

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 2515

By: Williams of the House

and

Robinson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public records; amending 51 O.S. 1991, Sections 24A.1, 24A.2, 24A.3, as amended by Section 1, Chapter 39, O.S.L. 1993, 24A.5, as last amended by Section 7, Chapter 97, O.S.L. 1993 and 24A.9 (51 O.S. Supp. 1993, Sections 24A.3 and 24A.5), which relate to the Oklahoma Open Records Act; updating statutory references; modifying short title; establishing public policy; modifying definitions; modifying requirement for release of driver license information; modifying and adding provisos for the inspection, copying or mechanical reproduction of records; limiting permissible charges for the provision of public records in formats other than paper; stating duties of the Office of State Finance; providing for promulgation of rules pursuant to Administrative Procedures Act; providing criteria for charges for electronic access to public records; authorizing contracts for the sale of public records in formats other than paper; establishing contract parameters; providing procedures for the review of proposed contracts; clarifying confidentiality of certain materials; defining term; prohibiting collection of certain information; requiring adoption and promulgation of certain rules; allowing opportunity for certain appeal and providing procedure for appeal to certain state agencies; requiring confidentiality; prohibiting denial or withholding of services under certain circumstances; prohibiting certain cause of action for certain violations; allowing review or copy of individual information; stating cost for copies of certain information; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 51 O.S. 1991, Section 24A.1, is amended to read as follows:

Section 24A.1 Sections 24A.1 through ~~24A.19~~ 24A.21 of this title and ~~Section~~ Sections 6, 7 and 8 of this act shall be known as the "Oklahoma Open Records Act".

SECTION 2. AMENDATORY 51 O.S. 1991, Section 24A.2, is amended to read as follows:

Section 24A.2 As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. It is also the public policy of the State of Oklahoma that public information be accessible as required pursuant to the federal Americans with Disabilities Act. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act.

SECTION 3. AMENDATORY 51 O.S. 1991, Section 24A.3, as amended by Section 1, Chapter 39, O.S.L. 1993 (51 O.S. Supp. 1993, Section 24A.3), is amended to read as follows:

Section 24A.3 Definitions. As used in ~~this act~~ the Oklahoma Open Records Act:

1. "Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not mean computer software, nongovernment personal effects or, unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Turnpike Authority obtained in connection with the Authority's electronic toll collection system, personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, or permit, or for the purpose of becoming qualified to contract with a public body. "Record" shall include data files created by or used with computer software;

2. "Public body" shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust, county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A.4 of this title, "public body" does not mean ~~judges, justices, the State Legislature, or State Legislators;~~

3. "Public office" means the physical location where public bodies conduct business or keep records;

4. "Public official" means any official or employee of any public body as defined herein. Except for the records required by Section 24A.4 of this title, "public official" does not mean judges, justices or State Legislators; and

5. "Law enforcement agency" means any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions, including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections, and the Oklahoma State Bureau of Investigation.

SECTION 4. AMENDATORY 51 O.S. 1991, Section 24A.5, as last amended by Section 7, Chapter 97, O.S.L. 1993 (51 O.S. Supp. 1993, Section 24A.5), is amended to read as follows:

Section 24A.5 All records of public bodies and public officials shall be open to any person for inspection, copying, and/or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act does not apply to records specifically required by law to be kept confidential including:

- a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges; or
- b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes.

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions, ~~provided however, the~~. The Oklahoma Department of Public Safety shall not be required to assemble for the requesting person specific information requested from the Oklahoma Department

of Public Safety's Driver License file relating to persons whose names and dates of birth or whose driver license numbers are not furnished by the requesting person. Municipal police departments shall not be required to assemble for the requesting person any traffic collision report unless the requesting person furnishes the name of the driver involved.

3. Any request for a record which contains individual records of persons and the cost of copying, reproducing or certifying such individual record which is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of document copying, and/or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall said document copying fee exceed twenty-five cents (\$0.25) per page for documents having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. For purposes of this section, only such charges as prescribed pursuant to Section 6 of this act shall be assessed by a public body for the provision of public information in a format other than paper. However, if the request is:

- a. solely for commercial purpose; or
- b. clearly would cause excessive disruption of the public body's essential functions;

then the public body may charge a reasonable fee to recover the direct cost of document search. No public body shall be required to expend public resources to create, segregate, analyze or format records requested solely for commercial purposes.

Any public body establishing fees under this act shall post a written schedule of said fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of said documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the

affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

Said fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, such index shall not be copied and/or mechanically reproduced for the purpose of sale of such information.

5. In response to open record requests for records in formats other than paper, a public body shall be required to furnish access to the records or copies of the records in any format used by the public body in the normal performance of its duties. A public body shall not be required to furnish access to records or copies of records in any format not used by the public body in the normal performance of its duties. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

6. Any public body which maintains a computer data base that commingles public records with records specifically required by law to be kept confidential shall maintain a computer program that allows for the segregation of public information from the data base. Fulfillment of a request to copy and/or mechanically reproduce the public record portion of a data base in machine-readable form, while segregating those records in the data base specifically required by law to be kept confidential, shall not be considered the creation of a new record.

7. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one such person

shall be available at all times to release records during the regular business hours of the public body.

SECTION 5. AMENDATORY 51 O.S. 1991, Section 24A.9, is amended to read as follows:

Section 24A.9 ~~Prior to taking action, including making a recommendation or issuing a report, a public official may keep confidential his or her personal~~ Personal notes and personally created materials ~~other than departmental budget requests of a public body prepared as an aid to memory,~~ or personal research leading to the which precede action or adoption of a public policy or the implementation of a public project by a public official, may be kept confidential. However, unless otherwise exempted by law, personal notes, personally created materials or personal research, regardless of its purpose, which are disseminated outside the public body or provided to members of the governing board of the public body shall be available to the public at the same time the notes, materials or research are disseminated or provided. Agency memoranda, research, notes or other materials that describe or set forth action by an agency or a public official or adoption of agency policy shall always be open.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24A.22 of Title 51, unless there is created a duplication in numbering, reads as follows:

The Office of State Finance, by rules promulgated pursuant to Article I of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes, shall establish permissible charges for electronic access to public records, including but not limited to charges for computer discs, tapes, audio cassettes and other electronic or machine-readable information storage devices when an agency is required to furnish information on such storage media; central processing unit time; programming; segregation of confidential information; and such other direct costs of copying and/or mechanical reproduction of public records in formats other than paper as may be incurred by public bodies. Charges for central processing unit time shall be limited to the actual time required to electronically transfer

public records from computer storage to the computer disc, tape, audio cassette or other electronic or machine-readable information storage devices. Charges for programming shall be limited to the actual and direct programming costs of retrieving and electronically transferring public records. If a state agency already possesses programs which are capable of retrieving public records, then no charge for programming may be permitted. Once an agency creates or obtains a program for the retrieval and transfer of public records from computer storage, it may not charge for those costs of retrieving records again. If a state agency already possesses programs which are capable of segregating public records, then no charge for segregating records may be permitted. Once an agency creates or obtains a program for the segregation of public records contained in computer storage, it may not charge for the costs of segregating records again. Actual and direct costs of retrieval and segregation of public records shall not include the costs of computer hardware or software. Actual and direct utility and other support costs of retrieval and segregation of public records shall be limited to those actual costs incurred during the actual transfer and segregation of public records. Only such charges as are established by the Office of State Finance as provided in this section may be assessed by a public body.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24A.23 of Title 51, unless there is created a duplication in numbering, reads as follows:

Public bodies that are otherwise authorized by law to sell public records may contract for the provision and sale of the records in formats other than paper. The contracts shall contain, as a minimum, terms governing the determination of charges, manner of payment, and means of delivery of the public information, and shall specify the statutory authority of the public body permitting the sale of the information. Proposed contracts of executive department entities shall be reviewed by the Attorney General. Proposed contracts of local governmental entities shall be reviewed by the counsel for the local governmental entity using

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terms and conditions applicable to contracts for the sale of public information by executive department entities. All contracts must satisfy the minimum parameters for the contracts prescribed by this section and must be in pursuance of lawful duties of the public body. Contracts not in compliance with the provisions of this section shall be null and void and of no effect.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24A.24 of Title 51, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this section, "individual information" means data that is collected, received or stored by a public body or employee or agent thereof and that identifies a specific person or can be manipulated by the application of other data or information to identify a specific person.

B. Data that is individual information and that is not needed by a public body in meeting its lawfully prescribed duties or responsibilities shall not be collected by the public body. Every public body shall prescribe by rule the nature of the individual information that the public body requires to carry out its lawfully prescribed duties or responsibilities. State agencies subject to the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes, shall promulgate said rules pursuant to said act.

C. Every public body shall grant a person who wishes to challenge the need of the public body for collecting individual information about that person at least one opportunity to appeal to a designated officer or administrator of the agency. In the case of state agencies subject to the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes, the appeal shall be by petition pursuant to Section 305 of Title 75 of the Oklahoma Statutes.

D. Except as otherwise provided by law, individual information collected by a public body shall be kept confidential on a need-to-know basis and shall not be disseminated, shown or otherwise revealed to any other public body, agency or person

without the express written consent of the individual identified. No person shall have services, to which the person is otherwise entitled, withheld or denied solely by reason of the person's having declined to provide the written consent. Individual information collected by a public body may be disseminated to another public body if the information is needed to meet the lawfully prescribed duties of the public body to which the information is disseminated.

E. Nothing in this section shall be deemed to create a private cause of action for damages or attorney fees if individual information is disseminated contrary to or in violation of this section.

F. Every person shall have a right to review without charge or, once each year, to obtain a copy of, within thirty (30) days of request, all individual information held by a public body respecting the person. The cost for copies made pursuant to this subsection shall be as prescribed by the Oklahoma Open Records Act.

SECTION 9. This act shall become effective September 1, 1994.

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