



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-055

July 15, 2025

Justin Delvalle

Email: justindelvalle3772@gmail.com

Dear Mr. Delvalle:

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 you forwarded to our office, the Arkansas Department of Corrections has received FOIA requests for your "personnel records." The custodian has determined that the records are subject to release, with certain redactions. You have requested that I review the custodian's decision to determine whether it is consistent with the FOIA.

RESPONSE

In my opinion, the custodian's decision to release the records as redacted is partially consistent with the FOIA. The records the custodian intends to release are properly classified as personnel records, and the custodian has correctly determined that they are subject to release with redactions. But I have identified several additional pieces of information that must be redacted before the records can be released, as well as information that may be improperly redacted.

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 Corrections, which is 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 Given that I have no information to suggest that the presumption can be rebutted here, I will focus on whether any exemptions prevent the documents' disclosure.

For purposes of the FOIA, employees' personnel files⁵ normally contain two distinct groups of records: "personnel records" and "employee-evaluation or job-performance records." 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.⁶ 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.⁷

The test for whether these two types of documents may be released differs significantly. Thus, 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

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(7)(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 "Personnel files" are not referenced in the FOIA but typically includes the following documents: employment applications; school transcripts; payroll-related documents, such as information about reclassifications, promotions, or demotions; transfer records; health- and life-insurance forms; performance evaluations; recommendation letters; disciplinary-action records; requests for leave-without-pay; certificates of advanced training or education; and legal documents, such as subpoenas. *E.g.* Ark. Att'y Gen. Ops. 2016-104, 97-368; John J. Watkins et al., *The Arkansas Freedom of Information Act* 203–04 (6th ed. 2017).

⁶ See, e.g., Ark. Att'y Gen. Ops. 2015-072, 99-147.

⁷ *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, at 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.

the FOIA. In this instance, it is apparent that the records at issue are properly classified as personnel records. I will, therefore, limit my discussion to records of that type.

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.”⁸ 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.⁹ The balancing test, which takes place “with the scale tipped in favor of public access,” has two steps.¹⁰

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 de minimis privacy interest.¹¹ If the privacy interest is minimal, then the records should be disclosed. Second, if the information does give rise to a greater than de minimis privacy interest, then the custodian must determine whether that privacy interest is outweighed by the public’s interest in disclosure.¹²

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 interest.¹³ 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.¹⁴

Even if a document, when considered as a whole, meets the test for disclosure, it may contain pieces of information that must be redacted,¹⁵ such as personal contact information of public employees (including personal phone numbers, email addresses, and home addresses);¹⁶ employee personnel numbers or identification codes;¹⁷ marital status of

⁸ A.C.A. § 25-19-105(b)(12).

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

¹⁰ Watkins et al., *supra* note 5, at 208.

¹¹ *Young*, 308 Ark. at 598, 826 S.W.2d at 255.

¹² *Id.*

¹³ *Stilley v. McBride*, 332 Ark. 306, 313, 965 S.W.2d 125, 128 (1998).

¹⁴ *E.g.*, Ark. Att’y Gen. Ops. 2016-055, 2001-112, 2001-028, 94-198; Watkins et al., *supra* note 5, at 207.

¹⁵ A.C.A. § 25-19-105(f).

¹⁶ A.C.A. § 25-19-105(b)(13).

¹⁷ 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

public employees;¹⁸ information about children and dependents;¹⁹ dates of birth of public employees;²⁰ social security numbers;²¹ driver's license numbers;²² insurance coverage;²³ tax information or withholdings;²⁴ payroll deductions;²⁵ net pay;²⁶ banking information;²⁷ and other financial "records that would divulge intimate financial detail."²⁸

3. Redactions to the records. The custodian has properly redacted certain discrete pieces of information that are exempt from release, including your social security number, personal contact information, date of birth, personnel number, banking and financial information, and driver's license number. However, I have identified several additional pieces of information that must be redacted before the records can be released. First, the text regarding your separation from employment should be redacted from one of the documents titled, "Arkansas Department of Corrections Employment Reference Consent and Release."²⁹ Similarly, your marital status should be redacted from the form titled, "State of Arkansas Employee's Withholding Exemption Certificate."³⁰ Your personnel records also contain several photocopies of your driver's license. One of these photocopies lists the date on which you turned 21. This information indirectly reveals your date of birth and should be redacted.³¹ Finally, additional redactions must be made to documents titled,

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).

¹⁸ Ark. Att'y Gen. Op. 2001-080.

¹⁹ Ark. Att'y Gen. Ops. 2018-084, 2018-083, 2001-080.

²⁰ Ark. Att'y Gen. Op. 2007-064.

²¹ Ark. Att'y Gen. Ops. 2006-035, 2003-153.

²² Ark. Att'y Gen. Op. 2007-025.

²³ Ark. Att'y Gen. Op. 2004-167.

²⁴ Ark. Att'y Gen. Ops. 2005-194, 2003-385.

²⁵ Ark. Att'y Gen. Op. 98-126.

²⁶ Ark. Att'y Gen. Ops. 2018-064, 2018-015, 2002-043, 98-126.

²⁷ Ark. Att'y Gen. Op. 2005-194.

²⁸ Ark. Att'y Gen. Ops. 2005-194, 98-126, 95-242, 95-110, 94-235, 91-093, 87-422.

²⁹ *See* Ark. Att'y Gen. Ops. 2021-090, 2015-003 (opining that "information about marital status and family life" must be redacted under A.C.A. § 25-19-105(b)(12)'s "clearly unwarranted invasion of personal privacy" standard).

³⁰ *Id.*

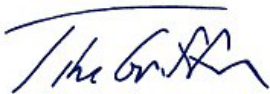
³¹ *See* Ark. Att'y Gen. Op. 2007-064.

“Remuneration Statement” and “Employee’s Withholding Certificate.” While your gross salary is not exempt from disclosure under the FOIA,³² this office has consistently opined that a public employee’s net pay,³³ withholdings,³⁴ deductions,³⁵ and retirement benefits³⁶ are all exempt from release under the FOIA because their disclosure would constitute a clearly unwarranted invasion of personal privacy. The custodian must redact all of this information from your personnel records before they can be released.

Additionally, some nonexempt information may have been improperly redacted from the records. There are several instances in which the custodian has redacted your “position number,” but I am uncertain as to what this number refers. If this number refers to the job position number, that information is disclosable.³⁷ But if it refers to your employee personnel number, that information is not subject to release.³⁸ There are also redactions on forms titled, “Offender Photograph,” “Inmate Synopsis,” and “Visitor List.” The basis for these redactions is unclear, but because I have not reviewed the unredacted documents, I cannot say whether the custodian’s decision to make these redactions is consistent with the FOIA.

Senior Assistant Attorney General Kelly Summerside 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

³² *E.g.*, Ark. Att’y Gen. Ops. 2019-072, 2018-122, 2018-064, 1996-205, 1994-198.

³³ *E.g.*, Ark. Att’y Gen. Ops. 2018-064, 2018-015, 2002-043, 1998-126.

³⁴ *E.g.*, Ark. Att’y Gen. Ops. 2005-194, 2003-385.

³⁵ *E.g.*, Ark. Att’y Gen. Op. 1998-126.

³⁶ *E.g.*, Ark. Att’y Gen. Op. 2002-043.

³⁷ Ark. Att’y Gen. Op. 2021-018.

³⁸ *See* A.C.A. § 25-19-105(b)(11) (exempting from disclosure “[r]ecords containing measures, procedures, instructions, or related data used to cause a computer or a computer system or network, including telecommunication networks or applications thereon, to perform security functions, including ... personal identification numbers...”).