

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1037

By: Faught of the House

and

Holt and Quinn of the
Senate

COMMITTEE SUBSTITUTE

An Act relating to records; amending 51 O.S. 2011, Sections 24A.5 and 24A.8, as amended by Section 3, Chapter 266, O.S.L. 2014 (51 O.S. Supp. 2014, Section 24A.8), which relate to the Oklahoma Open Records Act; modifying definitions; providing additional exemption; modifying records required to be available for public inspection and copying by law enforcement agencies; providing procedures; allowing redaction or obscuring of portions of records under certain circumstances; providing that access not denied if records made available previously; and declaring an 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 1. The Oklahoma Open Records Act, ~~Sections~~ Section 24A.1
2 ~~through 24A.28~~ et seq. of this title, does not apply to records
3 specifically required by law to be kept confidential including:

- 4 a. records protected by a state evidentiary privilege
5 such as the attorney-client privilege, the work
6 product immunity from discovery and the identity of
7 informer privileges,
- 8 b. records of what transpired during meetings of a public
9 body lawfully closed to the public such as executive
10 sessions authorized under the Oklahoma Open Meeting
11 Act, Section 301 et seq. of Title 25 of the Oklahoma
12 Statutes,
- 13 c. personal information within driver records as defined
14 by the Driver's Privacy Protection Act, 18 United
15 States Code, Sections 2721 through 2725, ~~or~~
- 16 d. information in the files of the Board of Medicolegal
17 Investigations obtained pursuant to Sections 940 and
18 941 of Title 63 of the Oklahoma Statutes that may be
19 hearsay, preliminary unsubstantiated investigation-
20 related findings, or confidential medical
21 information~~-,~~ or
- 22 e. any test forms, question banks, and answer keys
23 developed for state licensure examinations, but
24

1 specifically excluding test preparation materials or
2 study guides;

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

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

16 3. ~~Any~~ For any request for a record which contains individual
17 records of persons, ~~and~~ when the cost of copying, reproducing or
18 certifying each individual record is otherwise prescribed by state
19 law, the cost may be assessed for each individual record, or portion
20 thereof requested as prescribed by state law. Otherwise, a public
21 body may charge a fee only for recovery of the reasonable, direct
22 costs of record copying, or mechanical reproduction.
23 Notwithstanding any state or local provision to the contrary, in no
24 instance shall the record copying fee exceed twenty-five cents

1 (\$0.25) per page for records having the dimensions of eight and one-
2 half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One
3 Dollar (\$1.00) per copied page for a certified copy. However, if
4 the request:

5 a. is solely for commercial purpose, or

6 b. would clearly cause excessive disruption of the
7 essential functions of the public body,

8 then the public body may charge a reasonable fee to recover the
9 direct cost of record search and copying; however, publication in a
10 newspaper or broadcast by news media for news purposes shall not
11 constitute a resale or use of a record for trade or commercial
12 purpose and charges for providing copies of electronic data to the
13 news media for a news purpose shall not exceed the direct cost of
14 making the copy. The fee charged by the Department of Public Safety
15 for a copy in a computerized format of a record of the Department
16 shall not exceed the direct cost of making the copy unless the fee
17 for the record is otherwise set by law.

18 Any public body establishing fees under this act shall post a
19 written schedule of the fees at its principal office and with the
20 county clerk.

21 In no case shall a search fee be charged when the release of
22 records is in the public interest, including, but not limited to,
23 release to the news media, scholars, authors, and taxpayers seeking
24 to determine whether those entrusted with the affairs of the

1 government are honestly, faithfully, and competently performing
2 their duties as public servants.

3 The fees shall not be used for the purpose of discouraging
4 requests for information or as obstacles to disclosure of requested
5 information-; i

6 4. The land description tract index of all recorded instruments
7 concerning real property required to be kept by the county clerk of
8 any county shall be available for inspection or copying in
9 accordance with the provisions of the Oklahoma Open Records Act;
10 provided, however, the index shall not be copied or mechanically
11 reproduced for the purpose of sale of the information-; i

12 5. A public body must provide prompt, reasonable access to its
13 records but may establish reasonable procedures which protect the
14 integrity and organization of its records and to prevent excessive
15 disruptions of its essential functions-; and

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

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

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

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

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

9 3. A chronological list of all incidents, including initial
10 offense report information showing the offense, date, time, general
11 location, officer, and a brief summary of what occurred;

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

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

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

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

22 8. Jail registers, including jail blotter data or jail booking
23 information recorded on persons at the time of incarceration showing
24 the name of each prisoner with the date and cause of commitment, the

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

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

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

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

12 c. identify minors ~~under the age of sixteen (16) years.~~

13 ~~Provided further, law enforcement agencies may redact~~

14 ~~or obscure specific portions of audio and video~~

15 ~~recordings which~~ as defined in Section 1-1-105 of

16 Title 10A of the Oklahoma Statutes or which would be

17 considered confidential pursuant to the provisions of

18 Section 1-6-102 of Title 10A of the Oklahoma Statutes,

19 d. depict acts of severe violence resulting in great

20 bodily injury, as defined in Section 11-904 of Title

21 47 of the Oklahoma Statutes, against persons that are

22 clearly visible, unless perpetrated by a law

23 enforcement officer,

- 1 e. depict great bodily injury, as defined in Section 11-
2 904 of Title 47 of the Oklahoma Statutes, unless
3 perpetrated by a law enforcement officer,
- 4 f. include personal medical information that is not
5 already public,
- 6 g. would undermine the assertion of confidentiality or a
7 privilege provided in Section 1-109 or Section 3-428
8 of Title 43A of the Oklahoma Statutes for detention
9 and/or transportation for mental health evaluation or
10 treatment or drug or alcohol detoxification purposes,
- 11 h. include personal information other than the name or
12 license plate number of a person not arrested, cited,
13 charged or issued a written warning. Such personal
14 information shall include any government-issued
15 identification number, date of birth, address or
16 financial information, or
- 17 i. reveal the identity of law enforcement officers who
18 become subject to internal investigation by the law
19 enforcement agency as a result of an event depicted in
20 the recording. This exception shall apply until the
21 law enforcement agency concludes the investigation.
22 At the conclusion of the investigation and
23 disciplinary process, the unedited audio and video
24 portions of the recordings previously withheld as

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

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

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

14 (2) pursuits of any kind,

15 (3) traffic stops,

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

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

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

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

- 1 (8) actions by a law enforcement officer that have
2 become the cause of an investigation or charges,
3 (9) recordings in the public interest that may
4 materially aid a determination of whether law
5 enforcement officers are appropriately performing
6 their duties as public servants, or
7 (10) any contextual events occurring before or after
8 the events depicted in divisions (1) through (9)
9 of this subparagraph.

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

- 15 (1) depict the death of a person or a dead body,
16 (2) depict nudity,
17 (3) identify minors as defined in Section 1-1-105 of
18 Title 10A of the Oklahoma Statutes or which would
19 be considered confidential pursuant to the
20 provisions of Section 1-6-102 of Title 10A of the
21 Oklahoma Statutes,
22 (4) depict acts of severe violence resulting in great
23 bodily injury, as defined in Section 11-904 of
24 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

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

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

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

1 automatically cancels any such extension,
2 though a new extension following an
3 arraignment may be requested by the parties
4 on the grounds and under the terms provided
5 for in subdivision (a) of this division, or
6 (c) the options presented in this paragraph to
7 potentially withhold a recording or portions
8 of a recording on the grounds provided for
9 in this paragraph absolutely expire in
10 totality four (4) years after the recording
11 was made, at which time all recordings
12 previously withheld on the grounds provided
13 for in this paragraph shall be made
14 available for public inspection and copying,
15 or

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

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

9 B. Except for the records listed in subsection A of this
10 section and those made open by other state or local laws, law
11 enforcement agencies may deny access to law enforcement records
12 except where a court finds that the public interest or the interest
13 of an individual outweighs the reason for denial. The provisions of
14 this section shall not operate to deny access to law enforcement
15 records if such records have been previously made available to the
16 public as provided in the Oklahoma Open Records Act or as otherwise
17 provided by law.

18 C. Nothing contained in this section imposes any new
19 recordkeeping requirements. Law enforcement records shall be kept
20 for as long as is now or may hereafter be specified by law. Absent
21 a legal requirement for the keeping of a law enforcement record for
22 a specific time period, law enforcement agencies shall maintain
23 their records for so long as needed for administrative purposes.
24

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

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

13 1. To verify the current certification status of any peace
14 officer;

15 2. As may be required to perform the duties imposed by Section
16 3311 of Title 70 of the Oklahoma Statutes;

17 3. To provide to any peace officer copies of the records of
18 that peace officer upon submitting a written request;

19 4. To provide, upon written request, to any law enforcement
20 agency conducting an official investigation, copies of the records
21 of any peace officer who is the subject of such investigation;

22 5. To provide final orders of administrative proceedings where
23 an adverse action was taken against a peace officer; and
24

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

3 F. The Department of Public Safety shall keep confidential:

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

8 a. training, lesson plans, teaching materials, tests, and
9 test results,

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

12 c. the following information from radio logs:

13 (1) telephone numbers,

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

16 (3) personal information which is contrary to the
17 provisions of the Driver's Privacy Protection
18 Act, 18 United States Code, Sections 2721 through
19 2725; and

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

23 SECTION 3. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby

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

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