

Opinion No. 2012-017

February 10, 2012

Billy D. Vanlandingham & Michael E. Suttle
c/o 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 Messrs. Vanlandingham & Suttle:

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 the names and salaries of all state employees. The custodian intends to release this information, which includes both of your names and salaries, as a personnel record. One employee objects to the release, but does not indicate why. The other employee objects to the release because, he says, "the requester has to be a United States Citizen." And, he says, he is "not certain of the citizenship of" the requester. He would like his information be "withheld until verification of the citizenship of the requestor can be ascertained through proper documentation."

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. Neither of you dispute whether any of these elements are met.

This office has repeatedly held that the release of a public employee's name and 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 name and salary does not rise to such a level, which means the name and salary information must be released in response to an FOIA request.³

The only remaining question is whether either of the employees raise legally sufficient reasons that, in their cases, require that their names and salary information be withheld. The first employee does not give any reasons for his objection. He seems to think that, if he just objects, then the custodian is barred from releasing his information. There is no provision in the FOIA that requires the subject of personnel records to give his or her consent before the records can be released. Therefore, this employee has failed to provide a legally sufficient reason for the custodian to withhold his information.

The other employee objects to release of your information until the requestor is proven to be a "United States Citizen." As this office has previously noted, the FOIA only requires that access to records be provided to *Arkansas* citizens: "[A]ll public records shall be open to inspection and copying by any citizen of the State of Arkansas...."⁴ Accordingly, as I explained in Opinion Nos. 2008-191 and 2011-058, if the requester is not an Arkansas citizen, then that would be a basis for denying the request. I will note, however, that the federal Court of Appeals for the Third Circuit has issued a decision that—while not binding in Arkansas—used the Privileges and Immunities Clause of the U.S. Constitution to hold that the citizen

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. 2001-314, at note 1 (citing A.C.A. § 25-19-105(a)(1)); *see also* J. Watkins & R. Peltz, *THE ARKANSAS FREEDOM OF INFORMATION ACT* (5th ed., Arkansas Law Press 2009), at 87.

restriction in Delaware's FOIA was unconstitutional.⁵ Additionally, given that the FOIA does not *prohibit* the release of public records to non-citizens of Arkansas, a custodian might reasonably decide to grant the FOIA request in light of the Third Circuit decision. Therefore, this employee has not provided a legally sufficient reason to block the release of his name and salary.

In summary, 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

⁵ *Lee v. Minner*, 458 F.3d 194 (3rd Cir. 2006); *see also* *Watkins & Peltz*, *supra* note 4, at 92–94 (analyzing *Lee v. Minner*).