

Opinion No. 2012-087

June 20, 2012

Mr. Mack M. Vought
c/o Lynn Luther, Human Resources Administrator
Little Rock Wastewater
11 Clearwater Drive
Little Rock, Arkansas 72204

Dear Mr. Vought:

You have requested my opinion regarding the Arkansas Freedom of Information Act (“FOIA”). Your request, which is made as the subject of the records, 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 all “written or electronic copies of all employee severance agreements at the [Little Rock Wastewater] utility since 1999” including any “supporting documents.” The custodian has determined that records pertaining to you are encompassed within this FOIA request. He has decided that such documents are your personnel records and should be released.

You ask whether the custodian’s decision is consistent with the FOIA.

RESPONSE

While the custodian has, in my opinion, correctly decided to release the documents you have attached to your letter, he has failed to make necessary redactions.

My predecessors and I have opined on this precise question several times. In each case, we have opined that a public employee’s severance agreement is that

employee's personnel record and should be released.¹ Rather than simply restate that analysis, I have enclosed Opinion No. 2006-225 for your reference and convenience. It explains the applicable law. The mere fact that the drafters of a contract included a clause making the contract's existence and content "strictly confidential" is irrelevant to the FOIA analysis. If the FOIA requires the document be released—as it does here—then a confidentiality clause will not block the release. Accordingly, the custodian's decision to release the document is, in my opinion, consistent with the FOIA.

I hasten to add, however, that the custodian has failed to make necessary redactions. Specifically, and as explained in several previous opinions, the gross amount of taxes and the line-item taxes reflected on personnel records must be redacted.² The custodian has failed to do that here.

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

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/RO:cyh

Enclosure

¹ See Op. Att'y Gen. Nos. 2007-003, 2006-225, 2006-048.

² See Op. Att'y Gen. Nos. 2012-063, 2005-194, 2003-385.