

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 36

By: Dahm

AS INTRODUCED

An Act relating to the Oklahoma Open Records Act; amending 51 O.S. 2021, Section 24A.8, as amended by Section 1, Chapter 12, O.S.L. 2022 (51 O.S. Supp. 2022, Section 24A.8), which relates to disclosure of law enforcement records; requiring disclosure of recordings from certain equipment; and declaring an emergency.

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

SECTION 1. AMENDATORY 51 O.S. 2021, Section 24A.8, as amended by Section 1, Chapter 12, O.S.L. 2022 (51 O.S. Supp. 2022, 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;

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

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

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

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

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

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

20 9. Audio and video recordings from recording equipment attached
21 to law enforcement vehicles or unmanned aircraft as defined in
22 Section 322 of Title 3 of the Oklahoma Statutes, associated audio
23 recordings from recording equipment on the person of a law
24 enforcement officer or audio and video recordings from any other

1 source used by a law enforcement agency; provided, the law
2 enforcement agency may, before releasing any audio or video
3 recording provided for in this paragraph, redact or obscure specific
4 portions of the recording which:

- 5 a. depict the death of a person or a dead body, unless
6 the death was effected by a law enforcement officer,
- 7 b. depict nudity,
- 8 c. would identify minors under the age of sixteen (16)
9 years or would undermine any requirement to keep
10 certain juvenile records confidential as provided for
11 in Title 10A of the Oklahoma Statutes,
- 12 d. depict acts of severe violence resulting in great
13 bodily injury, as defined in Section 11-904 of Title
14 47 of the Oklahoma Statutes, against persons that are
15 clearly visible, unless the act of severe violence was
16 effected by a law enforcement officer,
- 17 e. depict great bodily injury, as defined in Section 11-
18 904 of Title 47 of the Oklahoma Statutes, unless the
19 great bodily injury was effected by a law enforcement
20 officer,
- 21 f. include personal medical information that is not
22 already public,
- 23 g. would undermine the assertion of a privilege provided
24 in Section 1-109 or Section 3-428 of Title 43A of the

Oklahoma Statutes for detention 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 have become subject to internal investigation by the law enforcement agency as a result of an event depicted in the recording. The option to protect the identity of a law enforcement officer shall not be available to the law enforcement agency after the law enforcement agency has concluded the investigation and rendered a decision as to final disciplinary action. At such time when an investigation has concluded and the law enforcement agency has rendered its decision as to final disciplinary action, the portions of the recordings previously withheld as provided for in this subparagraph shall be available for public inspection and copying. The audio and video recordings withheld as provided for in this subparagraph shall be

1 available for public inspection and copying before the
2 conclusion of the investigation if the investigation
3 lasts for an unreasonable amount of time; and

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

- 7 (1) the use of any physical force or violence by a
8 law enforcement officer,
- 9 (2) pursuits of any kind,
- 10 (3) traffic stops,
- 11 (4) any person being arrested, cited, charged or
12 issued a written warning,
- 13 (5) events that directly led to any person being
14 arrested, cited, charged or receiving a written
15 warning,
- 16 (6) detentions of any length for the purpose of
17 investigation,
- 18 (7) any exercise of authority by a law enforcement
19 officer that deprives a citizen of his or her
20 liberty,
- 21 (8) actions by a law enforcement officer that have
22 become the cause of an investigation or charges
23 being filed,
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- 1 (9) recordings in the public interest that may
2 materially aid a determination of whether law
3 enforcement officers are appropriately performing
4 their duties as public servants, or
5 (10) any contextual events occurring before or after
6 the events depicted in divisions (1) through (9)
7 of this subparagraph.

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

- 13 (1) depict the death of a person or a dead body,
14 unless the death was effected by a law
15 enforcement officer,
16 (2) depict nudity,
17 (3) would identify minors under the age of sixteen
18 (16) years or would undermine any requirement to
19 keep certain juvenile records confidential as
20 provided for in Title 10A of the Oklahoma
21 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
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1 persons that are clearly visible, unless the act
2 of severe violence was effected by a law
3 enforcement officer,

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

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

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

16 (8) identify alleged victims of sex crimes or
17 domestic violence,

18 (9) identify any person who provides information to
19 law enforcement or the information provided by
20 that person when that person requests anonymity
21 or where disclosure of the identity of the person
22 or the information provided could reasonably be
23 expected to threaten or endanger the physical
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1 safety or property of the person or the physical
2 safety or property of others,

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

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

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

17 (a) ten (10) days following the formal
18 arraignment or initial appearance, whichever
19 occurs first, of a person charged in the
20 case in question, the recording shall be
21 made available for public inspection and
22 copying with no redaction of the portions
23 that were temporarily withheld by reliance
24 on this division. Provided, before

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

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

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

1 than three (3) years. Provided, charges
2 being filed against a person in the case in
3 question automatically cancels any extension
4 of time. A new request for an extension of
5 time following an arraignment or initial
6 appearance may be requested by the parties
7 on the grounds and under the terms provided
8 for in subdivision (a) of this division.

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

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

14 B. 1. Except for the records listed in subsection A of this
15 section and those made open by other state or local laws, law
16 enforcement agencies may deny access to law enforcement records
17 except where a court finds that the public interest or the interest
18 of an individual outweighs the reason for denial. The provisions of
19 this section shall not operate to deny access to law enforcement
20 records if such records have been previously made available to the
21 public as provided in the Oklahoma Open Records Act or as otherwise
22 provided by law.

23 2. a. A law enforcement agency shall deny access to any
24 audio or video recording that depicts the death of a
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1 law enforcement officer who was acting in the course
2 of his or her official duties including any related
3 acts or events immediately preceding or subsequent to
4 the acts or events that caused or otherwise relate to
5 the death, except where a court finds that the public
6 interest or the interest of an individual outweighs
7 the reason for denial. Provided, however, a law
8 enforcement agency may allow a family member of the
9 deceased law enforcement officer to hear or view such
10 audio or video recording under protocols established
11 by the law enforcement agency. For the purposes of
12 this subparagraph, "family member" means a spouse,
13 adult child, parent or sibling of the deceased law
14 enforcement officer.

15 b. Nothing in subparagraph a of this paragraph shall be
16 construed to prohibit the prosecution and defense
17 counsel from access to such audio or video recordings
18 or the use of such recordings as evidence in a legal
19 proceeding.

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

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

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

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

17 2. As may be required to perform the duties imposed by Section
18 3311 of Title 70 of the Oklahoma Statutes;

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

21 4. To provide, upon written request, to any law enforcement
22 agency conducting an official investigation, copies of the records
23 of any peace officer who is the subject of such investigation;
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1 5. To provide final orders of administrative proceedings where
2 an adverse action was taken against a peace officer; and

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

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

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

10 a. training, lesson plans, teaching materials, tests and
11 test results,

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

14 c. the following information from radio logs:

15 (1) telephone numbers,

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

18 (3) personal information which is contrary to the
19 provisions of the Driver's Privacy Protection

20 Act, 18 United States Code, Sections 2721 through
21 2725; and

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

1 SECTION 2. It being immediately necessary for the preservation
2 of the public peace, health or safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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