

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 719

By: Weedn of the Senate

and

Rice of the House

(public records - 51 O.S. 1991 - Oklahoma Open Records Act
- short title - fees - software - codification -
effective date)

AUTHOR: Add the following House Coauthor: Deutschendorf

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

An Act relating to public records; amending 51 O.S. 1991, Section 24A.1, 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.10 (51 O.S. Supp. 1995, Sections 24A.3 and 24A.5), which relate to the Oklahoma Open Records Act; modifying references in short title; modifying definition; modifying duties imposed upon the Department of Corrections and Oklahoma State Bureau of Investigation with respect to certain records; authorizing use of computer system for response to certain requests; prescribing procedures for use by public bodies to respond to requests through use of computer systems; authorizing fees and providing for procedures for charging fees; specifying fee to

be charged for records used for certain publication; allowing use of certain software; making certain provisions not apply to the State Election Board; allowing certain public bodies to keep certain information confidential; requiring certain measures considered by the Legislature to be indexed on internet home pages; 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~~ Section 24A.1 ~~through 24A.19 et seq.~~ of this title ~~and Section 7 of this act~~ shall be known and may be cited 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. 1995, 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, data files created by or used with computer software, 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, 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. AMENDATORY 51 O.S. 1991, Section 24A.5, as last amended by Section 7, Chapter 97, O.S.L. 1993 (51 O.S. Supp. 1995, 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, Section 24A.1 et seq. of this title, 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 and dates of birth or whose driver license numbers are not furnished by the requesting person and the Oklahoma Department of Corrections and the Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names and dates of birth 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, except as specifically provided by Section 4 of this act. 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. is solely for commercial purpose~~+~~, or
- b. ~~clearly~~ would clearly 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; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of data for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose may not exceed the direct cost of making the copy.

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~~ The 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24A.5a 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 the fee presented by Section 24A.5 of Title 51 of the Oklahoma Statutes for 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 Title 51 of the Oklahoma Statutes, 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 unless otherwise agreed to by contract.

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. The provisions of this section shall not apply to the State Election Board.

SECTION 5. AMENDATORY 51 O.S. 1991, Section 24A.10, is amended to read as follows:

Section 24A.10 A. Any information, records or other material heretofore voluntarily supplied to any state agency, board or commission which was not required to be considered by that agency, board or commission in the performance of its duties may, within thirty (30) days from the effective date of this act, be removed from the files of such agency, board or commission by the person or entity which originally voluntarily supplied such information. Provided, after thirty (30) days from the effective date of this act, any information voluntarily supplied shall be subject to full disclosure pursuant to this act.

B. If disclosure would give an unfair advantage to competitors or bidders, a public body may keep confidential records relating to:

1. Bid specifications for competitive bidding prior to publication by the public body; or
2. Contents of sealed bids prior to the opening of bids by a public body; or
3. Computer programs or software but not data thereon; or

4. Appraisals relating to the sale or acquisition of real estate by a public body prior to award of a contract; or

5. The prospective location of a private business or industry prior to public disclosure of such prospect except for records otherwise open to inspection such as applications for permits or licenses.

C. Except as set forth hereafter, the Oklahoma Department of Commerce may keep confidential:

1. Business plans, feasibility studies, financing proposals, marketing plans, financial statements or trade secrets submitted by a person or entity seeking economic advice from the Oklahoma Department of Commerce; and

2. Information compiled by the Oklahoma Department of Commerce in response to those submissions.

The Oklahoma Department of Commerce may not keep confidential that submitted information when and to the extent the person or entity submitting the information consents to disclosure.

D. Although they must provide public access to their records, including records of the name, address, rate paid for services, charges, and payment for each customer, public bodies that provide utility services to the public may keep confidential credit information, credit card numbers, telephone numbers, and bank account information for individual customers.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.22 of Title 75, unless there is created a duplication in numbering, reads as follows:

Measures considered by the Oklahoma Senate and House of Representatives shall be indexed on the House and Senate Internet Home Pages with the measure number and short title.

SECTION 7. This act shall become effective November 1, 1996."

Passed the House of Representatives the 3rd day of April, 1996.

Speaker

of the House of
Representatives

Passed the Senate the ____ day of _____, 1996.

President

of the Senate