ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1037 By: Faught of the House

and

Quinn of the Senate

An Act relating to the Oklahoma Open Records Act; amending 51 O.S. 2011, Section 24A.5, which relates to exemptions from the Oklahoma Open Records Act; providing additional exemption; and providing an effective date.

AUTHORS: Remove as principal Senate author Quinn and substitute as principal Senate author Holt. Retain Quinn as Senate coauthor

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"[records - Oklahoma Open Records Act - ~~emergency~~]

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

SECTION 1. AMENDATORY 51 O.S. 2011, 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, or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, ~~Sections~~ Section 24A.1 ~~through 24A.28~~ 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,

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,

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~~.~~, or

e. any test forms, question banks, and answer keys developed for state licensure examinations, but

specifically excluding test preparation materials or study guides;

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions; provided, however, the Department of Public Safety shall not be required to assemble for the requesting person specific information, in any format, from driving records relating to any person whose name and date of birth or whose driver license 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, dates of birth, and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule are not furnished by the requesting person~~.~~;

3. ~~Any~~ For any request for a record which contains individual records of persons, ~~and~~ when the cost of copying, reproducing or certifying each individual record 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 record copying, or mechanical reproduction.

Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents

($0.25) per page for 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 essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of 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 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 the fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of 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, the index shall not be copied or mechanically reproduced for the purpose of sale of 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~~.~~; and

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 person shall be available at all times to release records during the regular business hours of the public body.

SECTION 2. AMENDATORY 51 O.S. 2011, Section 24A.8, as amended by Section 3, Chapter 266, O.S.L. 2014 (51 O.S. Supp. 2014, Section 24A.8), is amended to read as follows:

Section 24A.8. A. Law enforcement agencies shall make available for public inspection and copying, 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 all incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred;

4. Radio logs, including a chronological listing of the calls dispatched;

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

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

7. A crime summary, including an agency summary of crimes reported and public calls for service by classification or nature and number;

8. 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 commitment, the

authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner; ~~and~~

9. Audio and video recordings from recording equipment attached to law enforcement vehicles and/or associated audio recordings from recording equipment on the person of a law enforcement officer; provided, the law enforcement agency may, before releasing any audio or video recording provided for in this paragraph, redact or obscure specific portions of the recording which:

a. depict the death of a person or a dead body,

b. depict ~~any person who is nude or~~ nudity,

c. identify minors ~~under the age of sixteen (16) years. Provided further, law enforcement agencies may redact or obscure specific portions of audio and video recordings which~~ as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes or which would be considered confidential pursuant to the provisions of Section 1-6-102 of Title 10A of the Oklahoma Statutes,

d. depict acts of severe violence resulting in great bodily injury, as defined in Section 11-904 of Title 47 of the Oklahoma Statutes, against persons that are clearly visible, unless perpetrated by a law enforcement officer,

e. depict great bodily injury, as defined in Section 11-904 of Title 47 of the Oklahoma Statutes, unless perpetrated by a law enforcement officer,

f. include personal medical information that is not already public,

g. would undermine the assertion of confidentiality or a privilege provided in Section 1-109 or Section 3-428 of Title 43A of the Oklahoma Statutes for detention and/or transportation for mental health evaluation or treatment or drug or alcohol detoxification purposes,

h. include personal information other than the name or license plate number of a person not arrested, cited, charged or issued a written warning. Such personal information shall include any government-issued identification number, date of birth, address or financial information, or

i. reveal the identity of law enforcement officers who become subject to internal investigation by the law enforcement agency as a result of an event depicted in the recording. This exception shall apply until the law enforcement agency concludes the investigation. At the conclusion of the investigation and disciplinary process, the ~~unedited audio and video~~ portions of the recordings previously withheld as

provided for in this subparagraph shall be available for public inspection and copying. The ~~unedited~~ audio and video recordings withheld as provided for in this subparagraph shall be available for public inspection and copying before the conclusion of the investigation and disciplinary process if the investigation and disciplinary process lasts for an unreasonable amount of time; and

10. a. Audio and video recordings from recording equipment attached to the person of a law enforcement officer that depict:

(1) the use of any physical force or violence by a law enforcement officer,

(2) pursuits of any kind,

(3) traffic stops,

(4) any person being arrested, cited, charged or issued a written warning,

(5) events that directly led to any person being arrested, cited, charged or receiving a written warning,

(6) detentions of any length for the purpose of investigation,

(7) any exercise of authority by law enforcement that deprives citizens of liberty,

(8) actions by a law enforcement officer that have become the cause of an investigation or charges,

(9) recordings in the public interest that may materially aid a determination of whether law enforcement officers are appropriately performing their duties as public servants, or

(10) any contextual events occurring before or after the events depicted in divisions (1) through (9) of this subparagraph.

b. Notwithstanding the provisions of subparagraph a of this paragraph, the law enforcement agency may, before releasing any audio or video recording provided for in this paragraph, redact or obscure specific portions of the recording that:

(1) depict the death of a person or a dead body,

(2) depict nudity,

(3) identify minors as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes or which would be considered confidential pursuant to the provisions of Section 1-6-102 of Title 10A of the Oklahoma Statutes,

(4) depict acts of severe violence resulting in great bodily injury, as defined in Section 11-904 of Title 47 of the Oklahoma Statutes, against

persons that are clearly visible, unless perpetrated by a law enforcement officer,

(5) depict great bodily injury, as defined in Section 11-904 of Title 47 of the Oklahoma Statutes, unless perpetrated by a law enforcement officer,

(6) include personal medical information that is not already public,

(7) undermine the assertion of confidentiality or a privilege as provided in Section 1-109 or Section 3-428 of Title 43A of the Oklahoma Statutes for detention and/or transportation for mental health evaluation or treatment or drug or alcohol detoxification purposes,

(8) depict a crime scene during an investigative phase during which time the crime scene is closed to the public,

(9) identify alleged victims of sex crimes or domestic violence,

(10) identify any person who provides information to law enforcement, or the information provided by that person, when that person requests anonymity or where disclosure of the identity of the person or the information provided could reasonably be expected to threaten or endanger the person's

physical safety or property or the physical safety or property of others,

(11) undermine the assertion of a privilege to keep the identity of an informer confidential as provided for in Section 2510 of Title 12 of the Oklahoma Statutes,

(12) include personal information other than the name or license plate number of a person not officially arrested, cited, charged or issued a written warning. Such personal information shall include any government-issued identification number, date of birth, address or financial information,

(13) include information that would clearly and materially compromise an ongoing criminal investigation or ongoing criminal prosecution, provided that:

(a) one business day following the formal arraignment of a person charged in the case in question, the recording shall be made available for public inspection and copying, with no redaction of the portions that were temporarily withheld by reliance on this division. Provided, before potential

release of a recording as provided for in this subdivision, the prosecutor or the legal representatives of the person charged may request from the appropriate district court an extension of the time during which the recording may be withheld under the provisions of this division, and when such a request has been filed with the court, the recording in question may be withheld until the court has issued a ruling. Such requests for an extension of the time during which the recording may be withheld may be made on the grounds that release of the recording will clearly and materially compromise an ongoing criminal investigation or criminal prosecution or on the grounds that release of the recording will clearly and materially compromise the accused's right to a fair trial that has not yet begun. Courts considering such requests shall consider whether the public interest outweighs the interests asserted by the parties. In response to such requests, a court shall order the recording to be made

available for public inspection and copying with no redaction of the portions that were temporarily withheld by reliance on this division, or shall order an extension of the time during which the recording may be withheld under the provisions of this division. Provided further, each such time extension can only be ordered by a court for an additional six (6) months or less, and cumulative time extensions cannot add up to more than eighteen (18) months,

(b) in the event that one hundred twenty (120) calendar days have passed since the events depicted in the recording without an arraignment of any person charged in the case in question, and release of a recording or portions of a recording have been denied on the grounds provided for in this division, an appeal of such denial may be made to the appropriate district court. In such situations where no arraignment has been made and a recording is being withheld on the grounds provided for in this division after one hundred twenty (120) calendar days

have passed since the recording's creation, courts considering appeals to the use of the provisions of this division for temporarily withholding a recording, shall consider whether the public interest outweighs the interests protected by this division. In response to such appeals, a district court shall order the recording to be made available for public inspection and copying with no redaction of the portions that were temporarily withheld by reliance on this division, or shall order an extension of the time during which the recording may be withheld under the provisions of this division. An order granting an extension shall be applicable to the recording against all appellants for the duration of the extension. Provided, each such time extension can only be ordered by a district court for an additional twelve (12) months or less, and cumulative time extensions cannot add up to more than three (3) years. Provided, the arraignment of a person charged in the case in question

automatically cancels any such extension, though a new extension following an arraignment may be requested by the parties on the grounds and under the terms provided for in subdivision (a) of this division, or

(c) the options presented in this paragraph to potentially withhold a recording or portions of a recording on the grounds provided for in this paragraph absolutely expire in totality four (4) years after the recording was made, at which time all recordings previously withheld on the grounds provided for in this paragraph shall be made available for public inspection and copying, or

(14) reveal the identity of law enforcement officers who have become subject to internal investigation by the law enforcement agency as a result of an event depicted in the recording. This exception is available until the law enforcement agency concludes the investigation. At the conclusion of the investigation and disciplinary process, the portions of the recording previously withheld as provided for in this division shall be

available for public inspection and copying. The audio and video recordings withheld on the grounds provided for in this division shall be available for public inspection and copying before the conclusion of the investigation and disciplinary process if the investigation and disciplinary process lasts for an unreasonable amount of time.

B. Except for the records listed in subsection A 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. The provisions of this section shall not operate to deny access to law enforcement records if such records have been previously made available to the public as provided in the Oklahoma Open Records Act or as otherwise provided by law.

C. 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. 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. 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, upon written request, to any law enforcement agency conducting an official investigation, copies of the records of any peace officer who is the subject of such investigation;

5. To provide final orders of administrative proceedings where an adverse action was taken against a peace officer; and

6. Pursuant to an order of the district court of the State of Oklahoma.

F. 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,

b. policies, procedures, and operations, any of which are of a tactical nature, and

c. the following information from radio logs:

(1) telephone numbers,

(2) addresses other than the location of incidents to which officers are dispatched, and

(3) personal information which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725; 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 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby~~

~~declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."~~

and when the title is restored, amend the title to conform

Passed the Senate the 21st day of April, 2015.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2015.

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Presiding Officer of the House of Representatives