



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-064

July 28, 2025

Ms. Rayvern D. Lewis

Sent via email only: Rayvern.D.Lewis@arkansas.gov

Dear Ms. Lewis:

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 our Office received from the custodian, your employer received a FOIA request for your "employment application."¹ The custodian has determined that an application, resume, and cover letter are subject to release, with certain redactions. You have provided a redacted copy of each record.

You object to your application records being disclosed and request that I review the custodian's decision to determine whether it is consistent with the FOIA. Additionally, you state that "personal records are exempt from disclosure due to an invasion of personal privacy" and that certain FOIA exemptions "protect[] sensitive personal information and uphold individual privacy."

RESPONSE

The custodian's decision to release the job application records as personnel records is consistent with the FOIA. But, as discussed in the opinion, the custodian will need to review the salary information contained in the application and make redactions to private-employer salary information. And to the extent that a job reference listed in the application is employed in the private sector, his or her information is not exempt from release and should not be redacted.

¹ Based on the information provided, I assume for purposes of this opinion that you were a successful applicant for the position applied, or, if you were unsuccessful, you were applying for a job with the same employer of your current job. *See, e.g.,* Ark. Att'y Gen. Op. 2024-096 (concerning the analysis of job applications under the FOIA for successful candidates versus unsuccessful candidates).

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.²

The first two elements appear to be met. The request was made to the Arkansas Department of Workforce Services, which is a public entity subject to the FOIA. And the records at issue appear to be public records.³ Because these records are held by a public entity, they are presumed to be public records,⁴ although that presumption is rebuttable.⁵ 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 files⁶ 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.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. Thus, the custodian must first decide whether a record meets the definition of either a "personnel record" or

² *Harrill & Sutter, PLLC v. Farrar*, 2012 Ark. 180, at 8, 402 S.W.3d 511, 515.

³ 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).

⁴ *Id.*

⁵ 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)).

⁶ "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).

⁷ See, e.g., Ark. Att'y Gen. Ops. 2015-072, 99-147.

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, 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.

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.

2. Employee application records. This Office has consistently opined that a successful job applicant’s résumés, application cover letters,⁹ and applications qualify as “personnel records” under the FOIA.¹⁰

A personnel record is open to public inspection except “to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy.”¹¹ 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.¹² The balancing test, which takes place “with the scale tipped in favor of public access,” has two steps.¹³

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.¹⁴ 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.¹⁵

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.¹⁶ 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.¹⁷

⁹ See Ark. Att’y Gen. Op. 93-076.

¹⁰ Ark. Att’y Gen. Ops. 2024-096, 2014-127, 2012-146, 2009-156, 2009-096, 2009-032, 2005-086, 2005-004, 2003-015, 98-101, 97-042, 96-142.

¹¹ A.C.A. § 25-19-105(b)(12).

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

¹³ Watkins et al., *supra* note 5, at 208.

¹⁴ *Young*, 308 Ark. at 598, 826 S.W.2d at 255.

¹⁵ *Id.*

¹⁶ *Stilley v. McBride*, 332 Ark. 306, 313, 965 S.W.2d 125, 128 (1998).

¹⁷ *E.g.*, Ark. Att’y Gen. Ops. 2016-055, 2001-112, 2001-028, 94-198; Watkins et al., *supra* note 5, at 207.

Applying this balancing test to a successful applicant's records, this Office has regularly concluded that "the balance weighs in favor of release."¹⁸ Additionally, the following information commonly contained in applications and resumes are personnel records subject to release under the FOIA: dates of hire;¹⁹ general education background, including schools attended and degrees received;²⁰ training and certifications;²¹ employee names;²² salaries of public employees;²³ salary history of public employees;²⁴ and payroll records.²⁵ Therefore, the custodian's decision to disclose the application records is consistent with the FOIA.²⁶

Even if a document, when considered as a whole, meets the test for disclosure, it may contain pieces of information that must be redacted,²⁷ such as personal contact information of public employees (including personal phone numbers, email addresses, and home addresses);²⁸ employee personnel numbers or identification codes;²⁹ marital status of public employees;³⁰ information about children and dependents;³¹ dates of birth of public employees;³² social security numbers;³³

¹⁸ See Ark. Att'y Gen. Ops. 2024-096, 2014-127, 2014-123, 2012-146, 2010-070; *see also* Ark. Att'y Gen. Ops. 2012-115, 2008-039, 2006-044, 2005-086.

¹⁹ Ark. Att'y Gen. Ops. 2016-103, 95-256.

²⁰ Ark. Att'y Gen. Ops. 2016-124, 2015-034, 2008-082, 2006-176.

²¹ Ark. Att'y Gen. Ops. 2002-252 (training), 2006-165 (educational background), 96-256 (certifications).

²² Ark. Att'y Gen. Op. 2009-156.

²³ Ark. Att'y Gen. Op. 2002-159.

²⁴ Ark. Att'y Gen. Op. 96-205.

²⁵ Ark. Att'y Gen. Ops. 2008-129, 94-198.

²⁶ E.g., Ark. Att'y Gen. Ops. 2024-022, 2022-039, 2019-008, 2018-093, 2016-103, 2011-114, 2007-070, 2005-057, 95-220, 90-335.

²⁷ A.C.A. § 25-19-105(f).

²⁸ A.C.A. § 25-19-105(b)(13).

²⁹ 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).

³⁰ Ark. Att'y Gen. Op. 2001-080.

³¹ Ark. Att'y Gen. Ops. 2018-084, 2018-083, 2001-080.

³² Ark. Att'y Gen. Op. 2007-064.

³³ Ark. Att'y Gen. Ops. 2006-035, 2003-153.

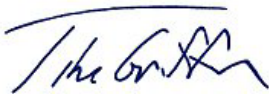
driver's license numbers;³⁴ insurance coverage;³⁵ tax information or withholdings;³⁶ payroll deductions;³⁷ net pay;³⁸ banking information;³⁹ and other financial "records that would divulge intimate financial detail."⁴⁰

If a job reference is a non-elected public employee, and their personal contact information is "contained in employer records,"⁴¹ then such personal contact information should be redacted.⁴² But if the job reference is employed in the private sector, his or her personal contact information—such as addresses and telephone numbers—are not exempt from disclosure.⁴³ The custodian will need to examine the job references and make applicable redactions if the reference listed holds a private-sector job.

To the extent that the job application includes private-employment salaries, such information generally should be redacted unless, for some reason known to the custodian, there is a "heightened public interest in this private-sector salary information."⁴⁴ I lack sufficient information to determine whether a particular salary listed in the job application records is private or public. The custodian will need to examine the salaries listed and determine if they are private-employer salary information subject to redaction.

Assistant Attorney General Justin L. Hughes 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

³⁴ Ark. Att'y Gen. Op. 2007-025.

³⁵ Ark. Att'y Gen. Op. 2004-167.

³⁶ Ark. Att'y Gen. Ops. 2005-194, 2003-385.

³⁷ Ark. Att'y Gen. Op. 98-126.

³⁸ Ark. Att'y Gen. Ops. 2018-064, 2018-015, 2002-043, 98-126.

³⁹ Ark. Att'y Gen. Op. 2005-194.

⁴⁰ Ark. Att'y Gen. Ops. 2005-194, 98-126, 95-242, 95-110, 94-235, 91-093, 87-422.

⁴¹ See A.C.A. § 25-19-105(b)(13).

⁴² See, e.g., Ark. Att'y Gen. Op. 2025-023.

⁴³ See Ark. Att'y Gen. Ops. 2025-023, 2016-129, 2015-008, 2010-070, 2005-131.

⁴⁴ Ark. Att'y Gen. Op. 2019-065. See also, e.g., Ark. Att'y Gen. Op. 2006-182.