Oklahoma Open Records Act

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Public Policy
Section 24A.2

"[I]t is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government."

"The purpose of this act is to ensure and facilitate the public's access to and review of government records so they may efficiently and intelligently exercise their inherent political power."

What does the Open Records Act mean?

- A record is open unless specifically exempted by law.
- The privacy interests of individuals are adequately protected in the specific exceptions of the Act or in the statutes which authorize, create, or require records.
- Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep it from public access.
Record

Section 24A.3(1)

- Regardless of physical form or characteristic
- Created by, received by, under the authority of, coming into custody, control or possession of
- Public officials, public bodies or their representatives
- In connection with the transaction of public business, the expenditure of public funds, or the administering of public property.

Record Cont ...

Electronic Communication:

AG Opinion 09-12

“E-mails, text messages, and other electronic communications made or received in connection with the transaction of public business, the expenditure of public funds or the administration of public property, are subject to the Open Records Act.”

- This includes records on personal devices

Record Does Not Mean ...

- Nongovernment personal effects - (§ 24A.3)
- Personal financial information – (§ 24A.3)
- Required or allowed by law to be confidential - (§ 24A.5)
- Records protected by state evidentiary privilege, such as attorney-client - (§ 24A.5)
- Records of what transpired during executive sessions - (§ 24A.5)
Records Exempt from Disclosure

- A record is open unless specifically exempted by law.
- Public body bears the burden of establishing that records are protected/confidential.

Personnel Records

### Section 24A.7

- Some *may* be kept confidential \(\text{– § 24A.7(A)}\)
- Some *must* be confidential: employee or former employee – home address, phone number, DOB and social security number \(\text{– § 24A.7(D)}\)
- Some *must* be available \(\text{– § 24A.7(B)}\)
  - Public official employment application
  - Gross receipts of public funds
  - Dates of employment and title or position
  - Final disciplinary action

Various Confidentiality Provisions

- Personal notes (Prior to action) – 24A.9
- Bid specifications (before publication), sealed bids, appraisals (before disclosure) – 24A.10
- Federal records - fed. law – 24A.13
- Personal communications received by public body relating to exercise of constitutional rights – 24A.14
  - Information pertaining to donors and prospective donors to or for benefit of institutions or agencies of State System of Higher Ed. – 24A.16a
Confidential Educational Records
Section 24A.16

- Individual student records (not including directory information)
- Teacher lesson plans, tests, and other teaching materials
- Personal communications concerning individual students

Directory Information

“Directory information” includes a student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, most recent educational institution attended.

- Must give student notice of information designated as directory information.
- Allow reasonable time after notice to allow parent or student (18) to advise that information designated should not be released.

Confidential Research Records
Section 24A.19

- Information related to research, the disclosure of which would affect:
  - Outcome of research
  - Ability to patent or copyright research or other proprietary rights in research or results
Disclosure

Section 24A.5 & 24A.6

- Open to any person
- Inspection, copying and/or mechanical reproduction
- During regular business hours
  - Offices with 30 hrs or less
- Not required to create a record or format that does not exist

Procedures

- Prompt, reasonable access - § 24A.5(5)
- Reasonable procedures to protect records and prevent excessive disruptions
- One person available at all times during regular business hours to release records -§ 24A.5(6)
- Additional recordkeeping not required -§ 24A.18
  - Not required to create a record in a format in which it is not currently kept.

Fees

Section 24A.5(3)

Copying/Mechanical Reproduction

- If not otherwise prescribed by state law, reasonable, direct cost.
- Copying - max .25¢ per page; $1.00 for certified.
- Written schedule posted at principal office and filed with county clerk.
Search Fees

- If solely for commercial purpose
- If search would cause excessive disruption of essential functions
- Only reasonable, direct costs of search
- Not used for discouraging requests or as obstacles to disclosure
- Search fee cannot be charged if in “public interest.”
- Written schedule posted at principal office and filed with county clerk.

Penalties

- Willful violation (Criminal) - up to $500 fine and up to one year in county jail or both - § 24A.17(A)
- Civil suit – public body pays attorney fees if unsuccessful - § 24A.17(B)(2)
- Public body or public official NOT civilly liable for damages resulting from disclosure pursuant to the Act - § 24A.17(D)

Thank you for attending

➡ www.oag.ok.gov
➡ www.okpress.com
➡ www.foioklahoma.org