

ENGROSSED HOUSE  
BILL NO. 1268

By: Williams of the House  
and  
Robinson of the Senate

An Act relating to public records; amending 51 O.S. 1991, Sections 24A.2, 24A.3, 24A.5, as amended by Section 2, Chapter 231, O.S.L. 1992, and 24A.9 (51 O.S. Supp. 1992, Section 24A.5), which relate to the Oklahoma Open Records Act; establishing public policy; modifying definitions; modifying and adding provisos for the inspection, copying or mechanical reproduction of records; clarifying confidentiality of certain materials; 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.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 2. AMENDATORY 51 O.S. 1991, 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, personal financial statements submitted to a public body for the purpose of obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body. "Record" shall include data and information on 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, and the Oklahoma State Bureau of Investigation.

SECTION 3. 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. 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; provided, however, no public body shall be required to expend public resources to 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. 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.

7. 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.

SECTION 4. 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 5. This act shall become effective September 1, 1993.

Passed the House of Representatives the 2nd day of March, 1993.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1993.

President of the Senate