

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1780

By: Williams

COMMITTEE SUBSTITUTE

An Act relating to access to public records; amending 51 O.S. 1991, Sections 24A.1 and 24A.5, as amended by Section 2, Chapter 231, O.S.L. 1992 (51 O.S. Supp. 1992, Section 24A.5), which relate to the Oklahoma Open Records Act; updating statutory references; modifying short title; limiting permissible charges for the provision of public records in formats other than paper; providing procedure for the determination of charges for access to public records in formats other than paper; stating duties of the Office of State Finance; authorizing the judicial department to formulate a standard fee schedule and providing for its effectiveness; authorizing contracts for the sale of public records in formats other than paper; establishing contract parameters; providing procedures for the review of proposed contracts; authorizing the judicial department to formulate a standard contract and requiring approval; amending Section 1, Chapter 231, O.S.L. 1992, which relates to the Advisory Committee on Access to Machine-Readable Records; modifying certain dates; providing for codification; providing an effective date; and declaring an emergency.

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 7~~ Sections 3 and 4 of this act shall be known as the "Oklahoma Open Records Act".

SECTION 2. AMENDATORY 51 O.S. 1991, Section 24A.5, as amended by Section 2, Chapter 231, O.S.L. 1992 (51 O.S. Supp. 1992, 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 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 are not furnished by the requesting person.

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 3 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.

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. 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. 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 3. 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:

A. The Office of State Finance shall establish a procedure for determining permissible charges for electronic access to public records, including but not limited to charges for computer discs, tapes and other electronic or machine-readable devices; 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. Only such charges as are identified in writing by the Office of State Finance as provided in this section may be assessed by a public body.

B. Notwithstanding the provisions of subsection A of this section, the judicial department may formulate a standard fee schedule for charges for electronic access to public records of the courts, consistent with the procedures prescribed by the Office of State Finance to the extent deemed appropriate. The fee schedule adopted by the judicial department shall not be effective without the approval of the Office of the Attorney General.

SECTION 4. 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:

A. Public bodies that are otherwise authorized by law to sell public records may contract for the provision and sale of such 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 state entities shall be reviewed by the Office of the Attorney General. Proposed contracts of local governmental entities shall be reviewed by the counsel for the local governmental entity using terms and conditions applicable to contracts for the sale of public information by executive state entities. All contracts must satisfy the minimum parameters for such 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.

B. Notwithstanding the provisions of subsection A of this section, the judicial department may formulate a standard contract for the provision and sale of public records of the courts, consistent with the contractual provisions applicable to executive state entities and local governmental entities to the extent determined appropriate. The standard contract adopted by the judicial department shall require the approval of the Office of the Attorney General.

SECTION 5. AMENDATORY Section 1, Chapter 231, O.S.L. 1992, is amended to read as follows:

Section 1. A. There is hereby created until June 1, ~~1993~~ 1994, the Advisory Committee on Access to Machine-Readable Records. The Committee shall be composed of:

1. Two legislators who are members of the Joint Legislative Committee on Data Processing and Telecommunication, appointed by the Speaker of the House of Representatives;

2. Two legislators who are members of the Joint Legislative Committee on Data Processing and Telecommunication, appointed by the President Pro Tempore of the Senate;

3. The Cabinet Secretary of Finance and Revenue or the Secretary's designee;

4. The Cabinet Secretary of Education or the Secretary's designee;

5. The Cabinet Secretary of Safety and Security or the Secretary's designee;

6. The Attorney General or the Attorney General's designee;

7. An employee of the Corporation Commission appointed by the Chairman of the Corporation Commission;

8. The Chief Justice of the Supreme Court or the Chief Justice's designee;

9. The State Treasurer or the State Treasurer's designee; and

10. The chief executive officer of a state agency, appointed by the Governor, or a designee of such chief executive officer.

B. The Speaker of the House of Representatives shall designate one of the appointed legislative members as chairman.

C. Not later than December 1, 1992, the Committee shall file a plan for access to machine-readable records with the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Joint Legislative Committee on Data Processing and Telecommunication. The plan shall include:

1. Recommendations on:

- a. legislative amendments needed, if any, to the Oklahoma Open Records Act, and rules needed for implementation of statutory requirements relating to access, including on-line access, to machine-readable data,
- b. statutory changes necessary to ensure development and compatibility of systems and processes necessary for the efficient and effective operation of a consolidated data repository, and
- c. the kind of public or private agency or agencies that should have managerial and operational responsibility for receiving machine-readable data from state agencies and political subdivisions of the state and for making the data available to other agencies and the public; and

2. Cost estimates for all recommendations having fiscal impact on state or local government.

D. After filing its plan, and until May 31, ~~1993~~ 1994, the Committee shall continue working as necessary to provide assistance to the Legislature. Not later than June 1, ~~1993~~ 1994, the Committee shall transfer its records to the Legislative Service Bureau.

SECTION 6. Sections 1 through 4 of this act shall become effective September 1, 1993.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take

effect and be in full force from and after its passage and approval.

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