “to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy.”⁹ While the FOIA does not define the phrase “clearly unwarranted invasion of personal privacy,” the Arkansas Supreme Court has provided some guidance. In *Young v. Rice*, the Court applied a balancing test that weighs the public’s interest in accessing the records against the individual’s interest in keeping them private.¹⁰ The balancing test, which takes place “with the scale tipped in favor of public access,” has two steps.¹¹

First, the custodian must assess whether the information contained in the requested document is of a personal or intimate nature such that it gives rise to a greater than minimal privacy interest.¹² If the privacy interest is minimal, then disclosure is required. Second, if the information gives rise to a greater than minimal privacy interest, then the custodian must determine whether that privacy interest is outweighed by the public’s interest in disclosure.¹³

Because the exceptions must be narrowly construed, the person resisting disclosure bears the burden of showing that, under the circumstances, the employee’s privacy interests outweigh the public’s interests.¹⁴ The fact that the subject of the records may consider release of the records an unwarranted invasion of personal privacy is irrelevant to the analysis because the test is objective.¹⁵

Even if a document, when considered as a whole, meets the test for disclosure, it may contain discrete pieces of information that must be redacted,¹⁶ such as personal contact information of public employees (including personal phone numbers, email addresses, and home addresses);¹⁷ employee personnel numbers or identification codes;¹⁸ marital status of public employees;¹⁹

⁹ A.C.A. § 25-19-105(b)(12).

¹⁰ 308 Ark. 593, 826 S.W.2d 252 (1992).

¹¹ John J. Watkins et al., *The Arkansas Freedom of Information Act* 208 (6th ed. 2017).

¹² *Young*, 308 Ark. at 598, 826 S.W.2d at 255.

¹³ *Id.*

¹⁴ *Stilley v. McBride*, 332 Ark. 306, 313, 965 S.W.2d 125, 128 (1998).

¹⁵ *E.g.*, Ark. Att’y Gen. Ops. 2016-055, 2001-112, 2001-028, 1994-198; Watkins et al., *supra* note 11, at 207.

¹⁶ A.C.A. § 25-19-105(f).

¹⁷ *Id.* § 25-19-105(b)(13).

¹⁸ Ark. Att’y Gen. Ops. 2022-032, 2014-094, 2007-070. Public employee personnel numbers are exempt from disclosure because “these numbers presumably provide access to computerized data, and records containing ‘personal identification numbers’ used for computer security functions are specifically exempt from disclosure under the FOIA.” Ark. Att’y Gen. Op. 2022-032; *see also* A.C.A. § 25-19-105(b)(11).

¹⁹ Ark. Att’y Gen. Op. 2001-080.

information about children and dependents;²⁰ dates of birth of public employees;²¹ Social Security numbers;²² driver's license numbers;²³ insurance coverage;²⁴ tax information or withholdings;²⁵ payroll deductions;²⁶ net pay;²⁷ banking information;²⁸ and other financial "records that would divulge intimate financial detail."²⁹

3. Application. The records at issue are best classified as personnel records because they relate to you but were not created by or at the behest of the employer to evaluate you. A personnel record must be released when the public's interest in the record outweighs the employee's privacy interest in the document. Aside from the information that has been redacted, these records do not contain information that is of a private or intimate nature. In my opinion, any privacy interest that you may have in these documents is far outweighed by the "thumb on the scale favoring disclosure." Thus, the custodian's decision to release the documents is consistent with the FOIA.

With respect to redactions, the custodian has properly identified and redacted certain information, including your personal contact information, Social Security number, date of birth, personnel number, and information related to marital status and dependents. Disclosure of this information would be a clearly unwarranted invasion of your privacy, so the custodian's decision to redact this information is consistent with the FOIA.

Assistant Attorney General Jodie Keener 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 Ark. Att'y Gen. Ops. 2018-084, 2018-083, 2001-080.

²¹ Ark. Att'y Gen. Op. 2007-064.

²² Ark. Att'y Gen. Ops. 2006-035, 2003-153.

²³ Ark. Att'y Gen. Op. 2007-025.

²⁴ Ark. Att'y Gen. Op. 2004-167.

²⁵ Ark. Att'y Gen. Ops. 2005-194, 2003-385.

²⁶ Ark. Att'y Gen. Op. 1998-126.

²⁷ Ark. Att'y Gen. Ops. 2018-064, 2018-015, 2002-043, 1998-126.

²⁸ Ark. Att'y Gen. Op. 2005-194.

²⁹ Ark. Att'y Gen. Ops. 2005-194, 1998-126, 1995-242, 1995-110, 1994-235, 1991-093, 1987-422.