

# PETITION TO THE TONTITOWN CITY COUNCIL

## Encouraging Use of Executive Session to Review Personnel Evaluations

We, the undersigned citizens of Tontitown, Arkansas, respectfully call upon our City Council to exercise its authority under Arkansas law to enter into executive session for the purpose of reviewing personnel evaluations that cannot be released to the public under Attorney General Opinion 2025-080.

By signing below, we affirm our belief that:

- Council members should be fully informed on employee performance when making personnel decisions;
- Executive sessions provide a lawful means to review these evaluations while protecting employee privacy;
- Final decisions must remain transparent through open session votes, ensuring accountability to the citizens of Tontitown.

We urge the City Council to act in the best interest of both city employees and the public by convening executive sessions to read and consider personnel evaluations.

Name (Printed)	Signature	Address
Mary Jo Elliott	Mary Jo Elliott	1916 Dowell Rd
Joe Elliott	Joe Elliott	1916 Dowell Rd.
Mike Zulpo	Mike Zulpo	900 S. Piaratto Rd
Terry Talds	Terry Talds	360 Cesta
Mario CENOBIO	Mario CENOBIO	736 Klenc Rd.
FRANK YOUNG	Frank Young	803 Callahan Loop
Jimmy Rasty	Jimmy Rasty	232 W. Henri De Jona Blvd
Norbert	Norbert	2122 W Henri de Jont
Landy Rantz	Landy Rantz	489 S Piaratto Rd
Josy Piaratto	Josy Piaratto	1124 MONTANA AV.
Ora Faye Charles	Ora Faye Charles	2190 S. Piaratto
Tammy Gerber	Tammy Gerber	1884 S. Piaratto.

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Name (Printed)	Signature	Address
<u>Alvin Hock</u>	<u>Alvin Hock</u>	<u>1170 Kelly Av.</u>
<u>Alana Julian</u>	<u>Alana Julian</u>	<u>644 Apple Blossom, LN</u>
<u>JOHN D. ASTON</u>	<u>John D. Aston</u>	<u>1819 S. Barrington RD</u>
<u>MELBA R. ASTON</u>	<u>Melba R. Aston</u>	<u>1819 S. Barrington Rd</u>
<u>MARC Henry</u>	<u>Marc Henry</u>	<u>2625 S. Barrington Rd.</u>
<u>Steve Gaudin</u>	<u>Steve Gaudin</u>	<u>402 Stanatto Ave</u>
<u>Toni L. Zulpe</u>	<u>Toni L. Zulpe</u>	<u>900 S. Ranallo Rd</u>
<u>Ronald McQuire</u>	<u>Ronald McQuire</u>	<u>832 K/ene Rd</u>
<u>Brian Keener</u>	<u>Brian Keener</u>	<u>369 Cedar Ave</u>
<u>Rick Uy Varbroug</u>	<u>Rick Uy Varbroug</u>	<u>408 Romano Ave</u>
<u>Jerry BRATCHEK</u>	<u>Jerry Bratchek</u>	<u>589 K/ene Rd.</u>
<u>Bob Tennell</u>	<u>Bob Tennell</u>	<u>754 Via Perona Rd</u>

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Name (Printed)	Signature	Address
<u>Joe Frame</u>	<u>[Signature]</u>	<u>586 N Barrington</u>
<u>Ronnie Delozie</u>	<u>[Signature]</u>	<u>1025 Kelly Ave.</u>
<u>Charlotte Delozie</u>	<u>[Signature]</u>	<u>1025 Kelly Ave.</u>
<u>Kenneth PIANALTO</u>	<u>[Signature]</u>	<u>533 S. PIANALTO TONTITOWN AR</u>
<u>Amity Bolinger</u>	<u>[Signature]</u>	<u>1980 Dowell Rd</u>
<u>LISA NEIL</u>	<u>[Signature]</u>	<u>465 Brinley St Tontitown, AR</u>
<u>PAT ZULPO</u>	<u>[Signature]</u>	<u>1064 N. Barrington Rd.</u>
<u>NORMAN "JACK" BARKER</u>	<u>[Signature]</u>	<u>204 S. MANSTER RD TONTITOWN, AR</u>
<u>Chris TROTT</u>	<u>[Signature]</u>	<u>1278 Kelly Ave</u>
<u>David Bolinger</u>	<u>[Signature]</u>	<u>2251 S. Barrington</u>
<u>_____</u>	<u>_____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>_____</u>



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PRINT CHECK IMAGE

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CITY OF TONTITOWN  
GENERAL FUND  
P O BOX 305  
TONTITOWN, ARKANSAS 72770  
(479) 361-2700

15734

CENTENNIAL BANK  
81-275/829

July 02, 2025

PAY TO THE ORDER OF HealthyHR

\$ 5,250.00

FIVE THOUSAND TWO HUNDRED FIFTY & NO/100

DOLLARS

HealthyHR  
224 N Spruce St  
Little Rock, AR 72205



VOID AFTER 6 MONTHS

Angela Russell

*[Signature]*  
AUTHORIZED SIGNATURE

Security Features. Details on back.

MEMO

⑆015734⑆ ⑆082902757⑆ 0095000170⑆

7/8/2025 100138100542  
>082900872< Arvest Bank  
For Deposit Only Mobile

① CHECK HERE FOR MOBILE OR REMOTE DEPOSIT ONLY  
AT Arvest  
NAME OF FINANCIAL INSTITUTION  
DATE 7/8/25  
D.N.S. N. 11 3411. OR 5:00 PM, BELLUM 111. 17  
H-S-0-0-0 FOR FINANCIAL INSTITUTION USE

*Sym. R.D.*

August 20, 2025

Via Email Correspondence: [opinions@arkansasag.gov](mailto:opinions@arkansasag.gov)

The Honorable Tim Griffin  
Attorney General of the State of Arkansas  
FOIA Opinion Division  
323 Center Street, Suite 200  
Little Rock, AR 72201

Dear Mr. Attorney General,

Please accept this request for an opinion whether the attached record (an employee investigation report) is exempt from examination under the Arkansas Freedom of Information Act (FOIA). I represent the City of Tontitown, Arkansas (City) and Mr. Steve Zega represents the requestor who is a citizen of the City of Tontitown.

The employee in question was terminated by the Mayor, but then was reinstated to her position by the City Council through an override of that action pursuant to Ark. Code Ann. § 14-42-110(a). During the process in which the employee was reinstated by the City Council, several allegations were made against her by some other employees and the Mayor. The city then hired an employment investigator to investigate the other employees' claims. The investigator issued the enclosed report. Both the investigation and the report were issued after the employee was reinstated to her position by the City Council.

The requestor has asked for a copy of this investigation report. The custodian determined that the record is exempt from disclosure to the requestor pursuant to Ark. Code. Ann. § 25-19-105(c)(1) because the final administrative resolution of the matter did not result in her termination or suspension, but rather she was reinstated to the position by the City Council. The employee in question does not object to the release of the investigation report. The other employees who made the allegations do object to the report. The position of the requestor is that employee in question can waive or consent to the release of the investigation report that would otherwise not be releasable under Ark. Code. Ann. § 25-19-105(c)(1). The position of the custodian of record is that Ark. Code. Ann. § 25-19-105(c)(1) does not allow for the employee in question to grant the release of the investigation report and that there are other employees mentioned in the report, including information about health-related matters who do not want the report released. The position of the requestor is that the employee names and health-related information can be redacted.


The requestor's attorney has asserted that the attached record can and should be released in redacted form (also attached) in accordance with Ark. Code Ann. § 25-19-105(f)(1): "No request to inspect, copy, or obtain records of public information shall be denied on the ground that information exempt from disclosure is commingled with nonexempt information." The

requestor's attorney asserts that the privacy of the other employees in question can be completely protected by redacting relevant information from the report and thereby protect both the public's right of access to the record and the sensitive information regarding the third-party employees.

The requestor also takes the position that, in light of the City's statement that the final administrative resolution of the proceeding was not to terminate or suspend the employee in question, there is a compelling public interest in the disclosure of the record, as redacted. The requestor believes that the interest in the release of the document is compelling because, if, as the requestor believes, the premise for terminating the employee was false and the requestor believes that the report would raise important questions about the decision and judgment to terminate.

Thank you for your cooperation and assistance. Please do not hesitate to contact me if I can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Justin Eichmann". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

R. Justin Eichmann

Encl.

cc: Mr. Steve Zega w/o enclosure



**TIM GRIFFIN**  
ATTORNEY GENERAL

Opinion No. 2025-080

August 25, 2025

Mr. R. Justin Eichmann  
Harrington, Miller, Kieklak, Eichmann & Brown  
4710 South Thompson, Suite 102  
Springdale, Arkansas 72764

Dear Mr. Eichmann:

You have requested an opinion from this Office regarding the Arkansas Freedom of Information Act (FOIA). Your request, which is made as the attorney for the custodian of records, is based on A.C.A. § 25-19-105(c)(3)(B)(i). This subdivision authorizes the custodian, requester, or the subject of certain employee-related records to seek an opinion stating whether the custodian's decision regarding the release of such records is consistent with the FOIA.

You report that the City of Tontitown has received a FOIA request for an "investigation report" of an employee who was terminated by the Mayor but then "reinstated ... by the City Council through an override of that action [under A.C.A.] § 14-42-1109(a)." You also report that during that process, "several allegations were made against [the employee] by some other employees and the Mayor." At that point, the city "hired an employment investigator to investigate the other employees' claims," and the investigator issued a report at the investigation's conclusion. The investigation did not result in the employee's termination or suspension.

The FOIA request seeks a copy of this investigation report. The custodian has classified the report as an employee evaluation, and the custodian has determined that it is exempt from disclosure because "the final administrative resolution ... did not result in [the employee's] termination or suspension." The employee who was investigated does not object to the release of the report, but the employees who instigated the investigation object to its release, in part, because the report includes their health information. The requester insists that the report can be released if (1) the employee who was investigated "waive[s] or consent[s] to the release" and (2) "employee names and health-related information" are redacted from the report. You ask if the custodian's decisions are consistent with the FOIA.

BOB R. BROOKS JR. JUSTICE BUILDING  
101 WEST CAPITOL AVENUE  
LITTLE ROCK, ARKANSAS 72201

Exhibit 2 (4 Pages)

## RESPONSE

In my opinion, the custodian has correctly classified the investigation report as an employee-evaluation record, and the custodian has properly determined that the report is exempt from disclosure. Because the employee's termination was not administratively final, the four-part test for release of an employee evaluation does not appear to be met.

Further, an employee evaluation cannot be disclosed unless each element of the four-part test is met. Waiver or consent by the employee at issue cannot overcome this prohibition. Likewise, redacting employee names and protected health information does not make the report releasable.

## DISCUSSION

**1. General rules.** A document must be disclosed in response to a FOIA request if (1) the request was directed to an entity subject to the FOIA, (2) the requested document is a public record, and (3) no exceptions allow the document to be withheld.<sup>1</sup>

The first two elements appear to be met. The request was made to the City of Tontitown—a public entity subject to the FOIA.<sup>2</sup> And the record at issue appears to be a public record.<sup>3</sup> Because the record is held by a public entity, it is presumed to be a public record,<sup>4</sup> although that presumption is rebuttable.<sup>5</sup> I have no information to suggest that the presumption can be rebutted here, so I will focus on whether any exceptions prevent the document's disclosure.

For FOIA purposes, documents in a public employee's file can usually be divided into two distinct groups: "personnel records"<sup>6</sup> and "employee evaluation or job performance records."<sup>7</sup> Personnel

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<sup>1</sup> *Harrill & Sutter, PLLC v. Farrar*, 2012 Ark. 180, at 8, 402 S.W.3d 511, 515.

<sup>2</sup> *E.g.*, Ark. Att'y Gen. Ops. 2024-095, 2023-120, 2020-028.

<sup>3</sup> The FOIA defines public records as "writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium, required by law to be kept or otherwise kept, and that constitute a record of the performance or lack of performance of official functions...carried out by a public official or employee." A.C.A. § 25-19-103(7)(A).

<sup>4</sup> *Id.*

<sup>5</sup> *See Pulaski Cnty. v. Ark. Democrat-Gazette, Inc.*, 370 Ark. 435, 440–41, 260 S.W.3d 718, 722 (2007) ("[T]he presumption of public record status established by the FOIA can be rebutted if the records do not otherwise fall within the definition found in the first sentence, i.e., if they do not 'constitute a record of the performance or lack of performance of official functions.'" (quoting Ark. Att'y Gen. Op. 2005-095)).

<sup>6</sup> A.C.A. § 25-19-105(b)(12) ("It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter ... [p]ersonnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy").

<sup>7</sup> *Id.* § 25-19-105(c)(1) ("[A]ll employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination

records are records that pertain to an individual employee that were not created by or at the behest of the employer to evaluate the employee.<sup>8</sup> Employee evaluation and job-performance records, on the other hand, are records (1) created by or at the behest of the employer (2) to evaluate the employee (3) that detail the employee's performance or lack of performance on the job.<sup>9</sup>

The test for whether these two types of documents may be released differs significantly. When reviewing documents to determine whether to release under the FOIA, the custodian must first decide whether a record meets the definition of either a "personnel record" or an "employment evaluation or job performance record" and then apply the appropriate test for that record to determine whether the record should be released under the FOIA.

**2. Investigation report.** The investigation report is best classified as an "employee evaluation or job performance record" because it was created at the behest of the employer to evaluate the employee, and it details the employee's performance or lack of performance on the job. Employment evaluations include "records generated while investigating allegations of employee misconduct that detail incidents that gave rise to an allegation of misconduct."<sup>10</sup> So the custodian has properly classified the report as an employee evaluation.

If a document qualifies as an employee-evaluation record, the document 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., relevance); and
4. The public has a compelling interest in the disclosure of the records in question (i.e., compelling interest).<sup>11</sup>

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proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure").

<sup>8</sup> See, e.g., Ark. Att'y Gen. Ops. 2015-072, 99-147.

<sup>9</sup> *Thomas v. Hall*, 2012 Ark. 66, at 8–9, 399 S.W.3d 387, 392; see also *Davis v. Van Buren Sch. Dist.*, 2019 Ark. App. 466, 7–8, 572 S.W.3d 466, 471 (noting that "[o]ur supreme court has approved" the definition of employee-evaluation records developed by the Attorney General's office); Ark. Att'y Gen. Ops. 2015-057, 2009-067, 2006-038, 2003-073, 95-351, 93-055.

<sup>10</sup> E.g., Ark. Att'y Gen. Op. 2015-057 (collecting citations).

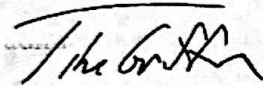
<sup>11</sup> A.C.A. § 25-19-105(c)(1); e.g., Ark. Att'y Gen. Op. 2008-065.

The primary purpose of this exception is to preserve the confidentiality of the formal job-evaluation process ... to promote honest exchanges between employees and their employers.<sup>12</sup> The first question, then, is whether the employee was suspended or terminated. Here, the employee was initially terminated, so the next question is whether that termination was “a final administrative resolution.” Because the employee was later reinstated, the termination was not administratively final. Thus, the four-part test for release of an employee evaluation is not met, and the custodian’s decision to withhold the report is consistent with the FOIA.

**3. Other issues.** As noted above, an employee evaluation cannot be disclosed unless each element of the four-part test is met. Waiver or consent by the employee at issue cannot overcome this prohibition.<sup>13</sup> Likewise, redacting employee names and protected health information does not make the report releasable.<sup>14</sup>

Assistant Attorney General Jodie Keener prepared this opinion, which I hereby approve.

Sincerely,



TIM GRIFFIN  
Attorney General

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<sup>12</sup> *E.g.*, Ark. Att’y Gen. Op. 96-168.

<sup>13</sup> Ark. Att’y Gen. Op. 2020-004 (opining that “the custodian may not publicly release an exempt record even if the subject requests or has ‘authorized’ such disclosure”).

<sup>14</sup> Ark. Att’y Gen. Op. 2004-012 (opining that “the FOIA expressly contemplates releasing redacted excerpts of personnel records under appropriate circumstances, whereas it flatly prohibits releasing any portion of an employee evaluation/job performance record” unless the four-part test is met).