

Date : 9/21/2022 12:52:46 PM

From : "Mary Claire Hyatt" maryclaire.hyatt@g.fayar.net

To : "Alan Wilbourn" alan.wilbourn@g.fayar.net

Subject : Re: Arkansas Freedom of Information Act Request: Business Insider public records law request August 16 2022

The link to the federal regs didn't copy I don't think. You may want to send that or check your email to them. Could just be on my end! Eager to see the response.

MCH

Mary Claire Hyatt

General Counsel

Fayetteville Public Schools

1000 West Bulldog Blvd.

Fayetteville, AR 72701

P: 479-973-8640

On Wed, Sep 21, 2022 at 11:16 AM Alan Wilbourn <alan.wilbourn@g.fayar.net> wrote:

First, by way of context, Fayetteville Public Schools is not the only district to deny this request. We have been in contact with other school districts in our state that received the same request from your organization and who have also denied your request. The MuckRock website lists every request of this nature and shows that your request has been denied by at least two other school districts. We were unable to find any Arkansas school district that provided the requested documentation on your website. Should you wish to provide us with the names of districts that have released information, we would be happy to reach out to them to see if we can understand their reasoning.

Second, in our response to your request, we asked for you to verify your residency in Arkansas. You have not provided such verification. The Arkansas Freedom of Information Act gives Arkansas citizens access to public documents. Prior to providing any documents, we ask that you provide proof of Arkansas residency.

In your response, you assert without citation that exemptions under the Arkansas Freedom of Information Act do not apply to matters of sexual misconduct and abuse. We have been unable to find such authority. We would be happy to reconsider our position if you wish to provide us with any authority to support your position.

Despite your position, any record that contains student-specific information and is maintained by the school district is an educational record that is protected from unauthorized release or disclosure under FERPA. In an effort to assist you in understanding this law, I am linking the federal code that makes the definition exceptionally clear.

Any record in the district's possession, maintained by the district, related to sexual harassment, unwelcome conduct, hostile educational environment, and/or sexual violence involving one or more current or former students would, by its very nature, contain information directly related to a student. While you are correct that records solely related to employee misconduct are not records protected under FERPA, you are incorrect that FERPA is in no way applicable to your request. Seeing that you requested records related to misconduct that "arises from, relates to, and/or is a consequence of sexual behavior and/or activities with district students (emphasis added), whether currently or previously enrolled, and notwithstanding whether any such behavior and/or activities were proven to have occurred or not," it is clear that FERPA is applicable. To use your words, it defies logic that FERPA would not apply. Please let us know if this is unclear.

To be clear, we would like to state that our school district is unequivocally committed to the safety and well-being of students. FPS follows all state, local, and federal laws and regulations concerning the safety and privacy of students. Should you be inclined to provide the names of other school districts that released the requested information, or the reasoning to support your claims as discussed above, we would be more than happy to reconsider our position.

Thank you for clarifying that you did not intend to limit your request for all separation agreements and settlements reached with current and former teachers to those related to sexual misconduct. We will be happy to process this request once you have provided proof of Arkansas citizenship.

Alan T. Wilbourn

Interim Executive Director of Communications & PR

Fayetteville Public Schools

1000 W. Bulldog Blvd.

Fayetteville, AR 72701

479-444-3000



**FAYETTEVILLE
PUBLIC SCHOOLS**
Since 1871

On Wed, Sep 7, 2022 at 6:55 PM <132644-18121013@requests.muckrock.com> wrote:

Fayetteville Public Schools

FOIA Office

1000 West Bulldog Blvd.

Fayetteville, AR 72701

September 7, 2022

This is a follow up to a previous request:

Good afternoon,

Thank you for the update. Unfortunately, it appears you have misconstrued both my request and the limitations of the statutory exemptions which you cite as the basis to withhold public information. I'm hopeful that we can resolve this matter without seeking a judicial remedy through the courts.

First, by way of context, I've requested these same records from a dozen other school districts across the state. Fayetteville Public Schools is the only district to deny this request.

Regarding the separation and settlement agreements I've requested, these are not, as you assert, part of an employee's personnel file. With respect to the separation and settlement agreements I've requested, please note that I am requesting all such agreements, regardless of the underlying reason/rationale for departure. It defies logic that in a district as large as Fayetteville Public Schools, not a single employee would have separated from the district in the past five years. Please reply to this email and confirm your understanding of both the scope of my request and public nature of these documents.

With respect to the disciplinary and other records I've requested, while it is true that state statute does allow agencies to withhold certain aspects of an employee's personnel file, as you've alluded to, these exemptions do not apply to matters of sexual misconduct and abuse. Indeed, given the district's obligation to ensure student safety, other districts in Arkansas have readily segregated these records and made them available for public inspection. I can only assume that the Fayetteville Public Schools similarly values the safety of its students. In an effort to assist you in legitimately processing this request, records regarding "activities with district students" should be interpreted to mean "Sexual Harassment," "Unwelcome Conduct," "Hostile Educational Environment," and/or "Sexual Violence," involving one or more former or current students.

Lastly, it is puzzling that you would attempt to further cite FERPA as the basis for your denial. In no scenario are matters of employee misconduct considered student educational records; FERPA is in no way whatsoever applicable to this request.

Please let me know if this is unclear.

Thank you,

View request history, upload responsive documents, and report problems here:

https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Ffayetteville-public-schools-18021%252Fbusiness-insider-public-records-law-request-august-16-2022-132644%252F%253Femail%253Dalan.wilbourn%252540g.fayar.net&url_auth_token=AABerQJ-UlaQkbDKARpUKhF-bzA%3A1oW4sz%3A5xXuD0-go2DFPs9qxSI60gLTaq5RHZsjmqid_axIV0

If prompted for a passcode, please enter:

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Filed via MuckRock.com

E-mail (Preferred): 132644-18121013@requests.muckrock.com

PLEASE NOTE OUR NEW ADDRESS

For mailed responses, please address (see note):

MuckRock News
DEPT MR 132644
263 Huntington Ave
Boston, MA 02115

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On Aug. 19, 2022:

Subject: FOIA Request

Personnel records are exempt from the FOIA to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy. You have requested records "notwithstanding whether any such behavior and/or activities were proven to have occurred or not." If behavior of this nature was proven to have not occurred, such release would constitute an unwarranted invasion of personal privacy.

Regarding the remainder of the request, even if a compelling public

interest exists, all employee evaluation or job performance records, including preliminary notes and other materials, are only available to the public upon final administrative resolution of a suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee. The district has no records that meet this requirement because, as related to any responsive documents, either there has been no administrative resolution of a suspension or termination, or the records did not form the basis for a decision to suspend or terminate an employee.

Concerning the requested separation agreements and settlements, such records would by their nature not form the basis of a suspension or termination and are, therefore, not releasable.

To the extent that any of the responsive documents are not considered personnel documents, their release is still prohibited as they contain confidential student information protected by FERPA.

Alan T. Wilbourn
Interim Executive Director of Communications & PR
Fayetteville Public Schools
1000 W. Bulldog Blvd.
Fayetteville, AR 72701
479-444-3000

On Aug. 16, 2022:
Subject: FOIA Request
We have received your FOIA request and are reviewing it. If we have any responsive documents, they will be transmitted via email attachment. We will not be uploading any documents.

We also need verification of Nicole Kanu's Arkansas citizenship. Please provide her mailing address.

Sincerely,

Alan T. Wilbourn
Interim Executive Director of Communications & PR
Fayetteville Public Schools
1000 W. Bulldog Blvd.
Fayetteville, AR 72701
479-444-3000

On Aug. 16, 2022:
Subject: Arkansas Freedom of Information Act Request: Business Insider public records law request August 16 2022
To Whom It May Concern:

Pursuant to the Arkansas Freedom of Information Act, I hereby request the following records:

-All separation agreements and settlements reached with current and former teachers who taught in the district between January 1, 2017 through the day this request is fulfilled.

-All public records relating to any and all claims of misconduct against current and former teachers who taught in the district between January 1, 2017 through the day this request is fulfilled. Such public records should include, but not be limited to, all complaints; allegations; claims; investigatory reports; analyses; summaries; memoranda and/or notes; interview recordings; transcripts and/or notes; reviews; emails, text or other electronic messages, voicemails, and/or other communications and/or correspondence; determinations; decisions; orders; resignation letters; employment reclassification documents; offers in compromise and/or settlement agreements; termination and/or transfer papers; letters of reproof and/or other disciplinary actions, whether imposed or not; referrals to law enforcement, administrative, and/or licensing agencies, departments, and/or bodies; appeals; court filings and/or rulings; and all similar materials notwithstanding the use of other terminology, nomenclature, or categorization by this or other involved public agencies.

To further clarify this request, the scope of the misconduct at issue arises from, relates to, and/or is a consequence of sexual behavior and/or activities with district students, whether currently or previously enrolled, and notwithstanding whether any such behavior and/or activities were proven to have occurred or not. The construction of this request should be understood to be liberal and expansive, such that all public records which may be remotely responsive should be produced in full and may only be withheld and/or redacted only as required by law.

I would like these records in the electronic format that they are stored in, transmitted via email or other digital method; please refrain from sending paper copies of the records.

Rather than provide all responsive records at once, I ask that you provide copies of records on a rolling basis, as they become available.

If you determine that any of the information qualifies for an exemption from disclosure, I ask you to note whether the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any of the information is exempt and will not be disclosed.

Please waive any applicable fees; this information is being sought for reporting purposes. If I can provide any clarification that will help expedite the processing of my request, please contact me directly, at mdrange@insider.com.

Note: a delay in access to these records is tantamount to a denial of access.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 3 business days, as the statute requires.

Sincerely,

Nicole Kanu, a citizen of Arkansas, in coordination with Insider Staff

View request history, upload responsive documents, and report problems here:

https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Ffayetteville-public-schools-18021%252Fbusiness-insider-public-records-law-request-august-16-2022-132644%252F%253Femail%253Dalan.wilbourn%252540g.fayar.net&url_auth_token=AAberOJ-UlaQkbDKARpUKhF-bzA%3A1oW4sz%3A5xXuD0-go2DFPs9qxSI860gLTaq5RHZsjmqid_axIV0

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