

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1553

By: Carey of the House

and

Gumm of the Senate

COMMITTEE SUBSTITUTE

An Act relating to records; amending 47 O.S. 2001, Sections 2-110, as last amended by Section 7, Chapter 130, O.S.L. 2004 and 2-111 (47 O.S. Supp. 2004, Section 2-110), which relate to creation, organization, and responsibilities of the Department of Public Safety; deleting authority to prepare, deliver, and collect fees for videotape recordings; requiring certain records be provided upon payment of fees; providing for adoption of rules for destruction and retention of records; providing exceptions to certain statutory provisions; amending 47 O.S. 2001, Section 6-117, as last amended by Section 42, Chapter 5, O.S.L. 2004 (47 O.S. Supp. 2004, Section 6-117), which relates to records kept by Department of Public Safety; clarifying language; authorizing release of Motor Vehicle Report; stating contents of Motor Vehicle Report; prohibiting release of driving index; requiring inclusion of certain report in Motor Vehicle Report; amending 51 O.S. 2001, Sections 24A.3, as last amended by Section 1, Chapter 328, O.S.L. 2004, 24A.5, 24A.8, 24A.17 and 24A.18 (51 O.S. Supp. 2004, Section 24A.3), which relate to Oklahoma Open Records Act; modifying definition of certain term; modifying Department of Public Safety exemptions to Oklahoma Open Records Act; modifying records requirements for law enforcement agencies; clarifying fee requirement for computerized format of records; allowing public inspection of certain lists and logs; clarifying meaning of certain phrase; requiring confidentiality of certain records kept by Department of Public Safety; clarifying civil liability provisions; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 2-110, as last amended by Section 7, Chapter 130, O.S.L. 2004 (47 O.S. Supp. 2004, Section 2-110), is amended to read as follows:

Section 2-110. A. Officers and employees of the Department of Public Safety designated by the Commissioner, for the purpose of administering the motor vehicle laws, are authorized to administer oaths and acknowledge signatures and shall do so without fee.

B. The Commissioner and such officers of the Department as the Commissioner may designate are hereby authorized to prepare under the seal of the Department and deliver upon request a certified copy of any record of the Department, charging a fee of Three Dollars (\$3.00) for each record so certified, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof. A certification fee shall be charged:

1. Only if the person requesting the record specifically requests that the record be certified; and

2. In addition to the copying and reproduction fees provided by the Oklahoma Open Records Act or any other applicable law.

C. The Commissioner and any other officers of the Department as the Commissioner may designate are hereby authorized to provide a copy of any record required to be maintained by the Department at no charge to any of the following government agencies when requested in the performance of official governmental duties:

1. The driver license agency of any other state;

2. Any court, district attorney or municipal prosecutor in this state or any other state;

3. Any law enforcement agency in this state or any other state or any federal agency empowered by law to make arrests for public offenses;

4. Any public school district in this state for purposes of verifying the driving record of a currently employed school bus driver or person making application for employment as a school bus driver; or

5. Any state agency in this state.

D. Any record required to be maintained by the Department may be released to any other entity free of charge when the release of the record would be for the benefit of the public, as determined by the Commissioner or a designee of the Commissioner.

~~E. The Commissioner and any other officers of the Department as the Commissioner may designate are hereby authorized to prepare copies of videotape recordings which are not exempt law enforcement records, as prescribed in Section 24A.8 of Title 51 of the Oklahoma Statutes, when held as records of the Department, and deliver upon request to any person a copy of a videotape recording, for a fee of Twenty five Dollars (\$25.00) for each copy. Any monies collected by the Department pursuant to this subsection shall be deposited to the credit of the Department of Public Safety Revolving Fund following records shall be provided by the Department to any authorized recipient, pursuant to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, upon payment of the appropriate fees for the records:~~

1. A Motor Vehicle Report, as defined in Section 6-117 of this title; and

2. A copy of any driving record related to the Motor Vehicle Report.

F. 1. The provisions of subsections B ~~and~~, D, and E of this section and the Open Records Act shall not apply to the release of personal information ~~on the~~ from any driving record of any person ~~or~~ application for an original, renewal, or replacement driver license or identification card. Such personal information shall be confidential except as provided for in this subsection or in the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725. Upon written request to the Commissioner of Public Safety by a law enforcement agency or another state's or country's driver licensing agency for personal information on a specific individual, as named or otherwise

identified in the written request, to be used in the official capacity of the agency, the Commissioner may release such personal information to the agency pursuant to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725.

2. For the purposes of this subsection, "personal information" means information which identifies a person, including but not limited to a photograph or image in computerized format of the person, fingerprint image in computerized format, signature or signature in computerized format, social security number, residence address, mailing address, and medical or disability information.

SECTION 2. AMENDATORY 47 O.S. 2001, Section 2-111, is amended to read as follows:

Section 2-111. A. All records of the Department, other than those declared by law to be confidential for the use of the Department, shall be open to public inspection during office hours.

B. The Commissioner ~~may destroy any~~ shall supervise the maintaining of all records of the Department which have been maintained on file for five (5) years which he may deem obsolete and of no further service and shall adopt rules concerning the destruction and retention of records. Records of the Department shall not be subject to the provisions of:

1. Sections 305 through 317 of Title 67 of the Oklahoma Statutes or be transferred to the custody or control of the State Archives Commission;

2. Section 590 of Title 21 of the Oklahoma Statutes; or

3. The Records Management Act, Sections 201 through 215 of Title 67 of the Oklahoma Statutes.

The Commissioner may, pursuant to an adopted rule, order destruction of records deemed to be no longer of value to the Department in carrying out the powers and duties of the Department.

C. 1. The Commissioner may cause any or all records kept by the Department of Public Safety to be photographed, microphotographed, photostated, reproduced on film, or stored on computer storage medium. The film or reproducing material shall be of durable material, and the device used to reproduce the records on the film or reproducing material shall accurately reproduce and perpetuate the original records in all detail.

2. The photostatic copy, photograph, microphotograph, photographic film or computerized image of the original records shall be deemed to be an original record for all purposes and shall be admissible as evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy thereof shall be deemed to be a transcript, exemplification, or certified copy of the original.

3. The photostatic copies, photographs, microphotographs, reproductions on film, or computerized images shall be placed in conveniently accessible files and provisions made for preserving, examining, and using ~~such~~ the copies, photographs, microphotographs, reproductions on film and computerized images. The Commissioner of Public Safety is empowered to authorize the disposal, archival storage, or destruction of the original records or papers.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 6-117, as last amended by Section 42, Chapter 5, O.S.L. 2004 (47 O.S. Supp. 2004, Section 6-117), is amended to read as follows:

Section 6-117. A. The Department of Public Safety shall file every application for a driver license or identification card received by ~~it~~ the Department and shall maintain suitable indexes containing:

1. All applications denied and on each thereof note the reasons for ~~such~~ the denial;

2. All applications granted;

3. The name of every person whose driving privilege has been suspended, revoked, cancelled, or disqualified by the Department and after each such name note the reasons for ~~such~~ the action. Any notation of suspension of ~~a person's~~ the driving privilege of a person for reason of nonpayment of a fine shall be removed from the driving record after the person has paid the fine and the ~~person's~~ driving privilege of the person is reinstated as provided for by law; and

4. ~~By the~~ The county of residence, the name, date of birth, and mailing address of each person residing in that county who is eighteen (18) years of age or older, and who is the holder of a current driver license or a current identification card issued by the Department of Public Safety for the purpose of ascertaining names of all persons qualified for jury service as required by Section 18 of Title 38 of the Oklahoma Statutes.

B. The Department shall file all collision reports and abstracts of court records of convictions received by it pursuant to the laws of this state and maintain convenient records of ~~such~~ the records and reports or make suitable notations in order that an individual record of a person showing the convictions of ~~such~~ the person and the traffic collisions in which the person has been involved shall be readily ascertainable and available for the consideration of the Department of Public Safety upon any application for a driver license or renewal of a driver license and at other suitable times. Any abstract, index or other entry relating to a driving record according to the licensing authority in another state or a province of Canada may be posted upon the driving record of any resident of this state when notice thereof is received by documentation or by electronic transmission. The individual record of a person shall not include any collision reports and abstracts of court records involving a collision in which the person

was not issued a citation or if a citation is issued and ~~said~~ the person was not convicted.

C. 1. The Commissioner and ~~such~~ the officers of the Department as the Commissioner may designate are hereby authorized to prepare under the seal of the Department and deliver upon request a copy of any collision report on file with the Department, charging a fee of Seven Dollars (\$7.00). However, the Department shall not be required to furnish personal information from ~~a driver record~~ the collision report which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725.

2. Notwithstanding the provisions of paragraph 1 of this subsection, the Department is authorized to enter into contracts to supply information regarding vehicles reported to be involved in collisions. For each ~~such~~ vehicle, the information shall be limited to that which only describes the vehicle and the collision. The Department shall not be required to provide any information regarding the owner or operator of the vehicle or any information which would conflict with Section 2-110 or Section 1109 of this title.

D. The Department of Public Safety or any motor license agent upon request shall prepare and furnish ~~a summary~~ to any authorized person ~~of the driving record~~ a Motor Vehicle Report of any person subject to the provisions of the motor vehicle laws of this state. However, the Department shall not be required to furnish personal information from a driving record contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725. ~~Said summary~~ The Motor Vehicle Report shall be a summary of the driving record of the person and shall include the enumeration of any motor vehicle collisions, reference to convictions for violations of motor vehicle laws, and any action taken against the ~~person's~~ privilege of the person to operate a

motor vehicle, as shown by the files of the Department for the three (3) years preceding the date of the request. The Department shall not be required to release to any person, in whole or in part and in any format, a driving index, as described in subsection A of this section, except as otherwise provided for by law. For each ~~summary~~ Motor Vehicle Report furnished by the Department of Public Safety, the Department shall collect the sum of Ten Dollars (\$10.00). For each ~~summary~~ Motor Vehicle Report furnished by a motor license agent, the agent shall collect the sum of Ten Dollars (\$10.00), Eight Dollars (\$8.00) of which shall be paid to the Oklahoma Tax Commission for deposit in the General Revenue Fund in the State Treasury and Two Dollars (\$2.00) of which shall be retained by the motor license agent. Persons sixty-five (65) years of age or older shall not be required to pay a fee for their own ~~driving record~~ summary Motor Vehicle Report furnished by the Department or a motor license agent. For purposes of this subsection, a Motor Vehicle Report shall include a report which indicates that no driving record is on file with the Department of Public Safety for the information received by the Department in the request for the Motor Vehicle Report.

E. All monies received by the Commissioner of Public Safety and the officers and employees of the Department shall be remitted to the State Treasurer to be credited to the General Revenue Fund in the State Treasury except as otherwise provided for by law.

SECTION 4. AMENDATORY 51 O.S. 2001, Section 24A.3, as last amended by Section 1, Chapter 328, O.S.L. 2004 (51 O.S. Supp. 2004, Section 24A.3), is amended to read as follows:

Section 24A.3 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:

- a. computer software,
- b. nongovernment personal effects ~~or~~,
- c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system,
- d. 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. ~~"Record" does not mean,~~
- e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority. ~~"Record" does not mean any,~~
- f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department or the Board of Trustees of the Quartz Mountain Arts and Conference Center and Nature Park to obtain any service at ~~such~~ the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department or the Quartz Mountain Arts and Conference Center and Nature Park. ~~"Record" does not mean,~~

- g. a Department of Defense Form 214 (DD Form 214) filed with a county clerk, including any DD Form 214 filed before the effective date of this act, or
- h. except as provided for in Section 2-110 of Title 47 of the Oklahoma Statutes,
- (1) any record in connection with a Motor Vehicle Report issued by the Department of Public Safety, as prescribed in Section 6-117 of Title 47 of the Oklahoma Statutes,
- (2) personal information within driver records, as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, which are stored and maintained by the Department of Public Safety, or
- (3) audio or video recordings of the Department of Public Safety;

2. "Public body" shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a 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 Council on Judicial Complaints, the Legislature, or 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 State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation.

SECTION 5. AMENDATORY 51 O.S. 2001, 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~~ or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, ~~Section~~ Sections 24A.1 ~~et seq.~~ through 24A.28 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, ~~or~~
- c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or
- d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.

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,~~ in any format, from driving records relating to ~~persons~~ any person whose ~~names~~ name and ~~dates~~ date of birth or whose driver license ~~numbers are~~ number is not furnished by the requesting person.

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~~ each 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~~ record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall ~~said document~~ the record copying fee exceed twenty-five cents (\$0.25) per page for ~~documents~~ records 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:

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

then the public body may charge a reasonable fee to recover the direct cost of ~~document~~ record search and copying; however, publication in a newspaper or broadcast by news media for news

purposes shall not constitute a resale or use of ~~data~~ a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of ~~said~~ the 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~~ records 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.

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~~ the index shall not be copied ~~and/or~~ or mechanically reproduced for the purpose of sale of ~~such~~ the 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 6. AMENDATORY 51 O.S. 2001, Section 24A.8, is amended to read as follows:

Section 24A.8 A. Law enforcement agencies shall make available for public inspection, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;

2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;

3. A chronological list of incidents pertaining to the arrest, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred; and

4. Radio logs, including a chronological listing of the calls dispatched pertaining to the arrest, but shall not be required to include:

a. telephone numbers, addresses, or

b. personal information from a radio log which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725;

provided, personal information from a driving record shall not be furnished by the Department of Public Safety contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725.

B. Law enforcement agencies shall make available for public inspection, if kept, the following records:

1. Conviction information, including the name of any person convicted of a criminal offense;

~~4.~~ 2. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;

~~5.~~ ~~A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer and a brief summary of what occurred;~~

~~6.~~ 3. A crime summary, including ~~a departmental~~ an agency summary of crimes reported and public calls for service by classification or nature and number;

~~7.~~ ~~Radio logs, including a chronological listing of the calls dispatched;~~ and

~~8.~~ 4. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of ~~his~~ commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of ~~his~~ discharge or escape of the prisoner.

~~B.~~ C. Except for the records listed in ~~subsection~~ subsections A and B of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

~~C.~~ D. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.

~~D.~~ E. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act shall be made available for public inspection in a manner to be determined by the Department.

~~E.~~ F. The Council on Law Enforcement Education and Training (C.L.E.E.T.) shall keep confidential all records it maintains pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and deny release of records relating to any employed or certified full-time officer, reserve officer, retired officer or other person; teacher lesson plans, tests and other teaching materials; and personal communications concerning individual students except under the following circumstances:

1. To verify the current certification status of any peace officer;
2. As may be required to perform the duties imposed by Section 3311 of Title 70 of the Oklahoma Statutes;
3. To provide to any peace officer copies of the records of that peace officer upon submitting a written request;
4. To provide final orders of administrative proceedings where an adverse action was taken against a peace officer; and
5. Pursuant to an order of the district court of the State of Oklahoma.

G. The Department of Public Safety shall keep confidential:

1. All records it maintains pursuant to its authority under Title 47 of the Oklahoma Statutes relating to the Oklahoma Highway Patrol Division, the Communications Division, and other divisions of the Department relating to:

- a. training, lesson plans, teaching materials, tests, and test results, and
- b. policies, procedures, and operations, any of which are of a tactical nature; and

2. For the purpose of preventing identity theft and invasion of law enforcement computer systems, except as provided in Title 47 of the Oklahoma Statutes, all driving records.

SECTION 7. AMENDATORY 51 O.S. 2001, Section 24A.17, is amended to read as follows:

Section 24A.17 A. Any public official who willfully violates any provision of the Oklahoma Open Records Act, upon conviction, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both such fine and imprisonment.

B. Any person denied access to a ~~record~~ records of a public body or public official ~~may~~:

1. May bring a civil suit for declarative ~~and/or~~ or injunctive relief, or both, which shall be limited to the records originally sought and denied; and, ~~if~~

2. If successful, shall be entitled to reasonable attorney fees.

C. If the public body or public official successfully defends a civil suit and the court finds that the suit was clearly frivolous, the public body or public official shall be entitled to reasonable attorney fees.

~~C.~~ D. A public body or public official shall not be civilly liable for damages for providing access to records as allowed under the Oklahoma Open Records Act.

SECTION 8. AMENDATORY 51 O.S. 2001, Section 24A.18, is amended to read as follows:

Section 24A.18 Except as may be required in Section 4 24A.4 of this ~~act~~ title, this act does not impose any additional recordkeeping requirements on public bodies or public officials.

SECTION 9. This act shall become effective November 1, 2005.

50-1-7053 SCE 03/09/05