

1053 FOIAs, Subpoenas, Requests for Disclosure, and Legal Opinions

I. Scope

This policy applies to all employees of the Department of Human Services (DHS) and insures that this entire agency adheres to the Arkansas Freedom of Information Act (FOIA) and all other applicable state and federal laws.

II. Policy

- (a) All requests for documents under the FOIA, all subpoenas, all requests for opinions from the Attorney General's Office, and any requests for disclosure of information (for example: from courts, other state agencies, investigators, attorneys, legislators, advocacy groups, journalists, etc.) shall be processed through the DHS Office of Chief Counsel (OCC).
- (b) FOIA requests can be emailed to DHS.FOIA@dhs.arkansas.gov, subpoenas can be emailed to DHS.Subpoena@dhs.arkansas.gov. Legal opinions shall be directed to the OCC Chief Attorney or the division or office's attorney within OCC.
- (c) Divisions and Offices may designate a person or unit to receive and gather documents responsive to FOIA requests or requests for disclosure, but all requests must be filtered through OCC before release. The OCC may approve a system of handling requests with divisions or offices that receive FOIA requests on a regular basis.
- (d) DHS Divisions and Offices shall not deny FOIA requests without OCC approval. A decision to deny a FOIA request must be reviewed and approved by the OCC Director or Chief Attorney. If Divisions or Offices believe they have no documents responsive to a FOIA request, they should check with the OCC Chief Attorney first.
- (e) A FOIA request doesn't have to be in writing. A FOIA request may be made in person, by phone, by email, by fax, by posted mail, or by any electronic means provided by the custodian of the record(s) (Ark. Code Ann. § 25-19-105 (a)(2)(B)). All FOIA requests must be forwarded to or processed through the OCC.
- (f) The FOIA request must be sufficiently specific enough to enable the custodian to locate the records with reasonable effort (Ark. Code Ann. § 25-19-105 (a)(2)(C)).
- (g) The OCC will insure that DHS will comply with subpoenas, orders, and FOIA requests to produce public records in any readily available format, manner, or medium, and in any readily convertible medium. The OCC will adhere to DHS APM Chapter 900 in handling FOIA requests.
- (h) Confidential information contained in a FOIA request must be removed or redacted from all documents prior to release. Failure to do so must be reported as a Privacy/Security Incident on DHS Share. Confidential information includes,

without limitation: protected health information, personal identifiable information, juvenile records, foster care/adoption information, state income tax records, legislative audit working papers, and, any other information considered confidential per a state or federal law. (See DHS APM Chapter 900 for a list of information that is prohibited from being disclosed under FOIA.)

- (i) No employee shall be disciplined for exercising his or her right or privilege to file a FOIA request with this or any state agency (Ark. Code Ann. § 21-19-101).

III. FOIA Request for Personnel Records

Any personnel or evaluation records exempt from disclosure under FOIA shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative. The representative must be designated in writing by the employee.

IV. Failure to Comply

Failure to comply with this policy will result in disciplinary action. The DHS Office of Chief Counsel will recommend appropriate action to the employee's direct supervisor, manager, or director. In addition, failing to protect confidential information and unauthorized release of confidential information are violations outlined in DHS Policy 4002, "Privacy and Security Sanctions." Multiple sanctions can be applied to one incident and result in termination of employment as well as criminal charges.