

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1037

By: Faught of the House and Holt of the Senate

Title: Oklahoma Open Records Act; providing additional exemption under Oklahoma Open Records Act; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Holt	_____
Justice	_____
Marlatt	_____
Treat	_____
Griffin	_____
Paddack	_____
Bass	_____

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1037

By: Faught of the House

and

Holt and Quinn of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Open Records Act;
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; updating statutory
citations; providing additional exemption; directing
law enforcement agencies to release certain audio and
video recordings; allowing for the redaction of audio
and video recordings that depict or identify certain
information; providing procedures for delaying the
release of audio and video recordings; providing for
appeals; requiring the release of audio and video
recordings after certain amount of time has expired;
prohibiting law enforcement from denying access to
previously released records; 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:

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

4 1. The Oklahoma Open Records Act, Sections 24A.1 through ~~24A.28~~
5 24A.30 of this title, does not apply to records specifically
6 required by law to be kept confidential including:

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

1 e. any test forms, question banks and answer keys
2 developed for state licensure examinations, but
3 specifically excluding test preparation materials or
4 study guides;

5 2. Any reasonably segregable portion of a record containing
6 exempt material shall be provided after deletion of the exempt
7 portions; provided however, the Department of Public Safety shall
8 not be required to assemble for the requesting person specific
9 information, in any format, from driving records relating to any
10 person whose name and date of birth or whose driver license number
11 is not furnished by the requesting person.

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

18 3. Any request for a record which contains individual records
19 of persons, and the cost of copying, reproducing or certifying each
20 individual record is otherwise prescribed by state law, the cost may
21 be assessed for each individual record, or portion thereof requested
22 as prescribed by state law. Otherwise, a public body may charge a
23 fee only for recovery of the reasonable, direct costs of record
24 copying, or mechanical reproduction. Notwithstanding any state or

1 local provision to the contrary, in no instance shall the record
2 copying fee exceed twenty-five cents (\$0.25) per page for records
3 having the dimensions of eight and one-half (8 1/2) by fourteen (14)
4 inches or smaller, or a maximum of One Dollar (\$1.00) per copied
5 page for a certified copy. However, if the request:

6 a. is solely for commercial purpose, or

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

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

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

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

1 to determine whether those entrusted with the affairs of the
2 government are honestly, faithfully, and competently performing
3 their duties as public servants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 offense, a description of the prisoner, and the date or manner of
2 discharge or escape of the prisoner; ~~and~~

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

- 9 a. depict the death of a person or a dead body, unless
10 the death was effected by a law enforcement officer,
- 11 b. depict ~~any person who is nude or~~ nudity,
- 12 c. would identify minors under the age of sixteen (16)
13 years. ~~Provided further, law enforcement agencies may~~
14 ~~redact or obscure specific portions of audio and video~~
15 ~~recordings which~~ or would undermine any requirement to
16 keep certain juvenile records confidential as provided
17 for in Title 10A of the Oklahoma Statutes,
- 18 d. depict acts of severe violence resulting in great
19 bodily injury, as defined in Section 11-904 of Title
20 47 of the Oklahoma Statutes, against persons that are
21 clearly visible, unless the act of severe violence was
22 effected by a law enforcement officer,
- 23 e. depict great bodily injury, as defined in Section 11-
24 904 of Title 47 of the Oklahoma Statutes, unless the

1 great bodily injury was effected by a law enforcement
2 officer,

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

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

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

16 i. reveal the identity of law enforcement officers who
17 have become subject to internal investigation by the
18 law enforcement agency ~~until~~ as a result of an event
19 depicted in the recording. The option to protect the
20 identity of a law enforcement officer shall not be
21 available to the law enforcement agency after the law
22 enforcement agency ~~concludes~~ has concluded the
23 investigation and rendered a decision as to final
24 disciplinary action. At ~~the conclusion of the~~ such

1 time when an investigation has concluded and the law
2 enforcement agency has rendered its decision as to
3 final disciplinary ~~process~~ action, the ~~unedited~~ audio
4 and video portions of the recordings previously
5 withheld as provided for in this subparagraph shall be
6 available for public inspection and copying. The
7 ~~unedited~~ audio and video recordings withheld as
8 provided for in this subparagraph shall be available
9 for public inspection and copying before the
10 conclusion of the investigation ~~and disciplinary~~
11 ~~process~~ if the investigation ~~and disciplinary process~~
12 lasts for an unreasonable amount of time; and

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

- 16 (1) the use of any physical force or violence by a
17 law enforcement officer,
18 (2) pursuits of any kind,
19 (3) traffic stops,
20 (4) any person being arrested, cited, charged or
21 issued a written warning,
22 (5) events that directly led to any person being
23 arrested, cited, charged or receiving a written
24 warning,

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

3 (7) any exercise of authority by a law enforcement
4 officer that deprives a citizen of his or her
5 liberty,

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

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

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

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

21 (1) depict the death of a person or a dead body,
22 unless the death was effected by a law
23 enforcement officer,

24 (2) depict nudity,

- 1 (3) would identify minors under the age of sixteen
2 (16) years or would undermine any requirement to
3 keep certain juvenile records confidential as
4 provided for in Title 10A of the Oklahoma
5 Statutes,
- 6 (4) depict acts of severe violence resulting in great
7 bodily injury, as defined in Section 11-904 of
8 Title 47 of the Oklahoma Statutes, against
9 persons that are clearly visible, unless the act
10 of severe violence was effected by a law
11 enforcement officer,
- 12 (5) depict great bodily injury, as defined in Section
13 11-904 of Title 47 of the Oklahoma Statutes,
14 unless the great bodily injury was effected by a
15 law enforcement officer,
- 16 (6) include personal medical information that is not
17 already public,
- 18 (7) undermine the assertion of a privilege as
19 provided in Section 1-109 or Section 3-428 of
20 Title 43A of the Oklahoma Statutes for detention
21 or transportation for mental health evaluation or
22 treatment or drug or alcohol detoxification
23 purposes,
- 24

1 (8) identify alleged victims of sex crimes or
2 domestic violence,

3 (9) identify any person who provides information to
4 law enforcement or the information provided by
5 that person when that person requests anonymity
6 or where disclosure of the identity of the person
7 or the information provided could reasonably be
8 expected to threaten or endanger the physical
9 safety or property of the person or the physical
10 safety or property of others,

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

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

22 (12) include information that would materially
23 compromise an ongoing criminal investigation or
24 ongoing criminal prosecution, provided that:

1 (a) ten (10) days following the formal
2 arraignment or initial appearance, whichever
3 occurs first, of a person charged in the
4 case in question, the recording shall be
5 made available for public inspection and
6 copying with no redaction of the portions
7 that were temporarily withheld by reliance
8 on this division. Provided, before
9 potential release of a recording as provided
10 for in this subdivision, the prosecutor or
11 legal representative of the person charged
12 may request from the appropriate district
13 court an extension of time during which the
14 recording may be withheld under the
15 provisions of this division. When a request
16 for an extension of time has been filed with
17 the court, the recording in question may be
18 withheld until the court has issued a
19 ruling. Such requests for an extension of
20 the time during which the recording may be
21 withheld may be made on the grounds that
22 release of the recording will materially
23 compromise an ongoing criminal investigation
24 or criminal prosecution or on the grounds

1 that release of the recording will
2 materially compromise the right of an
3 accused to a fair trial that has yet to
4 begin. Courts considering such requests
5 shall conduct a hearing and consider whether
6 the interests of the public outweigh the
7 interests asserted by the parties. In
8 response to such requests, the court shall
9 order that the recording be made available
10 for public inspection and copying with no
11 redaction of the portions that were
12 temporarily withheld by reliance on this
13 division or order an extension of time
14 during which the recording may be withheld
15 under the provisions of this division.
16 Provided further, each such time extension
17 shall only be ordered by the court for an
18 additional six-month period of time or less
19 and cumulative time extensions shall not add
20 up to more than eighteen (18) months, or
21 (b) in the event that one hundred twenty (120)
22 days expire from the date of the events
23 depicted in the recording without any person
24 being criminally 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 situations
where one hundred twenty (120) days have
expired since the creation of the recording,
criminal charges have not been filed against
a person and the recording is being withheld
on the grounds provided for in this
division, courts considering appeals to the
use of the provisions of this division for
temporarily withholding a recording shall
conduct a hearing and consider whether the
interests of the public outweigh the
interests of the parties protected by this
division. In response to such appeals, the
district court shall order that the
recording be made available for public
inspection and copying with no redaction of
the portions that were temporarily withheld
by reliance on this division or order an
extension of time during which the recording
may be withheld under the provisions of this

division. An order granting an extension of
time shall be applicable to the recording
against all appellants for the duration of
the extension. Provided, each such time
extension shall only be ordered by the
district court for an additional twelve-
month period of time or less and cumulative
time extensions shall not add up to more
than three (3) years. Provided, charges
being filed against a person in the case in
question automatically cancels any extension
of time. A new request for an extension of
time following an arraignment or initial
appearance may be requested by the parties
on the grounds and under the terms provided
for in subdivision (a) of this division.

The options presented in this division to
potentially withhold a recording or portions of a
recording on the grounds provided for in this
division shall 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 division shall be made
available for public inspection and copying, or

1 (13) reveal the identity of law enforcement officers
2 who have become subject to internal investigation
3 by the law enforcement agency as a result of an
4 event depicted in the recording. The option to
5 protect the identity of a law enforcement officer
6 shall not be available to the law enforcement
7 agency after the law enforcement agency has
8 concluded the investigation and rendered a
9 decision as to final disciplinary action. At
10 such time when an investigation has concluded and
11 the law enforcement agency has rendered its
12 decision as to final disciplinary action, the
13 portions of the recordings previously withheld as
14 provided for in this division shall be available
15 for public inspection and copying. The audio and
16 video recordings withheld on the grounds provided
17 for in this division shall be available for
18 public inspection and copying before the
19 conclusion of the investigation if the
20 investigation lasts for an unreasonable amount of
21 time.

22 B. Except for the records listed in subsection A of this
23 section and those made open by other state or local laws, law
24 enforcement agencies may deny access to law enforcement records

1 except where a court finds that the public interest or the interest
2 of an individual outweighs the reason for denial. The provisions of
3 this section shall not operate to deny access to law enforcement
4 records if such records have been previously made available to the
5 public as provided in the Oklahoma Open Records Act or as otherwise
6 provided by law.

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

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

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

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

3 2. As may be required to perform the duties imposed by Section
4 3311 of Title 70 of the Oklahoma Statutes;

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

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

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

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

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

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

19 a. training, lesson plans, teaching materials, tests, and
20 test results,

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

23 c. the following information from radio logs:

24 (1) telephone numbers,

- 1 (2) addresses other than the location of incidents to
2 which officers are dispatched, and
3 (3) personal information which is contrary to the
4 provisions of the Driver's Privacy Protection
5 Act, 18 United States Code, Sections 2721 through
6 2725; and

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

10 SECTION 3. It being immediately necessary for the preservation
11 of the public peace, health and safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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15 55-1-7471 GRS 05/08/15
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