

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 3382

By: Terrill of the House

and

Sykes of the Senate

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8  
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to records; amending 51 O.S. 2001, Sections 24A.3,  
11 as last amended by Section 4, Chapter 199, O.S.L. 2005, 24A.5, as  
12 last amended by Section 34, Chapter 16, O.S.L. 2006 and 24A.7, as  
13 amended by Section 2, Chapter 116, O.S.L. 2005 (51 O.S. Supp. 2009,  
14 Sections 24A.3, 24A.5 and 24A.7), which relate to the Oklahoma Open  
15 Records Act; modifying certain definition; updating statutory  
16 references; allowing Department of Public Safety to withhold the  
17 release of certain records; providing exceptions; providing  
18 guidelines for assessing costs on certain records; directing public  
19 bodies to keep certain employee information confidential; and  
20 declaring an emergency.

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

22 SECTION 1. AMENDATORY 51 O.S. 2001, Section 24A.3, as  
23 last amended by Section 4, Chapter 199, O.S.L. 2005 (51 O.S. Supp.  
24 2009, 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

1 used with computer software, computer tape, disk, record, sound  
2 recording, film recording, video record or other material regardless  
3 of physical form or characteristic, created by, received by, under  
4 the authority of, or coming into the custody, control or possession  
5 of public officials, public bodies, or their representatives in  
6 connection with the transaction of public business, the expenditure  
7 of public funds or the administering of public property. "Record"  
8 does not mean:

- 9 a. computer software,
- 10 b. nongovernment personal effects,
- 11 c. unless public disclosure is required by other laws or  
12 regulations, vehicle movement records of the Oklahoma  
13 ~~Transportation~~ Turnpike Authority obtained in  
14 connection with the Authority's electronic toll  
15 collection system,
- 16 d. personal financial information, credit reports or  
17 other financial data obtained by or submitted to a  
18 public body for the purpose of evaluating credit  
19 worthiness, obtaining a license, permit, or for the  
20 purpose of becoming qualified to contract with a  
21 public body,
- 22 e. any digital audio/video recordings of the toll  
23 collection and safeguarding activities of the Oklahoma  
24 ~~Transportation~~ Turnpike Authority,

- 1 f. any personal information provided by a guest at any  
2 facility owned or operated by the Oklahoma Tourism and  
3 Recreation Department or the Board of Trustees of the  
4 Quartz Mountain Arts and Conference Center and Nature  
5 Park to obtain any service at the facility or by a  
6 purchaser of a product sold by or through the Oklahoma  
7 Tourism and Recreation Department or the Quartz  
8 Mountain Arts and Conference Center and Nature Park,
- 9 g. a Department of Defense Form 214 (DD Form 214) filed  
10 with a county clerk, including any DD Form 214 filed  
11 before the effective date of this act, or
- 12 h. except as provided for in Section 2-110 of Title 47 of  
13 the Oklahoma Statutes,
- 14 (1) any record in connection with a Motor Vehicle  
15 Report issued by the Department of Public Safety,  
16 as prescribed in Section 6-117 of Title 47 of the  
17 Oklahoma Statutes, or
- 18 (2) personal information within driver records, as  
19 defined by the Driver's Privacy Protection Act,  
20 18 United States Code, Sections 2721 through  
21 2725, which are stored and maintained by the  
22 Department of Public Safety, ~~or~~
- 23 ~~(3) audio or video recordings of the Department of~~  
24 ~~Public Safety;~~

1       2. "Public body" shall include, but not be limited to, any  
2 office, department, board, bureau, commission, agency, trusteeship,  
3 authority, council, committee, trust or any entity created by a  
4 trust, county, city, village, town, township, district, school  
5 district, fair board, court, executive office, advisory group, task  
6 force, study group, or any subdivision thereof, supported in whole  
7 or in part by public funds or entrusted with the expenditure of  
8 public funds or administering or operating public property, and all  
9 committees, or subcommittees thereof. Except for the records  
10 required by Section 24A.4 of this title, "public body" does not mean  
11 judges, justices, the Council on Judicial Complaints, the  
12 Legislature, or legislators;

13       3. "Public office" means the physical location where public  
14 bodies conduct business or keep records;

15       4. "Public official" means any official or employee of any  
16 public body as defined herein; and

17       5. "Law enforcement agency" means any public body charged with  
18 enforcing state or local criminal laws and initiating criminal  
19 prosecutions, including, but not limited to, police departments,  
20 county sheriffs, the Department of Public Safety, the Oklahoma State  
21 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic  
22 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau  
23 of Investigation.

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1 SECTION 2. AMENDATORY 51 O.S. 2001, Section 24A.5, as  
2 last amended by Section 34, Chapter 16, O.S.L. 2006 (51 O.S. Supp.  
3 2009, Section 24A.5), is amended to read as follows:

4 Section 24A.5 All records of public bodies and public officials  
5 shall be open to any person for inspection, copying, or mechanical  
6 reproduction during regular business hours; provided:

7 1. The Oklahoma Open Records Act, Sections 24A.1 through ~~24A.28~~  
8 24A.29 of this title, does not apply to records specifically  
9 required by law to be kept confidential including:

- 10 a. records protected by a state evidentiary privilege  
11 such as the attorney-client privilege, the work  
12 product immunity from discovery and the identity of  
13 informer privileges,
- 14 b. records of what transpired during meetings of a public  
15 body lawfully closed to the public such as executive  
16 sessions authorized under the Oklahoma Open Meeting  
17 Act, ~~Section 301 et seq. of Title 25 of the Oklahoma~~  
18 ~~Statutes,~~
- 19 c. personal information within driver records as defined  
20 by the Driver's Privacy Protection Act, 18 United  
21 States Code, Sections 2721 through 2725, or
- 22 d. information in the files of the Board of Medicolegal  
23 Investigations obtained pursuant to Sections 940 and  
24 941 of Title 63 of the Oklahoma Statutes that may be

1           hearsay, preliminary unsubstantiated investigation-  
2           related findings, or confidential medical information.

3           2. Any reasonably segregable portion of a record containing  
4 exempt material shall be provided after deletion of the exempt  
5 portions; provided however<sup>7</sup>:

6           a. the Department of Public Safety shall not be required  
7           to assemble for the requesting person specific  
8           information, in any format, from driving records  
9           relating to any person whose name and date of birth or  
10          whose driver license number is not furnished by the  
11          requesting person. ~~The,~~

12          b. the Department of Public Safety shall not be required  
13          to provide a copy of a video or tape recording until  
14          such time as any ongoing criminal or internal  
15          investigation to which the video or tape recording is  
16          relevant is concluded; provided:

17          (1) a copy of a video or tape recording shall be made  
18               available to any person, or the legal  
19               representative of the person, who is directly  
20               involved in any ongoing criminal or internal  
21               investigation to which the video or recording is  
22               relevant,

23          (2) the Department shall, before releasing any video  
24               or tape recording other than as provided in

1 division (1) of this subparagraph, redact all  
2 content which depicts, expressly or implicitly,  
3 the death of any person, and

4 (3) the Department shall not be required to maintain  
5 the original or a copy of any video or tape  
6 recording for more than three (3) years from the  
7 date of the most recent event on the video or  
8 tape recording, and

9 c. the Oklahoma State Bureau of Investigation shall not  
10 be required to assemble for the requesting person any  
11 criminal history records relating to persons whose  
12 names, dates of birth, and other identifying  
13 information required by the Oklahoma State Bureau of  
14 Investigation pursuant to administrative rule are not  
15 furnished by the requesting person.

16 3. ~~Any~~

17 a. Except as provided in subparagraph b of this  
18 paragraph, any request for a record which contains  
19 individual records of persons, and the cost of  
20 copying, reproducing or certifying each individual  
21 record is otherwise prescribed by state law, the cost  
22 may be assessed for each individual record, or portion  
23 thereof requested as prescribed by state law.

24 Otherwise, a public body may charge a fee only for

1 recovery of the reasonable, direct costs of record  
2 copying, or mechanical reproduction. Notwithstanding  
3 any state or local provision to the contrary, in no  
4 instance shall the record copying fee exceed twenty-  
5 five cents (\$0.25) per page for records having the  
6 dimensions of eight and one-half (8 1/2) by fourteen  
7 (14) inches or smaller, or a maximum of One Dollar  
8 (\$1.00) per copied page for a certified copy.

9 b. Any request for a record from the Department of Public  
10 Safety which contains individual records of persons,  
11 and the cost of copying, reproducing or certifying  
12 each individual record is otherwise prescribed by  
13 state law, the cost may be assessed for each  
14 individual record, or portion thereof requested as  
15 prescribed by state law. Otherwise, the Department  
16 may charge a fee only for recovery of the reasonable,  
17 direct costs of record copying, or mechanical  
18 reproduction. Notwithstanding any provision to the  
19 contrary, the record copying fee shall not exceed One  
20 Dollar (\$1.00) for the first page and twenty-five  
21 cents (\$0.25) for each page thereafter for records  
22 having the dimensions of eight and one-half (8 1/2) by  
23 fourteen (14) inches or smaller. The fee charged by  
24 the Department of Public Safety for a copy in a

1 computerized or electronic format of a record of the  
2 Department shall not exceed the direct cost of making  
3 the copy unless the fee for the record is otherwise  
4 set by law; provided, for any video or image provided  
5 under the provisions of this act or pursuant to any  
6 subpoena, the Department shall charge:

7 (1) Fifty Dollars (\$50.00) for each copy of a video  
8 in any format, and

9 (2) Fifty Dollars (\$50.00) for still images from a  
10 single incident provided in digitized format on a  
11 compact disc.

12 c. However, if the request, as provided under  
13 subparagraph a or b of this paragraph:

14 a. (1) is solely for commercial purpose, or

15 b. (2) would clearly cause excessive disruption of the  
16 essential functions of the public body,

17 then the public body may charge a reasonable fee to  
18 recover the direct cost of record search and copying;  
19 however, publication in a newspaper or broadcast by  
20 news media for news purposes shall not constitute a  
21 resale or use of a record for trade or commercial  
22 purpose and charges for providing copies of electronic  
23 data to the news media for a news purpose shall not  
24 exceed the direct cost of making the copy. ~~The fee~~

1 ~~charged by the Department of Public Safety for a copy~~  
2 ~~in a computerized format of a record of the Department~~  
3 ~~shall not exceed the direct cost of making the copy~~  
4 ~~unless the fee for the record is otherwise set by law.~~

5 d. Any public body establishing fees under this act shall  
6 post a written schedule of the fees at its principal  
7 office and with the county clerk.

8 e. In no case shall a search fee be charged when the  
9 release of records is in the public interest,  
10 including, but not limited to, release to the news  
11 media, scholars, authors and taxpayers seeking to  
12 determine whether those entrusted with the affairs of  
13 the government are honestly, faithfully, and  
14 competently performing their duties as public  
15 servants.

16 f. The fees shall not be used for the purpose of  
17 discouraging requests for information or as obstacles  
18 to disclosure of requested information.

19 4. The land description tract index of all recorded instruments  
20 concerning real property required to be kept by the county clerk of  
21 any county shall be available for inspection or copying in  
22 accordance with the provisions of the Oklahoma Open Records Act;  
23 provided, however, the index shall not be copied or mechanically  
24 reproduced for the purpose of sale of the information.

1       5. A public body must provide prompt, reasonable access to its  
2 records but may establish reasonable procedures which protect the  
3 integrity and organization of its records and to prevent excessive  
4 disruptions of its essential functions.

5       6. A public body shall designate certain persons who are  
6 authorized to release records of the public body for inspection,  
7 copying, or mechanical reproduction. At least one person shall be  
8 available at all times to release records during the regular  
9 business hours of the public body.

10       SECTION 3.        AMENDATORY        51 O.S. 2001, Section 24A.7, as  
11 amended by Section 2, Chapter 116, O.S.L. 2005 (51 O.S. Supp. 2009,  
12 Section 24A.7), is amended to read as follows:

13       Section 24A.7 A. A public body may keep personnel records  
14 confidential:

15       1. Which relate to internal personnel investigations including  
16 examination and selection material for employment, hiring,  
17 appointment, promotion, demotion, discipline, or resignation; or

18       2. Where disclosure would constitute a clearly unwarranted  
19 invasion of personal privacy such as employee evaluations, payroll  
20 deductions, employment applications submitted by persons not hired  
21 by the public body, and transcripts from institutions of higher  
22 education maintained in the personnel files of certified public  
23 school employees; provided, however, that nothing in this subsection  
24 shall be construed to exempt from disclosure the degree obtained and

1 the curriculum on the transcripts of certified public school  
2 employees.

3 B. All personnel records not specifically falling within the  
4 exceptions provided in subsection A of this section shall be  
5 available for public inspection and copying including, but not  
6 limited to, records of:

7 1. An employment application of a person who becomes a public  
8 official;

9 2. The gross receipts of public funds;

10 3. The dates of employment, title or position; and

11 4. Any final disciplinary action resulting in loss of pay,  
12 suspension, demotion of position, or termination.

13 C. Except as may otherwise be made confidential by statute, an  
14 employee of a public body shall have a right of access to his own  
15 personnel file.

16 D. Public bodies shall keep confidential the home address,  
17 telephone numbers ~~and~~, social security numbers, employee  
18 identification number and birth date of any person employed or  
19 formerly employed by the public body.

20 SECTION 4. It being immediately necessary for the preservation  
21 of the public peace, health and safety, an emergency is hereby  
22 declared to exist, by reason whereof this act shall take effect and  
23 be in full force from and after its passage and approval.

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