



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2016-004

January 19, 2016

Stacy M. Lynch  
c/o James DePriest, Chief Legal Counsel  
Central Office, Legal Division  
Arkansas Department of Correction  
P. O. Box 8707  
Pine Bluff, AR 71611-8707

Dear Ms. Lynch:

You have requested my opinion regarding the Arkansas Freedom of Information Act ("FOIA"). Your request is based on Ark. Code Ann. § 25-19-105(c)(3)(B)(i), 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 correspondence indicates that a journalist has submitted a FOIA request to a state agency "for all of the applications and resumes for" a particular job opening. Because you have applied for this job, your resume and application are included in the responsive records. You say that while you "have no problem" with releasing most of your records, you object to the custodian's decision to release certain parts of your resume. Specifically, you say that, having worked as a private investigator for several years, your resume lists several criminal cases you worked on and includes some annotations of your work on that case. You say that the disclosure of these case names "would serve no public interest and could create potential hazards for [you] and [your] family." You ask whether the custodian's decision to disclose these parts of your resume is consistent with the FOIA.

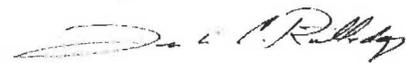
**RESPONSE**

The only dispute here is whether a FOIA exception requires the custodian to redact from your resume the names of cases on which you served as a private

investigator. I cannot resolve this dispute in the context of an opinion under section 25-19-105(c)(3)(B)(i). This statute authorizes me to review a custodian's decision with respect to personnel records and employee-evaluation records. A "personnel record" is any record that pertains to an individual employee that is not an employee evaluation.<sup>1</sup> Since applicants, by definition, are neither "personnel" nor "employees," their job applications and resumes do not qualify as personnel records unless they are hired.<sup>2</sup> This result is required by the rule that, when there is a reasonable doubt about an exception's meaning or application, the exception should be narrowly construed to exempt the fewest records.<sup>3</sup> Since you were not hired for the position, the records in dispute do not qualify as personnel records or evaluations.<sup>4</sup> Therefore, this dispute is beyond the scope of my review.

Nevertheless, I will simply note, for your reference, that the only basis on which the custodian could redact the information in dispute is your constitutional right to privacy. In *McCambridge v. City of Little Rock*, the Arkansas Supreme Court recognized that the constitutional right of privacy can supersede the specific disclosure requirements of the FOIA, at least with regard to the release of documents containing constitutionally-protectable information.<sup>5</sup> But this is a narrow exception that only applies to extremely personal information.<sup>6</sup>

Sincerely,



LESLIE RUTLEDGE  
Attorney General

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<sup>1</sup> See Op. Att'y Gen. No. 2015-034.

<sup>2</sup> *But see* John J. Watkins & Richard J. Peltz, *THE ARKANSAS FREEDOM OF INFORMATION ACT* 185-6 (Arkansas Law Press, 5th ed., 2009) (disagreeing with this view and noting that two trial courts have divided on the question).

<sup>3</sup> See generally Op. Att'y Gen. Nos. 2015-057, 2015-024; *Stilley v. McBride*, 332 Ark. 306, 313, 965 S.W.2d 125, 128 (1998).

<sup>4</sup> See generally Op. Att'y Gen. No. 2012-146 (explaining why only public employees can have personnel records or employee-evaluation records for purposes of the Ark. Code Ann. § 25-19-105(b)(12) and (c)(1)).

<sup>5</sup> *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989).

<sup>6</sup> See generally Op. Att'y Gen. No. 2012-085.