

OKLAHOMA OPEN RECORDS ONE PAGER FOR LAW ENFORCEMENT

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PRODUCIBLE RECORDS IF KEPT

1. Arrestee description, including:
 - a. name,
 - b. date of birth,
 - c. address,
 - d. race,
 - e. sex,
 - f. physical description, and
 - g. occupation of the arrestee,
2. Facts concerning arrest, including cause of arrest and name of arresting officer,
3. Chronological list of all incidents, including:
 - a. initial offense report information showing the offense,
 - b. date,
 - c. time,
 - d. general location,
 - e. officer, and
 - f. a brief summary of what occurred,
4. Radio logs, including a chronological listing of the calls dispatched,
5. Conviction information, including the name of any person convicted of a criminal offense
6. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person,
7. A crime summary, including the agency summary of crimes reported and public calls for service by classification or nature and number,
8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing:
 - a. the name of each prisoner with the date and cause of commitment,
 - b. the authority committing the prisoner,
 - c. whether committed for a criminal offense,
 - d. a description of the prisoner, and
 - e. the date or manner of discharge or escape of the prisoner;
9. Audio and video recordings from recording equipment attached to law enforcement vehicles or associated audio recordings from recording equipment on the person of a law enforcement officer; and
10. Audio and video recordings from recording equipment attached to the person of a law enforcement officer that depict:
 - The use of any physical force or violence by a law enforcement officer,
 - Pursuits of any kind,
 - Traffic stops,
 - Any person being arrested, cited, charged, or issued a written warning,
 - Events that directly led to any person being arrested, cited, charged or receiving a written warning,
 - Detentions of any length for the purpose of investigation,
 - Any exercise of authority by a law enforcement officer that deprives a citizen of his or her liberty,
 - Actions by a law enforcement officer that have become the cause of an investigation or charges being filed,
 - Recordings in the public interest that may materially aid a determination of whether law enforcement officers are appropriately performing their duties as public servants, or
 - Any contextual events occurring before or after the events described above.

ORA GENERAL REQUIREMENTS APPLY

- ▶ Must still provide prompt, reasonable access to records in accordance with § 24A.5.
- ▶ **REMEMBER:** some bases for redaction may be required (e.g., juvenile privilege, mental health privilege). Even so, redaction is treated as a permissive action under § 24A.8. (Using the word “may”).
- ▶ Lacking the capability to redact or obscure audio or visual does not relieve a law enforcement agency from producing records.

ACCESS TO LAW ENFORCEMENT RECORDS (51 O.S. §§ 24A.8(B)(1)–(2) and 24A.20)

- ▶ Except as provided by law, a law enforcement agency may deny access to law enforcement records unless a court finds that the public interest of an individual outweighs the reason for denial.
- ▶ **BUT**, a law enforcement agency cannot deny access to such records if they have been previously made public under the ORA or other applicable law.
- ▶ A law enforcement agency may also deny access to a copy of such record in an investigative file if a true and complete copy is available for public inspection and copying at another public body.

RECORDKEEPING (51 O.S. §§ 24A.8(C))

- ▶ § 24A.8 does not impose any new recordkeeping requirements.
- ▶ Law enforcement records “shall be kept” for as long as is now or may be specified by law.
- ▶ **CHECK:** Title 11 or 19.
- ▶ Absent legal requirement to keep a law enforcement record, a law enforcement agency shall maintain its records for so long as needed for administrative purposes.



SCAN TO READ THE FULL OPEN RECORDS ACT OR VISIT

<https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=80288>

REDACTION

(51 O.S. § 24A.8(A)(9)(a)–(i) and (10)(b)(1)–(12))

A public body may, before releasing audio or video recordings, redact or obscure specific portions of a record that:

- ▶ Depict the death of a person or a dead body, unless the death was effected by a law enforcement officer,
- ▶ Depict nudity,
- ▶ Would identify minors under the age 16 years or would undermine any requirement to keep certain juvenile records confidential under Title 10A of the Oklahoma Statutes,
- ▶ Depict acts of severe violence resulting in great bodily injury, as defined in 47 O.S. § 11-904, against persons that are clearly visible, unless the act of severe violence was effected by a law enforcement officer,
- ▶ Depict great bodily injury, as defined in 47 O.S. § 11-904, unless the great bodily injury was effected by a law enforcement officer,
- ▶ Include personal medical information that is not already public,
- ▶ Would undermine the assertion of a privilege provided in 43A O.S. §§ 1-109 or 3-428 for detention or transportation for mental health evaluation or treatment or drug or alcohol detoxification purposes
- ▶ 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,
- ▶ Identify alleged victims of sex crimes or domestic violence,
- ▶ Identify any person who provides information to law enforcement or the information provided by that person when that person requests anonymity or where disclosure of the identity of the person or the information provided could reasonably be expected to threaten or endanger the physical safety or property of the person or the physical safety or property of others,
- ▶ Undermine the assertion of a privilege to keep the identity of an informer confidential as provided for in 12 O.S. § 2510, or
- ▶ Include information that would materially compromise an ongoing criminal investigation or ongoing criminal prosecution.

OHP RECORDS

(51 O.S. §§ 24A.8(F))

“Shall keep confidential”—

- ▶ Training, lesson plans, teaching materials, tests, and test results,
- ▶ Tactical policies, procedures, and operations, and
- ▶ Information from radio logs including phone numbers and addresses other than those locations to which OHP is dispatched.
- ▶ Personal information which is contrary to the provisions of the Driver’s Privacy Protection Act, 18 U.S.C. §§ 2721–2725.

RELEASE OF RECORDINGS RELATED TO PENDING INVESTIGATION OR PROSECUTION

(51 O.S. § 24A.8(A)(10)(b)(12))

- ▶ **10 days following formal arraignment or initial appearance, whichever occurs first**, the law enforcement agency shall make the recording available for inspection and copy without redactions.
- ▶ Before potential release, the State, municipality, or the defendant’s counsel may request the court to extend the time for which the recording is withheld from public inspection. Prior to the court ruling on the motion, a law enforcement agency may withhold the recording.
- ▶ Such requests for an extension of time must be made by the State or municipality, arguing that the release of the recording may materially compromise the investigation.
- ▶ Defendant’s counsel must argue that the release of the recording will materially compromise the right of an accused to a fair trial yet to begin.
- ▶ Court must hold hearing to determine whether the interests of the public outweigh the interests of the party moving to keep the recording confidential.
- ▶ A court can order an extension of time for 6-month periods, cumulatively the time extensions must not exceed 18 months.
- ▶ If 120 days pass without criminal charges of any person related to a recording and release of the recording has been denied, a requestor can appeal a denial to inspection or copying to the district court having jurisdiction.
- ▶ The district court must hold hearing and consider whether public interest outweighs the parties protected by the withholding of the recording. Extensions of time shall not exceed additional 12-month periods, cumulatively no less than 3 years.
- ▶ Charges filed against a person in question automatically cancels any extension of time.

RECORDINGS DEPICTING DEATH OF LAW ENFORCEMENT OFFICER

(51 O.S. § 24A.8(B)(2))

- ▶ A law enforcement agency **must** deny access to and keep confidential recordings that depict the death of a law enforcement officer acting in the course of his or her duties.
- ▶ **BUT** a court may determine that the public interest or the interest of an individual outweighs any reason for denial.
- ▶ A law enforcement agency **may permit** a spouse, adult child, parent, or sibling of a deceased officer to hear or view any audio or video recording in accordance with protocols promulgated by the agency.
- ▶ The State and Defense retain the right to receive recordings of a law enforcement officer death to use as evidence in a legal proceeding.