

An Act

ENROLLED HOUSE
BILL NO. 2163

By: Pfeiffer of the House

and

Howard of the Senate

An Act relating to open records; creating the Public Access Counselor within the Office of the Attorney General; allowing certain persons to file review of denial of open records requests with the Public Access Counselor; providing instructions for filing; prohibiting filings made for a commercial purpose; establishing procedures for review of requests; directing Public Access Counselor to notify public body; requiring certain furnishing of records; permitting subpoena by the Attorney General; prohibiting disclosure of certain protected information; allowing public body chance to respond to request; directing binding opinions be made within certain time frame; permitting Attorney General to choose other means for resolving review requests; permitting parties to file in district court; directing for notification of certain proceedings; permitting the Attorney General to issue advisory opinions to public bodies regarding compliance; exempting certain failures to comply made under good faith; 74 O.S. 2021, Section 18b, as last amended by Section 170, Chapter 452, O.S.L. 2024 (74 O.S. Supp. 2024, Section 18b), which relates to duties of the Attorney General; modifying duties related to violations of the Oklahoma Open Records Act and the Oklahoma Open Meetings Act; providing for codification; and declaring an emergency.

SUBJECT: Open records

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24A.40 of Title 51, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established in the Office of the Attorney General the Public Access Counselor Unit.

B. A person whose request to inspect or copy a public record is denied by a public body, except the Legislature and committees, commissions, and agencies thereof, may file a request for review with the Public Access Counselor not later than thirty (30) calendar days after the date of the denial. The request for review shall be in writing on a form prescribed by the Attorney General and signed by the requester, and shall include:

1. A copy of the request for access to records; and
2. Any responses from the public body.

C. A person whose request to inspect or copy a public record was treated by the public body as a request for a commercial purpose may file a request for review with the Public Access Counselor for the limited purpose of reviewing whether the public body properly determined that the request was made for a commercial purpose.

D. A person whose request to inspect or copy a public record has not been returned in a prompt or reasonable manner may file a request for review with the Public Access Counselor.

E. No person whose request to inspect or copy a public record is made for a commercial purpose may file a request for review with the Public Access Counselor.

F. Upon receipt of a request for review, the Public Access Counselor shall determine whether further action is warranted. If the Public Access Counselor determines that the alleged violation is unfounded, they shall advise the requester and the public body and no further action shall be undertaken. In all other cases, the Public Access Counselor shall forward a copy of the request for review to the public body within seven (7) business days after receipt and shall specify the records or other documents that the public body shall furnish to facilitate the review. Within seven (7) business days after receipt of the request for review, the public body shall fully cooperate and provide a written response to the Public Access Counselor. To the extent that records or

documents produced by a public body contain information claimed to be confidential or exempt from disclosure under the Oklahoma Open Records Act, the Public Access Counselor shall not further disclose that information.

G. 1. The Attorney General shall examine the request and response and shall issue to the public body or public official, or both, an advisement in response to the request for review within sixty (60) calendar days after its receipt. Additionally, the Attorney General shall notify the requester when the office has completed its review.

2. Upon receipt of an advisement, the public body shall either take necessary action promptly and reasonably to comply with the Oklahoma Open Records Act or shall respond to the requester. If the advisement concludes that no additional response is required, the requester may file suit in the proper district court against the public body of which the request was made.

3. A public body that discloses records in accordance with advice of the Attorney General is immune from all liabilities by reason thereof and shall not be liable for penalties under this act.

H. If the requester files suit under Section 24A.17 of Title 51 of the Oklahoma Statutes with respect to the same denial that is the subject of a pending request for review, the requester shall notify the Public Access Counselor, and the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the public body.

I. The Attorney General may issue advisory opinions to advise public bodies regarding compliance with this act. A review may be initiated upon receipt of a written request from the head of the public body or its attorney, which shall contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the public body in order to assist in the review. A public body that relies in good faith on the advice of the Attorney General in responding to a request is not liable for penalties under this act if the facts upon which the advice is based have been fully and fairly disclosed to the Public Access Counselor.

J. If the Public Access Counselor finds that a person requesting review of an agency's action pursuant to subsections B,

C, or D of this section has submitted multiple frivolous requests, the Public Access Counselor may deny future requests for review.

K. Notwithstanding any other provisions of law, the Attorney General shall not be required to produce pursuant to Section 24A.5 of Title 51 of the Oklahoma Statutes, the following:

1. Any records provided under this section to the Office of the Attorney General by another public body;
2. Any correspondence between the Office of the Attorney General and the public body related to advice under this section; or
3. Any work papers or product of the Office of the Attorney General in carrying out the duties required by this section.

L. Nothing in this section shall be construed to limit the Attorney General from enforcing or taking action regarding the Oklahoma Open Records Act.

SECTION 2. AMENDATORY 74 O.S. 2021, Section 18b, as last amended by Section 170, Chapter 452, O.S.L. 2024 (74 O.S. Supp. 2024, Section 18b), is amended to read as follows:

Section 18b. A. The duties of the Attorney General as the chief law officer of the state shall be:

1. To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court and Court of Criminal Appeals in which the state is interested as a party;
2. To appear for the state and prosecute and defend all actions and proceedings in any of the federal courts in which the state is interested as a party;
3. To initiate or appear in any action in which the interests of the state or the people of the state are at issue, or to appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein;

4. To consult with and advise district attorneys, when requested by them, in all matters pertaining to the duties of their offices, when the district attorneys shall furnish the Attorney General with a written opinion supported by citation of authorities upon the matter submitted;

5. To give an opinion in writing upon all questions of law submitted to the Attorney General by the Legislature or either branch thereof, or by any state officer, board, commission or department, provided, that the Attorney General shall not furnish opinions to any but district attorneys, the Legislature or either branch thereof, or any other state official, board, commission or department, and to them only upon matters in which they are officially interested;

6. At the request of the Governor, State Auditor and Inspector, State Treasurer, or either branch of the Legislature, to prosecute any official bond or any contract in which the state is interested, upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their Departments;

7. Whenever requested by any state officer, board or commission, to prepare proper drafts for contracts, forms and other writing which may be wanted for the use of the state;

8. To prepare drafts of bills and resolutions for individual members of the Legislature upon their written request stating the gist of the bill or resolution desired;

9. To enforce the proper application of monies appropriated by the Legislature and to prosecute breaches of trust in the administration of such funds;

10. To institute actions to recover state monies illegally expended, to recover state property and to prevent the illegal use of any state property, upon the request of the Governor or the Legislature;

11. To pay into the State Treasury, immediately upon its receipt, all monies received by the Attorney General belonging to the state;

12. To settle, compromise and dispose of an action in which the Attorney General represents the interests of the state, so long as

the consideration negotiated for such settlement, compromise or disposition is payable to the state or one of its agencies which is a named party of the action and any monies, any property or other item of value is paid first to the State Treasury;

13. To keep and file copies of all opinions, contracts, forms and letters of the office, and to keep an index of all opinions, contracts and forms according to subject and section of the law construed or applied;

14. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by the Attorney General in behalf of the state. The register or docket shall give the style of the case or investigation, where pending, court number, office number, the gist of the matter, result and the names of the assistants who handled the matter;

15. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the state;

16. To report to the Legislature or either branch thereof whenever requested upon any business relating to the duties of the Attorney General's office;

17. To institute civil actions against members of any state board or commission for failure of such members to perform their duties as prescribed by the statutes and the Constitution and to prosecute members of any state board or commission for violation of the criminal laws of this state where such violations have occurred in connection with the performance of such members' official duties;

18. To respond to any request for an opinion of the Attorney General's office, submitted by a member of the Legislature, regardless of subject matter, by written opinion determinative of the law regarding such subject matter;

19. To convene multicounty grand juries in such manner and for such purposes as provided by law; provided, such grand juries are composed of citizens from each of the counties on a pro rata basis by county;

20. To investigate any report by the State Auditor and Inspector filed with the Attorney General pursuant to Section 223 of this title and prosecute all actions, civil or criminal, relating to

such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of this state;

21. To represent and protect the collective interests of all utility consumers of this state in rate-related proceedings before the Corporation Commission or in any other state or federal judicial or administrative proceeding;

22. To represent and protect the collective interests of insurance consumers of this state in rate-related proceedings before the Insurance Commissioner or in any other state or federal judicial or administrative proceeding;

23. To investigate and prosecute any criminal action relating to insurance fraud, if in the opinion of the Attorney General a criminal prosecution is warranted, or to refer such matters to the appropriate district attorney;

24. To monitor and evaluate any action by the federal government including, but not limited to, executive orders by the President of the United States, rules or regulations promulgated by an agency of the federal government or acts of Congress to determine if such actions are in violation of the Tenth Amendment to the Constitution of the United States;

25. To cross-deputize police officers of the police department of any municipality or any officer deputized by the county sheriff or a designee subject to an interlocal governmental agreement with the Attorney General's Office in an effort to combine city, county, and state law enforcement efforts and to encourage cooperation between city, county, and state law enforcement officials. Liability for the conduct of any municipal police officer cross-deputized under the terms and conditions of an interlocal governmental agreement or any officer deputized by the county sheriff under the terms and conditions of an interlocal governmental agreement shall remain the responsibility of the respective employer for that officer; ~~and~~

26. To maintain data related to human trafficking and to assist law enforcement, social service agencies, and victim services programs in identifying and supporting victims of human trafficking; and

27. To investigate and prosecute any civil or criminal action relating to violations of the Oklahoma Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, or the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, if the Attorney General determines that a civil or criminal prosecution is warranted or to defer such matters to a district attorney.

B. Nothing in this section shall be construed as requiring the Attorney General to appear and defend or prosecute in any court any cause or proceeding for or on behalf of the Oklahoma Tax Commission, the Board of Managers of the State Insurance Fund, or the Commissioners of the Land Office.

C. In all appeals from the Corporation Commission to the Supreme Court of Oklahoma in which the state is a party, the Attorney General shall have the right to designate counsel of the Corporation Commission as the Attorney General's legally appointed representative in such appeals, and it shall be the duty of the Corporation Commission counsel to act when so designated and to consult and advise with the Attorney General regarding such appeals prior to taking action therein.

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

Passed the House of Representatives the 25th day of March, 2025.

Presiding Officer of the House
of Representatives

Passed the Senate the 5th day of May, 2025.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____