



**STATE OF ARKANSAS**  
**THE ATTORNEY GENERAL**  
**LESLIE RUTLEDGE**

Opinion No. 2015-024

May 19, 2015

The Honorable David Johnson  
State Senator  
500 Woodlane Avenue  
State Capitol, Room 320  
Little Rock, Arkansas 72201

Dear Senator Johnson:

I am writing in response to your request for my opinion on how the open-meetings rules under the Arkansas Freedom of Information Act (FOIA) apply to Central Arkansas Water. You provide the following background for your request: “Central Arkansas Water (“CAW”) is a body corporate and politic created under the Consolidated Waterworks Authorization Act, codified at Ark. Code Ann. § 25-20-301 *et seq.* As such, CAW is subject to the FOIA.” You also note that one provision of the FOIA, section 25-19-106(c)(6), “provides that ‘a *public agency* may meet in executive session for the purpose of considering, evaluating, or discussing matters pertaining to public water system security....’ (emphasis added).”

With this background in mind, you ask three questions:

1. Can the Board of Commissioners of CAW meet in executive session with CAW staff to consider, evaluate, and discuss a vulnerability assessment clearly pertaining to public water system security?

2. If so, can third parties (such as the police chief, county sheriff, fire chief, representatives from the Department of Homeland Security, and other third-party security and vulnerability consultants) also attend the executive session to provide technical expertise in consideration, evaluation and discussion of the vulnerability assessment?
3. In other words, what is the definition of “public agency” as used in Ark. Code Ann. § 25-19-106(c)(6)?

## **RESPONSE**

For the reasons explained below, it is clear (a) that CAW has authority to enter into an executive session for water security and (b) that CAW’s Board and employees may jointly attend that executive session. Thus, the answer to your first question is “yes.” But, in my opinion, the “third parties” referenced in your second question are not authorized to attend that executive session. Thus, the answer to your second question is “no.” My responses to your first two questions should sufficiently resolve your third question.

## **DISCUSSION**

The open-meetings provisions of the Arkansas Freedom of Information Act (FOIA) require that, as a general rule, members of the public have a right to attend public meetings.<sup>1</sup> This general rule is subject to three exceptions.<sup>2</sup> Under these exceptions (called “executive sessions”), the entity is authorized to hold its discussions behind closed doors. Your opinion request presents the two threshold questions for most executive sessions: Who can hold an executive session? and Who can attend the executive session?

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<sup>1</sup> Ark. Code Ann. § 25-19-106(a) (Repl. 2014), amended by Acts 2015. No. 186.

<sup>2</sup> Ark. Code Ann. § 25-19-106(c).

Regarding that first question, the CAW can clearly hold an executive session related to water security. The FOIA provides that “a public agency may meet in executive session for the purpose of considering, evaluating, or discussing matters pertaining to public water system security or *municipally owned utility system security*.”<sup>3</sup> The emphasized phrase, which was just added to the FOIA in the 2015 legislative session,<sup>4</sup> is defined to include consolidated waterworks systems.<sup>5</sup> Because CAW is a consolidated waterworks system,<sup>6</sup> it is authorized to hold an executive session for water security.

The next question is, “Who can attend that executive session?” The provision at issue states that “*a public agency* may meet in executive session” regarding water security.<sup>7</sup> In my opinion, this means that all those who are officials or employees of the public agency (or municipally owned utility system) are authorized to attend. This would include CAW’s Board and its employees, but not those third parties referenced in your second question. At least two independent reasons compel this conclusion. First, the term “public agency,” as used in this context, can reasonably be interpreted as a collective noun, which refers to all those who are a constituent part of that agency.<sup>8</sup> This would clearly include CAW’s employees and Board, but it would exclude those persons referenced in your second question. Second, the Arkansas Supreme Court has held that all FOIA

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<sup>3</sup> Ark. Code Ann. § 25-19-106(c)(6).

<sup>4</sup> The phrase was added by the passage of Act 186 of 2015, section 4.

<sup>5</sup> According to Section 2 of Act 186 of 2015, a “municipally owned utility system” is defined to “include without limitation a...consolidated waterworks system under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq.”

<sup>6</sup> I base this factual claim on your representation that the CAW was, in fact, created under the Consolidated Waterworks Authorization Act.

<sup>7</sup> Ark. Code Ann. § 25-19-106(c)(6) (emphasis added).

<sup>8</sup> A “collected noun” is a “noun that names a group of people...; a noun that is grammatically singular but has a plural sense. *Garner’s Modern American Usage* 906 (Bryan A. Garner, ed., 3d ed., Oxford Univ. Press 2009).

exceptions must be narrowly construed.<sup>9</sup> Thus, when in doubt about an exception's scope, we are required to give it the narrowest reasonable interpretation. Here, the two options for attendees are (1) CAW's employees only or (2) CAW's employees together with anyone else whom CAW considers to have subject-matter expertise. Clearly, the former is the more narrow interpretation, which renders it the one most likely to be adopted by a court.

With the foregoing principles in mind, I now turn directly to your questions. As noted above, since the CAW can hold an executive session that consists of both CAW's Board and staff, the answer to your first question is "yes." Further, for the reasons given above, the term "public agency" cannot be read to include third parties who are not staff members of CAW. Thus, the answer to your second question is "no." The answer to these two questions should sufficiently resolve your third question.

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

Sincerely,



LESLIE RUTLEDGE  
ATTORNEY GENERAL

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<sup>9</sup> See *Laman v. McCord*, 245 Ark. 401, 432 S.W.2d 753 (1968); see also *McCambridge v. City of Little Rock*, 298 Ark. 219, 226, 766 S.W.2d 909, 912 (1989); *Ragland v. Yeargan*, 288 Ark. 81, 702 S.W.2d 23 (1986); John J. Watkins & Richard J. Peltz, *THE ARKANSAS FREEDOM OF INFORMATION ACT* 10 (Arkansas Law Press, 5th ed., 2009).