

**Do documents pertaining to investigation of employee misconduct have to be disclosed if requested under the Freedom of Information Act?**

Only if there has been a “final administrative resolution of any suspension or termination 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.” Ark. Code Ann. § 25-19-105(c). Otherwise, employee evaluation or job performance records, including preliminary notes and other materials, are not subject to disclosure. Documents involved in disciplinary proceedings are considered employee evaluation or job performance records. Atty. Gen. Op. No. 99-289.

On receiving such a request, the custodian of the records must make a decision within 24 hours whether the records should be disclosed. The requester and subject of the request must then be notified of the decision. Ark. Code Ann. § 25-19-105(c)(3). Note that the law gives the employer, the requester, or the employee the opportunity to have the attorney general review a request for personnel evaluation or job performance records. The attorney general will issue an opinion within three days of receiving the request, during which time, the records shall not be disclosed. 25-19-105(c)(3).