STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2069 By: Larason

COMMITTEE SUBSTITUTE

An Act relating to public records; amending 51 O.S. 1991, Sections 24A.1 and 24A.3, as amended by Section 1, Chapter 39, O.S.L. 1993 (51 O.S. Supp. 1993, Section 24A.3), which relate to the Oklahoma Open Records Act; modifying references in short title; modifying definition of public record to include computer programs; authorizing response to request for public records with a computer system; providing for authorized charges by public body if response possible with certain media; providing for authorized charges by public body if response possible by production of written materials; providing for authorized charges by public body based upon computer system development, usage and matters related thereto; providing for interpretation in the event of conflict between statutory provisions; amending 62 O.S. 1991, Section 41.5a, as amended by Section 5, Chapter 268, O.S.L. 1992 (62 O.S. Supp. 1993, Section 41.5a), which relates to the Information Services Division of the Office of State Finance; requiring state agencies to provide copies of computer programs to Information Services Division; requiring recordkeeping system for programs; authorizing rules for transmission to programs; requiring state governmental entities to provide computer record overlays or keys; 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.20 of this title and Section ~~7~~ 4 of this act shall be known as the "Oklahoma Open Records Act".

SECTION 2. 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:

1. "Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, computer programs, 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 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, permit, or for the purpose of becoming qualified to contract with a public body;

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; 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, and the Oklahoma State Bureau of Investigation.

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. For purposes of the Oklahoma Open Records Act, a public body may respond to a request for a record using a computer system.

B. If the public body can respond to the request for a record by making a copy of information with a magnetic or similar computer data storage media, the public body may charge its cost for the form of the media upon which the information may be copied or stored.

C. If the public body can respond to the request for a record by producing a written or printed document produced by the computer system of the public body, the public body may charge the fee prescribed by Section 24A.5 of this title for the document so produced. If a written document contains information which includes multiple lines or information which may be defined by law as containing multiple records, the public body may charge only the fee authorized by this act for each printed page and may not impose a separate charge for each line or each record on multiple pages.

D. If a public body uses its own computer system and can respond to a request for a record without making a direct payment to any other entity, the public body shall not charge for the expense of conducting the search for the record, but may charge only for the final form in which the requested record is transmitted to the person requesting the record as authorized by subsection B of this section.

E. If as a result of a request for a record a public body is required to make a direct payment to any other entity for use of a computer system (excluding installment or lease payments made by the public body to a vendor or lessor of computer equipment used in the ordinary course of activity performed by the public body),

the public body may charge an amount equal to its direct cost for the use of the computer system if the use is required or reasonably necessary in order to respond to the request for the record. The public body may also charge for the final form in which the requested record is transmitted to the person requesting the record as authorized by subsection B of this section.

F. If a public body, without making a payment to any other entity, develops software in order to respond to a request for a record, the public body may charge a reasonable fee for its cost to develop the software if the software is required or reasonably necessary in order to respond to the request. The public body may take into account its labor expense, including but not limited to the compensation level of the persons who develop the software, in order to arrive at the reasonable fee authorized by this subsection. The public body may also charge for the final form in which the requested record is transmitted to the person requesting the record as authorized by subsection B of this section.

G. If the person requesting a record furnishes software to the public body for purposes of retrieving the requested record and the software may be used without significant risk of damage to the hardware or software of the public body, the public body may use the software so furnished in order to respond to the request. If the public body is required to make a payment of its funds to any other entity in order to conduct the search using the software so furnished, the public body may charge the direct cost it incurs as provided in subsection E of this section. The charge may only be made if the cost to the public body is required or reasonably necessary in order to respond to the request for the record.

H. In the event of any conflict between the provisions of this section and any other provision of law regarding the authorized fees or charges for use of a computer system to produce records pursuant to the Oklahoma Open Records Act or the transmission of records to the person requesting records pursuant to the Oklahoma Open Records Act, the provisions of this section shall be controlling and shall be followed notwithstanding any inconsistency with any other provision of law.

SECTION 4. AMENDATORY 62 O.S. 1991, Section 41.5a, as amended by Section 5, Chapter 268, O.S.L. 1992 (62 O.S. Supp. 1993, Section 41.5a), is amended to read as follows:

Section 41.5a A. The Information Services Division shall:

1. Coordinate data processing planning through analysis of each agency's long-term data processing plans;

2. Develop a state-wide data processing plan with annual modifications to include as a minimum:

a. individual agency plans,

b. information systems plans for the state-wide electronic data processing function,

c. major development projects proposed for the current year and the next three (3) years, and

d. an explanation of revisions to previous plans;

3. Establish minimum mandatory standards for:

a. information systems planning,

b. systems development methodology,

c. documentation,

d. hardware requirements and compatibility,

e. operating systems compatibility,

f. software and hardware acquisition,

g. data security and internal controls,

h. data base compatibility, and

i. contingency planning and disaster recovery.

Such standards shall, upon adoption, be the minimum requirements applicable to all agencies. These standards shall be compatible with the standards established for the Oklahoma Government Telecommunications Network created in Section ~~1~~ 41.5m of this ~~act~~ title. Individual agency standards may be more specific than state-wide requirements but shall in no case be less than the minimum mandatory standards. Where standards required of an individual agency of the state by agencies of the federal government are more strict than the state minimum standards, such federal requirements shall be applicable;

4. Develop and maintain applications for agencies not having the capacity to do so;

5. Operate a data processing service center to provide operations and hardware support for agencies requiring such services and for state-wide systems;

6. Maintain a directory of application systems, systems software, hardware, internal and external data processing studies and training courses in use by all agencies of the state; and facilitate the utilization of such resources by any agency having requirements which are found to be available within any agency of the state;

7. Assist agencies in the acquisition and utilization of data processing systems and hardware to effectuate the maximum benefit for the provision of services and accomplishment of the duties and responsibilities of agencies of the state;

8. Require agencies to provide to the Information Services Division an exact copy of any computer software program developed by the agency. The Information Services Division shall maintain a permanent recordkeeping system which allows the examination of all such programs. The records shall be indexed to allow convenient location and review of the software programs. The Information Services Division may prescribe rules for the method by which agencies transmit software programs as required by this paragraph;

9. Require agencies to provide to the Information Services Division a computer record overlay or key which demonstrates the method by which the agency uses a computer system to organize, store or gain access to information which the agency creates or maintains;

10. In conjunction with the Office of Personnel Management, establish training guidelines for electronic data processing personnel, assist agencies in placing personnel in appropriate courses offered by other agencies of the state, and sponsor training courses for attendance by data processing personnel of all agencies;

~~9.~~ 11. Coordinate for the executive branch of state government agency data processing activities, encourage joint projects and common systems, and linking of agency systems through the review of agency plans, development of a state-wide plan and

its integration with the budget process to ensure that developments and/or acquisitions are consistent with state-wide objectives and that proposed systems are justified and cost effective;

~~10.~~ 12. Develop performance reporting guidelines for data processing facilities and conduct an annual review to compare agency plans and budgets with results and expenditures;

~~11.~~ 13. Establish operations review procedures for data processing installations operated by agencies of the state for independent assessment of productivity, efficiency, and cost effectiveness;

~~12.~~ 14. Establish service center user charges for billing costs to agencies based on the use of all resources; and

~~13.~~ 15. Provide system development and consultant support to state agencies on a contractual, cost reimbursement basis.

B. No agency of the executive branch of the state shall use state funds for or enter into any agreement for the acquisition of computer hardware or software exceeding Two Thousand Five Hundred Dollars ($2,500.00) in value without written authorization of the Director of State Finance. The provisions of this subsection shall not be applicable to any member of The Oklahoma State System of Higher Education, any public elementary or secondary schools of the state, or any area vocational-technical school district as defined in Section 14-108 of Title 70 of the Oklahoma Statutes.

C. The provisions of this act shall not require the disclosure, directly or indirectly, of any information of a state agency which is declared to be confidential or privileged by state or federal statute or the disclosure of which is restricted by agreement with the United States or one of its agencies, nor the disclosure of data processing system details that may permit the access to confidential information.

SECTION 5. This act shall become effective September 1, 1994.

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