



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2026-002

January 8, 2026

Ms. Tiffany Taggart

Via email only: tiffanytaggart1983@gmail.com

Dear Ms. Taggart:

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 we received from the records custodian, Pulaski County received a FOIA request for complaints filed against Pulaski County employees. The custodian has provided me with redacted and unredacted copies of a discrimination and harassment complaint form and a memorandum referenced in the complaint. The custodian has classified these records as personnel records, and she intends to release them with redactions. You object to the release of these records, and you ask if the custodian's decisions are consistent with the FOIA.

RESPONSE

In my opinion, the custodian's decision to classify these documents as personnel records is inconsistent with the FOIA. Instead, these records are best classified as employee evaluations. As employee-evaluation records, they cannot be disclosed unless the four-part test for release has been met.

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 Pulaski County—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 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”⁵ and “employee evaluation or job performance records.”⁶ 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. 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 released under the FOIA.

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(15)(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 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”).

⁶ *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”).

⁷ See, e.g., Ark. Att’y Gen. Ops. 2015-072, 1999-147.

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, 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, 1995-351, 1993-055.

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.”⁹ 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.¹⁰ The balancing test, which takes place “with the scale tipped in favor of public access,” has two steps.¹¹

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 minimal privacy interest.¹² If the privacy interest is minimal, then disclosure is required. Second, if the information gives rise to a greater than minimal privacy interest, then the custodian must determine whether that privacy interest is outweighed by the public’s interest in disclosure.¹³

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 interests.¹⁴ 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.¹⁵

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.¹⁶ For instance, the FOIA exempts the personal contact information of certain public employees from disclosure, including their personal telephone numbers, personal email addresses, and home addresses.¹⁷

3. Employee-evaluation records. The second relevant exception is for “employee evaluation or job performance records,” which 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

⁹ A.C.A. § 25-19-105(b)(12).

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

¹¹ John J. Watkins et al., *The Arkansas Freedom of Information Act* 208 (6th ed. 2017).

¹² *Young*, 308 Ark. at 598, 826 S.W.2d at 255.

¹³ *Id.*

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

¹⁵ *E.g.*, Ark. Att’y Gen. Ops. 2016-055, 2001-112, 2001-028, 1994-198; Watkins et al., *supra* note 11, at 207.

¹⁶ A.C.A. § 25-19-105(f).

¹⁷ *See id.* § 25-19-105(b)(13).

job.¹⁸ “This exception includes records generated while investigating allegations of employee misconduct that detail incidents that gave rise to an allegation of misconduct.”¹⁹

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).²⁰

The primary purpose of this exception is to preserve the confidentiality of the formal job-evaluation process to promote honest exchanges between employees and their employers.²¹

4. Application. Here, the documents at issue are best classified as employee evaluations. Your supervisor created a memorandum detailing a conversation between you in which you voiced concerns regarding your work environment. Information detailing an employee’s viewpoint on her work environment is an employee evaluation because work environment affects an employee’s performance or lack of performance on the job.²² In essence, an employee’s complaint about work environment is her explanation for lack of performance on the job.

¹⁸ *Thomas v. Hall*, 2012 Ark. 66, at 8–9, 399 S.W.3d 387, 392; *see also Davis v. Van Buren School 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, 1995-351, and 1993-055.

¹⁹ *E.g.*, Ark. Att’y Gen. Op. 2015-057 (collecting citations).

²⁰ A.C.A. § 25-19-105(c)(1); *e.g.*, Ark. Att’y Gen. Op. 2008-065.

²¹ *E.g.*, Ark. Att’y Gen. Op. 1996-168.

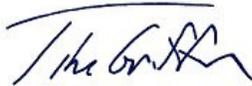
²² *See* Ark. Att’y Gen. Op. 2005-271 (opining that when an employee completes an exit interview with detailed information regarding his work environment, the exit interview becomes an employee evaluation). *See also* Ark. Att’y Gen. Op. 2002-204 (opining that if “a completed [internal, anonymous] survey form mentions a particular employee or supervisor in comments appended to the survey, those comments may well detail that employee or supervisor’s performance or lack of performance on the job”).

Based on that conversation, your supervisor then completed a discrimination and harassment complaint form on your behalf and against your wishes.²³ Additionally, these documents could imply that you were unwilling to comply with Pulaski County's personnel policies. Because the documents were created by your employer to evaluate you and they detail your performance or lack of performance on the job, they qualify as employee-evaluation records.

As employee-evaluation records, they cannot be disclosed unless the four-part test for release is satisfied. If the test is not satisfied, the evaluation records must be withheld in their entirety. I do not have access to all the facts surrounding these documents, so I am unable to determine if they should be withheld in this instance.

Assistant Attorney General Jodie Keener prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Griffin", with a horizontal line above it.

TIM GRIFFIN
Attorney General

²³ See Ark. Att'y Gen. Op. 2025-130 (opining that a supervisor's incident reports and memoranda are exempt under A.C.A. § 25-19-105(c)(1) as "preliminary notes and other materials").