

Opinion No. 2012-072

May 10, 2012

Christy Peterson
Saline County Personnel Manager
200 N. Main, Room 112
Benton, Arkansas 72015

Dear Ms. Peterson:

You have requested my opinion regarding the Arkansas Freedom of Information Act (“FOIA”). Your request, which is made as the record’s custodian, is based on A.C.A. § 25-19-105(c)(3)(B)(i) (Supp. 2011). This subsection 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.

Your letter indicates that someone has requested the “entire personnel file” of a former county employee. You have attached a “copy of this file with personal information redacted.” Further, you plan to “release the entire file with the exception of (1) a direct deposit authorization formation form; (2) IRS W-4; and (3) photocopies of social security card and driver’s license.

You ask whether your decisions are consistent with the FOIA.

RESPONSE

My statutory duty is to state whether the custodian’s decision is consistent with the FOIA. But, as explained below, you have not made a clear decision that I can address. Instead, you simply say that you plan to release all the attached documents. You fail to say which of the documents you believe to be personnel records or employee evaluations. That failure has led to the subsequent failure to explain why you believe the test for the release of such records is met.

Accordingly, I cannot fully perform my statutory duty. Instead, I will simply explain some of the relevant law.

DISCUSSION

Because I sent you an extensive opinion about related matters last week, I will skip the general introduction to the FOIA and the definitions and tests associated with personnel records and employee evaluations. Instead, I simply refer you to that earlier opinion—Opinion No. 2012-063—which I have enclosed for your convenience.

The threshold question is how to characterize the documents you have attached and plan to release. You have not indicated whether you have identified these documents as personnel records or employee evaluations. Further, you have not indicated the reasons you believe the test for the release of such records is met. Instead of making those decisions, you have simply attached all the records and effectively asked me to do it. The FOIA requires you, as the custodian, to make the initial decision about how to characterize the records. Accordingly, you have not made a decision that is sufficient to trigger my review.

I will simply note that the vast majority of these records appear to be related to a claim for unemployment benefits with the Department of Workforce Services. You should be aware that these kinds of records can be exempt from disclosure pursuant to a separate statute, A.C.A. § 11-10-314(a) (Supp. 2011). Opinion No. 2010-057, which addresses these issues, is enclosed for your convenience. I cannot further assess in this opinion the extent to which this exemption applies to the records at issue. An inquiry of that sort is outside the ordinary scope of my review under A.C.A. § 25-19-105(c)(3)(B)(i). You may wish to confer with counsel to whom you ordinarily look for advice in this regard.

Apart from the documents that are related to the claim before Workforce Services, there are only four records.

- The first record—which is entitled “Section 35 Employee Conduct and Work Rules”—appears to be a personnel policy. Accordingly, in my opinion, this is a mere public record that is not subject to any exemptions and should be released.
- The second record—which is entitled “Staff Discussions” and dated December 7, 2011—appears to be an employee evaluation. The custodian must apply the definition explained in the previous opinion and determine

whether this document does, in fact, meet the definition. If so, then the custodian must go one step further and apply the test for the release of such records. The test was also explained in the previous opinion.

- The third record—which is dated December 20, 2011—appears to be a termination letter. This office has opined that such letters constitute employee-evaluation records if they contain the reasons for the suspension or termination.¹ If, however, the letter merely reflects the fact of termination, without elaboration, this office has opined that the letter is properly classified as a “personnel record” under A.C.A. § 25-19-105(b)(12) and is subject to release under the separate test discussed in the earlier opinion.² The custodian needs to apply these standards to the termination letter.
- The fourth record—which is an overview of the gross earnings, tax deductions, and the net earnings—is also probably a personnel record. While you have redacted the line-item taxes, you have not redacted the “net earnings” line. A failure to do this means that someone can simply subtract the “net earnings” from the “gross earnings” and generate the total amount of taxes withheld in each paycheck. As explained in the previous opinion, the custodian must redact information about tax withholdings.

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. 2001-276 (and opinions cited therein).

² *E.g.*, Op. Att’y Gen. 2006-147.