



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2026-017

February 4, 2026

Sergeant Anthony Ross
Detective Amber Phillips
Officer Ta'Aje Burns
c/o El Dorado Police Department
402 North West Avenue
El Dorado, Arkansas 71730

Dear Sergeant Ross, Detective Phillips, and Officer Burns:

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, the El Dorado Police Department received a FOIA request for records of officers "who have been found to have engaged in misconduct relevant to credibility, truthfulness, bias, use of excessive force, or other acts bearing upon their honesty or fitness to serve as a law enforcement officer." The custodian has provided me with unredacted copies of three records he intends to release: a suspension report for each of you. The custodian has classified the suspension reports as employee evaluations, and he intends to release them because he has determined that the four-part test for release has been met. You object to the release of these records, and you ask if the custodian's decisions are consistent with the FOIA.

RESPONSE

Because the records at issue here are employee evaluations, I will restrict my analysis to that category of records. In my opinion, the custodian has correctly classified the suspension reports as employee-evaluation records. And because the four-part test for release of employee evaluations appears to be met, the custodian's decision to release those records is also consistent with the FOIA.

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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

The first two elements appear to be met. The request was made to the El Dorado Police Department—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

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

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, 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, 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 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. Employee-evaluation records. 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).⁹

As for the final prong, the FOIA never defines the key phrase “compelling public interest.” But the leading commentators on the FOIA, referring to this Office’s opinions, 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.¹⁰

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”

⁹ A.C.A. § 25-19-105(c)(1); e.g., Ark. Att’y Gen. Op. 2008-065.

¹⁰ John J. Watkins et al., *The Arkansas Freedom of Information Act* 238–39 (6th ed. 2017).

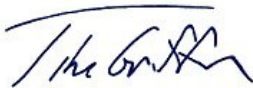
exists,¹¹ which is always a question of fact that must be determined, in the first instance, by the custodian after he considers all the relevant information.¹² The primary purpose of this exception is to preserve the confidentiality of the formal job-evaluation process in order to promote honest exchanges between employees and their employers.¹³

3. Application. Suspension reports are employee evaluations when the reports specify the grounds for the suspensions.¹⁴ Here, the suspension reports at issue recount the grounds for each suspension, so they are best classified as employee-evaluation records.

The four-part test for release of these employee-evaluation records also appears to be met because (1) you were suspended; (2) the suspensions appear to be final; (3) the records detail the grounds for suspension; and (4) there is a compelling public interest in disclosure of the records in question. This Office has consistently opined that, because law enforcement officers are invested with significant public trust, there is usually a compelling public interest in records, such as these, that reflect violations of office policy.¹⁵ Therefore, the custodian's decision to release these suspension reports is consistent with the FOIA.

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

Sincerely,



TIM GRIFFIN
Attorney General

¹¹ *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”).

¹² *E.g.*, Ark. Att’y Gen. Ops. 2024-045, 2023-012, 2015-057, 2011-051.

¹³ *E.g.*, Ark. Att’y Gen. Op. 96-168.

¹⁴ *E.g.*, Ark. Att’y Gen. Ops. 2001-276 (opining that a letter of suspension was an “employee evaluation/job performance record” when the letter “detail[is] the incident that gave rise to the discipline”); 2001-244 (opining that “any document reflecting the fact of disciplinary charges brought against you, regardless of when the document was created, qualifies as a ‘job performance record’”); 1998-075 (analyzing a list containing law enforcement officer disciplinary action in the past five years).

¹⁵ Ark. Att’y Gen. Ops. 2025-029, 2023-071, 2014-129.