

1 **SENATE FLOOR VERSION**

2 April 8, 2025

3 ENGROSSED HOUSE
4 BILL NO. 2163

By: Pfeiffer of the House

and

Howard of the Senate

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7
8 An Act relating to open records; creating the Public
9 Access Counselor within the Office of the Attorney
10 General; allowing certain persons to file review of
11 denial of open records requests with the Public
12 Access Counselor; providing instructions for filing;
13 prohibiting filings made for a commercial purpose;
14 establishing procedures for review of requests;
15 directing Public Access Counselor to notify public
16 body; requiring certain furnishing of records;
17 permitting subpoena by the Attorney General;
18 prohibiting disclosure of certain protected
19 information; allowing public body chance to respond
20 to request; directing binding opinions be made within
21 certain time frame; permitting Attorney General to
22 choose other means for resolving review requests;
23 permitting parties to file in district court;
24 directing for notification of certain proceedings;
25 permitting the Attorney General to issue advisory
26 opinions to public bodies regarding compliance;
27 exempting certain failures to comply made under good
28 faith; 74 O.S. 2021, Section 18b, as last amended by
29 Section 170, Chapter 452, O.S.L. 2024 (74 O.S. Supp.
30 2024, Section 18b), which relates to duties of the
31 Attorney General; modifying duties related to
32 violations of the Oklahoma Open Records Act and the
33 Oklahoma Open Meetings Act; providing for
34 codification; and declaring an emergency.

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

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

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

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

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

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

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

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

4 F. Upon receipt of a request for review, the Public Access
5 Counselor shall determine whether further action is warranted. If
6 the Public Access Counselor determines that the alleged violation is
7 unfounded, they shall advise the requester and the public body and
8 no further action shall be undertaken. In all other cases, the
9 Public Access Counselor shall forward a copy of the request for
10 review to the public body within seven (7) business days after
11 receipt and shall specify the records or other documents that the
12 public body shall furnish to facilitate the review. Within seven
13 (7) business days after receipt of the request for review, the
14 public body shall fully cooperate and provide a written response to
15 the Public Access Counselor. To the extent that records or
16 documents produced by a public body contain information claimed to
17 be confidential or exempt from disclosure under the Oklahoma Open
18 Records Act, the Public Access Counselor shall not further disclose
19 that information.

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

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

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

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

18 I. The Attorney General may issue advisory opinions to advise
19 public bodies regarding compliance with this act. A review may be
20 initiated upon receipt of a written request from the head of the
21 public body or its attorney, which shall contain sufficient accurate
22 facts from which a determination can be made. The Public Access
23 Counselor may request additional information from the public body in
24 order to assist in the review. A public body that relies in good

1 faith on the advice of the Attorney General in responding to a
2 request is not liable for penalties under this act if the facts upon
3 which the advice is based have been fully and fairly disclosed to
4 the Public Access Counselor.

5 J. If the Public Access Counselor finds that a person
6 requesting review of an agency's action pursuant to subsections B,
7 C, or D of this section has submitted multiple frivolous requests,
8 the Public Access Counselor may deny future requests for review.

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

12 1. Any records provided under this section to the Office of the
13 Attorney General by another public body;

14 2. Any correspondence between the Office of the Attorney
15 General and the public body related to advice under this section; or

16 3. Any work papers or product of the Office of the Attorney
17 General in carrying out the duties required by this section.

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

21 SECTION 2. AMENDATORY 74 O.S. 2021, Section 18b, as last
22 amended by Section 170, Chapter 452, O.S.L. 2024 (74 O.S. Supp.
23 2024, Section 18b), is amended to read as follows:

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

3 1. To appear for the state and prosecute and defend all actions
4 and proceedings, civil or criminal, in the Supreme Court and Court
5 of Criminal Appeals in which the state is interested as a party;

6 2. To appear for the state and prosecute and defend all actions
7 and proceedings in any of the federal courts in which the state is
8 interested as a party;

9 3. To initiate or appear in any action in which the interests
10 of the state or the people of the state are at issue, or to appear
11 at the request of the Governor, the Legislature, or either branch
12 thereof, and prosecute and defend in any court or before any
13 commission, board or officers any cause or proceeding, civil or
14 criminal, in which the state may be a party or interested; and when
15 so appearing in any such cause or proceeding, the Attorney General
16 may, if the Attorney General deems it advisable and to the best
17 interest of the state, take and assume control of the prosecution or
18 defense of the state's interest therein;

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

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

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

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

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

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

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

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

8 12. To settle, compromise and dispose of an action in which the
9 Attorney General represents the interests of the state, so long as
10 the consideration negotiated for such settlement, compromise or
11 disposition is payable to the state or one of its agencies which is
12 a named party of the action and any monies, any property or other
13 item of value is paid first to the State Treasury;

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

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

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

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

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

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

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

21 20. To investigate any report by the State Auditor and
22 Inspector filed with the Attorney General pursuant to Section 223 of
23 this title and prosecute all actions, civil or criminal, relating to
24 such reports or any irregularities or derelictions in the management

1 of public funds or property which are violations of the laws of this
2 state;

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

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

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

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

21 25. To cross-deputize police officers of the police department
22 of any municipality or any officer deputized by the county sheriff
23 or a designee subject to an interlocal governmental agreement with
24 the Attorney General's Office in an effort to combine city, county,

1 and state law enforcement efforts and to encourage cooperation
2 between city, county, and state law enforcement officials.
3 Liability for the conduct of any municipal police officer cross-
4 deputized under the terms and conditions of an interlocal
5 governmental agreement or any officer deputized by the county
6 sheriff under the terms and conditions of an interlocal governmental
7 agreement shall remain the responsibility of the respective employer
8 for that officer; ~~and~~

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

13 27. To investigate and prosecute any civil or criminal action
14 relating to violations of the Oklahoma Open Records Act, Section
15 24A.1 et seq. of Title 51 of the Oklahoma Statutes, or the Oklahoma
16 Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma
17 Statutes, if the Attorney General determines that a civil or
18 criminal prosecution is warranted or to defer such matters to a
19 district attorney.

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

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

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

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
14 April 8, 2025 - DO PASS
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