

1 **SENATE FLOOR VERSION**

2 April 2, 2024

3 ENGROSSED HOUSE
4 BILL NO. 3779

By: Duel of the House

and

Standridge of the Senate

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6
7
8 An Act relating to the Oklahoma Open Records Act;
9 amending 51 O.S. 2021, Sections 24A.3, as last
10 amended by Section 11, Chapter 271, O.S.L. 2023,
11 24A.5, as amended by Section 5, Chapter 332, O.S.L.
12 2023, and 24A.17 (51 O.S. Supp. 2023, Sections 24A.3
13 and 24A.5), which relate to public records; reducing
14 the list of things defined as nonrecords; increasing
15 the types of confidential records; prescribing a
16 deadline to notify of intent to file suit for denied
17 record access; and providing an effective date.

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

19 SECTION 1. AMENDATORY 51 O.S. 2021, Section 24A.3, as
20 last amended by Section 11, Chapter 271, O.S.L. 2023 (51 O.S. Supp.
21 2023, Section 24A.3), is amended to read as follows:

22 Section 24A.3 As used in the Oklahoma Open Records Act:

23 1. "Record" means all documents including, but not limited to,
24 any book, paper, photograph, microfilm, data files created by or
used with computer software, computer tape, disk, record, sound
recording, film recording, video record or other material regardless
of physical form or characteristic, created by, received by, under

1 the authority of, or coming into the custody, control or possession
2 of public officials, public bodies or their representatives in
3 connection with the transaction of public business, the expenditure
4 of public funds or the administering of public property. Record
5 does not mean:

- 6 a. computer software, or
- 7 b. nongovernment personal effects,
- 8 ~~c. unless public disclosure is required by other laws or~~
9 ~~regulations, vehicle movement records of the Oklahoma~~
10 ~~Transportation Authority obtained in connection with~~
11 ~~the Authority's electronic toll collection system,~~
- 12 ~~d. personal financial information, credit reports or~~
13 ~~other financial data obtained by or submitted to a~~
14 ~~public body for the purpose of evaluating credit~~
15 ~~worthiness, obtaining a license, permit or for the~~
16 ~~purpose of becoming qualified to contract with a~~
17 ~~public body,~~
- 18 ~~e. any digital audio/video recordings of the toll~~
19 ~~collection and safeguarding activities of the Oklahoma~~
20 ~~Transportation Authority,~~
- 21 ~~f. any personal information provided by a guest at any~~
22 ~~facility owned or operated by the Oklahoma Tourism and~~
23 ~~Recreation Department to obtain any service at the~~
24 ~~facility or by a purchaser of a product sold by or~~

1 through the Oklahoma Tourism and Recreation
2 Department,

3 g. ~~a Department of Defense Form 214 (DD Form 214) filed~~
4 ~~with a county clerk including any DD Form 214 filed~~
5 ~~before July 1, 2002,~~

6 h. ~~except as provided for in Section 2-110 of Title 47 of~~
7 ~~the Oklahoma Statutes:~~

8 ~~(1) any record in connection with a Motor Vehicle~~
9 ~~Report issued by the Department of Public Safety,~~
10 ~~as prescribed in Section 6-117 of Title 47 of the~~
11 ~~Oklahoma Statutes, or~~

12 ~~(2) personal information within driver records, as~~
13 ~~defined by the Driver's Privacy Protection Act,~~
14 ~~18 United States Code, Sections 2721 through~~
15 ~~2725, which are stored and maintained by the~~
16 ~~Department of Public Safety,~~

17 i. ~~any portion of any document or information provided to~~
18 ~~an agency or entity of the state or a political~~
19 ~~subdivision to obtain licensure under the laws of this~~
20 ~~state or a political subdivision that contains an~~
21 ~~applicant's personal address, personal phone number,~~
22 ~~personal electronic mail address or other contact~~
23 ~~information. Provided, however, lists of persons~~
24 ~~licensed, the existence of a license of a person, or a~~

1 ~~business or commercial address, or other business or~~
2 ~~commercial information disclosable under state law~~
3 ~~submitted with an application for licensure shall be~~
4 ~~public record, or~~

5 j. ~~an investigative file obtained during an investigation~~
6 ~~conducted by the State Department of Health under this~~
7 ~~act;~~

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

1 not receive direct appropriations from the Oklahoma Legislature.

2 The following persons shall not be eligible to serve as a voting

3 member of the governing board of the organization:

4 a. a member, officer, or employee of the Oklahoma State
5 Regents for Higher Education,

6 b. a member of the board of regents or other governing
7 board of the college or university that is the sole
8 beneficiary of the organization, or

9 c. an officer or employee of the college or university
10 that is the sole beneficiary of the organization;

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

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

15 5. "Law enforcement agency" means any public body charged with
16 enforcing state or local criminal laws and initiating criminal
17 prosecutions including, but not limited to, police departments,
18 county sheriffs, the Department of Public Safety, the Oklahoma State
19 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
20 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau
21 of Investigation.

22 SECTION 2. AMENDATORY 51 O.S. 2021, Section 24A.5, as
23 amended by Section 5, Chapter 332, O.S.L. 2023 (51 O.S. Supp. 2023,
24 Section 24A.5), is amended to read as follows:

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

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

- 7 a. records protected by a state evidentiary privilege
8 such as the attorney-client privilege, the work
9 product immunity from discovery and the identity of
10 informer privileges,
- 11 b. records of what transpired during meetings of a public
12 body lawfully closed to the public such as executive
13 sessions authorized under the Oklahoma Open Meeting
14 Act,
- 15 c. personal information within driver records as defined
16 by the Driver's Privacy Protection Act, 18 United
17 States Code, Sections 2721 through 2725,
- 18 d. information in the files of the Board of Medicolegal
19 Investigations obtained pursuant to Sections 940 and
20 941 of Title 63 of the Oklahoma Statutes that may be
21 hearsay, preliminary unsubstantiated investigation-
22 related findings, or confidential medical information,
- 23 e. any test forms, question banks and answer keys
24 developed for state licensure examinations, but

1 specifically excluding test preparation materials or
2 study guides, ~~or~~

3 f. last names, addresses, ~~social security~~ Social Security
4 numbers or tax identification numbers, and proof of
5 identification submitted to the Oklahoma Lottery
6 Commission by persons claiming a lottery prize,

7 g. unless public disclosure is required by other laws or
8 regulations, vehicle movement records of the Oklahoma
9 Transportation Authority obtained in connection with
10 the Authority's electronic toll collection system,

11 h. personal financial information, credit reports, or
12 other financial data obtained by or submitted to a
13 public body for the purpose of evaluating credit
14 worthiness, obtaining a license, permit, or for the
15 purpose of becoming qualified to contract with a
16 public body,

17 i. any digital audio/video recordings of the toll
18 collection and safeguarding activities of the Oklahoma
19 Transportation Authority,

20 j. any personal information provided by a guest at any
21 facility owned or operated by the Oklahoma Tourism and
22 Recreation Department to obtain any service at the
23 facility or by a purchaser of a product sold by or
24

1 through the Oklahoma Tourism and Recreation
2 Department,

3 k. a Department of Defense Form 214 (DD Form 214) filed
4 with a county clerk, including any DD Form 214 filed
5 before July 1, 2002,

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

8 (1) any record in connection with a Motor Vehicle
9 Report issued by the Department of Public Safety,
10 as prescribed in Section 6-117 of Title 47 of the
11 Oklahoma Statutes, or

12 (2) personal information within driver records, as
13 defined by the Driver's Privacy Protection Act,
14 18 U.S.C., Sections 2721 through 2725, which are
15 stored and maintained by the Department of Public
16 Safety,

17 m. any portion of any document or information provided to
18 an agency or entity of the state or a political
19 subdivision to obtain licensure under the laws of this
20 state or a political subdivision that contains an
21 applicant's personal address, personal phone number,
22 personal email address, any government-issued
23 identification numbers, or other contact information;
24 provided, however, lists of persons licensed, the

1 existence of a license of a person, or a business or
2 commercial address, or other business or commercial
3 information disclosable under state law submitted with
4 an application for licensure shall be public record,
5 unless the business or commercial address is the same
6 as the applicant's personal address, except when the
7 applicant permits in writing the disclosure of the
8 address,

9 n. an investigative file obtained during an investigation
10 conducted by the State Department of Health into
11 violations of the Long-Term Care Administrator Act
12 under Title 63 of the Oklahoma Statutes, or
13 o. documents, evidence, materials, records, reports,
14 complaints, or other information in the possession or
15 control of the Attorney General or Insurance
16 Department pertaining to an evaluation, examination,
17 investigation, or review made pursuant to the
18 provisions of the Patient's Right to Pharmacy Choice
19 Act, the Pharmacy Audit Integrity Act, or Sections 357
20 through 360 of Title 59 of the Oklahoma Statutes;

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

1 3. Any reasonably segregable portion of a record containing
2 exempt material shall be provided after deletion of the exempt
3 portions; provided however, the Department of Public Safety shall
4 not be required to assemble for the requesting person specific
5 information, in any format, from driving records relating to any
6 person whose name and date of birth or whose driver license number
7 is not furnished by the requesting person.

8 The Oklahoma State Bureau of Investigation shall not be required
9 to assemble for the requesting person any criminal history records
10 relating to persons whose names, dates of birth, and other
11 identifying information required by the Oklahoma State Bureau of
12 Investigation pursuant to administrative rule are not furnished by
13 the requesting person;

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

1 inches or smaller, or a maximum of One Dollar (\$1.00) per copied
2 page for a certified copy. However, if the request:

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

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

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

19 In no case shall a search fee be charged when the release of
20 records is in the public interest, including, but not limited to,
21 release to the news media, scholars, authors and taxpayers seeking
22 to determine whether those entrusted with the affairs of the
23 government are honestly, faithfully, and competently performing
24 their duties as public servants.

1 The fees shall not be used for the purpose of discouraging
2 requests for information or as obstacles to disclosure of requested
3 information;

4 5. The land description tract index of all recorded instruments
5 concerning real property required to be kept by the county clerk of
6 any county shall be available for inspection or copying in
7 accordance with the provisions of the Oklahoma Open Records Act;
8 provided, however, the index shall not be copied or mechanically
9 reproduced for the purpose of sale of the information;

10 6. A public body must provide prompt, reasonable access to its
11 records but may establish reasonable procedures which protect the
12 integrity and organization of its records and to prevent excessive
13 disruptions of its essential functions. A delay in providing access
14 to records shall be limited solely to the time required for
15 preparing the requested documents and the avoidance of excessive
16 disruptions of the public body's essential functions. In no event
17 may production of a current request for records be unreasonably
18 delayed until after completion of a prior records request that will
19 take substantially longer than the current request. Any public body
20 which makes the requested records available on the Internet shall
21 meet the obligation of providing prompt, reasonable access to its
22 records as required by this paragraph; and

23 7. A public body shall designate certain persons who are
24 authorized to release records of the public body for inspection,

1 copying, or mechanical reproduction. At least one person shall be
2 available at all times to release records during the regular
3 business hours of the public body.

4 SECTION 3. AMENDATORY 51 O.S. 2021, Section 24A.17, is
5 amended to read as follows:

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

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

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

17 2. If successful, shall be entitled to reasonable attorney
18 fees.

19 C. Prior to bringing a civil suit under subsection B of this
20 section, any person seeking declaratory or injunctive relief, or
21 both, must notify the public body or public official of his or her
22 intent to bring a civil suit to obtain relief in writing ten (10)
23 business days prior to filing for such relief. Such notice must
24 also be provided to the Attorney General.

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

5 ~~D.~~ E. A public body or public official shall not be civilly
6 liable for damages for providing access to records as allowed under
7 the Oklahoma Open Records Act.

8 SECTION 4. This act shall become effective November 1, 2024.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
10 April 2, 2024 - DO PASS

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