

Opinion No. 2011-042

March 23, 2011

Michael Parette  
c/o Ms. Kay Barnhill Terry  
State Personnel Administrator  
Office of Personnel Management  
Department of Finance and Administration  
1509 West Seventh Street, Suite 201  
Little Rock, Arkansas 72203-3278

Dear Ms. Terry:

I am writing in response to several requests, made pursuant to A.C.A. § 25-19-105(c)(3)(B), for my opinion on whether the release of certain records in the Arkansas Administration Statewide Information System or “AASIS” would be consistent with the Arkansas Freedom of Information Act (“FOIA”), codified at A.C.A. §§ 25-19-101 to –110 (Repl. 2002 and Supp. 2009). The request seeks an electronic copy of the name, agency, job title, grade and salary, work address, work phone number, and birth date of all state employees with 25 or more years of service.

It is my understanding that the custodian intends to release the requested information to the extent it is included in the requested database.

**RESPONSE**

My duty under A.C.A. § 25-19-105(c)(3)(B) is to determine whether a custodian’s decision regarding the disclosure of certain employee-related documents is consistent with the FOIA. In the present case, the custodian has determined that the requested records are personnel records and should be released. In my opinion

the custodian's decision is largely consistent with the FOIA, except that the employees' birth dates must be redacted.

## **DISCUSSION**

The FOIA provides for the disclosure, upon request, of certain "public records," which the Arkansas Code defines as follows:

"Public records" means 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 which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.<sup>1</sup>

In this case, given that the subjects of the request are public employees, documents containing the requested information clearly qualify as "public records" under this definition. As one of my predecessors noted: "If records fit within the definition of 'public records'... they are open to public inspection and copying under the FOIA except to the extent they are covered by a specific exemption in that Act or some other pertinent law."<sup>2</sup>

The relevant exemption in this case is the one for "personnel records."<sup>3</sup> This office has previously opined that "records relating to [an employee's] hiring date and salary information are clearly 'personnel records' for purposes of the FOIA."<sup>4</sup> Additionally, as a general rule the name of a public employee, like salary

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<sup>1</sup> A.C.A. § 25-19-103(5)(A) (Supp. 2009).

<sup>2</sup> Op. Att'y Gen. 99-305.

<sup>3</sup> A.C.A. § 25-19-105(b)(12) (Supp. 2009).

<sup>4</sup> Op. Att'y Gen. 2004-320.

information, is contained in records that are properly classified as “personnel records.”<sup>5</sup>

“Personnel records” are open to public inspection and copying under the FOIA, except “to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy.”<sup>6</sup> The FOIA does not define the phrase “clearly unwarranted invasion of personal privacy.” But the Arkansas Supreme Court has construed the phrase and adopted a balancing test to determine if it applies. That test requires that one weigh the public’s interest in accessing the records against the individual’s interest in keeping the records private.<sup>7</sup> If the public’s interest outweighs the individual’s interest, the custodian must disclose the personnel records. As the court noted in *Young*:

The fact that section 25-19-105(b)(10) [now subsection 105(b)(12)] exempts disclosure of personnel records only when a clearly unwarranted personal privacy invasion would result, indicates that certain “warranted” privacy invasions will be tolerated. Thus, section 25-19-105(b)(10) requires that the public’s right to knowledge of the records be weighed against an individual’s right to privacy.... Because section 25-19-105(b)(10) allows warranted invasions of privacy, it follows that when the public’s interest is substantial, it will usually outweigh any individual privacy interests and disclosure will be favored.<sup>8</sup>

In contrast, as the court noted in *Stilley v. McBride*, when there is “little relevant public interest” in disclosure, “it is sufficient under the circumstances to observe that the employees’ privacy interest in nondisclosure is not insubstantial.”<sup>9</sup> Given that exemptions from disclosure must be narrowly construed, it is the burden of an individual resisting disclosure to establish that his privacy interests outweighed

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<sup>5</sup> Op. Att’y Gen. Nos. 2005-074 and 2003-095, and opinions cited therein.

<sup>6</sup> A.C.A. § 25-19-105(b)(12) (Supp. 2009).

<sup>7</sup> *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992).

<sup>8</sup> *Id.* at 598.

<sup>9</sup> 332 Ark. 306, 312, 965 S.W.2d 125 (1998).

that of the public's under the circumstances presented.<sup>10</sup> Further, the requestor's motive in seeking the documents is usually irrelevant to whether the document should be disclosed.<sup>11</sup>

At issue, then, is whether disclosing documents that record an employee's name; agency; job title; grade and salary; and work address and phone number would amount to a "clearly unwarranted invasion of personal privacy" under this balancing test. In my opinion, it would not. Several opinions of this office support the conclusion that the public interest in this type of basic employment information is substantial and any potential privacy interest does not outweigh it.<sup>12</sup>

You express expressed concern about the potential uses to which the documents may be put after they are disclosed. This office has consistently opined that a person's motive or reason for requesting records pursuant to the FOIA is irrelevant.<sup>13</sup> If the record is a "public record" under the FOIA and is subject to no exception, the FOIA requires that it be released to members of the public without regard to the requestor's motives or the use to which the records may be put.

The requestor also seeks the birth date of each employee who falls within the scope of the request. The custodian's letter to me does not clearly indicate whether she intends to release this specific piece of information. As this office has consistently opined, the birth dates of public employees are "personnel records."

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<sup>10</sup> *Id.* at 313.

<sup>11</sup> *See, e.g.,* Op. Att'y Gen. 2010-148.

<sup>12</sup> *E.g.,* Op. Att'y Gen. 2008-050, citing Op. Att'y Gen. Nos. 2007-001, 2005-194, 2005-057, 2004-225, and 2002-087; *see also* Op. Att'y Gen. 2005-074 (citing several opinions to the effect that the names of public employees are generally subject to disclosure, including Op. Att'y Gen. 90-335 ("[t]he 'public' is the employer of these individuals, and pays their salaries [and] [i]t is not unreasonable to expect that an employer would have an interest in knowing whom it employs[;]")) and Op. Att'y Gen. 95-220 ("[c]ourts have found relatively little privacy interest in records revealing names of public employees."); Op. Att'y Gen. 2003-298 ("[T]he public interest in obtaining salary information relating to public employees, including the identity of particular employees, outweighs the employees' privacy interests."); 98-126 ([S]alary information is clearly subject to disclosure, as such information does not constitute a "clearly unwarranted invasion of personal privacy[.]" citing Op. Att'y Gen. Nos. 96-205, 95-242, 95-070, and 94-198).

<sup>13</sup> *See* Op. Att'y Gen. 92-289; John J. Watkins & Richard J. Peltz, *THE ARKANSAS FREEDOM OF INFORMATION ACT* (5th ed., Arkansas Law Press 2009), at 140.

And because their release would constitute “a clearly unwarranted invasion of personal privacy,” these dates must be redacted.<sup>14</sup>

It is, therefore, my opinion that—with the exception of the birth dates—the public interest prevails with respect to this basic employment information and the custodian’s decision to release a record listing employees’ names, work contact information, agencies, job titles, grades and salaries is consistent with the FOIA.

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

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM/RO:cyh

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<sup>14</sup> *E.g.*, Op. Att’y Gen. No. 2010-078.