

1 **SENATE FLOOR VERSION**

2 April 8, 2015

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 1037

By: Faught of the House

and

Holt and Quinn of the
Senate

6 [records - Oklahoma Open Records Act -
7
8
9 emergency]

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

13 SECTION 1. AMENDATORY 51 O.S. 2011, Section 24A.5, is
14 amended to read as follows:

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

18 1. The Oklahoma Open Records Act, ~~Sections~~ Section 24A.1
19 ~~through 24A.28~~ et seq. of this title, does not apply to records
20 specifically required by law to be kept confidential including:

- 21 a. records protected by a state evidentiary privilege
22 such as the attorney-client privilege, the work
23 product immunity from discovery and the identity of
24 informer privileges,

1 b. records of what transpired during meetings of a public
2 body lawfully closed to the public such as executive
3 sessions authorized under the Oklahoma Open Meeting
4 Act, Section 301 et seq. of Title 25 of the Oklahoma
5 Statutes,

6 c. personal information within driver records as defined
7 by the Driver's Privacy Protection Act, 18 United
8 States Code, Sections 2721 through 2725, ~~or~~

9 d. information in the files of the Board of Medicolegal
10 Investigations obtained pursuant to Sections 940 and
11 941 of Title 63 of the Oklahoma Statutes that may be
12 hearsay, preliminary unsubstantiated investigation-
13 related findings, or confidential medical
14 information~~, or~~ or

15 e. any test forms, question banks, and answer keys
16 developed for state licensure examinations, but
17 specifically excluding test preparation materials or
18 study guides;

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

3 The Oklahoma State Bureau of Investigation shall not be required to
4 assemble for the requesting person any criminal history records
5 relating to persons whose names, dates of birth, and other
6 identifying information required by the Oklahoma State Bureau of
7 Investigation pursuant to administrative rule are not furnished by
8 the requesting person-;

9 3. ~~Any~~ For any request for a record which contains individual
10 records of persons, ~~and~~ when the cost of copying, reproducing or
11 certifying each individual record is otherwise prescribed by state
12 law, the cost may be assessed for each individual record, or portion
13 thereof requested as prescribed by state law. Otherwise, a public
14 body may charge a fee only for recovery of the reasonable, direct
15 costs of record copying, or mechanical reproduction.

16 Notwithstanding any state or local provision to the contrary, in no
17 instance shall the record copying fee exceed twenty-five cents
18 (\$.25) per page for records having the dimensions of eight and one-
19 half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One
20 Dollar (\$1.00) per copied page for a certified copy. However, if
21 the request:

- 22 a. is solely for commercial purpose, or
- 23 b. would clearly cause excessive disruption of the
24 essential functions of the public body,

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

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

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

20 The fees shall not be used for the purpose of discouraging
21 requests for information or as obstacles to disclosure of requested
22 information;

23 4. The land description tract index of all recorded instruments
24 concerning real property required to be kept by the county clerk of

1 any county shall be available for inspection or copying in
2 accordance with the provisions of the Oklahoma Open Records Act;
3 provided, however, the index shall not be copied or mechanically
4 reproduced for the purpose of sale of the information~~;~~;

5 5. A public body must provide prompt, reasonable access to its
6 records but may establish reasonable procedures which protect the
7 integrity and organization of its records and to prevent excessive
8 disruptions of its essential functions~~;~~; and

9 6. A public body shall designate certain persons who are
10 authorized to release records of the public body for inspection,
11 copying, or mechanical reproduction. At least one person shall be
12 available at all times to release records during the regular
13 business hours of the public body.

14 SECTION 2. AMENDATORY 51 O.S. 2011, Section 24A.8, as
15 amended by Section 3, Chapter 266, O.S.L. 2014 (51 O.S. Supp. 2014,
16 Section 24A.8), is amended to read as follows:

17 Section 24A.8. A. Law enforcement agencies shall make
18 available for public inspection and copying, if kept, the following
19 records:

20 1. An arrestee description, including the name, date of birth,
21 address, race, sex, physical description, and occupation of the
22 arrestee;

23 2. Facts concerning the arrest, including the cause of arrest
24 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; ~~and~~

20 9. Audio and video recordings from recording equipment attached
21 to law enforcement vehicles and/or associated audio recordings from
22 recording equipment on the person of a law enforcement officer;
23 provided, the law enforcement agency may, before releasing any audio
24

1 or video recording provided for in this paragraph, redact or obscure
2 specific portions of the recording which:

3 a. depict the death of a person or a dead body,

4 b. depict ~~any person who is nude or~~ nudity,

5 c. identify minors ~~under the age of sixteen (16) years.~~

6 ~~Provided further, law enforcement agencies may redact~~

7 ~~or obscure specific portions of audio and video~~

8 ~~recordings which~~ as defined in Section 1-1-105 of

9 Title 10A of the Oklahoma Statutes or which would be

10 considered confidential pursuant to the provisions of

11 Section 1-6-102 of 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 perpetrated by a law

16 enforcement officer,

17 e. depict great bodily injury, as defined in Section 11-

18 904 of Title 47 of the Oklahoma Statutes, unless

19 perpetrated by a law enforcement officer,

20 f. include personal medical information that is not

21 already public,

22 g. would undermine the assertion of confidentiality or a

23 privilege provided in Section 1-109 or Section 3-428

24 of Title 43A of the Oklahoma Statutes for detention

1 and/or transportation for mental health evaluation or
2 treatment or drug or alcohol detoxification purposes,
3 h. include personal information other than the name or
4 license plate number of a person not arrested, cited,
5 charged or issued a written warning. Such personal
6 information shall include any government-issued
7 identification number, date of birth, address or
8 financial information, or
9 i. reveal the identity of law enforcement officers who
10 become subject to internal investigation by the law
11 enforcement agency as a result of an event depicted in
12 the recording. This exception shall apply until the
13 law enforcement agency concludes the investigation.
14 At the conclusion of the investigation and
15 disciplinary process, the ~~unedited audio and video~~
16 portions of the recordings previously withheld as
17 provided for in this subparagraph shall be available
18 for public inspection and copying. The ~~unedited~~ audio
19 and video recordings withheld as provided for in this
20 subparagraph shall be available for public inspection
21 and copying before the conclusion of the investigation
22 and disciplinary process if the investigation and
23 disciplinary process lasts for an unreasonable amount
24 of time; and

1 10. a. Audio and video recordings from recording equipment
2 attached to the person of a law enforcement officer
3 that depict:

4 (1) the use of any physical force or violence by a
5 law enforcement officer,

6 (2) pursuits of any kind,

7 (3) traffic stops,

8 (4) any person being arrested, cited, charged or
9 issued a written warning,

10 (5) events that directly led to any person being
11 arrested, cited, charged or receiving a written
12 warning,

13 (6) detentions of any length for the purpose of
14 investigation,

15 (7) any exercise of authority by law enforcement that
16 deprives citizens of liberty,

17 (8) actions by a law enforcement officer that have
18 become the cause of an investigation or charges,

19 (9) recordings in the public interest that may
20 materially aid a determination of whether law
21 enforcement officers are appropriately performing
22 their duties as public servants, or

1 (10) any contextual events occurring before or after
2 the events depicted in divisions (1) through (9)
3 of this subparagraph.

4 **b.** Notwithstanding the provisions of subparagraph a of
5 this paragraph, the law enforcement agency may, before
6 releasing any audio or video recording provided for in
7 this paragraph, redact or obscure specific portions of
8 the recording that:

9 (1) depict the death of a person or a dead body,

10 (2) depict nudity,

11 (3) identify minors as defined in Section 1-1-105 of
12 Title 10A of the Oklahoma Statutes or which would
13 be considered confidential pursuant to the
14 provisions of Section 1-6-102 of Title 10A of the
15 Oklahoma Statutes,

16 (4) depict acts of severe violence resulting in great
17 bodily injury, as defined in Section 11-904 of
18 Title 47 of the Oklahoma Statutes, against
19 persons that are clearly visible, unless
20 perpetrated by a law enforcement officer,

21 (5) depict great bodily injury, as defined in Section
22 11-904 of Title 47 of the Oklahoma Statutes,
23 unless perpetrated by a law enforcement officer,

- 1 (6) include personal medical information that is not
2 already public,
- 3 (7) undermine the assertion of confidentiality or a
4 privilege as provided in Section 1-109 or Section
5 3-428 of Title 43A of the Oklahoma Statutes for
6 detention and/or transportation for mental health
7 evaluation or treatment or drug or alcohol
8 detoxification purposes,
- 9 (8) depict a crime scene during an investigative
10 phase during which time the crime scene is closed
11 to the public,
- 12 (9) identify alleged victims of sex crimes or
13 domestic violence,
- 14 (10) identify any person who provides information to
15 law enforcement, or the information provided by
16 that person, when that person requests anonymity
17 or where disclosure of the identity of the person
18 or the information provided could reasonably be
19 expected to threaten or endanger the person's
20 physical safety or property or the physical
21 safety or property of others,
- 22 (11) undermine the assertion of a privilege to keep
23 the identity of an informer confidential as
24

1 provided for in Section 2510 of Title 12 of the
2 Oklahoma Statutes,

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

10 (13) include information that would clearly and
11 materially compromise an ongoing criminal
12 investigation or ongoing criminal prosecution,
13 provided that:

14 (a) one business day following the formal
15 arraignment of a person charged in the case
16 in question, the recording shall be made
17 available for public inspection and copying,
18 with no redaction of the portions that were
19 temporarily withheld by reliance on this
20 division. Provided, before potential
21 release of a recording as provided for in
22 this subdivision, the prosecutor or the
23 legal representatives of the person charged
24 may request from the appropriate district

1 court an extension of the time during which
2 the recording may be withheld under the
3 provisions of this division, and when such a
4 request has been filed with the court, the
5 recording in question may be withheld until
6 the court has issued a ruling. Such
7 requests for an extension of the time during
8 which the recording may be withheld may be
9 made on the grounds that release of the
10 recording will clearly and materially
11 compromise an ongoing criminal investigation
12 or criminal prosecution or on the grounds
13 that release of the recording will clearly
14 and materially compromise the accused's
15 right to a fair trial that has not yet
16 begun. Courts considering such requests
17 shall consider whether the public interest
18 outweighs the interests asserted by the
19 parties. In response to such requests, a
20 court shall order the recording to be made
21 available for public inspection and copying
22 with no redaction of the portions that were
23 temporarily withheld by reliance on this
24 division, or shall order an extension of the

1 time during which the recording may be
2 withheld under the provisions of this
3 division. Provided further, each such time
4 extension can only be ordered by a court for
5 an additional six (6) months or less, and
6 cumulative time extensions cannot add up to
7 more than eighteen (18) months,

8 (b) in the event that one hundred twenty (120)
9 calendar days have passed since the events
10 depicted in the recording without an
11 arraignment of any person charged in the
12 case in question, and release of a recording
13 or portions of a recording have been denied
14 on the grounds provided for in this
15 division, an appeal of such denial may be
16 made to the appropriate district court. In
17 such situations where no arraignment has
18 been made and a recording is being withheld
19 on the grounds provided for in this division
20 after one hundred twenty (120) calendar days
21 have passed since the recording's creation,
22 courts considering appeals to the use of the
23 provisions of this division for temporarily
24 withholding a recording, shall consider

1 whether the public interest outweighs the
2 interests protected by this division. In
3 response to such appeals, a district court
4 shall order the recording to be made
5 available for public inspection and copying
6 with no redaction of the portions that were
7 temporarily withheld by reliance on this
8 division, or shall order an extension of the
9 time during which the recording may be
10 withheld under the provisions of this
11 division. An order granting an extension
12 shall be applicable to the recording against
13 all appellants for the duration of the
14 extension. Provided, each such time
15 extension can only be ordered by a district
16 court for an additional twelve (12) months
17 or less, and cumulative time extensions
18 cannot add up to more than three (3) years.
19 Provided, the arraignment of a person
20 charged in the case in question
21 automatically cancels any such extension,
22 though a new extension following an
23 arraignment may be requested by the parties
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1 on the grounds and under the terms provided
2 for in subdivision (a) of this division, or
3 (c) the options presented in this paragraph to
4 potentially withhold a recording or portions
5 of a recording on the grounds provided for
6 in this paragraph absolutely expire in
7 totality four (4) years after the recording
8 was made, at which time all recordings
9 previously withheld on the grounds provided
10 for in this paragraph shall be made
11 available for public inspection and copying,
12 or

13 (14) reveal the identity of law enforcement officers
14 who have become subject to internal investigation
15 by the law enforcement agency as a result of an
16 event depicted in the recording. This exception
17 is available until the law enforcement agency
18 concludes the investigation. At the conclusion
19 of the investigation and disciplinary process,
20 the portions of the recording previously withheld
21 as provided for in this division shall be
22 available for public inspection and copying. The
23 audio and video recordings withheld on the
24 grounds provided for in this division shall be

1 available for public inspection and copying
2 before the conclusion of the investigation and
3 disciplinary process if the investigation and
4 disciplinary process lasts for an unreasonable
5 amount of time.

6 B. Except for the records listed in subsection A of this
7 section and those made open by other state or local laws, law
8 enforcement agencies may deny access to law enforcement records
9 except where a court finds that the public interest or the interest
10 of an individual outweighs the reason for denial. The provisions of
11 this section shall not operate to deny access to law enforcement
12 records if such records have been previously made available to the
13 public as provided in the Oklahoma Open Records Act or as otherwise
14 provided by law.

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

21 D. Registration files maintained by the Department of
22 Corrections pursuant to the provisions of the Sex Offenders
23 Registration Act shall be made available for public inspection in a
24 manner to be determined by the Department.

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

- 9 1. To verify the current certification status of any peace
10 officer;
- 11 2. As may be required to perform the duties imposed by Section
12 3311 of Title 70 of the Oklahoma Statutes;
- 13 3. To provide to any peace officer copies of the records of
14 that peace officer upon submitting a written request;
- 15 4. To provide, upon written request, to any law enforcement
16 agency conducting an official investigation, copies of the records
17 of any peace officer who is the subject of such investigation;
- 18 5. To provide final orders of administrative proceedings where
19 an adverse action was taken against a peace officer; and
- 20 6. Pursuant to an order of the district court of the State of
21 Oklahoma.

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

- 23 1. All records it maintains pursuant to its authority under
24 Title 47 of the Oklahoma Statutes relating to the Oklahoma Highway

1 Patrol Division, the Communications Division, and other divisions of
2 the Department relating to:

- 3 a. training, lesson plans, teaching materials, tests, and
4 test results,
- 5 b. policies, procedures, and operations, any of which are
6 of a tactical nature, and
- 7 c. the following information from radio logs:
 - 8 (1) telephone numbers,
 - 9 (2) addresses other than the location of incidents to
10 which officers are dispatched, and
 - 11 (3) personal information which is contrary to the
12 provisions of the Driver's Privacy Protection
13 Act, 18 United States Code, Sections 2721 through
14 2725; and

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

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

22 COMMITTEE REPORT BY: COMMITTEE ON RULES
23 April 8, 2015 - DO PASS AS AMENDED
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