

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2800

By: Luttrell of the House

and

Coleman of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to open records; amending 51 O.S.
12 2011, Section 24A.8, as last amended by Section 2,
13 Chapter 370, O.S.L. 2015 (51 O.S. Supp. 2019, Section
14 24A.8), which relates to law enforcement agencies;
15 providing that law enforcement agencies shall not be
16 required to provide records otherwise available
17 through discovery; and providing an effective date.

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

19 SECTION 1. AMENDATORY 51 O.S. 2011, Section 24A.8, as
20 last amended by Section 2, Chapter 370, O.S.L. 2015 (51 O.S. Supp.
21 2019, Section 24A.8), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

7 a. depict the death of a person or a dead body, unless
8 the death was effected by a law enforcement officer,

9 b. depict nudity,

10 c. would identify minors under the age of sixteen (16)
11 years or would undermine any requirement to keep
12 certain juvenile records confidential as provided for
13 in Title 10A of the Oklahoma Statutes,

14 d. depict acts of severe violence resulting in great
15 bodily injury, as defined in Section 11-904 of Title
16 47 of the Oklahoma Statutes, against persons that are
17 clearly visible, unless the act of severe violence was
18 effected by a law enforcement officer,

19 e. depict great bodily injury, as defined in Section 11-
20 904 of Title 47 of the Oklahoma Statutes, unless the
21 great bodily injury was effected by a law enforcement
22 officer,

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

- 1 g. would undermine the assertion of a privilege provided
2 in Section 1-109 or Section 3-428 of Title 43A of the
3 Oklahoma Statutes for detention or transportation for
4 mental health evaluation or treatment or drug or
5 alcohol detoxification purposes,
- 6 h. include personal information other than the name or
7 license plate number of a person not arrested, cited,
8 charged or issued a written warning. Such personal
9 information shall include any government-issued
10 identification number, date of birth, address or
11 financial information, or
- 12 i. reveal the identity of law enforcement officers who
13 have become subject to internal investigation by the
14 law enforcement agency as a result of an event
15 depicted in the recording. The option to protect the
16 identity of a law enforcement officer shall not be
17 available to the law enforcement agency after the law
18 enforcement agency has concluded the investigation and
19 rendered a decision as to final disciplinary action.
20 At such time when an investigation has concluded and
21 the law enforcement agency has rendered its decision
22 as to final disciplinary action, the portions of the
23 recordings previously withheld as provided for in this
24 subparagraph shall be available for public inspection

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

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

- 9 (1) the use of any physical force or violence by a
10 law enforcement officer,
11 (2) pursuits of any kind,
12 (3) traffic stops,
13 (4) any person being arrested, cited, charged or
14 issued a written warning,
15 (5) events that directly led to any person being
16 arrested, cited, charged or receiving a written
17 warning,
18 (6) detentions of any length for the purpose of
19 investigation,
20 (7) any exercise of authority by a law enforcement
21 officer that deprives a citizen of his or her
22 liberty,
23
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1 (8) actions by a law enforcement officer that have
2 become the cause of an investigation or charges
3 being filed,

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

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

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

16 (1) depict the death of a person or a dead body,
17 unless the death was effected by a law
18 enforcement officer,

19 (2) depict nudity,

20 (3) would identify minors under the age of sixteen
21 (16) years or would undermine any requirement to
22 keep certain juvenile records confidential as
23 provided for in Title 10A of the Oklahoma
24 Statutes,

- 1 (4) depict acts of severe violence resulting in great
2 bodily injury, as defined in Section 11-904 of
3 Title 47 of the Oklahoma Statutes, against
4 persons that are clearly visible, unless the act
5 of severe violence was effected by a law
6 enforcement officer,
- 7 (5) depict great bodily injury, as defined in Section
8 11-904 of Title 47 of the Oklahoma Statutes,
9 unless the great bodily injury was effected by a
10 law enforcement officer,
- 11 (6) include personal medical information that is not
12 already public,
- 13 (7) undermine the assertion of a privilege as
14 provided in Section 1-109 or Section 3-428 of
15 Title 43A of the Oklahoma Statutes for detention
16 or transportation for mental health evaluation or
17 treatment or drug or alcohol detoxification
18 purposes,
- 19 (8) identify alleged victims of sex crimes or
20 domestic violence,
- 21 (9) identify any person who provides information to
22 law enforcement or the information provided by
23 that person when that person requests anonymity
24 or where disclosure of the identity of the person

1 or the information provided could reasonably be
2 expected to threaten or endanger the physical
3 safety or property of the person or the physical
4 safety or property of others,

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

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

16 (12) include information that would materially
17 compromise an ongoing criminal investigation or
18 ongoing criminal prosecution, provided that:

19 (a) ten (10) days following the formal
20 arraignment or initial appearance, whichever
21 occurs first, of a person charged in the
22 case in question, the recording shall be
23 made available for public inspection and
24 copying with no redaction of the portions

1 that were temporarily withheld by reliance
2 on this division. Provided, before
3 potential release of a recording as provided
4 for in this subdivision, the prosecutor or
5 legal representative of the person charged
6 may request from the appropriate district
7 court an extension of time during which the
8 recording may be withheld under the
9 provisions of this division. When a request
10 for an extension of time has been filed with
11 the court, the recording in question may be
12 withheld until the court has issued a
13 ruling. Such requests for an extension of
14 the time during which the recording may be
15 withheld may be made on the grounds that
16 release of the recording will materially
17 compromise an ongoing criminal investigation
18 or criminal prosecution or on the grounds
19 that release of the recording will
20 materially compromise the right of an
21 accused to a fair trial that has yet to
22 begin. Courts considering such requests
23 shall conduct a hearing and consider whether
24 the interests of the public outweigh the

1 interests asserted by the parties. In
2 response to such requests, the court shall
3 order that the recording be made available
4 for public inspection and copying with no
5 redaction of the portions that were
6 temporarily withheld by reliance on this
7 division or order an extension of time
8 during which the recording may be withheld
9 under the provisions of this division.
10 Provided further, each such time extension
11 shall only be ordered by the court for an
12 additional six-month period of time or less
13 and cumulative time extensions shall not add
14 up to more than eighteen (18) months, or
15 (b) in the event that one hundred twenty (120)
16 days expire from the date of the events
17 depicted in the recording without any person
18 being criminally charged in the case in
19 question and release of a recording or
20 portions of a recording have been denied on
21 the grounds provided for in this division,
22 an appeal of such denial may be made to the
23 appropriate district court. In situations
24 where one hundred twenty (120) days have

1 expired since the creation of the recording,
2 criminal charges have not been filed against
3 a person and the recording is being withheld
4 on the grounds provided for in this
5 division, courts considering appeals to the
6 use of the provisions of this division for
7 temporarily withholding a recording shall
8 conduct a hearing and consider whether the
9 interests of the public outweigh the
10 interests of the parties protected by this
11 division. In response to such appeals, the
12 district court shall order that the
13 recording be made available for public
14 inspection and copying with no redaction of
15 the portions that were temporarily withheld
16 by reliance on this division or order an
17 extension of time during which the recording
18 may be withheld under the provisions of this
19 division. An order granting an extension of
20 time shall be applicable to the recording
21 against all appellants for the duration of
22 the extension. Provided, each such time
23 extension shall only be ordered by the
24 district court for an additional twelve-

1 month period of time or less and cumulative
2 time extensions shall not add up to more
3 than three (3) years. Provided, charges
4 being filed against a person in the case in
5 question automatically cancels any extension
6 of time. A new request for an extension of
7 time following an arraignment or initial
8 appearance may be requested by the parties
9 on the grounds and under the terms provided
10 for in subdivision (a) of this division.

11 The options presented in this division to
12 potentially withhold a recording or portions of a
13 recording on the grounds provided for in this
14 division shall expire in totality four (4) years
15 after the recording was made at which time all
16 recordings previously withheld on the grounds
17 provided for in this division shall be made
18 available for public inspection and copying, or
19 (13) reveal the identity of law enforcement officers
20 who have become subject to internal investigation
21 by the law enforcement agency as a result of an
22 event depicted in the recording. The option to
23 protect the identity of a law enforcement officer
24 shall not be available to the law enforcement

1 agency after the law enforcement agency has
2 concluded the investigation and rendered a
3 decision as to final disciplinary action. At
4 such time when an investigation has concluded and
5 the law enforcement agency has rendered its
6 decision as to final disciplinary action, the
7 portions of the recordings previously withheld as
8 provided for in this division shall be available
9 for public inspection and copying. The audio and
10 video recordings withheld on the grounds provided
11 for in this division shall be available for
12 public inspection and copying before the
13 conclusion of the investigation if the
14 investigation lasts for an unreasonable amount of
15 time.

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

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

7 D. Nothing in the Oklahoma Open Records Act shall be construed
8 to require law enforcement agencies to provide records that have
9 been turned over to a district attorney's office for prosecution and
10 that are available to the person making the request through the
11 normal process of criminal discovery pursuant to Title 22 of the
12 Oklahoma Statutes.

13 E. 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.~~ F. 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.~~ G. 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 2. This act shall become effective November 1, 2020.

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12 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02/20/2020 -
13 DO PASS, As Amended and Coauthored.
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