

Opinion No. 2012-126

October 22, 2012

Melinda Moss, Ed. D.
Superintendent
Harrison School District
110 S. Cherry St.
Harrison, AR 72601

Dear Dr. Moss:

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 has requested a copy of the school district's "Employee Directory," which includes the names, positions, campus, home address, and "home/personal phone number" of all the district's faculty and staff. You have decided to disclose the directory after redacting the employees' home addresses and "home/personal phone numbers." You ask whether this decision is consistent with the FOIA.

RESPONSE

My statutory duty is to state whether the custodian's decision is consistent with the FOIA. Not having seen any of the specific records at issue, I cannot opine about the release of any specific document. But I can explain how the FOIA applies to

the home addresses and, what you call, “home/personal phone numbers” of school employees.

As noted in previous opinions, when a public employee’s home address or telephone number (whether work or personal) is included in an employer record, that address or number is considered a personnel record.¹ The FOIA requires that personnel records be released unless doing so constitutes a “clearly unwarranted invasion of personal privacy.”² To determine whether the release of a personnel record would constitute a clearly unwarranted invasion of personal privacy, the court applies a balancing test that weighs the public’s interest in accessing the record against the individual’s privacy interest.

This balancing test, which takes place with a thumb on the scale favoring disclosure, has two steps.³ First, the custodian must assess whether the information contained in the requested document is of a personal or intimate nature such that it gives rise to a greater than *de minimus* privacy interest.⁴ If the privacy interest is merely *de minimus*, then the thumb on the scale favoring disclosure outweighs the privacy interest. In my opinion, school employees have a greater than *de minimus* privacy interest because of their close, day-to-day working relationship with members of the public. While the privacy interest may not be very substantial—especially when the address or phone number is published in some other publicly available directory—the interest is at least moderate.

The next step in the balancing test is assessing whether the public’s interest outweighs the privacy interest. According to the Arkansas Supreme Court, the public’s interest is measured by “the extent to which disclosure of the information sought would ‘shed light on an agency’s performance of its statutory duties’ or

¹ See, e.g., Op. Att’y Gen. 2005-272. There is an exemption for the home addresses of certain public employees, but that exception does not apply to school employees. See A.C.A. § 25-19-105(b)(13) (Supp. 2011).

² A.C.A. § 25-19-105(b)(12) (Supp. 2011).

³ See e.g., *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992).

⁴ *Id.* at 598, 826 S.W.2d at 255.

otherwise let citizens know ‘what their government is up to.’”⁵ It is hard to see how the home phone numbers or cell phone numbers of school-district employees either “sheds light on the” district’s performance of its statutory duties or “let[s] citizens know what their government is up to.” Thus, in my opinion, there is little to no public interest in the non-work phone numbers of these employees. A similar conclusion applies to the home addresses of school-district employees. I have no information to suggest that the release of this kind of information would shed light on how the school or school district is fulfilling its public responsibilities.

One of my predecessors has reached a similar conclusion:

[A]lthough the FOIA provides no specific exemption for school employees’ home addresses, an argument could be made that the... home address should be redacted from any records that are released. Such an argument would be based upon the Arkansas Supreme Court’s decision in *Stilley v. McBride*, 332 Ark. 306, 965 S.W.2d 125 (1998). In that case, the court upheld a custodian’s decision to withhold from release certain police officers’ home addresses. In upholding that decision, the *Stilley* court applied its traditional balancing test between the privacy interest and the public interest and concluded that the privacy interest outweighed the public interest. In reaching this conclusion, the court specifically considered the fact that where police officers are concerned, this information can carry a heightened potential to be used for purposes of harassment, nuisance, and of people attempting to contact the subject at home, or endangering their families’ safety. The same reasoning might apply to a public school employee—particularly if this employee is a principal or teacher.⁶

Accordingly, given the exceedingly low or non-existent public interest in home addresses and non-work phone numbers, and given the (at least) moderate privacy interest in the same information, I believe a court would probably conclude that you were correct to redact this information before releasing the directory.

⁵ *Stilley v. McBride*, 332 Ark. 306, 313, 965 S.W.2d 125, 128 (1998), quoting *Department of Defense v. FLRA*, 510 U.S. 487, 497 (1994).

⁶ Op. Att’y Gen. 2003-364, p.4.

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

Sincerely,

DUSTIN MCDANIEL
Attorney General

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