

# OKLAHOMA OPEN RECORDS ONE PAGER

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## PURPOSE AND SCOPE

- ▶ The public policy of the Open Records Act (“ORA”) is that “the people are vested with the inherent right to know and be fully informed about their government.” 51 O.S. § 24A.2.
- ▶ The ORA ensures and facilitates the public’s right to access government records so citizens may exercise their political power effectively. 51 O.S. § 24A.2.
- ▶ All records of public bodies and officials are presumed open unless specifically exempted. 51 O.S. § 24A.5.
- ▶ All public bodies must maintain complete records of receipts and expenditures. 51 O.S. § 24A.4.
- ▶ There is no duty to create a new record to fulfill a request. 51 O.S. § 24A.18.

## PRIVILEGE AND CONFIDENTIALITY

Privileged is confidential. Confidential is not privileged. What may be confidential under the ORA and not subject to production but may be subpoenaed or discoverable. *McKesson Corp. v. Campbell*, 2022 OK 6, 502 P.3d 110.

## FEES AND LIMITATIONS

(51 O.S. § 24A.5(4))

- ▶ Copying fees: Up to \$0.25 per page or \$1.00 per certified page. Higher reasonable fees allowed for commercial or disruptive requests.
- ▶ No search fees for public interest requests (e.g., media, scholars, taxpayers). Fee schedules must be posted publicly at the public body’s office and with the county clerk.
- ▶ Fees **cannot** be used by a public body to discourage a person from requesting records under the ORA.

## ENFORCEMENT AND PENALTIES

(51 O.S. § 24A.17)

- ▶ Willful violation is a misdemeanor: up to \$500 fine and/or one year in jail. 51 O.S. § 24A.17(A).
- ▶ Civil remedies include injunctive relief and recovery of attorney fees for successful plaintiffs. 51 O.S. § 24A.17(B).
- ▶ Prior to filing for declaratory or injunctive relief, requester must notify public body or official ten (10) business days prior to filing suit, copying the Attorney General. 51 O.S. § 24A.17(C).
- ▶ Party urging an exemption to a record under the ORA bears a burden of proof to establish that such exemption applies. *Tulsa Tribune Co. v. Okla. Horseracing Comm’n*, 1986 OK 24, 735 P.2d 548.

## LITIGATION FILES & INVESTIGATORY REPORTS

(51 O.S. § 24A.12)

The Attorney General, agency attorneys authorized by law, the Workers’ Compensation Commission, and the office of district attorney of any county, and the municipal attorney of any county may keep its litigation files and investigatory reports confidential.

## KEY DEFINITIONS

- ▶ **RECORD**: Any document (physical or digital) related to public business or public funds, excluding nongovernmental personal effects and software. 51 O.S. § 24A.3(1).
  - Include electronic communications, **regardless of whether sent from a public or personal device—if they concern public business.** 2001 OK AG 46; 2009 OK AG 12; and 51 O.S. § 24A.3(1)
- ▶ **PUBLIC BODY**: Entities supported by or administering public funds, including state agencies, boards, commissions, and local governments. 51 O.S. § 24A.3(2).
- ▶ **PUBLIC OFFICIAL**: Any official or employee of a public body. 51 O.S. § 24A.3(4).
- ▶ **LAW ENFORCEMENT AGENCY**: Any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions . . . 51 O.S. § 24A.3(5).

## PROMPT, REASONABLE ACCESS

(51 O.S. § 24A.5(6))

- ▶ Public bodies must provide prompt, reasonable access to records during regular business hours.
- ▶ No “first-in, first-out” queue: Agencies may not delay a simpler or current request while working on older, more complex ones.
- ▶ Delays are allowed only to prepare documents or avoid excessive disruption of core functions.
- ▶ Posting online to website satisfies the duty of providing prompt, reasonable access.
- ▶ For public bodies or officials that are open for business less than 30 hours a week, consult title 51, section 24A.6.
- ▶ Must produce reasonably segregable portions of a record, removing all exempt materials by redaction.

## PERSONNEL RECORDS

(51 O.S. 24A.7)

- ▶ Public body has “sole discretion” to keep certain personnel records confidential under subsection A.
- ▶ **Must disclose**: Name, title, salary, dates of employment, job description, office location, and final disciplinary actions.
- ▶ **May redact**: Personal details (e.g., address, phone, ID numbers) if disclosure would be a clearly unwarranted invasion of personal privacy. Requires a case-by-case balancing test. (§ 24A.7(A)(2); *Okla. Public Employees Ass’n*, 2011 OK 68, 267 P.3d 838)
- ▶ **Always redact**: Social Security numbers. (§ 24A.7(D))
- ▶ A public body can withhold employee birth dates and employee identification numbers as confidential. *Okla. Public Employees Ass’n*.



SCAN TO READ THE FULL OPEN RECORDS ACT OR VISIT

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

## EXEMPTIONS TO ORA

(51 O.S. § 24A.5)

- ▶ Privileged legal materials, including attorney–client communications, work product, and informant identities (12 O.S. §§ 2502, 2510, and 3226(B)(3)).
- ▶ Executive session minutes and materials from lawfully closed meetings under the OMA.
- ▶ Driver records protected under the Driver's Privacy Protection Act (18 U.S.C. §§ 2721–2725).
- ▶ Confidential medical examiner files, including unverified findings or hearsay.
- ▶ Licensing exams: test forms, question banks, and answer keys.
- ▶ Lottery winners' personal data.
- ▶ OTA toll system data: vehicle movements and security recordings.
- ▶ Personal financial or credit info submitted to public bodies for licensure, permits, or contracts. Any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority,
- ▶ Tourism guest or purchaser information held by the Oklahoma Tourism and Recreation Department.
- ▶ Military discharge records (DD Form 214) filed with county clerks.
- ▶ Motor Vehicle Reports and personal driver data maintained by DPS.
- ▶ Contact information in license applications, including addresses, phone numbers, and IDs (refer to statute for scope).
- ▶ Long-Term Care Administrator investigation files.
- ▶ Investigative materials held by the AG or Insurance Department related to:
  - The Patient's Right to Pharmacy Choice Act,
  - The Pharmacy Audit Integrity Act, or
  - 59 O.S. §§ 357–360.

## PROTECTIVE ORDERS AND COURT RECORDS

(51 O.S. §§ 24A.29 & 24A.30)

- ▶ For protective orders, parties must comply with § 24A.29 and 12 O.S. § 3226(C).
- ▶ Parties cannot stipulate to overly broad protective orders than is necessary. *State v. Rivero*, 2021 OK 31, 489 P.3d 36.
- ▶ Court records are public records unless otherwise confidential.
- ▶ To seal a court record or a portion of, the moving party must demonstrate a "compelling privacy interest exists which outweighs the public's interest in the record.
- ▶ Prior to sealing a record or a portion of a record, the court must enter a public order and shall:
  - Make findings of fact which identify facts which the court relied on to enter its order,
  - Make conclusions of law specific enough to explain the legal basis for sealing the record,
  - Utilize the least restrictive means to achieve confidentiality
  - Narrowly tailor the order so that only portions of the record that are confidential are sealed and the remainder is kept open.

## OTHER NOTEWORTHY SECTIONS

- ▶ Public bodies may require requests be in writing and include contact info and such other information to allow a public body to determine whether the request is for a commercial purpose. 1999 OK AG 55.
- ▶ Public officials can keep personal notes and personally created materials confidential prior to action being taken. 51 O.S. § 24A.9.
- ▶ Generally, information, records, or other materials voluntarily supplied to a public body are subject to full disclosure. 51 O.S. § 24A.10.
  - Public bodies can keep certain records confidential to prevent unfair advantage to competitors or bidders, these include:
    1. Bid specifications for competitive bidding prior to publication by the public body,
    2. Contents of sealed bids prior to being opened by a public body
    3. Computer programs or software but not data thereon
    4. Appraisals relating to the sale or acquisition of real estate by a public body prior to award of a contract
    5. Prospective location of a private business or industry prior to public disclosure of such prospect except for records otherwise open to inspection such as applications for permits or licenses
- ▶ Records coming into the possession of a public body from the federal government or records generated or gathered as required by federal law may be kept confidential to the extent required by federal law. 51 O.S. § 24A.13.
- ▶ A record otherwise available for public inspection shall not be denied because a public body or official has placed it in a confidential file. 51 O.S. § 24A.20.
- ▶ Information related to the following may be kept confidential by a public body:
  - Vulnerability assessments of government facilities or public improvements;
  - Terrorism records concerning deterrence, prevention, protection, response, or remediation or terrorism investigative evidence;
  - Information technology of a public body to the extent it specifies:
    - Design or functional schematics demonstrating relationships or connections between devices or systems,
    - System configuration information
    - Security monitoring and response equipment placement and configuration,
    - Specific location or placement of systems, components, or devices,
    - System identification numbers, names or connecting circuits,
    - Business continuity and disaster planning, or response plans,
    - Investigative information on security penetrations or denial of services.
    - 51 O.S. § 24A.28(A)(1)–(6).