



**TIM GRIFFIN**  
ATTORNEY GENERAL

Opinion No. 2025-127

December 16, 2025

Mr. David Neal  
*Via email only:* dneal84@gmail.com

Dear Mr. Neal:

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.

You report that someone made a FOIA request to the Arkansas Department of Transportation for certain records, and the custodian determined that some records related to your employment were responsive to this request. The custodian has provided you with copies of the five records he intends to release: (1) a voluntary separation form with one redaction; (2) your letter of resignation; (3) an email stating that you were given the opportunity to resign or face termination; (4) a memorandum detailing the events that led to a disciplinary hearing and your resignation; and (5) information printed from the Arkansas Department of Finance and Administration's website. You ask if the custodian's decision to release these records is consistent with the FOIA.

**RESPONSE**

The voluntary separation form and resignation letter are best classified as personnel records, and the email and memorandum are best classified as employee-evaluation records. In my opinion, the custodian's decision to release these records is consistent with the FOIA. The record containing information printed from the Arkansas Department of Finance and Administration's website appears to be neither a personnel record nor an employee-evaluation record. Thus, it falls outside the scope of my review under A.C.A. § 25-19-105(c)(3)(B)(i).

## 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>1</sup>

The first two elements appear to be met. The request was made to the Arkansas Department of Transportation, which is a public entity subject to the FOIA. And the records at issue appear to be public records.<sup>2</sup> Because these records are held by a public entity, they are presumed to be public records,<sup>3</sup> although that presumption is rebuttable.<sup>4</sup> Accordingly, given that I have no information to suggest that the presumption can be rebutted, I will focus on whether any exceptions prevent the documents' disclosure.

The FOIA contains two exemptions for two groups of documents normally found in employees' personnel files.<sup>5</sup> For purposes of the FOIA, these items can usually be divided into two distinct groups: "personnel records"<sup>6</sup> or "employee evaluation or job performance records."<sup>7</sup> The test for whether these two types of documents may be released differs significantly. When custodians assess whether either of these exceptions applies to a particular record, they must first decide whether the record meets the definition of the

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

<sup>2</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(15)(A).

<sup>3</sup> *Id.*

<sup>4</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>5</sup> This office and the leading commentators on the FOIA have observed that personnel files usually include: 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. Op. 97-368; John J. Watkins et al., *The Arkansas Freedom of Information Act* 205–06 (6th ed. 2017).

<sup>6</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>7</sup> A.C.A. § 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.").

relevant exception and then apply the appropriate test to determine whether the FOIA requires that record be disclosed.

**2. Personnel records.** While the FOIA does not define the term “personnel records,” this office has consistently opined that personnel records are all records that pertain to an individual employee and were not created by or at the behest of the employer to evaluate the employee.<sup>8</sup> A personnel record is open to public inspection except “to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy.”<sup>9</sup> 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.<sup>10</sup> The balancing test, which takes place “with the scale tipped in favor of public access,” has two steps.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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,<sup>16</sup> such as personal contact

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<sup>8</sup> See, e.g., Ark. Att’y Gen. Ops. 2015-072, 99-147; Watkins, et al., *supra* note 5, at 202.

<sup>9</sup> A.C.A. § 25-19-105(b)(12).

<sup>10</sup> 308 Ark. 593, 826 S.W.2d 252 (1992).

<sup>11</sup> Watkins et al., *supra* note 5, at 208.

<sup>12</sup> *Young*, 308 Ark. at 598, 826 S.W.2d at 255.

<sup>13</sup> *Id.*

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

<sup>15</sup> E.g., Ark. Att’y Gen. Ops. 2016-055, 2001-112, 2001-028, 94-198; Watkins et al., *supra* note 5, at 207.

<sup>16</sup> A.C.A. § 25-19-105(f).

information of public employees;<sup>17</sup> employee personnel numbers or identification codes;<sup>18</sup> dates of birth of public employees;<sup>19</sup> social security numbers;<sup>20</sup> and driver's license numbers.<sup>21</sup>

**3. Employee-evaluation records.** Although the FOIA itself does not define the phrase “employee evaluation or job performance” record, the Arkansas Supreme Court has adopted this office’s view that such records are (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>22</sup> This exception includes records generated while investigating allegations of employee misconduct that detail incidents that gave rise to an allegation of misconduct.<sup>23</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>24</sup>

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<sup>17</sup> A.C.A. § 25-19-105(b)(13).

<sup>18</sup> 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).

<sup>19</sup> Ark. Att'y Gen. Op. 2007-064.

<sup>20</sup> Ark. Att'y Gen. Ops. 2006-035, 2003-153.

<sup>21</sup> Ark. Att'y Gen. Op. 2007-025.

<sup>22</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, 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.

<sup>23</sup> *E.g.*, Ark. Att'y Gen. Op. 2015-057 (collecting citations).

<sup>24</sup> A.C.A. § 25-19-105(c)(1); *e.g.*, Ark. Att'y Gen. Op. 2008-065.

As for the final prong, the FOIA never defines the key phrase “compelling public interest.” But the leading commentators on the FOIA have offered the following guidelines:

[I]t seems that the following factors should be considered in determining whether a compelling public interest is present: (1) the nature of the infraction that led to suspension or termination, with particular concern as to whether violations of the public trust or gross incompetence are involved; (2) the existence of a public controversy related to the agency and its employees; and (3) the employee’s position within the agency. In short, a general interest in the performance of public employees should not be considered compelling because that concern, at least theoretically, always exists. However, a link between a given public controversy, an agency associated with the controversy in a specific way, and an employee within the agency who commits a serious breach of public trust should be sufficient to satisfy the “compelling public interest” requirement.<sup>25</sup>

These commentators also note that “[t]he status of the employee” or “his or her rank within the bureaucratic hierarchy” may be relevant in determining whether a “compelling public interest” exists,<sup>26</sup> which is always a question of fact that must be determined, in the first instance, by the custodian after he considers all the relevant information.<sup>27</sup> The primary purpose of this exception is to preserve the confidentiality of the formal job-evaluation process in order to promote honest exchanges between employees and their employers.<sup>28</sup>

**4. Separation form and letter.** The voluntary separation form and resignation letter are best classified as your personnel records. They pertain to you but were not created by or at the behest of your employer to evaluate your performance. Releasing these records would not constitute an unwarranted invasion of privacy under the balancing test. Furthermore, the custodian has properly redacted your employee identification number from the voluntary separation form.<sup>29</sup>

**5. Email and memorandum.** The email is an evaluation record because it was created by your employer, and it evaluates your performance or lack of performance on the job. Likewise, the memorandum is an evaluation record because it was generated while investigating allegations of your misconduct, and it details the incidents that gave rise to those allegations.

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<sup>25</sup> Watkins et al., *supra* note 5, at 238–39.

<sup>26</sup> *Id.* at 237 (noting that “[a]s a practical matter, such an interest is more likely to be present when a high-level employee is involved than when the [records] of ‘rank-and-file’ workers are at issue”).

<sup>27</sup> *E.g.*, Ark. Att’y Gen. Ops. 2024-045, 2023-012, 2015-057, 2011-051.

<sup>28</sup> *E.g.*, Ark. Att’y Gen. Op. 96-168.

<sup>29</sup> *See supra* note 18.

Employee-evaluation records cannot be released unless the above four-part test for release is met. The first question, then, is whether you were suspended or terminated. You were not suspended, but you did resign in lieu of termination. This is evident from the email, which states that you were given the opportunity to resign or face termination, and the voluntary separation form, which says that you resigned “in lieu of termination.” 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 the first element for the disclosure of evaluation records.<sup>30</sup>

Because you resigned in lieu of termination, the test proceeds to the second element: determining whether the suspension or termination is final. Although not explicitly stated in your correspondence, I gather from the information you have provided that there are no appeals pending, and your resignation is final. If that understanding is correct, the second element of the test is met.

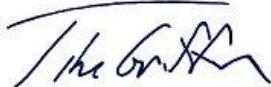
The third element is also met because the contents of the email and the memorandum detail the events that formed the basis for your forced resignation.

The final element of the test for release of an employee-evaluation record is whether the public has a compelling interest in the disclosure of the record. The existence of a “compelling public interest” in disclosure necessarily depends on all the surrounding facts and circumstances. But I believe that the final element has been met in this case because, as this office has consistently opined, law-enforcement officers are invested with a significant public trust, so there is usually a compelling public interest in records, such as these, that reflect policy violations and a breach of the public trust.<sup>31</sup>

**6. Website printout.** The final record you have provided for my review is a printout from a page on the Department of Finance and Administration’s website. This printout appears to be a public record that is neither a personnel record nor an employee-evaluation record. Thus, it falls outside the scope of my review under A.C.A. § 25-19-105(c)(3)(B)(i).

Deputy Attorney General Kelly Summerside prepared this opinion, which I hereby approve.

Sincerely,



TIM GRIFFIN  
Attorney General

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<sup>30</sup> See generally Ark. Att'y Gen. Ops. 2023-077, 2012-019, 2011-084.

<sup>31</sup> Ark. Att'y Gen. Ops. 2024-074, 2023-071, 2014-129, 2009-146, 2006-158.