

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3779

By: Duel

AS INTRODUCED

An Act relating to the Oklahoma Open Records Act; amending 51 O.S. 2021, Sections 24A.2, 24A.3, as last amended by Section 11, Chapter 271, O.S.L. 2023, 24A.5, as amended by Section 5, Chapter 332, O.S.L. 2023, and 24A.17, (51 O.S. Supp. 2023, Sections 24A.3 and 24A.5), which relate to public records; clarifying the role of Open Records Act in discovery processes; reducing the list of things defined as non-records; increasing the types of confidential records; proscribing a deadline to notify of intent to file suit for denied record access; and providing an effective date.

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

SECTION 1. AMENDATORY 51 O.S. 2021, Section 24A.2, is amended to read as follows:

Section 24A.2 As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open

1 Records Act, except as specifically set forth in the Oklahoma Open  
2 Records Act, establish any procedures for protecting any person from  
3 release of information contained in public records. The purpose of  
4 this act is to ensure and facilitate the public's right of access to  
5 and review of government records so they may efficiently and  
6 intelligently exercise their inherent political power. The privacy  
7 interests of individuals are adequately protected in the specific  
8 exceptions to the Oklahoma Open Records Act or in the statutes which  
9 authorize, create or require the records. Except where specific  
10 state or federal statutes create a confidential privilege, persons  
11 who submit information to public bodies have no right to keep this  
12 information from public access nor reasonable expectation that this  
13 information will be kept from public access; provided, the person,  
14 agency or political subdivision shall at all times bear the burden  
15 of establishing such records are protected by such a confidential  
16 privilege. Except as may be required by other statutes, public  
17 bodies do not need to follow any procedures for providing access to  
18 public records except those specifically required by the Oklahoma  
19 Open Records Act. The Oklahoma Open Records Act shall not be used  
20 as a substitute for discovery in any civil, criminal, or  
21 administrative action.

22 SECTION 2. AMENDATORY 51 O.S. 2021, Section 24A.3, as  
23 last amended by Section 11, Chapter 271, O.S.L. 2023 (51 O.S. Supp.  
24 2023, Section 24A.3), is amended to read as follows:  
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1 Section 24A.3 As used in the Oklahoma Open Records Act:

2 1. "Record" means all documents including, but not limited to,  
3 any book, paper, photograph, microfilm, data files created by or  
4 used with computer software, computer tape, disk, record, sound  
5 recording, film recording, video record or other material regardless  
6 of physical form or characteristic, created by, received by, under  
7 the authority of, or coming into the custody, control or possession  
8 of public officials, public bodies or their representatives in  
9 connection with the transaction of public business, the expenditure  
10 of public funds or the administering of public property. Record  
11 does not mean:

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

- 1           e. ~~any digital audio/video recordings of the toll~~  
2           ~~collection and safeguarding activities of the Oklahoma~~  
3           ~~Transportation Authority,~~
- 4           f. ~~any personal information provided by a guest at any~~  
5           ~~facility owned or operated by the Oklahoma Tourism and~~  
6           ~~Recreation Department to obtain any service at the~~  
7           ~~facility or by a purchaser of a product sold by or~~  
8           ~~through the Oklahoma Tourism and Recreation~~  
9           ~~Department,~~
- 10          g. ~~a Department of Defense Form 214 (DD Form 214) filed~~  
11          ~~with a county clerk including any DD Form 214 filed~~  
12          ~~before July 1, 2002,~~
- 13          h. ~~except as provided for in Section 2-110 of Title 47 of~~  
14          ~~the Oklahoma Statutes:~~
- 15                ~~(1) any record in connection with a Motor Vehicle~~  
16                ~~Report issued by the Department of Public Safety,~~  
17                ~~as prescribed in Section 6-117 of Title 47 of the~~  
18                ~~Oklahoma Statutes, or~~
- 19                ~~(2) personal information within driver records, as~~  
20                ~~defined by the Driver's Privacy Protection Act,~~  
21                ~~18 United States Code, Sections 2721 through~~  
22                ~~2725, which are stored and maintained by the~~  
23                ~~Department of Public Safety,~~
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- 1           ~~i. any portion of any document or information provided to~~  
2           ~~an agency or entity of the state or a political~~  
3           ~~subdivision to obtain licensure under the laws of this~~  
4           ~~state or a political subdivision that contains an~~  
5           ~~applicant's personal address, personal phone number,~~  
6           ~~personal electronic mail address or other contact~~  
7           ~~information. Provided, however, lists of persons~~  
8           ~~licensed, the existence of a license of a person, or a~~  
9           ~~business or commercial address, or other business or~~  
10           ~~commercial information disclosable under state law~~  
11           ~~submitted with an application for licensure shall be~~  
12           ~~public record, or~~
- 13           ~~j. an investigative file obtained during an investigation~~  
14           ~~conducted by the State Department of Health under this~~  
15           ~~act;~~

16           2. "Public body" shall include, but not be limited to, any  
17 office, department, board, bureau, commission, agency, trusteeship,  
18 authority, council, committee, trust or any entity created by a  
19 trust, county, city, village, town, township, district, school  
20 district, fair board, court, executive office, advisory group, task  
21 force, study group or any subdivision thereof, supported in whole or  
22 in part by public funds or entrusted with the expenditure of public  
23 funds or administering or operating public property, and all  
24 committees, or subcommittees thereof. Except for the records  
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1 required by Section 24A.4 of this title, public body does not mean  
2 judges, justices, the Council on Judicial Complaints, the  
3 Legislature or legislators. Public body shall not include an  
4 organization that is exempt from federal income tax under Section  
5 501(c)(3) of the Internal Revenue Code of 1986, as amended, and  
6 whose sole beneficiary is a college or university, or an affiliated  
7 entity of the college or university, that is a member of The  
8 Oklahoma State System of Higher Education. Such organization shall  
9 not receive direct appropriations from the Oklahoma Legislature.  
10 The following persons shall not be eligible to serve as a voting  
11 member of the governing board of the organization:

- 12 a. a member, officer, or employee of the Oklahoma State  
13 Regents for Higher Education,
- 14 b. a member of the board of regents or other governing  
15 board of the college or university that is the sole  
16 beneficiary of the organization, or
- 17 c. an officer or employee of the college or university  
18 that is the sole beneficiary of the organization;

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

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

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

6 SECTION 3. AMENDATORY 51 O.S. 2021, Section 24A.5, as  
7 amended by Section 5, Chapter 332, O.S.L. 2023 (51 O.S. Supp. 2023,  
8 Section 24A.5), is amended to read as follows:

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

12 1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.30  
13 of this title, does not apply to records specifically required by  
14 law to be kept confidential including:

- 15 a. records protected by a state evidentiary privilege  
16 such as the attorney-client privilege, the work  
17 product immunity from discovery and the identity of  
18 informer privileges,
- 19 b. records of what transpired during meetings of a public  
20 body lawfully closed to the public such as executive  
21 sessions authorized under the Oklahoma Open Meeting  
22 Act,

- 1 c. personal information within driver records as defined  
2 by the Driver's Privacy Protection Act, 18 United  
3 States Code, Sections 2721 through 2725,
- 4 d. information in the files of the Board of Medicolegal  
5 Investigations obtained pursuant to Sections 940 and  
6 941 of Title 63 of the Oklahoma Statutes that may be  
7 hearsay, preliminary unsubstantiated investigation-  
8 related findings, or confidential medical information,
- 9 e. any test forms, question banks and answer keys  
10 developed for state licensure examinations, but  
11 specifically excluding test preparation materials or  
12 study guides, or
- 13 f. last names, addresses, social security numbers or tax  
14 identification numbers, and proof of identification  
15 submitted to the Oklahoma Lottery Commission by  
16 persons claiming a lottery prize;
- 17 g. unless public disclosure is required by other laws or  
18 regulations, vehicle movement records of the Oklahoma  
19 Transportation Authority obtained in connection with  
20 the Authority's electronic toll collection system,
- 21 h. personal financial information, credit reports, or  
22 other financial data obtained by or submitted to a  
23 public body for the purpose of evaluating credit  
24 worthiness, obtaining a license, permit, or for the  
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1 purpose of becoming qualified to contract with a  
2 public body,

3 i. any digital audio/video recordings of the toll  
4 collection and safeguarding activities of the Oklahoma  
5 Transportation Authority,

6 j. any personal information provided by a guest at any  
7 facility owned or operated by the Oklahoma Tourism and  
8 Recreation Department to obtain any service at the  
9 facility or by a purchaser of a product sold by or  
10 through the Oklahoma Tourism and Recreation  
11 Department,

12 k. a Department of Defense Form 214 (DD Form 214) filed  
13 with a county clerk including any DD Form 214 filed  
14 before July 1, 2002,

15 l. except as provided for in Section 2-110 of Title 47 of  
16 the Oklahoma Statutes:

17 (1) any record in connection with a Motor Vehicle Report  
18 issued by the Department of Public Safety, as  
19 prescribed in Section 6-117 of Title 47 of the  
20 Oklahoma Statutes, or

21 (2) personal information within driver records, as defined  
22 by the Driver's Privacy Protection Act, 18 United  
23 States Code, Sections 2721 through 2725, which are  
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1 stored and maintained by the Department of Public  
2 Safety,

3 m. any portion of any document or information provided to  
4 an agency or entity of the state or a political  
5 subdivision to obtain licensure under the laws of this  
6 state or a political subdivision that contains an  
7 applicant's personal address, personal phone number,  
8 personal electronic mail address, any government-  
9 issued identification numbers, or other contact  
10 information; provided, however, lists of persons  
11 licensed, the existence of a license of a person, or a  
12 business or commercial address, or other business or  
13 commercial information disclosable under state law  
14 submitted with an application for licensure shall be  
15 public record, unless the business or commercial  
16 address is the same as the applicant's personal  
17 address, except when the applicant permits in writing  
18 the disclosure of the address, or

19 n. an investigative file obtained during an investigation  
20 conducted by the State Department of Health into  
21 violations of the Long-Term Care Administrator Act  
22 under title 63 of the Oklahoma Statutes;

23 2. All Social Security numbers included in a record may be  
24 confidential regardless of the person's status as a public employee  
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1 or private individual and may be redacted or deleted prior to  
2 release of the record by the public body;

3 3. 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  
11 to 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 4. Any request for a record which contains individual records  
17 of persons, and the cost of copying, reproducing or certifying each  
18 individual record is otherwise prescribed by state law, the cost may  
19 be assessed for each individual record, or portion thereof requested  
20 as prescribed by state law. Otherwise, a public body may charge a  
21 fee only for recovery of the reasonable, direct costs of record  
22 copying, or mechanical reproduction. Notwithstanding any state or  
23 local provision to the contrary, in no instance shall the record  
24 copying fee exceed twenty-five cents (\$0.25) per page for records  
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1 having the dimensions of eight and one-half (8 1/2) by fourteen (14)  
2 inches or smaller, or a maximum of One Dollar (\$1.00) per copied  
3 page for a certified copy. However, if the request:

- 4 a. is solely for commercial purpose, or
- 5 b. would clearly cause excessive disruption of the  
6 essential functions of the public body,

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

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

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

6 5. 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;

12 6. 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. A delay in providing access  
16 to records shall be limited solely to the time required for  
17 preparing the requested documents and the avoidance of excessive  
18 disruptions of the public body's essential functions. In no event  
19 may production of a current request for records be unreasonably  
20 delayed until after completion of a prior records request that will  
21 take substantially longer than the current request. Any public body  
22 which makes the requested records available on the Internet shall  
23 meet the obligation of providing prompt, reasonable access to its  
24 records as required by this paragraph; and  
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1           7. A public body shall designate certain persons who are  
2 authorized to release records of the public body for inspection,  
3 copying, or mechanical reproduction. At least one person shall be  
4 available at all times to release records during the regular  
5 business hours of the public body.

6           SECTION 4.           AMENDATORY           51 O.S. 2021, Section 24A.17, is  
7 amended to read as follows:

8           Section 24A.17 A. Any public official who willfully violates  
9 any provision of the Oklahoma Open Records Act, upon conviction,  
10 shall be guilty of a misdemeanor, and shall be punished by a fine  
11 not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in  
12 the county jail for a period not exceeding one (1) year, or by both  
13 such fine and imprisonment.

14           B. Any person who requests and is denied access to records of a  
15 public body or public official:

16           1. May bring a civil suit for declarative or injunctive relief,  
17 or both, but such civil suit shall be limited to records requested  
18 and denied prior to filing of the civil suit; and

19           2. If successful, shall be entitled to reasonable attorney  
20 fees.

21           C. Prior to bringing a civil suit under subsection B, any  
22 person seeking declaratory or injunctive relief, or both, must  
23 notify the public body or public official of his or her intent to  
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1 bring a civil suit to obtain relief in writing ten (10) business  
2 days prior to filing for such relief.

3       € D. If the public body or public official successfully defends  
4 a civil suit and the court finds that the suit was clearly  
5 frivolous, the public body or public official shall be entitled to  
6 reasonable attorney fees.

7       ⊕ E. A public body or public official shall not be civilly  
8 liable for damages for providing access to records as allowed under  
9 the Oklahoma Open Records Act.

10       SECTION 5. This act shall become effective November 1, 2024.

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