

Opinion No. 2012-074

May 22, 2012

McLee James
1811 Friendly Point
Horseshoe Bend, Arkansas 72512

Dear Mr. James:

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). 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 who was not your supervisor wrote an unsolicited letter to your employer complaining about you. When you made an FOIA request for the letter, your employer refused to give it to you because, according to you, the employer said you were not entitled to it. You ask whether the custodian’s decision is consistent with the FOIA.

RESPONSE

The FOIA specifically authorizes a public employee to gain access to his or her own personnel records and employee evaluations: “Any personnel or evaluation records exempt from disclosure under [the FOIA] shall nonetheless be made available to the person about whom the records are maintained...”¹

¹ A.C.A. § 25-19-105(c)(2) (Supp. 2011).

Most complaints against public employees are the personnel records or employee evaluations of the person being complained about.² If the complaint was prepared by (or at the behest of) the employer, then, in my opinion, the complaint is classified as an employee evaluation.³ This office has consistently held that when a complaint is not prepared by (or at the behest of) the employer, the complaint is the personnel record of the public employee being complained about.⁴

Therefore, the complaint against you is either your employee evaluation or your personnel record. Because the FOIA allows you to access your own personnel records or employee evaluations, the custodian's decision to shield the entire complaint from you is inconsistent with the FOIA. Because I have not seen the document, I cannot opine about whether there are discrete pieces of information on the document that might need to be redacted.

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

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/RO:cyh

² See, e.g., Op. Att'y Gen. 2011-152.

³ See, e.g., Op. Att'y Gen. 2011-152 (and opinions cited therein).

⁴ *Id.*