



**TIM GRIFFIN**  
ATTORNEY GENERAL

Opinion No. 2025-053

July 7, 2025

Mr. John T. Huett Sr.

*Via email only:* john.huett@mchenrygroup.org

Dear Mr. Huett:

You have requested an opinion from this Office regarding the Arkansas Freedom of Information Act (FOIA). Your request, which is made as the requester 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.

You submitted a FOIA request to the North Little Rock Police Department for “the full [Internal Affairs] investigation” into a particular police officer. You report that the officer “was recommended for termination” but resigned instead. You further report that, upon his resignation, the officer was decertified by the Commission on Law Enforcement Standards and Training. Finally, you note that the Commission has “reinstated his certification” and the officer “is now once again a full-time, certified law enforcement officer.”

In response to your FOIA request, the records custodian provided you with five pages of documents. The custodian has classified the documents as employee evaluations and has redacted four of the five pages as exempt under A.C.A. § 25-19-105(c)(1).<sup>1</sup> I have not been provided with an unredacted copy of the documents. You ask if the custodian's decisions are consistent with the FOIA.<sup>2</sup>

## **RESPONSE**

The North Little Rock Police Department's custodian of records has determined that the records should be released with certain redactions. I cannot determine whether the custodian's decision to

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<sup>1</sup> Although the custodian stated that the redacted portions were exempt under “Arkansas Statute 25-29-105 (28c),” I presume she meant to cite “A.C.A. § 25-19-105(c)(1)” since the cited code section does not exist.

<sup>2</sup> Your request for my opinion poses a specific question regarding whether a certain FOIA exemption applies after an officer has been recertified. This question goes beyond seeking my opinion as to whether the custodian's decisions with respect to employee-related records are consistent with the FOIA. Accordingly, I cannot address it, as it falls outside the scope of my authority under A.C.A. § 25-19-105(c)(3)(B)(i). See Ark. Att'y Gen. Ops. 2020-004, 2009-032, 2006-071.

redact that information is consistent with the FOIA because I was not provided with an unredacted copy of the documents. As to your specific objections—and for reasons discussed in this opinion—the custodian should release the employment-evaluation records if (1) the former employee resigned in the face of “certain, impending termination,” (2) the redacted records formed the basis for the “constructive termination,” and (3) the public has a compelling interest in the records’ disclosure.

## 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.<sup>3</sup>

The first two elements appear to be met. The request was made to the North Little Rock Police Department—a public entity subject to the FOIA.<sup>4</sup> And the records at issue appear to be public records.<sup>5</sup> Because these records are held by a public entity, they are presumed to be public records,<sup>6</sup> although that presumption is rebuttable.<sup>7</sup> 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”<sup>8</sup> and “employee evaluation or job performance records.”<sup>9</sup> Personnel records are records that pertain to an individual employee that were not created by or at the behest

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

<sup>4</sup> *E.g.*, Ark. Att’y Gen. Ops. 2024-095, 2023-120, 2020-028.

<sup>5</sup> 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(7)(A).

<sup>6</sup> *Id.*

<sup>7</sup> *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)).

<sup>8</sup> 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”).

<sup>9</sup> *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”).

of the employer to evaluate the employee.<sup>10</sup> 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.<sup>11</sup>

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 "employment evaluation or job performance record" and then apply the appropriate test for that record to determine whether the record should be release under the FOIA.

**2. Internal affairs investigation records.** You have requested investigation records, which are best classified as "employee evaluation or job performance records" because they are created by the employer to evaluate the employee, and they detail the employee's performance or lack of performance on the job. "This exception includes records generated while investigating allegations of employee misconduct that detail incidents that gave rise to an allegation of misconduct."<sup>12</sup>

If a document qualifies as an employee-evaluation record, the document cannot be released unless all the following elements have been met:

1. The employee was suspended or terminated (i.e., level of discipline);
2. There has been a final administrative resolution of the suspension or termination proceeding (i.e., finality);
3. The records in question formed a basis for the decision made in that proceeding to suspend or terminate the employee (i.e., relevance); and
4. The public has a compelling interest in the disclosure of the records in question (i.e., compelling interest).<sup>13</sup>

The first question, then, is whether the former employee was suspended or terminated. The former employee was not suspended, and he resigned from the position before he could be terminated. But this Office has consistently held that if a resignation is forced—i.e., if it is offered in the face of "certain, impending termination"—then it qualifies as a "constructive termination" that meets

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<sup>10</sup> See, e.g., Ark. Att'y Gen. Ops. 2015-072, 99-147.

<sup>11</sup> *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, 95-351, 93-055.

<sup>12</sup> E.g., Ark. Att'y Gen. Op. 2015-057 (collecting citations).

<sup>13</sup> A.C.A. § 25-19-105(c)(1); e.g., Ark. Att'y Gen. Op. 2008-065.

the first element for the disclosure of evaluation records.<sup>14</sup> You report that the former employee “was recommended for termination” but resigned instead. In addition, the unredacted page of the documents provided by the custodian is titled, “Consideration of Termination and Right to Administrative Hearing.” This suggests that the former employee may have resigned in the face of “certain, impending termination,” in which case the first element would be met. But I am not a factfinder when issuing opinions. It is up to the custodian to make this determination.

If the custodian determines that the former employee’s resignation was voluntary, then the evaluation records must be withheld from release because the first element of the test has not been met. But if the custodian determines that the resignation amounted to a constructive termination, the custodian proceeds to the second element of the test: determining whether the suspension or termination is final. Because the former employee left the North Little Rock Police Department in April 1999, it does not appear that there are any pending appeals, and the second element would be met.

With respect to the third element, relevance, the unredacted page of the documents evidences the standards of conduct and criminal law the former employee was alleged to have violated. So the unredacted page appears to have formed the basis for what was potentially a constructive termination. But I cannot opine regarding the redacted pages because I have not reviewed them. If they also contain information that formed the basis for what was potentially a constructive termination, then the third element would be met.

As for the final prong, the public has a compelling interest in the disclosure of the unredacted document because, as this Office has consistently opined, law-enforcement officers are invested with a significant public trust.<sup>15</sup> And the unredacted page reflects the officer’s violations of office policy and of criminal law, so there is a compelling public interest in that record. If the redacted documents also reflect violations of office policy or criminal law, there is a compelling public interest in their disclosure as well.

In sum, if the custodian determines that the former employee was constructively terminated from his employment with the North Little Rock Police Department, the investigative records that formed the basis for the constructive termination should be disclosed.

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 stylized flourish at the end.

TIM GRIFFIN  
Attorney General

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<sup>14</sup> See generally Ark. Att’y Gen. Ops. 2024-045, 2023-077, 2012-019, 2011-084.

<sup>15</sup> Ark. Att’y Gen. Ops. 2023-071, 2023-013, 2014-129, 2006-026.