

Opinion No. 2009-064

April 21, 2009

Gregory Klebanoff, Esq.  
103 North College Avenue  
Suites 1 & 2  
Fayetteville, Arkansas 72701

Dear Mr. Klebanoff:

I am writing in response to your request for my opinion on the propriety of the records-custodian's decision in response to a Freedom of Information Act (FOIA) request. Accordingly, this opinion is issued pursuant to the duty created by A.C.A. § 25-19-105(c)(3)(B) (Supp. 2007). On April 10, 2009, you requested numerous items ranging from e-mails to retention policies to the personnel file on a specific person. You indicate your entire request was denied, which prompted you to file a lawsuit to enforce the request. You filed that lawsuit on April 15, 2009.

**RESPONSE**

I must decline to issue an opinion on this matter for two reasons. First, most of the items you requested under the FOIA fall outside the scope of my authority to review. My statutory authority is limited to determining whether the records-custodian's decision regarding "personnel or evaluation records" is consistent with the FOIA. A.C.A. § 25-19-105(c)(3)(B)(i) (Supp. 2007). I am not authorized to address specific questions posed by the custodian, subject, or requester that fall outside those two types of records. *E.g.*, Op. Att'y Gen. 2006-071. Second, this office has a longstanding policy against issuing opinions about matters in litigation. Op. Att'y Gen. Nos. 2008-034, 2007-191, 2006-204, 2003-182, 1999-389, 92-257, and 86-181. As you indicate, you have already initiated litigation about the records custodian's response to your decision. Therefore, to the extent your request falls within the scope of my review, I must decline to respond because the matter is being litigated.

While I am unable to respond to your particular request, I will note that you may find general guidance on your questions in J. Watkins & R. Peltz, *The Arkansas Freedom of Information Act* (m & m Press, 4th ed. 2004) and in previous Attorney General Opinions, which opinions may be found online at <http://www.arkansasag.gov/opinions/>.

Assistant Attorney General Ryan Owsley prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM:RO/cyh