

Opinion No. 2012-117

September 18, 2012

Judson C. Kidd, Esq.
Dodds, Kidd & Ryan
313 West Second Street
Little Rock, Arkansas 72201

Dear Mr. Kidd:

You have requested my opinion regarding the Arkansas Freedom of Information Act (“FOIA”). Your request, which is made as the subject’s attorney, 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, 11 days ago, someone requested “certain files” related to your client, an employee with a sheriff’s department. You say that it “is [your] understanding that the [sheriff’s] department has stated that it intends to release a certain group of files” related to your client. Your client objects to the release of these documents because, you say, he believes the release “is not appropriate under Ark. Code Ann. § 25-19-105.”

RESPONSE

My statutory duty is to state whether the custodian’s decision is consistent with the FOIA. I have not been provided with any information about (a) what records, specifically, were requested; (b) what records the custodian intends to release; or (c) what factual determinations went into both the custodian’s analysis and your client’s position. The absence of information about any one of these would

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preclude me from fully assessing the custodian's decision.¹ In this case, given that all three are absent, I can only opine generally on the applicable law. Toward that end, please find the enclosed Opinion No. 2012-073, which explains how the FOIA applies to employment records.

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

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/RO:cyh

Enclosure

¹ This absence of information suggests to me that—contrary to A.C.A. §§ 25-19-105(c)(2), (c)(3)—neither you nor your client have been fully informed of the custodian's decision. If you have not been fully informed, then this may be the core problem.