

Opinion No. 2012-014

February 7, 2012

Amanda Robinson
500 West Markham, Room 112
Little Rock, Arkansas 72201

Dear Ms. Robinson:

You have requested my opinion regarding the Arkansas Freedom of Information Act (“FOIA”). Your request is based on A.C.A. § 25-19-105(c)(3)(B)(i) (Supp. 2011), which authorizes the custodian, requester, or the subject of personnel or employee evaluation records to seek an opinion from this office stating whether the custodian’s decision regarding the release of such records is consistent with the FOIA.

You report that someone has requested your salary, which is information that the custodian intends to release as a personnel record. You argue that your salary should not be released to this specific requestor because the requestor has repeatedly asked for the information, you do not work with her, and you “operate under separate budgets.” Given these three reasons, you think that the release of your salary to this person would constitute an unwarranted invasion of personal privacy. You ask me to review whether the custodian has properly decided to release this information.

RESPONSE

A document must be disclosed in response to a FOIA request if all three of the following elements are met. First, the FOIA request must be directed to an entity subject to the act. Second, the requested document must constitute a public record. Third, no exceptions allow the document to be withheld. You do not dispute whether the first two elements are met.

You do, however, claim that your salary information is exempt. This office has repeatedly held that the release of a public employee's salary must be evaluated under the provision of the FOIA applicable to "personnel records."¹ The FOIA requires that personnel records be released unless doing so would constitute a "clearly unwarranted invasion of personal privacy."² This office has consistently opined that the release of a public employee's salary does not rise to such a level, which means the salary information must be released in response to an FOIA request.³

You object to the release of your salary for several reasons, each of which centers on the identity or motives of the requestor. The FOIA requestor's identity or motive for making the request is generally irrelevant to whether a non-exempt public record should be released.⁴ Accordingly, your objections fail to establish a legally sufficient reason to withhold your salary information.

Therefore, in my opinion, the custodian's decision to release this information 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

¹ *E.g.*, Op. Att'y Gen. 2011-045.

² A.C.A. § 25-19-105(b)(12) (Supp. 2011).

³ *E.g.*, Op. Att'y Gen. 2011-045.

⁴ *E.g.*, Op. Att'y Gen. 2011-107.