



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-072

August 6, 2025

Mr. Jimmie Cavin

Via email only: jimmie.cavin@yahoo.com

Dear Mr. Cavin:

You have requested my opinion 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 from this office stating whether the custodian’s decision regarding the release of such records is consistent with the FOIA.

Under the FOIA, you requested the following records from the Conway Police Department: all “Calls for Service” to the residences of two named individuals and “[a]ll Incident Reports pertaining to events” at their residences. You note that one of the individuals is an officer with the Conway Police Department.

In response to your FOIA request, the Conway Police Department’s custodian of records provided you with redacted copies of a “Call For Service Report” and three “Incident Reports.” You have provided the redacted records for my review.

After you received the redacted records, you informed the Conway Police Department’s records custodian that the reasons for the redactions to the records “were not identified in the response as required under [A.C.A. §] 25-19-105(a)(3)(B).” The Conway Police Department responded by stating that all redactions were based on A.C.A. 25-29-105(b)(13), which exempts from release the personal contact information of certain nonelected public employees contained in employer records.

Noting that the “Call For Service and Incident Reports are clearly not ... [personnel records or employee-evaluation or job-performance records] and the request was not for such records,” you ask whether the custodian’s decisions concerning the redactions are consistent with the FOIA.

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RESPONSE

The records provided for my review are neither “personnel records” nor “employee-evaluation or job-performance records.” Thus, I lack the authority under A.C.A. § 25-19-105(c)(3)(B)(i) to opine on whether the custodian’s decisions are consistent with the FOIA.

DISCUSSION

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 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 request was made to the Conway Police Department, which is a public entity subject to the FOIA.⁴ And the records at issue appear to be public records.⁵ Because these records are held by a public entity, they are presumed to be public records,⁶ although that presumption is rebuttable.⁷ Because I have no information to suggest that the presumption can be rebutted,⁸ I will turn to whether any exemptions prevent the documents’ release.

For purposes of the FOIA, employees’ personnel files⁹ normally contain two distinct groups of records: “personnel records” and “employee-evaluation or job-performance records.” Personnel

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(7)(A) (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(7)(A).

⁶ *Id.*

⁷ *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)).

⁸ *Hengel v. City of Pine Bluff*, 307 Ark. 457, 459, 821 S.W.2d 761, 762 (1991) (noting that incident reports and “all other reports and records kept in the usual operation” of a police department “are public records within the meaning of the Arkansas FOIA”).

⁹ “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

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.¹⁰ 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.¹¹

2. Employee-evaluation or job-performance records. While incident reports are sometimes "employee-evaluation or job-performance records,"¹² the "Call for Service" reports and the three "Incident Reports" are not employee-evaluation or job-performance records because they were not created by or at the behest of the employer to evaluate the employee, and they do not detail the employee's performance or lack of performance on the job.

3. Personnel records. Even though the "Call for Service" reports and "Incident Reports" reference someone who happens to be an employee without evaluating that person, they do not qualify as the employee's "personnel records" because the records were generated by the Conway Police Department regarding someone acting purely in his capacity as a private citizen, not in his capacity as "personnel."¹³ And the evidence provided does not indicate that such records were kept on file because the individual mentioned in the report is "personnel."

4. Conclusion. My review under A.C.A. § 25-19-105(c)(3)(B)(i) is limited to personnel records and employee-evaluation or job-performance records. But as my predecessors have previously opined, incident reports are neither "personnel records" nor "employee-evaluation or job-performance records."¹⁴ Thus, the records you have provided fall outside the scope of my review under A.C.A. § 25-19-105(c)(3)(B)(i), and I lack the authority to opine on whether the custodian's decisions are consistent with the FOIA.

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).

¹⁰ See, e.g., Ark. Att'y Gen. Ops. 2024-071, 2015-072, 2009-145, 2001-152, 99-147; John J. Watkins, et al., *supra* note 9, at 202.

¹¹ *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.

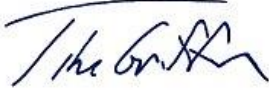
¹² See, e.g., Ark. Att'y Gen. Ops. 2009-145, 2000-257, 2000-231 (opining that an incident report that had "been created by the Department in response to a complaint about an employee" was an employee evaluation/job performance record).

¹³ See, e.g., A.C.A. § 25-19-105(b)(12) ("personnel records").

¹⁴ Ark. Att'y Gen. Ops. 2018-008, 2010-003, 2008-004, 2006-094, 2001-144.

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