



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-047

May 2, 2014

Ms. Sheila E. Pauley
c/o Arkansas Psychology Board
101 East Capitol Avenue, Suite 415
Little Rock, Arkansas 72201

Ms. Pauley:

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. 2013). 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 correspondence indicates that you are seeking my opinion on the custodian's response to two FOIA requests for your employment records. The first request was from someone, as you say, whose "name, organization, or contact information" you were never given. That requester seeks a copy of your "personnel file." You say that the custodian communicated to you that she intends to disclose a copy of your "termination letter" and unspecified "unemployment information." You object to the release of these documents because you say that you have a "personal, open legal issue *not* related to [your] employment," and you think this legal issue gives rise to a constitutional right to privacy that would "supersede any disclosure" obligation.

The other FOIA request for your employment records was made by you. You say that you are a former public employee who made a FOIA request for your "personnel file" and for a "personal file" that you maintained in your office. The "personal file" contained "documentation" relating to overtime you worked. You

say that you received only a few documents from your personnel file and that you never received the “personal file.” You ask whether these decisions are consistent with the FOIA.

RESPONSE

My statutory duty is to state whether the custodian’s decision is consistent with the FOIA. Because I have not seen any of the records at issue, I cannot opine about the release of any specific documents. Further, because the termination letter and “unemployment information” have already been released to the requester, I cannot evaluate that decision.¹ When an authorized person under 25-19-105(c)(3)(B)(i) requests my opinion, that request must take place before the custodian releases the documents and the custodian must wait to release the records until my opinion has been issued. Therefore, a review of the custodian’s decision regarding the first request is beyond the scope of this opinion.

I can, however, speak generally about the custodian’s decision regarding your own request. The FOIA authorizes current and former public employees to receive their own personnel and evaluation records: “Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person’s designated representative.”² Therefore, you are entitled to copies of your personnel records and your evaluation records.³ Because I have not seen the records at issue, I cannot say whether the custodian has complied with the FOIA when releasing these records to you.

¹ See generally Op. Att’y Gen. 2002-177 (noting that this office was “unable to respond” to a request for a review of a custodian’s decision because the “records have already been released to the requestor, thus rendering” the request for review “moot”).

² A.C.A. § 25-19-105(c)(2) (Supp. 2013). Because I have not been provided with adequate facts to determine how best to classify the “personal file,” I will assume, for purposes of this opinion, that the file’s contents qualify as “personnel records.” See Op. Att’y Gen. 2011-051 (explaining the definitions and general disclosure rules governing personnel records and job evaluation records).

³ There are occasions when information must be redacted before providing an employee with his or her own personnel or evaluation records. See, e.g., Op. Att’y Gen. No. 2000-058. I do not have sufficient facts to say whether information contained in your personnel file or your “personal file” must be redacted.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "DM/BR", is positioned above the typed name.

DUSTIN MCDANIEL
Attorney General

DM/RO:cyh