



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-116

October 9, 2014

Crystal Woods, Division Head
Human Resources Division
Arkansas State Highway & Transportation Department
Post Office Box 2261
Little Rock, Arkansas 72203-2261

Dear Ms. Woods:

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), which 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 request is a timely follow-up to Opinion No. 2014-109. In that opinion, someone had requested the "personnel file" of a former employee, and the custodian noted that "the primary record in question appears to be the report (and any related documentation) which was attached to your Form 19-125 and used as the basis for" the former employee's suspension and ultimate termination.¹ But because I was not provided with any of the records in question nor informed of the custodian's decisions, I was not able to perform my statutory charge.

You write to fill-in these gaps. You have provided me with four documents that you classify as employee-evaluation records and that you believe must be disclosed pursuant to the FOIA. You ask whether these decisions are "not only consistent with, but required by, the FOIA."

¹ I recognize that there is some dispute over whether the termination is final.

RESPONSE

Based on my review of the four documents in dispute, it seems clear that three are employee evaluations and one is a personnel record. Based on the information you have conveyed to me, together with information gleaned from the four documents, it is my opinion that the test for disclosure of all four records has been met and that, therefore, your decision to release the records is consistent with (indeed, required by) the FOIA.

DISCUSSION

In the interest of brevity, I will refrain from setting out all the FOIA's definitions and tests related to personnel records and employee evaluations. Instead, I will direct your attention to the prior opinion (Opinion No. 2014-109) for a discussion of those topics. In what follows, I will simply assume a general knowledge of those topics and move straight to applying those rules to the custodian's decisions, supplementing that application with additional discussion of the FOIA rules as needed.

When custodians field FOIA requests for personnel or employee-evaluation records, they must make two decisions. First, they must determine whether the record meets the definition of either exception. Second, assuming the record does meet one of the definitions, the custodian must apply the appropriate test to determine whether the FOIA requires the record be disclosed.

You have conveyed the following four records, all of which you classify as employee-evaluation records:

- A document entitled Form 19-125, which gives basic personnel information about the subject of the records including her change in status;
- A letter dated September 8, 2014;
- A multi-page report dated September 2, 2014; and
- A letter of termination dated September 15, 2014.

In my opinion, you have correctly classified the latter three as employee evaluations. But, in my opinion, the first record is a personnel record because it seems to have been created to memorialize administrative actions, not record the

grounds for disciplinary action. This office has opined that such “change-of-status” forms are personnel records.²

As noted above, after classifying the documents, the custodian must move to the next question—whether the relevant test for disclosure requires that the documents be disclosed.

The first document identified above, which is a personnel record, must be disclosed unless doing so constitutes a clearly unwarranted invasion of personal privacy.³ This test, in my opinion, requires that this specific document be disclosed.

The three employee evaluations cannot be released unless all the following elements have been met:

1. The employee was suspended or terminated (i.e., level of discipline);
2. There has been a final administrative resolution of the suspension or termination proceeding (i.e., finality);
3. The records in question formed a basis for the decision made in that proceeding to suspend or terminate the employee (i.e., basis); and
4. The public has a compelling interest in the disclosure of the records in question (i.e., compelling interest).⁴

Though the records say nothing of a suspension, they clearly reflect a termination. Additionally, your opinion request says that these records also formed the basis for the former employee’s *suspension*: “She was suspended and allowed to remain on leave without pay” for a period of time. Though I understand that there is some dispute about whether her termination has become final, the suspension has become final. Therefore, Elements 1 and 2, above, are clearly met. And you say that the records formed the basis for the suspension, thus meeting Element 3. Given the matters addressed in the records, it seems clear to me that there is a

² See, e.g., Op. Att’y Gen. 2007-323.

³ A.C.A. § 25-19-105(b)(12). The earlier opinion elaborates on this test.

⁴ A.C.A. § 25-19-105(c)(1) (Supp. 2013); Op. Att’y Gen. 2008-065.

compelling public interest in the records, thus meeting Element 4. Therefore, the FOIA requires that the employee evaluations be disclosed.

Therefore, I conclude that your decision to release these four documents is consistent with the FOIA.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Dustin McDaniel". The signature is fluid and cursive, with the first name "Dustin" and last name "McDaniel" clearly distinguishable.

DUSTIN MCDANIEL
Attorney General

DM/RO:cyh