



**TIM GRIFFIN**  
ATTORNEY GENERAL

Opinion No. 2025-045

June 17, 2025

Officer Will Tate

*Via email only:* willdtate@outlook.com

Dear Officer Tate:

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 records custodian, the City of Jonesboro received a FOIA request for your "personnel file and any IA documents associated with a 2023 use of force on Lana Turner." The custodian has provided me with unredacted copies of three records she intends to release: a citizen-complaint form and two disciplinary records. The custodian has classified the citizen-complaint form as a personnel record, and she has classified the two disciplinary records as employee evaluations. 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 has correctly classified the citizen-complaint form as a personnel record that is subject to release. The custodian has also properly classified the disciplinary records as employee-evaluation records. And because the four-part test for release of employee-evaluation records appears to be met, the custodian's decision to release those records is also consistent with the FOIA.

## **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>

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<sup>1</sup> *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 the City of Jonesboro—a public entity subject to the FOIA.<sup>2</sup> And the records at issue appear to be public records.<sup>3</sup> Because these records are held by a public entity, they are presumed to be public records,<sup>4</sup> although that presumption is rebuttable.<sup>5</sup> 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 mutually exclusive groups: “personnel records”<sup>6</sup> and “employee evaluation or job performance records.”<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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 release under the FOIA.

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<sup>2</sup> *E.g.*, Ark. Att’y Gen. Ops. 2024-095, 2023-120, 2020-028.

<sup>3</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(7)(A).

<sup>4</sup> *Id.*

<sup>5</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>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> *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”).

<sup>8</sup> *See, e.g.*, Ark. Att’y Gen. Ops. 2015-072, 99-147.

<sup>9</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, 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.

**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.”<sup>10</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>11</sup> The balancing test, which takes place “with the scale tipped in favor of public access,” has two steps.<sup>12</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 minimal privacy interest.<sup>13</sup> 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.<sup>14</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 interests.<sup>15</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>16</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>17</sup> 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.<sup>18</sup>

**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

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<sup>10</sup> A.C.A. § 25-19-105(b)(12).

<sup>11</sup> 308 Ark. 593, 826 S.W.2d 252 (1992).

<sup>12</sup> John J. Watkins et al., *The Arkansas Freedom of Information Act* 208 (6th ed. 2017).

<sup>13</sup> *Young*, 308 Ark. at 598, 826 S.W.2d at 255.

<sup>14</sup> *Id.*

<sup>15</sup> *Stilley v. McBride*, 332 Ark. 306, 313, 965 S.W.2d 125, 128 (1998).

<sup>16</sup> *E.g.*, Ark. Att’y Gen. Ops. 2016-055, 2001-112, 2001-028, 94-198; Watkins et al., *supra* note 12, at 207.

<sup>17</sup> A.C.A. § 25-19-105(f).

<sup>18</sup> *See id.* § 25-19-105(b)(13).

job.<sup>19</sup> “This exception includes records generated while investigating allegations of employee misconduct that detail incidents that gave rise to an allegation of misconduct.”<sup>20</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>21</sup>

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.<sup>22</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”

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<sup>19</sup> *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, 95-351, and 93-055.

<sup>20</sup> *E.g.*, Ark. Att’y Gen. Op. 2015-057 (collecting citations).

<sup>21</sup> A.C.A. § 25-19-105(c)(1); *e.g.*, Ark. Att’y Gen. Op. 2008-065.

<sup>22</sup> *Watkins et al.*, *supra* note 12, at 238–39.

exists,<sup>23</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>24</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>25</sup>

**4. Classification and disclosure of the citizen-complaint form.** An unsolicited complaint about a public employee that is generated by a third party unaffiliated with the employer is a personnel record.<sup>26</sup> It is not transformed into an employee-evaluation or job-performance record by virtue of any subsequent investigation.<sup>27</sup> Here, the custodian has correctly classified the citizen-complaint form as a personnel record because the document relates to you but was not created by or at the behest of the employer to evaluate you.

A personnel record must be released when the public's interest in the record outweighs the employee's privacy interest in the document. Any privacy interest that you may have in this document, in my opinion, is far outweighed by the combination of the "thumb on the scale favoring disclosure" and the public's interest in knowing that a police officer in a position of public trust may have abused that trust while on duty.<sup>28</sup> Thus, the custodian's decision to release the document is consistent with the FOIA.

**5. Classification and disclosure of the disciplinary records.** In my opinion, the custodian has correctly classified the two disciplinary records as employee evaluations. One of the records, titled "Performance Notice," was clearly created by the employer to evaluate you, and it details your performance or lack of performance on the job. The other disciplinary record is a suspension letter. This office has consistently opined that a suspension letter qualifies as an evaluation record when it states the grounds for the suspension.<sup>29</sup> Because the suspension letter recounts the specific reasons for the suspension, it qualifies as an employee-evaluation record.

The four-part test for release of these employee-evaluation records also appears to be met because (1) you were suspended; (2) the suspension appears 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.

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<sup>23</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>24</sup> *E.g.*, Ark. Att'y Gen. Ops. 2024-045, 2023-012, 2015-057, 2011-051.

<sup>25</sup> *E.g.*, Ark. Att'y Gen. Op. 96-168.

<sup>26</sup> *See, e.g.*, Ark. Att'y Gen. Op. 2001-123.

<sup>27</sup> Ark. Att'y Gen. Ops. 2001-123, 2000-166, 98-130, 98-001, 96-257.

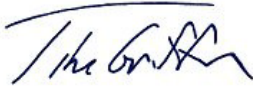
<sup>28</sup> *E.g.*, Ark. Att'y Gen. Ops. 2025-029, 2023-117, 2018-023, 1998-260.

<sup>29</sup> *E.g.*, Ark. Att'y Gen. Ops. 2001-276 (opining that a letter of suspension is an "employee evaluation/job performance record" when the letter details "the incidents 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).

Therefore, the custodian's decision to release these disciplinary records is also consistent with the FOIA.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Griffin". The signature is written in a cursive style with a prominent horizontal line above the first few letters.

TIM GRIFFIN  
Attorney General